



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

October 2010

Scheduled for committee review
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Senate Committee Room #116

Reference
XXXIII IAB No. 05(09/08/10)
XXXIII IAB No. 06(09/22/10)

HIGHLIGHTS IN THIS ISSUE:

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PUBLIC HEALTH DEPARTMENT

9:35

Iowa needs nurses now infrastructure account, IAB Vol. XXXIII, No. 06 ARC 9096B, NOTICE.

2010 Iowa Acts, Senate File 2384, §5 creates the "Iowa needs nurses now infrastructure account" to award grants for infrastructure to improve the education of nurses and educators, and to enhance the clinical experience for nurses. This includes clinical simulators, laboratory facilities, health information technology and other infrastructure items. The program is open to educational institutions with nursing preparation programs approved by the Nursing Board. Grant recipients must provide clinical experiences that:

- Expand the capacity of its nursing program in terms of opportunities for increased learning by the students completing the program.
• Offer educational opportunities in geographic areas where there is limited access to clinical facilities due to geographic location or limited patient census to support eligible students.
• Enhance learning opportunities for the students in the nursing program.

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Governmental public health advisory bodies, IAB Vol. XXXIII, No. 06 ARC 9093B, NOTICE.

2009 Iowa Acts, chapter 182 created the governmental public health advisory council and the governmental public health evaluation committee to advise the department

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regarding the coordination and implementation of the voluntary accreditation of local public health agencies and of the department and the evaluation of the accreditation program and governmental public health system. The advisory council consists of between 15 and 23 members appointed by the director. It will meet at least quarterly and will make recommendations to the department regarding the governmental public health system and propose public health standards that should be utilized for voluntary accreditation.

The public health evaluation committee consists of between 11 and 13 members appointed by the director. It will meet at least quarterly and will develop, implement, and evaluate the governmental public health system and voluntary accreditation program.

This proposal is part of the Iowa Public Health Modernization Act, enacted in 2009, and relating to the organization and operation of the governmental public health system. The system functions to prevent epidemics and spread of disease, protect against environmental hazards, prevent injuries, promote healthy behavior, and deal with public emergencies.

ECONOMIC DEVELOPMENT DEPARTMENT

10:00

Small business disaster recovery financial assistance program, IAB Vol. XXXIII, No. 05 ARC 9067B, EMERGENCY.

This filing creates a new forgivable loan program to provide disaster relief assistance to businesses physically damaged by the 2010 natural disasters that are in presidentially declared disaster areas eligible for individual assistance. A business meeting these criteria may apply for working capital to ensure the business's survival. The maximum amount of financial assistance available for working capital to ensure the business's survival is an amount equal to not more than 25% of the eligible lender's approved loan amount offered to the business, up to a maximum of \$50,000. The program will forgive a loan made to an eligible business if the business remains open for business for at least 12 months from the date of the award.

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Iowa small business loan program, IAB Vol. XXXIII, No. 05, ARC 8919B, Notice, ARC 9062B, FILED EMERGENCY AFTER NOTICE.

This filing was published on an emergency basis on June 30. It implements a new small business loan program to promote the creation and retention of jobs in Iowa's

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economy and to assist businesses to be more competitive. The rules establish the process by which a business shall apply for, receive and manage loan funds under this program. The General Assembly appropriated to the Department \$5 million for the program. According to the rules, the “purpose of the program is to promote the creation and retention of jobs in the state’s economy and to assist businesses to be more competitive by aiding entrepreneurs and small businesses in their efforts to upgrade or modernize equipment; realize additional efficiencies in their supply chains; improve their distribution and transportation margins; reduce facility costs through increased energy efficiency; and leverage other sources of business financing.”

The rules specify that the Department may enter into an agreement with and thereby designate certain nonprofit organizations to administer portions of the program. The rules identify specific terms and limitations for general loans made under the program, including loan amounts, interest rates, security requirements, and the length of the loan. The rules also identify unallowable uses for the proceeds from such loans.

