



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

April 2010

Scheduled for committee review
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Senate Committee Room #116

Reference
XXXII IAB No. 19(03/10/10)
XXXII IAB No. 20(03/24/10)

HIGHLIGHTS IN THIS ISSUE:

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LABOR SERVICES DIVISION

10:20

OSHA: consultative services, IAB Vol. XXXII, No. 19 ARC 8591B, ADOPTED.

Iowa's Division of Labor Services 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 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

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the employer's staff to assist in ensuring safe and healthful work and working conditions.

WORKFORCE DEVELOPMENT DEPARTMENT

10:40

Training extension benefits, IAB XXXII No. 19, ARC 8583B, NOTICE.

This 33-item proposal is mainly technical updates that are not controversial. Item 32 details "training extension benefits." Training extension benefits provide continued benefits so that the recipient may pursue a training program for entry into a high-demand or high-technology occupation; these include life sciences, advanced manufacturing, biotechnology, alternative fuels, insurance, environmental technology, and technologically advanced green jobs. Training extension benefits are available to an individual who was laid off or voluntarily quit with good cause attributable to the employer from full-time employment in a declining occupation or is involuntarily separated from full-time employment as a result of a permanent reduction of operations. Benefits can last 26 weeks.

PUBLIC HEALTH DEPARTMENT

11:20

Volunteer health care provider program, IAB XXXII No. 20, ARC8627B, NOTICE.

The volunteer health care provider program (VHCPP) has been in effect since 1994. This filing is a general update of existing provisions. The VHCPP is established to legally defend and indemnify eligible individual volunteer health care providers and protected clinics providing free health care services as provided in Iowa Code § 135.24. The state will pay all damages that a individual volunteer health care provider or protected clinic holding a protection agreement with the VHCPP is legally obligated to pay because of any claim made against the individual volunteer health care provider or protected clinic which arises out of the provision of free health care services rendered or which should have been rendered.

The rules specifically delineate the services that can be provided by each profession; only those specified services are eligible for this protection. To participate in the program, an individual health care provider must:

- hold a license or certification;
- describe any disciplinary action and malpractice lawsuit that has ever been taken against the licensee;
- describe the patients to be served, the *free* health services to be provided, and the location; and
- sign an agreement that identifies the site and the services.

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A clinic may also participate in the program, with an agreement similar to that used for individual health care providers, identify the clinic site, the patient groups served, and the *free* services provided.

Similar to the process for denial, suspension or revocation of a professional license, these agreements can be denied, suspended, or revoked, following a due process hearing.

MEDICINE BOARD

1:00

Interventional chronic pain management, IAB XXXII No. 19 ARC 8579B, NOTICE.

This proposal is a continuation of a long-standing rulemaking issue. The Nursing Board has adopted rules allowing an advanced registered nurse practitioner (ARNP) to provide direct supervision in the use of fluoroscopic x-ray equipment. The Department of Public Health has adopted a rule amendment that allows all ARNPs to supervise radiology technicians and students for the use of fluoroscopy. The public health rule complements the Board of Nursing's new rule that allows ARNPs to supervise fluoroscopy.

In 2009 the Committee referred this issue to the General Assembly, which took no legislative action. Senate Study Bill 3085 (Human Resources Committee) and House File 2136 (Judiciary Committee) both specifically defined the practice of chronic interventional pain medicine and the techniques used in that practice. Both bills limited the practice of interventional pain medicine to licensed physicians, podiatrists, or dentists; neither was passed out of sub-committee.

The Medicine Board now proposes standards of practice for the practice of interventional chronic pain management. It should be noted that unlike the proposed legislation, these rules do not contain language which specifically limits interventional pain medicine to a particular profession. The rule sets out a detailed definition of the term "*interventional chronic pain management*." In part, the definition states that:

"Interventional chronic pain management" means the diagnosis and treatment of pain-related disorders with the application of interventional techniques in managing subacute, chronic, persistent, and intractable pain.

