



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

October 2009

Scheduled for committee review Tuesday, October 13th, 2009. Senate Committee Room #22

Reference XXXII IAB No. 06(09/12/09) XXXII IAB No. 07(09/24/09)

HIGHLIGHTS IN THIS ISSUE:

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INSURANCE DIVISION

9:05

long-term care partnership program, IAB Vol. XXXII, No. 06 ARC 8132B, NOTICE

2009 Iowa Acts, House File 723, in response to the Deficit Reduction Act of 2005 (Public law 109-171), establishes a joint long-term care partnership program administered by the Insurance Division and the Department of Human Services, providing financing for long-term care through a combination of private insurance and medical assistance. The Long-Term Care Partnership Program initially began in 1987 as a demonstration project in four states—California, Connecticut, Indiana, and New York.

The program requirements apply to all long-term care policies or certificates sold or issued for delivery on or after January 1, 2010. In addition, insurers must provide a 90-day opportunity, to all existing policyholders that were issued long-term care policies between February 1, 2003, and January 1, 2010, to exchange their existing long-term care policies for an Iowa long-term care partnership policy. The program will:

- Provide incentives for individuals to insure for long-term care needs, including some limitations on premium inflation;
• Provide a mechanism medical assistance coverage while having certain assets disregarded for eligibility determinations and recovery; and
• Reduce the financial burden on the medical assistance program by encouraging the pursuit of private initiatives using qualified long-term care partnership policies or certificates. This reduction is accomplished by delaying or eliminating the need for some people to rely on Medicaid to pay for long-term care services .

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The proposed rules also change the training required of insurance producers who wish to sell long-term care insurance to include training regarding the long-term care partnership program. This consists of one-time training of eight credits and ongoing training of four credits. Topics must be related to long-term care insurance, long-term care services and qualified state long-term care insurance partnership programs.

IOWA FINANCE AUTHORITY

9:20

Disaster recovery housing project tax credits, IAB Vol. XXXII, No. 07, ARC 8181B, NOTICE.

This rulemaking implements 2009 Iowa Acts, Senate File 457, division IV, by creating a disaster recovery housing project tax credit program. The purpose of the program is to assist in the construction or rehabilitation of housing in areas which were declared to be disaster areas between May 1, 2008 and August 31, 2008. The tax credit shall not exceed 75 percent of the taxpayer's qualifying investment in a disaster recovery housing project. The maximum amount of tax credits issued by the Authority shall not exceed \$3 million in each of the five consecutive tax years beginning in the 2011 calendar year.

The majority of the proposed rules reflect the underlying legislation and set the requirements for eligibility of projects and taxpayers, the application and review process, and the amount of the available tax credits. The proposed rules also establish a nonrefundable application fee in the amount of one percent of the total five-year tax credit amount.

ECONOMIC DEVELOPMENT DEPARTMENT

9:30

Targeted jobs withholding tax credit program (TJWTC), IAB Vol. XXXII, No. 07, ARC 8147B, ADOPTED.

The IDED Board adopted previous amendments to the Targeted Jobs Withholding Tax Credit Program on January 15, 2009. These amendments were to become effective on March 18, 2009. However, at its March 6, 2009, meeting, the Committee imposed a 70-day delay to allow the Department to work through the legislative process and any pending legislation that would impact the program. 2009 Iowa Acts, Senate File 304, was passed during the 2009 legislative session and makes substantive changes to TJWTC. This rulemaking brings the rules into compliance with the statutory changes.

A public hearing was held on July 7, 2009, where the Department received comments from each of the five "pilot project" cities. In response to the comments received, the Department revised the definition of "local financial support" to clarify that in-kind contributions must be directly related to the project and clarified the local match

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requirement and provided an example. The adopted amendment also clarifies that the intent of the local match requirement is to require pilot project cities to contribute to projects that result in an increase in a city's tax collections.

The adopted rules:

- Add definitions of "employer's taxable capital investment" and "local financial support."
- Require the total amount of awarded withholding tax credits to be stated in the withholding agreement.
- Establish a limit on the total amount of withholding tax credits awarded based upon the total dollar amount of qualifying investment in the project.
- Prohibit the entering of a withholding agreement by an employer not located within a pilot project city when another Iowa community competes for the same project.
- Extend until 2013 the ability of a pilot project city to enter into a withholding agreement.
- Clarify required components of a withholding agreement and local match requirements.
- Require base employment to be established by the business at the time of submission of an application.
- Establish the department's review authority to approve a withholding agreement application.
- Modify reporting requirements of pilot project cities and require annual verification by the department.

The IDED Board adopted these amendments on August 20, 2009.