An Iowa small business is eligible to apply for a loan under the program provided it meets the following requirements:

- Has a business plan and has received assistance from an Iowa small business development center or qualified public or nonprofit business consultant.
- Is not in violation of environmental or worker safety laws or rules, if the business has been incorporated for at least two years.
- Employs only workers legally authorized to work in the state.
- Does not engage in the production, depiction or distribution of obscene material.
- Is not in bankruptcy or imminently contemplating filing for bankruptcy.
- Has a demonstrated need for the funds and will use them for an authorized purpose.

The rules also outline the application process, including all required application documentation. Startup businesses are required to submit additional information when applying for the program. Applications will be reviewed based on the quality of the business plan and whether it projects a positive cash flow after the loan repayment, cash flow of the business, credit score of the owners of the business, value and quality of collateral, education and experience of the owner, quality and results of a marketing plan, and the legal history of the owners.

The rules specify that the loans are not forgivable and also include provisions related to defaulting on a loan under the program.

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This new entity was established in 2010 Iowa Acts, House File 2076, §4, to advise the Department on the development and implementation of public policies that enhance innovation and entrepreneurship in the targeted industries. The Council consists of 29 members, representing a cross-section of business, academia and government.

The rules create an Executive Committee to handle the day-to-day business of the Council. The Executive Committee consists of the chief technology officer, vice-chairperson of the council, director of the department, and four members of the council selected by the Board.

IOWA FINANCE AUTHORITY

10:30

Iowans helping Iowans housing assistance program, IAB Vol. XXXIII, No. 5, ARC 9078B, NOTICE, ARC 9077B, FILED EMERGENCY.

This rulemaking implements a program of housing assistance for persons affected by certain natural disasters that occurred in 2010. Under the program, the authority may grant funds to local government participants, including certain Iowa councils of governments, cities, and counties. The local government participants shall, in turn, loan funds to eligible residents under the conditions specified in this chapter to assist those eligible residents in purchasing homes generally comparable to those they lived in prior to the occurrence of the natural disasters of 2010 and in repairing or rehabilitating disaster-affected homes. Individual eligibility is conditioned on having been approved by FEMA for housing assistance as a result of the natural disasters of 2010.

Local government participants may make forgivable loans, provide down payment assistance, or provide assistance for housing repair or rehabilitation. The rules outline the process for allocating funds to local governments and the review of individual applications for assistance, designate eligible uses for the assistance, and specify terms for loans and other assistance.

The rules became effective on August 20, 2010.

ENVIRONMENTAL PROTECTION COMMISSION

10:40

Authorization permit for discharge of biological and chemical pesticides to waters of the United States, IAB Vol. XXXIII, No. 5, ARC 9056B, NOTICE.

This rulemaking includes various amendments to the Commission's chapters relating to wastewater construction and operation permits and pesticide application to waters. Specifically, this rule making will allow for the use of a new General Permit (No. 7) to authorize discharge of biological pesticides and chemical pesticides which leave a

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residue to waters of the United States, as required by recent decision of the U.S. Sixth Circuit Court of Appeals. That court decision vacated the federal EPA's final rule exempting pesticides applied in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) from the Clean Water Act (CWA) permitting requirements.

The states and EPA have until April 9, 2011, to issue final general NPDES permits for pesticide applications. Coverage under the draft NPDES Pesticides General Permit No. 7 (PGP) will be required for the application of biological pesticides whether or not they leave a residue, and chemical pesticides which leave a residue (hereinafter collectively "pesticides") that result in residue discharges to waters of the United States.

The draft permit requires all operators to implement Best Management Practices (BMPs) to minimize discharges resulting from pesticide applications. These BMPs include following label instructions, conducting regular equipment maintenance, and visually monitoring application sites when possible. Larger applicators will have additional requirements, including the submittal of a Notice of Intent (NOI) for coverage under the permit, the submittal of annual activity reports, and the preparation of pesticide discharge management plans.

