



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

February 2010

Scheduled for committee review Monday, February 8th, 2010. Senate Committee Room #116

Reference XXXII IAB No. 15(01/13/10) XXXII IAB No. 16(01/27/10)

HIGHLIGHTS IN THIS ISSUE:

CARE FACILITIES: PAY FOR PERFORMANCE, Human Services Department .....1
HAWK-I DENTAL PLAN, Human Services Department .....2
BUDGET REDUCTIONS, Human Services Department.....2
FORFEITED PROPERTY, Attorney General.....3
ANTI-DEGRADATION IMPLEMENTATION, EPC .....4
OSHA: CONSULTATIVE SERVICES, Labor Division .....6

HUMAN SERVICES DEPARTMENT

7:45

Care facilities: pay for performance, IAB XXXII No. 15, ARC 8445B, EMERGENCY AFTER NOTICE.

House File 811, §33 required the department to devise a system to recognize and reward care facilities that provide cost=effective quality of life and appropriate access to medical assistance program recipients. The Act requires performance benchmarks and a system to collect data to evaluate nursing facility performance and to adjust the program and to recognize improvement. The program includes procedures to provide a pay=for=performance payment based upon a nursing facility's achievement of multiple favorable outcomes as determined by these benchmarks. Under the Act any increased reimbursement shall not exceed five percent of the direct and nondirect care medians. A facility may not receive a payment in a period where it has been cited for a deficiency resulting in actual harm or immediate jeopardy. Reimbursements may be reduced for certain other deficiencies.

The Act also specifically provides that pay=for=performance payments be used to support direct care staff through increased wages, enhanced benefits, and expanded training opportunities and that all pay=for=performance payments be used in a manner that improves and enhances quality of care for residents.

## THE RULES DIGEST

-2-

The new rules establish benchmarks four "domains": quality of life, quality of care, access, and efficiency. Possible scores in each domain are: quality of life, 25 points; quality of care, 59 points; access, 8 points; and efficiency, 8 points, for a potential total of 100 points. The entire list is detailed in chart form. A facility must receive at least 51 points to qualify for any additional reimbursement. Add-on payments are graduated depending on the facility's performance score as follows:

- A score of 51-60 points qualifies for an add-on of 1 percent of the direct care plus nondirect care cost component patient-day-weighted medians.
- A score of 61-70 points qualifies for an add-on of 2 percent of the direct care plus nondirect care cost component patient-day-weighted medians.
- A score of 71-80 points qualifies for an add-on of 3 percent of the direct care plus nondirect care cost component patient-day-weighted medians.
- A score of 81-90 points qualifies for an add-on of 4 percent of the direct care plus nondirect care cost component patient-day-weighted medians.
- A score of 91-100 points qualifies for an add-on of 5 percent of the direct care plus nondirect care cost component patient-day-weighted medians.

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*Hawk-I dental plan*, IAB Vol. XXXII, No. 15 ARC 8478B, ADOPTED.

The department implements a new Hawk-I program to provide dental coverage to children who would be eligible for benefits except that they have health insurance. Under current policy, children must be uninsured to obtain dental coverage through the HAWK-I program. These rules were initially reviewed by the Committee in October, 2009. At issue at that time was a provision eliminating an existing rule requiring that all participating insurance providers must a dental benefit as part of the package. Representatives of the Iowa Dental Association state that elimination of this coverage requirement has nothing in common with the rest of the notice, which expanded coverage to an additional group. They also contended that eliminating the insurance requirement would reduce competition and allow a single insurer to dominate the market and impose unfavorable contracts on participating dentists. Department representatives responded that they had little choice as many health care providers were eliminating dental coverage. The Department also states that allowing dental-only plans and medical-only plans to enter the HAWK-I market directly should ultimately afford a broader range of coverage options.

The adopted rule retains this provision and a new issue is presented; a provision was added that did not appear in the notice of intended action. The addition provides that before a waiting list for HAWK-I eligibility can be imposed, all children in the supplemental dental-only program must be dis-enrolled. The new provision states:

## THE RULES DIGEST

-3-

“**86.20(4) Waiting lists.** Before the provisions of subrule 86.3(10) [**relating to waiting lists**] are implemented, all children enrolled in supplemental dental-only coverage shall be disenrolled from the program.”

The introduction to this adopted filing notes the change was at the request of the federal Centers for Medicare and Medicaid Services (CMS).

