



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

December 2009

Scheduled for committee review Tuesday, December 8th, 2009. Senate Committee Room #116

Reference XXXII IAB No. 10(11/04/09) XXXII IAB No. 11(11/18/09) XXXII IAB No. 12(12/02/09)

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ATTORNEY GENERAL

9:50

Forfeited property, IAB Vol. XXXII, No. 10, ARC 8257B, NOTICE.

Iowa Code §809A.17 provides that forfeited property may be used by the Attorney Generals' office in the enforcement of criminal law or the Attorney General may give, sell, or trade property to any other state agency or to any other law enforcement agency within the state if, in the opinion of the attorney general, it will enhance law enforcement.

In response to the current state budget shortfall, the Attorney General proposes to increase the amount of forfeited funds retained by the Department from 10 percent to 20 percent and decrease the amount of forfeited funds given to local law enforcement agencies from 90 percent to 80 percent. The proposal also increases the fee charged for transfer of title of forfeited vehicles from \$100 to \$200. In addition, the proposed amendments set aside 20 percent the amount of proceeds from the sale of forfeited real estate to be retained by the Attorney General.

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DEPARTMENT OF TRANSPORTATION

10:00

REAL ID, IAB XXXII No. 12 ARC 8339B, EMERGENCY.

The federal REAL ID Act of 2005, 49 U.S.C. §30301 requires that all states must meet certain requirements relating to driver's licenses and nonoperator's identification cards, if those cards are to be accepted by the federal government for "official purposes".

The Act is a nationwide effort to increase the integrity and security of state-issued driver's licenses and identification cards. Iowa officials requested an extension of the compliance date of 2008; that extension was grant to December 31, 2009.

In general The Act requires documentation of identity, date of birth, social security number, address of principal residence, and evidence of lawful status in the United States. These requirements also include mandatory photographs for all applicants for driver's licenses and nonoperator's cards. States must verify, with the issuing agency, the issuance, validity, and completeness of each document that is required to be presented by a driver's licence applicant to prove their identity, birthdate, legal status in the U.S., social security number and the address of the applicants principal residence.

INSPECTIONS AND APPEALS DEPARTMENT

10:10

Dependent adult abuse in health care facilities and programs, IAB XXXII No. 11, ARC 8294B, ADOPTED.

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

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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 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.

PUBLIC HEALTH DEPARTMENT

11:00

Continuing education for plumbing and mechanical systems professionals, IAB XXXII No. 13, ARC 8270B, EMERGENCY.

2007 Iowa Acts, chapter 198, directed the Department of Public Health to establish continuing education requirements for plumbers and mechanical systems professionals. The Department proposed rules to implement this requirement in December, 2008; that notice was terminated and a new rulemaking is placed into "emergency" effect.

The rules establish a biennial continuing education compliance period. Each biennium a master or journey licensee must complete a minimum of 8 hours of continuing education, of which 4 hours must be in the prescribed practice discipline. A minimum of 2 hours of the 8 hours shall be in the content area of the applicable Iowa plumbing or mechanical codes, and 2 hours of the 8 hours shall be in the content area of the Iowa Occupational Safety and Health Act (IOSHA). A licensee holding licenses in multiple disciplines must obtain a minimum of 14 hours of continuing education, of which 8

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hours must be in any of the prescribed practice disciplines. A minimum of 2 hours of the 14 hours must be in *each* of the content areas of the applicable Iowa plumbing code, Iowa mechanical code, or both, and 4 hours of the 14 hours must be in the content area of IOSHA.

Up to 2 hours of continuing education may be obtained through completion of computer-based continuing education programs/activities. Each licensee must finance the cost of continuing education.

The rules also establish the standards governing the criteria for continuing education activities and provide that the plumbing and mechanical systems examining board may conduct audits to review compliance with continuing education requirements and require licensees to retain information about their continuing education courses for a period of two years. A licensee who is the subject of an audit is ineligible for license renewal until the completion of the audit.

The new rules provide automatic exemptions from the continuing education requirements of a license biennium for military service, residence in another state while complying with that state's continuing education requirements, and other specified circumstances. The proposed rules also provide permissive exemptions for situations involving exceptional hardship or extenuating circumstances and provide the grounds for extending the time in which a licensee may fulfill the continuing education requirements.