According to the Commission, the proposed thresholds are based on U.S. EPA's draft PGP and on comments from internal and external stakeholders. The Commission is requesting information on how many operators in the state, including public entities, commercial applicators, and private applicators, will need to submit an NOI under the proposed thresholds. U.S. EPA has received comments on the thresholds proposed in its draft PGP, and the Commission will adjust the thresholds in Iowa's draft PGP as appropriate based on information from stakeholders and on U.S. EPA's final decision on the thresholds.

The rulemaking also encompasses other amendments to Chapters 60, 64, and 66. Six public hearings are scheduled at various locations throughout the state.

NATURAL RESOURCES DEPARTMENT

10:50

Nursery stock sale to the public, IAB Vol. XXXIII, No. 5, ARC 9051B, FILED.

Iowa Code §455A.13(1), as amended by 2010 Iowa Acts, House File 253, states:

455A.13 State nurseries.

1. Notwithstanding section 17A.2, subsection 11, paragraph "g", the department of natural resources shall adopt administrative rules establishing a range of prices of plant material grown at the state forest

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nurseries to cover all expenses related to the growing of the plants. The department is authorized to sell plant material in other states.

This provision essentially does three things: it requires the state nursery to adopt its pricelist through rulemaking, thus giving stakeholders an opportunity to comment on those prices and the Committee an opportunity to review those prices; second, it requires that the price cover the cost of production; and three, the section now specifically authorizes the department to sell plant material in other states.

The revision is opposed by stakeholders who contend that private enterprise cannot effectively compete with a governmental operation which has no tax liability. Regardless, state law specifically authorizes out-of-state sales and this rulemaking recognizes that change.

HUMAN SERVICES DEPARTMENT

11:45

Iowa juvenile home and state training school, IAB Vol. XXXIII, No. 6, ARC 9086B, NOTICE.

This rulemaking includes proposed amendments to the Department's rules governing the Iowa State Juvenile Home and the State Training School. The rulemaking rescinds the applicable administrative code chapters and adopts two new chapters in lieu thereof. The proposed rules reorganize, update, and clarify existing rules on admission procedures, communication with individuals residing in those facilities, employment of those individuals, alleged child abuse in the facility, approval of temporary home visits, tours of the facility and public use of buildings and grounds.

According to the Department, the specific changes from the previous rules include additional definitions, a revision of the list of persons who are denied visiting rights, a rule requiring supervision by an adult family member during a visit by a family member under the age of 18 (formerly age 12), and conforming changes to reflect the requirements relating to sex offender registration.

The proposed rules also incorporate population guidelines and criteria for accepting youth into care, rules relating to photographing and recording of individuals, provisions for the recovery of the cost of care from individuals with unearned income, and procedures for donations to the facility.

Several rules have been deleted and are not included in the Department's proposed rules.

PUBLIC SAFETY DEPARTMENT

12:00

Concealed weapons permits, IAB Vol. XXXIII, No. 06 ARC 9085B, NOTICE.

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2010 Iowa Acts, Senate File 2379 and Senate File 2357 related to the process for obtaining concealed weapons permits; prior law provided that even if certain criteria were met, the issuing officer had discretion to decide whether a permit should be issued to the applicant. Senate File 2379 provides that an applicant who is not disqualified as provided in Code Chapter 724, and who has completed the required training *shall* be issued a permit to carry weapons for a five-year period. A background check is required. Code §724.8 provides that a permit shall not be issued to a person who:

- Is less than eighteen years of age for a professional permit or less than twenty-one years of age for a nonprofessional permit.
- Is addicted to the use of alcohol.
- Is likely to use a weapon unlawfully or in such other manner as would endanger the person's self or others, based upon documented specific actions of the person, where at least one of the actions occurred within two immediately preceding years.
- Is subject to a protective order or has been convicted of a misdemeanor crime of domestic violence.
- Has, within the previous three years, been convicted of any serious or aggravated misdemeanor not involving the use of a firearm or explosive.
- Is prohibited by federal law from shipping, transporting, possessing, or receiving a firearm.