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*Budget reductions*, IAB XXXII No. 15, ARC 8447B, 8449B, 8486B, 8451, 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. The Department “emergency” adopts a series of filings implementing that order. These filings:

- decrease by five percent the reimbursement rate for supervised apartment living services for the period from January 1, 2010, to June 30, 2010.
- decrease by five percent the reimbursement rates for foster group care For the period from January 1, 2010, to June 30, 2010.
- reduce State Payment Program expenses.
- decrease by five percent the basic reimbursement rate and the additional payments for
- special behavioral needs for foster family care and for adoption and guardianship subsidies, from January 1, 2010, to June 30, 2010.
- decrease by five percent the clothing allowance payments for children in foster care.
- Substitute a specific reimbursement amount for the maximum maintenance payment in the supervised apartment living program and maximum stipend payment in the preparation for adult living(PAL) program.
- Limit payment for nonrecurring adoption expenses and guardianship expenses.
- Suspend payment of special services payments under an adoption subsidy agreement between January 1, 2010, and June 30, 2010.

## ATTORNEY GENERAL

8:40

*Forfeited property*, IAB Vol. XXXII, No. 15, ARC 8476B, ADOPTED.

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 increases 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

## THE RULES DIGEST

-4-

20 percent the amount of proceeds from the sale of forfeited real estate to be retained by the Attorney General.

These provisions were initially reviewed in December 2009 as a notice of intended action. Agency representatives noted that the money was essential to continue providing assistance to local prosecutors. The change was opposed by local law enforcement officials, who stated that a successful forfeiture require a large investment in both time and money, and reducing the amount returned to the local jurisdiction would result in fewer forfeitures. The local law enforcement representatives asserted that this rule shifts the Attorney Generals' budget shortfall to local government.

### ENVIRONMENTAL PROTECTION COMMISSION

9:10

*Iowa anti-degradation implementation procedure*, IAB Vol. XXXII, No. 15 ARC 8466B, ADOPTED.

Iowa's antidegradation policy is intended to protect existing uses of surface waters (e.g.: fishing, boating, etc.) and to specify how the EPC will determine whether and to what extent existing water quality may be lowered in a surface water. This policy is required by federal law; under federal regulation water quality may be lowered only as "necessary to accommodate important economic or social development in the area." Federal requirements mandate a three tier approach to antidegradation: Tier 1 designations protect the existing uses of waters; Tier 2 designations for high quality waters allows some degradation under certain conditions but never below the level necessary to fully protect the "fishable/swimmable" standard and other existing uses; Tier 3 designations protect outstanding resource waters from any degradation. There are no Tier 3 waters in Iowa. For that reason the rules establish an "outstanding Iowa waters" category, nicknamed "Tier 2 and 1/2". Outstanding Iowa waters protection prohibits any lowering of water quality in unique waters as identified in the water quality standards unless the lowering is temporary and limited or serve to maintain or enhance the value, quality, or use of the water. Any proposed activity that would result in a permanent new or expanded source of pollutants in an outstanding national resource water is prohibited.

These rules were initially published as a notice of intended action in November, 2008. Following that initial rulemaking, the proposal was re-drafted and re-noticed in August, 2009. Thirteen public hearings were held. In September, 2009 the Committee requested a regulatory analysis. That analysis was reviewed in November, 2009. The analysis stated that inclusion of a stream in the Outstanding Iowa Waters (OIW) antidegradation

## THE RULES DIGEST

-5-

category could have an economic impact in a given watershed. The EPC stressed that these rules would not impact existing systems and only impact situations where there is an increased degradation in water quality.

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*Underground storage tanks: leak protection, IAB Vol. XXXII, No. 15 ARC 8469B, ADOPTED.*

This adopted filing establishes leak detection requirements for unstaffed fueling facilities. It requires in-line leak detection to shut off the submersible pump and stop fuel flow to the dispenser. In-line leak detection is for catastrophic leaks in pressurized product lines. At an unstaffed facility, shutting down the submersible pump to stop a large leak may not occur for several hours or days.

Initially, these provisions were part of a larger rulemaking package, it was reviewed by the Committee, without controversy, in July 2009. The EPC later tabled this portion of the filing for additional study. Opponents contend the cost for upgrading to automatic pump shutdown would be prohibitive. They estimated at least 160 unstaffed facilities and noted the hardship to the small agricultural communities if the unstaffed facilities decided to stop operating due to the cost. The opponents estimated costs for upgrade per facility (with three tanks) to be \$8,000 to \$10,000. Department representatives contest this figure and contend that the reason for immediately shutting down a catastrophic release is for public safety and to prevent further environmental contamination, which would be more expensive than the detection system.

Existing sites with an in-line leak detection system may continue operation provided that by January 1, 2013, an in-line leak detector capable of shutting off the submersible pump is installed; or the system is equipped with a device that immediately alerts the operator or designee when a leak is detected.