The definition sets out the techniques used in pain management and provides examples of those techniques in use. The rule also describes the process of pain management: comprehensive patient assessment, pain diagnosis, evaluation and selection of treatment options, termination of treatment when appropriate, follow-up care, and collaboration with other health care providers.

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The rule concludes by stating that “[i]nterventional chronic pain management is the practice of medicine.” The statement is ambiguous because it does not indicate whether chronic pain management is *exclusive* to medical and osteopathic physicians.

These rules are within the authority of the Board; traditionally, the practice of medicine embraces the whole of the healing arts, and for that reason the board is free to detail the practice in rule when such detail may be appropriate. The fact that the General Assembly did not enact specific legislation does not preclude Board action.

The Board rules do not necessarily conflict with the rules promulgated by the Nursing Board in 2009, or with the practice of other health care professions where pain management is part of the practice. In the situation of the Nursing Board, those rules simply state that an advanced registered nurse practitioner can provide direct supervision in the use of fluoroscopic x-ray equipment; the rules then set out some training and documentation requirements. The two sets of rules are not necessarily in conflict; the Nursing Board rules define a portion of chronic pain management as falling within the scope of practice of an advanced registered nurse, while interventional chronic pain management as a whole falls within the practice of medicine.

ENVIRONMENTAL PROTECTION COMMISSION

1:30

Failure to pay state liabilities, IAB XXXII No. 19 ARC 8597B, NOTICE.

This proposal is standard boilerplate language implementing Iowa Code chapter 272D. Similar language has been adopted by other agencies that issue licenses. When the Department of Revenue or the College Student Aid Commission certifies that an Iowa license holder owes money to the state, a state agency is obliged to commence the process for the suspension, revocation, or denial of issuance or renewal of a license to the debtor. There is no administrative review of this action, any appeal must be filed in district court.

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Stream designations, IAB XXXII No. 19 ARC 8599B, NOTICE.

In 2006, the Department of Natural Resources implemented rules which assigned Iowa’s perennial streams and rivers the highest level of protection against additional degradation. Part of that rulemaking was a commitment by the Department to conduct actual studies on these streams and rivers, and re-classify them, over time, based on actual data. This rulemaking is the latest installment in the re-classification process and sets out designations for 499 stream segments.

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EDUCATION DEPARTMENT

1:50

Nutrition standards in schools, 5/20/09 IAB, SELECTIVE REVIEW.

These provisions were last reviewed by the Committee in June 2009. At that time the Committee referred the rules to the General Assembly, which took no legislative action.

The rules implement 2008 Iowa Acts, Senate File 2425, the "Healthy Kids Act", which in part mandates minimum time periods of physical activity for elementary and secondary students and sets nutritional content standards for foods and beverages sold or provided on school grounds during the school day.

Generally speaking, the nutritional standards apply to ala carte items or "snack food" sales in vending machines; the rules do not apply to the nutritional content of food or beverages provided through a school breakfast program or a school lunch program, sold for fundraising purposes, sold at concession stands, provided by parents, other volunteers, or students for class events, or provided by staff for the consumption by staff or students.

The rules allow caffeinated beverages in high schools, and that the rules do not apply to teachers and school staff or to concession stands operated by school booster groups. Students remain free to purchase snacks off-campus or bring snacks on-campus. Department representatives stated that the rules were a work in progress, initially designed to eliminate foods containing only non-nutritive calories, and they would be revised over time.

The Committee previously took public testimony both in favor and opposed to the rules; opponents contended that the rules were overly restrictive and urged consideration of the national standards developed by the industry itself. Proponents contended the rules had not gone far enough

PROFESSIONAL LICENSURE DIVISION

2:10

Licensure of social workers, IAB Vol. XXXII, No. 19, ARC 8586B, NOTICE.

