



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

November
2010

Scheduled for committee review
Tuesday, November 9th, 2010.
Senate Committee Room #116

Reference
XXXIII IAB No. 07(10/06/10)
XXXIII IAB No. 08(10/20/10)
XXXIII IAB No. 09(11/03/10)

HIGHLIGHTS IN THIS ISSUE:

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NATURAL RESOURCES DEPARTMENT

9:30

Inter-state sale of nursery material, IAB Vol. XXXIII, No. 05, ARC 9051B, 30 DAY DELAY.

Iowa law specifically authorizes the Department to sell nursery stock, priced to cover all expenses related to the growing of the plants. 2010 Iowa Acts, House File 253 authorizes the Department to sell stock in surrounding states .

This filing was reviewed at the Committee’s October meeting, where it was delayed for 30 days to allow time for more discussion at the November meeting. At that meeting, Department representatives estimated this rule would raise approximately \$120,000 for the conservation fund. The Department also stated that out-of-state sales would have no impact on Iowa nurseries, because the state nursery was strictly limited to bare-root seedlings, less than four years old.

Committee members noted that the statute specifically authorized out-of-state sales but the members remained concerned over the possible impact on Iowa nurseries. The Committee imposed a temporary, 30-day delay on the filing to allow time for additional discussion.

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Boat motor regulations, IAB Vol. XXXIII, No. 7, ARC 9117B, NOTICE.

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This rulemaking includes proposed amendments to the Commission's rules governing the horsepower limitations on various lakes throughout the state under the authority of Iowa Code chapter 462A. The proposed amendments replace the use of "no-wake zones" with defined speed restrictions of five miles per hour for the designated areas in various counties throughout the state.

* * *

Permits for special events, IAB Vol. XXXIII, No. 07 ARC 9114B, EMERGENCY.

At its' June 2010 meeting, the Committee reviewed a DNR filing which created a general set of permit requirements for boating, ATV and snow events, such as an organized race, tournament, exhibition, or demonstration. The Department is empowered to impose special conditions for any special event if deemed necessary to protect the resource or to ensure public safety. Iowa Code § 455A.5(6) gives the NRC specific authority to adopt a schedule of permits.

Under the June filing, the fee for each event was set at \$25. This fee was opposed by various boating organizations around the state. They noted that events were held virtually every week at the fees could run up to hundreds of dollars for each club. Department representatives noted that other clubs, such as all-terrain vehicle groups, also pay this fee. The Committee imposed a seventy day delay on this filing. Private discussions failed to resolve this issue. For that reason the Department has rescinded the June rulemaking on an emergency basis, restoring the original rules. The Department and will adopt new rules after the issues have been resolved.

* * *

State parks and recreation areas, IAB Vol. XXXIII, No. 7, ARC 9118B, NOTICE.

This rulemaking implements portions of Iowa Code chapter 461A and includes proposed amendments to the Commission's rules governing campsite and facility reservations. The proposed amendments increase the percentage of campsites that may be reserved to 75%, remove the three percent credit card processing fee referenced throughout the rules, establish an online reservation change fee of \$5 and increase the call center change fee to \$7, establish an online cancellation fee of \$5 and increase the call center cancellation fee to \$7, and change the last day to make a rental facility reservation during the off season to seven days prior to the arrival date.

ENVIRONMENTAL PROTECTION COMMISSION

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10:10

Technical standards and corrective action requirements for owners and operators of underground storage tanks, IAB Vol. XXXIII, No. 8, ARC 9152B, NOTICE.

This rulemaking is in response to 2010 Iowa Acts, H.F. 2531, sections 169 through 174 relating to the review procedures and acceptance of reports from certified groundwater professionals on investigation and cleanup of petroleum contamination from underground storage tanks. A groundwater professional's site investigation, classification, and corrective action design reports must be accepted unless, within 90 days of receipt, the Department identifies material information in the report that is inaccurate or incomplete. From July 1, 2010, through June 30, 2011, the Department has 120 days rather than 90 days to review and comment on the reports.

Three public hearings will be held in November, one each in Coralville, Denison, and Des Moines.

EARLY CHILDHOOD IOWA STATE BOARD

10:30

Early childhood Iowa state board, IAB Vol. XXXIII, No. 07 ARC 9137B, NOTICE.

2010 Iowa Acts, Senate File 2088, §281 creates the “*Early Childhood Iowa State Board*”, staffed by the Department of Management. The Board is created to promote a vision for a comprehensive early care, education, health, and human services system. The board also oversees state and local efforts to implement the early childhood Iowa initiative, benefitting children up to five years of age. The Act sets out detailed responsibilities for the Board, including developing and promoting a school ready children grant program “for the purposes of enhancing quality child care capacity in support of parent capability to obtain or retain employment.”