A public hearing was scheduled for November 24, 2009, which included 14 ICN sites throughout the state.

EDUCATION DEPARTMENT

1:00

Financial management of categorical funding, IAB XXXII No. 05, ARC 8054B, ADOPTED, 70 day delay.

A 70-day delay was imposed at the September ARRC meeting, covering portions of new rules relating home school assistance program funding (rule 98.12) and the equalization levy fund (rule 98.112). The remainder of the rules became effective on September 30, 2009. The two provisions currently under delay will go into effect on Wednesday, December 9th, 2009..

Stakeholders associated with home school assistance programs requested that home school assistance programs be treated as a public school program for funding purposes, similar to the statewide voluntary four-year-old preschool program. They expressed concerns that if money provided under the funding scheme is treated like supplemental

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funding, there will be many expenses that will not be reimbursed, which will eventually lead to services being limited or cut altogether. Those stakeholders also questioned the inequity in not treating other programs similarly to the home school assistance program as it relates to funding. Concerns were also raised about how the new rules would impact home school assistance programs, particularly following other funding reductions in recent years.

Department representatives responded that the preschool program is a public school program, and a home school assistance program is not dual enrollment into a public school program, but rather is a program that is home-based with assistance given by the public school to that home-based instructional program. Accordingly, the department stated that the requested changes would conflict with the intent of the program as home-based and would contradict appropriate accounting procedures. The department also cited concerns over the potential for reimbursing certain expenditures that might, in effect, create a situation where homeschooling was a "private" school being funded with public money.

HUMAN SERVICES DEPARTMENT

1:30

Nursing facility quality assurance assessment, IAB XXXII No. 10, ARC 8258B, ADOPTED.

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.

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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 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.

* * *

Medicaid budget reductions, IAB XXXII No. 12, ARC 8344B, EMERGENCY.

Executive Order 19, mandated a "uniform modification of allotment requests...to achieve an annual ten percent budget reduction...". Iowa Code §8.31(5) authorizes the Governor to take this action if estimated budget resources are insufficient to pay all appropriations in full.

To comply with this mandated reduction the department now emergency implements reductions to a variety of Medicaid rates. Many of those reimbursement rates are specifically established in 2009 Acts, House File 811, §32. In some provisions the Act specifies a dollar amount (e.g.: "a single rate of \$4.57") for reimbursement, while in other provisions the Act mandate the continuation of an existing rate (e.g.: "shall remain at the rates in effect on June 30, 2009") or make reference to other provisions of law (e.g.: "shall not be less than the minimum payment level as established by the federal government").

These rate reductions have raised concerns that the rulemaking improperly nullifies the plain language of a statute. No rule may be "[b]eyond the authority delegated to the agency by any provision of law or in violation of any provision of law." (Code §17A.19(10)"b").

In response to this concern department representatives note the unique nature of Code §8.31---a statute that has empowered the Governor to reduce allocations specifically enacted into statute. The rates established in House File 811 were based on a specific level of appropriation; when that level was lawfully reduced pursuant to §8.31, the rates that were initially based on the appropriation could lawfully be reduced as well.

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Representatives also noted that leaving the rates intact would require even greater reductions in other areas.

PUBLIC SAFETY DEPARTMENT

2:30

Commercial explosive licensing, IAB Vol. XXXII, No. 11, ARC 8303B, ADOPTED.

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.

Over a year since rulemaking first began, the department now completes action on a this complete re-write of the regulation of commercial explosives. The noticed rules were reviewed at the committees' October meeting.

These new rules provide for licensing of 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 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 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.

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State building code: sprinklers required, IAB Vol. XXXII, No. 11, ARC 8305B, ADOPTED.

In this rulemaking the department is updating editions of national codes which have been adopted by reference into the state building code. This filing is controversial because the 2009 edition of the International Residential Code requires that all newly constructed single- and two-family homes be sprinklered. The adopted rules do delay the implementation date of this mandate until January 1, 2013.

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NO REPRESENTATIVE REQUESTED TO APPEAR

INSURANCE DIVISION

long-term care partnership program, IAB Vol. XXXII, No. 10 ARC 8271 B, ADOPTED

This filing was reviewed by the committee, as a notice of intended action, in October. 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 .

The 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.