In addition to Code Chapter 724, federal law prohibits the possession of firearms by a person who:

- Who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year.
- Who is a fugitive from justice.
- Who is an unlawful user of or addicted to any controlled substance.
- Who has been adjudicated as a mental defective or who has been committed to a mental institution.
- Who is an illegal alien.
- Who has been discharged from the armed forces under dishonorable conditions.
- Who has renounced the United States citizenship.
- Who is subject to a restraining order or a domestic violence order.
- Who has been convicted of a misdemeanor crime of domestic violence.
- Who is under indictment for a crime punishable by imprisonment for a term exceeding one year.

The denial, suspension, or revocation of a permit, either by the department or a sheriff may be appealed to an administrative law judge in the department of inspections and appeals within thirty days; the decision of the judge is final agency action and may be immediately appealed to district court.

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This proposal establishes separate license categories for residential electricians, residential master electricians, and residential electrical contractors. The current program provides for a “residential electrician” endorsement to a special license. The rules set out specific experience and testing requirements for each license. Three year licenses cost \$375 for a contractor or a master, \$75 for a residential electrician.

MEDICINE BOARD

No Rep

Standards of practice—medical directors at medical spas, IAB Vol. XXXIII, No. 06 ARC 9088B,
FILED.

The Board adopts practice standards specific to a physician serving as the medical director at a facility offering medical aesthetic services. Such a facility is referred to as a spa and offers a variety of medical-type skin treatments, including such procedures as laser treatments, chemical peels, microdermabrasion, botox injects and tattoo removal.

The rules clearly state that a medical aesthetic service is the practice of medicine and can be only be performed by a “qualified licensed or certified” individual if the service has been delegated by the medical director responsible for supervision of the services performed. That individual must hold an appropriate license or certificate from another Iowa licensing board (e.g.: licensed cosmetologist or esthetician).

The supervising physician may delegate the provision of a medical aesthetic service only if that service is:

- Within the delegating physicians' scope of practice and medical competence;
- a service that a reasonable and prudent physician would conclude is within the scope of sound medical judgment to delegate; and
- a routine and technical service which does not require the skill of a physician.

The rules establish numerous and detailed standards for supervision. Direct in-person supervision is required for at least four hours each week, and the supervising physician must be available, in person or electronically, at all times. The supervising physician must be located within sixty miles of the spa and must review at least 10 percent of all patient charts. The supervising physician must ensure that the individual providing the esthetic service is properly trained, licensed and competent to perform the service.

INSURANCE DIVISION

No Rep.

Companies in hazardous financial condition, IAB Vol. XXXIII, No. 06 ARC 9105B, NOTICE.

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The Commissioner of Insurance has broad authority under Code §505.8 to regulate the insurance industry. This proposal sets out the standards the Commissioner will use to assess the financial condition of Iowa's insurance companies.

The rules set out 21 specific standards that the Commissioner will use to assess the financial situation of the company; the standards relate to the financial position of the company, its' management, its' income and expenses, and its recent history.

If the Commissioner finds that a company is in hazardous condition, the Commissioner may order the company to:

- Obtain reinsurance;
- Reduce, suspend, or limit the volume of business being accepted or renewed;
- Reduce general expenses by specified methods;
- Increase capital and surplus;
- Suspend or limit the declaration and payment of a dividend;
- File reports concerning the market value of the insurer's assets;
- Limit or withdraw from certain investments or investment practices;
- Document the adequacy of premium rates in relation to the risks insured;
- File interim financial reports;
- Correct corporate governance practice deficiencies;
- Provide a business plan;
- Adjust rates for any non-life insurance product.

A company may contest any order by demanding a contested case hearing, which will not be open to the public; the company could then seek judicial review of the Commissioner order and decision.