PUBLIC HEALTH DEPARTMENT

9:50

Fluoroscopy, IAB Vol. XXXII, No. 07 ARC 8161B, NOTICE

The department establishes by rule general requirements for the proper use of X-ray equipment and imaging systems by, or under the supervision of, an individual authorized and licensed "to engage in the healing arts or veterinary medicine."

Fluoroscopy is a type of X-ray imaging that can display motion, using a continuous series of images. It is often used in chronic interventional pain management. This proposed rule states that the use of fluoroscopy by radiologic technologists and students shall be performed under the direct supervision of a licensed practitioner (defined as a person licensed or otherwise authorized by law to practice medicine, osteopathy, chiropractic, podiatry, or dentistry in Iowa, or certified as a physician assistant), or an advanced registered nurse practitioner (ARNP).

This requirement is directly tied to rules promulgated by the Board of Nursing in July, 2009. The Nursing Board filing allows an ARNP to provide direct supervision in the use of fluoroscopic equipment; the nurse must collaborate "as needed" with a physician. Those rules were controversial when reviewed by the Administrative Rules Review Committee (ARRC) in July, 2009. The rules were opposed by several medical groups who contended that the nursing board had no authority to authorize ARNP supervision. The ARRC did not delay that filing but did refer it to the legislature for further study.

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Both rulemaking efforts are part of a larger issue: chronic pain management. Medical groups maintain that chronic pain management is the practice of medicine, to be provided only by a medical or osteopathic physician. Nursing groups contend that nurse anesthetists already provide chronic pain management. The Board of Medicine is expected to propose rules on this issue in the upcoming months.

ENVIRONMENTAL PROTECTION COMMISSION

10:20

Underground storage tank operators, IAB Vol. XXXII, No. 06, ARC 8124B, ADOPTED.

The EPC revises the licensing requirements for underground storage tank operators. The proposed revisions provide for three levels of licensure. A class "A" operator is actually responsible for the proper operation of the facility, including training of personnel and compliance with all regulatory requirements. A class "B" operator implements applicable tank regulatory requirements and standards, including the day-to-day aspects of operating, maintaining, and record keeping for the tanks. A class "C" operator is the on-site employee who typically controls or monitors the dispensing or sale of the product. A class A or B operator should be immediately available for telephone consultation with the Class C operator when a facility is in operation, and be able to be on site at the tank facility within four hours. For staffed facilities, a class C operator must be on site whenever the facility is in operation.

Class A and B operators must be designated and trained by August 1, 2011; they must complete a department-approved training course and take an examination to verify their understanding and knowledge. Class C operators must receive written basic operating instructions, emergency contact names and telephone numbers, and basic procedures; and must receive some basic training within six months of the effective date of the rules. A facility may not operate after August 2011 unless operators have been designated and trained.

HUMAN SERVICES DEPARTMENT

10:50

Hawk-I dental plan, IAB Vol. XXXII, No. 06 ARC 8112B, NOTICE

In response to federal legislation the department proposes a new program to provide dental coverage to children who would be eligible for HAWK-I benefits except that they have health insurance. Under current policy, children must be uninsured to obtain dental coverage through the HAWK-I program. Coverage includes diagnostic and preventive services, routine and restorative services, endodontic services, periodontal services, cast restorations, and prosthetics. Orthodontia is not covered.

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A monthly premium is established on a sliding scale. The maximum, for family income at 250 percent of the federal poverty level but less than 300 percent is \$15 per child per month with a \$20 monthly maximum per family.

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Hawk-- proof of citizenship, IAB Vol. XXXII, No. 06 ARC 8110B, NOTICE

In response to federal legislation the department will require verification of the citizenship status and identity of all children applying for or enrolling in the HAWK-I program. Non-citizen children who are lawful permanent residents or refugees will continue to be eligible for the program. A social security number will be required. Eligibility for HAWK-I will not be approved until acceptable documentary evidence is provided.

* * *

HAWK-I –waiting period for determination of uninsured status, IAB Vol. XXXII, No. 06, ARC 8128B, NOTICE, ARC 8127B, FILED EMERGENCY.

This rulemaking implements a one-month delay in benefits when health insurance has ended during the month of application for HAWK-I or Medicaid benefits or during the five preceding months for a child whose family's income is 200 percent of the federal poverty level or more. The rulemaking does, however, include specific conditions when the delay will not apply, such as:

- The child is moving from Medicaid to HAWK-I.
- The child has a medical condition that, without medical care, would cause serious disability, loss of function, or death.
- The cost of health insurance coverage for the child exceeds 5 percent of the family's gross income. The cost of health insurance for the child shall be the difference between the premium for coverage with and without the child.
- According to the Department, the intent of this rulemaking is to provide a disincentive for families who drop health insurance coverage for their children and then apply for aid.
- The health insurance was provided through an individual plan.
- The child's health insurance coverage was lost due to, domestic violence, divorce or death of a parent, involuntary loss of employment that qualified the parent for dependent coverage, job change to a new employer that does not offer dependent coverage or that requires a waiting period before children can be enrolled in dependent coverage, utilization of the maximum lifetime coverage amount, expiration of coverage under COBRA, discontinuation of dependent coverage by the parent's employer, and a reason beyond the control of the parent, such as a serious illness of the parent, fire, flood, or natural disaster.