The Board has 21 voting members, with six chosen from state agencies. Members serve three year terms and have backgrounds in early care, education, health, human services, business, faith, and public interests. Two members of the House and two members of the Senate serve as ex officio, non-voting members.

The Act creates local boards to administer early childhood Iowa grant moneys available from the state and to perform a variety of other duties.

EDUCATION DEPARTMENT

10:40

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Extracurricular interscholastic competition, IAB Vol. XXXIII, No. 07 ARC 9144B, NOTICE.

The Departments proposes a series of revisions to its rules governing extracurricular interscholastic competition; the changes were made in consultation with the Iowa High School Athletic Association (IHSAA) and the Iowa Girls High School Athletic Union (IGHSAU). The most significant changes relate to the limitations imposed on all-star players competing in all-star contests. An all-star is a high school athlete chosen to compete individually in an all-star contest or to compete on an all-star high school team in an all-star contest. The National Collegiate Athletic Association (NCAA) will deny the first year of intercollegiate athletics competition if, following completion of high-school eligibility in the student-athlete's sport and prior to the student-athlete's high-school graduation, the student-athlete competes in more than two all-star football contests or two all-star basketball contests.

HUMAN SERVICES DEPARTMENT

12:50

Medicaid coverage in assisted living facilities, IAB Vol. XXXIII, No. 07 ARC 9138B, NOTICE.

The Departments proposes to add coverage for assisted living services, within a \$1,117 monthly cap, under the Medicaid home and community-based services (HCBS) elderly waiver. Assisted living services include 24-hour response staff to meet scheduled and unpredictable needs, and also include personal care and supportive services such as meal preparation, homemaker services and attendant care. Persons receiving assisted living services are not eligible for consumer-directed attendant care but could be eligible for services unrelated to assisted living. To qualify, a member must require one or more hours of personal care or supportive services per month. Level of service need is based on the following three categories of need:

- Activities of daily living, including physical care, medication management, and behavioral support;
- Supportive service needs for housekeeping, laundry, meal preparation, or supervision;
- Dementia or other cognitive impairments.

The program offers two tiers of service. Tier 1 service provides one to 21 hours of personal care, supervision, or other supportive services per month. Tier 2 service provides 22 or more hours of services per month.

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Quality improvement initiative grants, IAB Vol. XXXIII, No. 08, ARC 9157B, NOTICE.

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Iowa law allows the Department to impose civil money penalties when a health care facility is not in substantial compliance with Medicaid participation requirements. Penalties may range from \$50 to \$10,000 per day. The funds collected are to be applied to the protection of the health or property of the residents of the facilities determined to be out of compliance; this includes funding projects to improve the quality of life or quality of care of nursing facility residents through “quality improvement initiative grants.” The Department will annually set aside an amount from the civil penalty funds to fund these grants; there is no entitlement to these funds.

Grants are available to nursing facilities, state agencies, nursing facility advocacy groups, and related stakeholders. Grants will be awarded for one-time, short-term quality improvement initiatives (three years or less). The grants may be used only for quality improvement initiatives that are outside the scope of normal operations for the nursing facility or other applicant. Grants cannot be used as replacement funding for goods or services that the applicant already offers.

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Prior authorization: mental health drugs, IAB Vol. XXXIII, No. 09, ARC 9175B, ADOPTED.

The Medicaid program offers the full spectrum of prescription drugs. Because of the high cost, some of these drugs must have prior approval before they may be prescribed. This proposed rule implements Senate File 2088; the Act requires prior authorization for those mental health drugs which are not available with a supplemental rebate. This does not apply to a drug that has a significant variation in therapeutic or side effect profile from other drugs in the same therapeutic class. All established patients are ‘grandfathered’, and will be required to switch drugs.

This filing was initially reviewed by the Committee at its August meeting. At that time Department representatives stated that the cost of prescription mental health drugs was 46% of all Medicaid drugs. The representatives also noted that clinical efficacy and therapeutic effectiveness are the key factors in determining the preferred drug list. They anticipated a savings of \$2.5 million per year due to supplemental rebates from manufacturers of drugs that are no longer guaranteed preferred status.

Stakeholders stated that drug efficacy was more important than the actual cost, since an ineffective drug could result in an extended hospital stay. They emphasized the need

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to balance the lengthy process needed to determine the efficacy and effectiveness of a drug against the harm that could result to the individual patient by the delay in approving the drug.

* * *

Provider reimbursement rates, IAB Vol. XXXIII, No. 09, ARC 9176B, ADOPTED.