### **ECONOMIC DEVELOPMENT DEPARTMENT**

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*Iowa Broadband Deployment Governance Board, IAB Vol. XXXII, No. 15, ARC 8437B, ADOPTED.*

These provisions were initially reviewed by the Committee in November, 2009, as “emergency” filed rules. 2009 Iowa Acts, Senate File 376, mandated that the Department, along with the Utilities Board and the Telecommunications and Technology Commission establish and administer an "Iowa Broadband Deployment Governance Board" (IBDGB). The IBDGB is to establish a comprehensive broadband deployment program and a competitive process for granting funds to deploy and sustain high-speed broadband services. The 15-member IBDGB consists of educational users, local governments, urban and rural residential users, broadband and

## THE RULES DIGEST

-6-

telecommunications providers, state government, and four legislators, serving as non-voting members.

The broadband deployment program will promote universal access to sustainable high-speed broadband services throughout the state, and will award state grant funds as matching funds for the available federal funds. The program is open to both government and private entities. The program will fund capital projects that can be completed in 24 months. To be eligible a project must make broadband connections available to all business, government, educational, and residential locations within the project area. Projects will be evaluated using weighted criteria:

- Project purpose. (0-25 points).
- Project benefits. (0-25 points).
- Project viability. (0-25 points).
- Project budget and sustainability. (0-25 points).

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*Endow Iowa tax credits*, IAB Vol. XXXII, No. 15, ARC 8474B, ADOPTED.

This filing was initially reviewed by the Committee in November. the changes implement 2009 Iowa Acts, House File 478. They change the amount of the Endow Iowa Tax Credit from 20 percent to 25 percent of a qualifying donation and provide that any donation that receives such an Endow Iowa Tax Credit shall not be deductible in determining taxable income for state income tax purposes. The legislation also increased the base appropriation for the Endow Iowa Tax Credit program from \$2 million to \$3 million annually, which is reflected in the proposed amendments.

## LABOR DIVISION

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*OSHA: consultative services*, IAB Vol. XXXII, No. 15 ARC 8472B, NOTICE.

Iowa's Division of Labor operates with close ties to the federal Occupational Health and Safety Administration. This rulemaking is an update of existing provisions relating to consultative services provided upon request to employers without charge. The purpose of the services is to help employers provide safe and healthy workplaces. Under this program the division will provide a safety consultant who will review the workplace, without cost or penalty, for health and safety problems.

The consultant is independent of the enforcement staff. However, the employer must take immediate action to eliminate employee exposure to a hazard that, in the judgment of the consultant, presents an imminent danger to employees. The employer must also remediate other identified serious hazards.

## THE RULES DIGEST

-7-

The consultant will evaluate the employer's program for a safe and healthy workplace; identify specific hazards in the workplace; and provide appropriate advice and assistance in establishing or improving the employer's safety and health program and in correcting any hazardous conditions identified. Assistance may include education and training of the employer's staff to assist in ensuring safe and healthful work and working conditions.

### NATURAL RESOURCES COMMISSION

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*Conservation education programs*, IAB Vol. XXXII, No. 15 ARC 8463B, NOTICE.

The commission details in rule the general requirements of the boating, snowmobiling, all-terrain vehicle, snow groomer operation, fur harvester, and bow hunting education programs. The rules establish a specific instructor certification process for each type of program. Instructors must be at least 18 years old, pass a background check, take the prescribed education course, and serve an apprenticeship. The rules also provide for the suspension or revocation of a certificate, much like a professional license.

The rules also detail the educational programs themselves. Fees for each program vary from no cost up to \$25.

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*Permits for special events*, IAB Vol. XXXII, No. 15 ARC 8462B, NOTICE.

The Commission currently has rules governing boating events. These provisions create a general set of rules applying to boating, ATV and snow events, such as an organized race, tournament, exhibition, or demonstration. The Commission may impose special conditions for any special event if deemed necessary to protect the resource or to ensure public safety. The fee for each event is 25 dollars.

### PUBLIC HEALTH DEPARTMENT

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*Emergency medical services - air medical service program authorization*, IAB Vol. XXXII, No. 16, NOTICE.

The Department proposes a new chapter 144 establishing requirements for the air medical service program authorization. The rules provide various definitions for the administration of the program, including definitions for the various medical service providers and the different types of air ambulance service. The rules outline the general authority of an emergency medical care provider to render medical care as part of an authorized service program.

## **THE RULES DIGEST**

**-8-**

The rules establish the application procedures for an air ambulance service that desires to acquire an authorization to provide emergency medical care in an out-of-hospital setting. The rules require the applicant to operate in compliance with Iowa Code chapter 147A. An authorization is valid for three years. The rules establish requirements for the levels of care and staff, requirements relating to the air ambulance equipment and vehicles used, requirements for telecommunications systems employed by the program, and requirements for reporting certain incidents and patient data.

The rules also establish requirements and duties of the medical director for the program, including duties relating to the development and maintenance of program protocols, monitoring and evaluation of program activities, and assessment of personnel performance. The rules establish procedures for the investigation and disposition of complaints. The rules also include provisions governing the operation of an out-of-state air ambulance service program.