The federal Centers for Medicare and Medicaid Services has informed the Department that this rulemaking must be implemented as a condition of approval for the HAWK-I State Plan amendment to expand income eligibility to families whose countable limit is up to 300 percent of the federal poverty level.

The HAWK-I Board adopted this amendment on August 17, 2009.

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VOLUNTEER SERVICE COMMISSION

11:30

Iowa summer youth corps and Iowa green corps, IAB Vol. XXXII, No. 07, ARC 8158B, EMERGENCY.

The proposed rules implement new programs created in 2009 Iowa Acts, Senate File 482. The youth corps is a "service-learning" program combining community service with summer learning opportunities for students in grades six through twelve. It is a grant program administered by the commission. The program gives priority to projects in communities that have disproportionately high rates of juvenile crime or low rates of high school graduation or that have been designated as distressed city enterprise zones.

Service areas include:

- Energy conservation.
- Emergency and disaster preparedness.
- Improving access to and obtaining the benefits from computers.
- Mentoring of middle school youth.
- Summer service projects.
- Performing community improvement projects.

The Iowa green corps program is a youth program supporting AmeriCorps or summer youth corps projects relating to energy efficiency, historic preservation, neighborhood development, and storm water reduction and management.

PUBLIC SAFETY DEPARTMENT

11:50

*Fire protection system installer and maintenance worker licensing program, IAB Vol. XXXII, No. 07
ARC 8153B, NOTICE*

2009 Iowa Acts, chapter 1094, as amended by 2009 Iowa Acts, House File 400 provide for the licensing of fire protection system installers and maintenance workers.

The licensing requirements do not apply to:

- A licensed professional engineer providing consultation or develops planning services;
- A person who is employed full-time by a school corporation, hospital, or public facility and performs maintenance work involving no more than one sprinkler head or nozzle;
- A licensed plumber performing work within the scope of that license;
- An employee of a certified fire extinguishing system contractor who is working as an apprentice sprinkler fitter under the direct supervision of a licensed fire sprinkler installer and maintenance worker;
- A person who installs or demolishes walls, ceilings, insulation, sprinkler pipe, or associated materials;
- A person who is a responsible managing employee of a fire extinguishing system contractor.

The fee for a permanent or provisional license is \$250. Licensure is for a two year period and may include a variety of endorsements for additional specialties, which include: automatic sprinkler systems, special hazards fire suppression, or preengineered dry chemical or wet agent systems. Licensees must carry liability insurance in the

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following amounts: \$500,000 per person, \$1,000,000 per occurrence, and \$1,000,000 property damage.

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Electrician and electrical contractor licensing, IAB Vol. XXXII, No. 07 ARC 8160B, NOTICE

2009 Iowa Acts, Senate File 159, and 2009 Iowa Acts, Senate File 478 revise Iowa's recently enacted electrician and electrical contractor licensing program. Senate File 159 in part authorizes an inactive master electrician license which can be converted to a class A master electrician or class B master electrician license by complying with continuing education and license requirements. Licensees must complete 18 hours of continuing education each three years.

The Act also exempts certain farm work from inspection; an employee of a farm is not required to hold a license while acting within the scope of the employees employment.

Certain electrical work is exempted from both inspection and permit requirements if:

- The installation is performed by a master electrician, journeyman electrician, or apprentice electrician working under the direct supervision of a master or journeyman electrician.
- The installation to be performed does not in any way involve work within an existing or new switchboard or panel board.
- The installation to be performed does not involve over-current protection of more than 30 amperes.
- The installation to be performed does not involve any electrical line-to-ground circuit of more than 277 volts, single phase.

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Commercial explosive licensing, IAB Vol. XXXII, No. 07, ARC 8155B, NOTICE.

During 2008, discussions were undertaken between the State Fire Marshal and the Iowa Limestone Association, which is the trade association representing most commercial explosive licensees in the state, to prepare to rewrite and more systematically codify requirements for commercial explosive licenses issued by the Fire Marshal. Rulemaking was initiated in November 2008; however, those proposed rules were never adopted and that rulemaking was terminated. This rulemaking is intended to be a continuation of that rulemaking effort.