This filing was initially reviewed by the Committee in July as an emergency filing, implementing changes to provider reimbursement rates. The only controversy in this detailed filing involved item 13, which rescinded a provision allowing HCBS and certain other providers to retain 2.5% of any revenue in excess of adjusted actual cost. At the July meeting several service providers expressed concerns over the reduced reimbursement rates and the resulting elimination of the provider's margin in determining those rates. Service providers contended this margin is necessary because costs are settled retrospectively, meaning that reimbursement is based on past, not current cost. They contended that it can be 12-18 months before the cost report is approved and the rate increased. Providers maintained the 2.5% margin is needed to meet current cost increases. Department representatives stated that the reduction was instituted in December 2009 pursuant to Executive Order 19 for state fiscal year 2011. Providers expressed concern that this policy change would become permanent in the future.

In the adopted filing, Item 13 still eliminates the 2.5% margin; however, the rule now indicates that it is in effect only for the period July 1, 2010, through June 30, 2011. At the end of that period the entire rule must be re-written.

* * *

Emergency assistance, IAB Vol. XXXIII, No. 7, ARC9131B, Notice, ARC 9130B, FILED EMERGENCY.

These amendments implement the Iowans Helping Iowans Unmet Needs Disaster Assistance Program for the counties which were presidentially declared as disaster areas after June 1, 2010. Funding for the program is established by the Governor of Iowa through the Iowans Helping Iowans Program. The Rebuild Iowa Office is responsible for determining a methodology to distribute the funding among the counties. The program will end when funds are exhausted or on June 30, 2011, whichever occurs first.

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The program is administered through a local administrative entity designated by the county board of supervisors in each of the affected counties. The local administrative entity shall enter into a contract with the Department that delineates the entity's responsibilities for the administration of the program. The local administrative entity will receive applications from households and determine each household's eligibility for the program.

The local administrative entity shall disburse the funds allocated to the county by the Rebuild Iowa Office through direct reimbursement of documented expenses or issuance of vouchers for purchase of approved goods or services. The local administrative entity may keep up to five percent of the amount of benefits issued as administrative expense. The local administrative entity is required to submit weekly reports on program expenditures and to return any unused funds from its allocation when the program ends.

The amendments became effective on September 15, 2010.

NO REPRESENTATIVE REQUESTED TO APPEAR

AGRICULTURE AND LAND STEWARDSHIP

No Rep

Labeling of firewood: Emerald Ash Borer, IAB Vol. XXXIII, No. 09 ARC 9190B, ADOPTED.

On May 14, 2010, the Emerald Ash Borer was found in Allamakee County; this invasive pest kills ash trees. The beetle, native to eastern Asia, kills ash trees when larvae burrow under the bark and eat the actively growing layers. It was first discovered in Detroit, Michigan and has killed some 40,000,000 ash trees in that state. To contain its spread the Department will require that firewood offered for sale, sold or distributed will have to be identified by the county and state of origin.

Allamakee County is under quarantine, wood cannot be moved without a permit from the Iowa Department of Agriculture and Land Stewardship or the U.S. Department of Agriculture Animal and Plant Health Inspection Service.

ACCOUNTANCY BOARD

No Rep

Renewal fee doubled, IAB Vol. XXXIII, No. 09 ARC 9102B, NOTICE.

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Accountancy Board currently set biennial (every two years) renewal fee at \$100 for an active license and \$50 for an inactive license. This proposal changes the renewal to annual, thus doubling the license fee.

DENTAL BOARD

No Rep

Billing practices, IAB Vol. XXXIII, No. 09 ARC 9218B, ADOPTED.

Item 10 of this filing defines certain billing practices as unethical conduct. Under these provisions a dentist cannot bill or draw on a patient's line of credit prior for services not rendered; however, a dentist may bill or draw on a line of credit for those services which have been rendered, for actual costs incurred in the treatment of the patient. A dentist may charge for missed appointments.

Essentially, the rule prohibits a dentist from demanding advance payment for services. A patient may pre-pay for services on a voluntary basis.

INSURANCE DIVISION

No Rep

Rate hearings, IAB Vol. XXXIII, No. 8, ARC9168B, Notice, ARC 9158B, FILED EMERGENCY.

The Division adopted changes to its chapter 36, which provides reasonable standardization and simplification of terms and coverages of individual accident and sickness insurance policies and provides for full disclosure in the sale of the coverages. The amendments update the rules to reflect recent changes to Iowa Code chapter 505 made by 2010 Iowa Acts, Senate File 2201.

The new rules establish the required procedure for hearings about certain health insurance policy premium rates increases. The rules include provisions that outline filing and notice requirements, including language for a model "Notice of Proposed Premium Increase, provisions relating to the receipt of public comments regarding the rate increase, and provisions relating to the required hearing.

The Division intends that Iowa insurance companies will comply with these rules for all individual policy rate filings made with the Division on or after October 1, 2010. These amendments are published as a notice of intended action, ARC 9168B to allow for public comment. These amendments became effective on October 1, 2010.

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