Iowa law defines the practice of independent social work as providing "diagnosis and treatment of mental and emotional disorders or conditions." In September 2009, the Board of Social Work attempted to further define that term by adopting by reference the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (DSM-IV). This proposal was controversial with opponents contending that

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that the DSM-IV is a diagnostic tool developed by psychiatrists to use in a medical model setting and that most social work does not practice in a medical model setting.

The Board withdrew that notice and published a re-notice in December, which was reviewed by the Committee in January 2010. The controversies surrounding the earlier rulemaking have apparently been resolved. This revision provides that one component of diagnosis at the master's level for private practice must be utilization of the DSM-IV. The change also provides that that master level social workers seeking their license for independent practice may utilize diagnostic tools and methods other than the DSM-IV in supervised practice portion of their preparation, but that one component of their diagnostic practice must involve the DSM-IV.

HUMAN SERVICES DEPARTMENT

2:20

Child care centers, IAB XXXII No. 21, ARC8650B, ADOPTED, SPECIAL REVIEW.

This filing is being reviewed a month early, at the request of the Department. The rules implement Iowa Code § 237A.4A(1), by imposing a biennial fee ranging from \$50 for a center with the capacity to care for up to 20 children to \$150 for a center with the capacity to care for more than 150 children. The Code also requires a national criminal history check through the Federal Bureau of Investigation—at the cost of the center. This check applies to each owner, director, staff member, substitute, volunteer, or subcontracted staff person with direct responsibility for child care or with access to a child when the child is alone.

The rules require a detailed procedure for handling biting incidents, including “[a]n explanation of the center’s perspective on biting” and a procedure ensuring that unauthorized persons do not get access to the children.

No Representative Requested to Appear

CIVIL RIGHTS COMMISSION

General updates, IAB XXXII No. 19 ARC 8560B--8578B, NOTICE.

The Commission begins 18 rulemaking procedures, containing a variety of amendments that update current provisions. Some of the proposed amendments include:

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Changes in filing and delivery. The rules provide for the use of electronic filing using an online case management system. The rules include procedures for the use of “e-mail” in sending documents to the Commission. The Commission will now notify respondents in a complaint by “regular” mail. If the respondent does not answer, certified mail will be used.

Update rules for mediation. An alternative to an investigation and a contested case, mediation is a neutral, negotiating process, where parties attempt to negotiate a no-fault predetermination settlement for the purpose of amicably resolving the complaint.

The process for investigations is modified by allowing the administrative law judge to participate and direct the investigation. A commission investigator may confer with, be assisted by, or be directed by the administrative law judge during the investigation. The administrative law judge may participate in the investigation and engage in private communications with the parties or their counsel. The administrative law judge may then issue a “probable cause” determination, which will trigger a contested case hearing before the commission..

NATURAL RESOURCES DEPARTMENT

Special nonresident deer and turkey licenses, IAB XXXII No. 19, ARC8595B, NOTICE.

This program has been in effect since July 2009. The filing relates to the procedures and requirements for the issuance of special nonresident deer and turkey licenses authorized in Iowa Code § 483A.24. A Department committee reviews and ranks the summaries of the applications for the special license. The summaries are prepared by the program coordinator. The legislative committee considers the applications and makes final selection of the special license recipients. Selections are based on which conservation organizations and hunters are best qualified to promote the state and its natural resources. The rules provide several examples of the types of requests that legislative committee may consider.

The rules establish ranking criteria for the applicants; but the Department committee is allowed to “exercise its discretion.” Points are awarded based on criteria such as the relative size of the hunter’s potential audience, the hunter’s proposal to promote the state and its natural resources, and a hunter’s previous use of a special license. Certain conservation organizations and hunters are automatically forwarded to the legislative committee for consideration. Requests from an entity or person that has been found guilty of a game violation in Iowa or elsewhere within the past five years or that, in the

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opinion of the committee, has exhibited poor hunting ethics or judgment will not be considered for a special license.

The rules also establish the length of term for special licenses, reporting requirements for each recipient of a special license, special license costs, and hunter safety requirements.