Iowa Code section 101A.2 establishes licensing of commercial explosives operations and users of explosives for commercial purposes. The rules for this program have been in the general rules of the Fire Marshal, and are now being moved to a separate chapter as part of an effort to reorganize and renumber the rules of the department.

According to the Department, the proposed rules differ significantly from those that are currently in effect, primarily in that the proposed rules provide for licensing of

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individual blasters as well as commercial explosive businesses. The current statute authorizes the licensing of individual blasters, but this has not previously been implemented. The proposed rules do not require an individual blaster license to authorize a person solely to transport explosives from one location to another, to assist a licensed blaster, to train under a licensed blaster, or to engage in the manufacture of explosives. Also, an individual blaster license is not required for a person who is the owner of a sole proprietorship which holds a commercial explosive license in order for that person to engage in blasting.

The proposed rules outline the application process, specify the applicable fees, establish requirements for both the commercial explosive business license and the individual blaster license, establish requirements for inventory and recordkeeping by license holders, specify the grounds for suspension, revocation, or denial of a license, and establish annual inspection requirements and fees.

The department has scheduled a public hearing on October 13, 2009.

NO REPRESENTATIVE REQUESTED TO APPEAR

EDUCATIONAL EXAMINERS BOARD

Complaints, investigations, contested case hearings, IAB Vol. XXXII, No. 06, ARC 8143B, NOTICE.

The board's proposed amendments change the manner and timing by which a respondent receives a copy of a complaint at the beginning stage of an investigation. Current rules relating to the investigation of a complaint require the respondent to receive a copy of the complaint at the beginning stage of the investigation. The proposed amendment would eliminate the requirement for notice at the beginning of the investigation and instead require a copy only after the board has found probable cause. The proposed rules also specify that the complaint notice must include the respondent's name, address, and telephone number, if known, a concise statement of the facts of the alleged violation, an explanation of the facts underlying the complaint, and a citation to the specific rule or law alleged to have been violated. The proposed rules also strike provisions relating to the means by which the respondent receives the notice and instead requires only that the notice be in writing.

The board has scheduled three public hearings on this rulemaking. The first hearing is scheduled for September 29, 2009 and includes eight ICN sites. The second hearing is

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scheduled for September 30, 2009 at the Grimes State Office Building. The third hearing is scheduled for October 1, 2009 and includes seven ICN sites.

OFFICE OF ENERGY INDEPENDENCE

Energy efficiency community grants, IAB Vol. XXXII, No. 06, ARC 8102B, ADOPTED.

2009 Iowa Acts, Senate File 452, §2 provides for a community grant program to assist communities and organizations implement projects to reduce energy consumption and make communities more sustainable and energy efficient. Applicants can include either government or private non-profit entities which must provide matching funds of at least fifty percent of the total cost of the project, either in cash or in kind. Eligible projects include any project or program that would save energy dollars or energy units. Grants awarded range from between \$1000 and \$50000 each.

INSPECTIONS AND APPEALS DEPARTMENT

General provisions relating to senior care, IAB Vol. XXXII, No. 07, ARC 8174B through 8177B, ADOPTED.

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. The department now completes action on a series of rulemakings to transfer and update a variety of senior programs: specific provisions for elder group homes (ARC 8175B), assisted living programs (ARC 8176B), and adult day services (ARC 8177B), along with a set of general provisions applicable to all these programs (ARC 8174B). The rules were not controversial when published under notice.

The rules contain standards and criteria common to many residential-type programs, relating to tenant care, service plans, staffing, and the facility itself. Among the most significant are criteria for admission and retention of tenants. A program cannot admit *or retain* a tenant who:

- Is bed-bound; requires routine, two-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.

Standards also include provisions for the involuntary transfer from the program.

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VETERINARY MEDICINE BOARD

held over until November

Auxiliary personnel, IAB Vol. XXXII, No. 07, ARC 8168B, NOTICE.

The proposed amendments revise and adopt new definitions, set out categories and requirements for veterinary auxiliary personnel, and update the implementation statutes in the Chapter 10 rules regarding discipline standards. Specifically, the proposed rules provide for additional classifications of non-veterinarian employees who are employed by veterinarians, and include additional education, testing and continuing education requirements for non-veterinarian personnel.

The proposed rules also define for each class of personnel the level of supervision by a licensed veterinarian that is required for assisting the veterinarian in the treatment of animals and for performing laboratory work in a veterinary practice. The proposed rules also include provisions relating to temporary technician permits for applicants who are certified in another jurisdiction, establish a procedure for reactivation of registration, and increase certain fees.

The board has scheduled a public hearing for October 19, 2009.