



# THE RULES DIGEST

April 2011

**Scheduled for committee review**  
**MONDAY, April 11<sup>th</sup>, 2011**  
**Supreme Court Room #102**

Reference  
XXXIII IAB No. 17(02/23/11)  
XXXIII IAB No. 18(03/09/11)  
XXXIII IAB No. 19(03/23/11)

## **HIGHLIGHTS IN THIS ISSUE:**

*PERMIT TO CARRY FIREARMS: APPEAL PROCESS, Inspections & Appeals Dept..... 1*

*SPECIAL EVENTS: PERMIT REQUIREMENTS, Natural Resources Dept..... 2*

*WATER QUALITY STANDARDS: IOWA LAKES, EPC..... 3*

*RESPITE SERVICES, Human Services Department..... 5*

## **INSPECTIONS AND APPEALS DEPARTMENT**

8:35

*Procedure for contested cases involving permits to carry weapons and acquire firearms, IAB Vol. XXXIII, No. 18, ARC 9400B, ADOPTED.*

These rules were initially Adopted and Filed Emergency, effective January 1, 2011, along with a Notice of Intended Action. This rule making adopts new Chapter 11, "Procedure for Contested Cases Involving Permits to Carry Weapons and Acquire Firearms," which implements 2010 Iowa Acts, Senate File 2379, section 14, codified in Iowa Code section 724.21A. The law requires the Department to establish a procedural process through which Iowans who have been denied a permit to acquire firearms or carry weapons or whose permits have been suspended or revoked may appeal the decision of the sheriff or Commissioner of Public Safety to an administrative law judge. The appeal process allows for a decision of local government to be appealed to a state agency; this is similar to the process used in the appeal of school board actions.

Chapter 11 allows a person who has been denied a permit to appeal the decision to an administrative law judge in the Department. The appeal must be made in writing within 30 days and must state the reasons for rebutting the denial, suspension, or revocation. The Department will provide a contested case hearing, conducted pursuant to Iowa Code chapter 17A. The hearing will be conducted by telephone unless a party requests

## THE RULES DIGEST

-2-

an in-person hearing, which would occur in Des Moines. The parties may call witnesses and produce other evidence. The cost of the hearing will be paid by the Department. The statutorily required standard of review will be clear and convincing evidence that the issuing officer's reasons for the denial, suspension, or revocation constituted probable cause to deny an application or to suspend or revoke a permit. A decision by the administrative law judge will be considered final agency action without a right of appeal to the director of the Department, and the decision may then be appealed to district court pursuant to Iowa Code chapter 17A .

### NATURAL RESOURCE COMMISSION

8:50

*Special events and fireworks displays*, IAB Vol. XXXIII, No. 18, ARC 9419B, NOTICE.

A permit is required in order to conduct a special event on any public land under the jurisdiction of the Commission. The Commission proposes a complete re-write of its rules covering special events---now expanded to include special event permit requirements for ATVs and snowmobiles. Rules for other special events are also being relocated into this chapter. The proposal creates a computerized centralized special events application system and establishes fees to operate and maintain the system. Applications may be submitted anytime during the calendar year in which the special event is to begin but no later than 30 days prior to the special event.

There is a nonrefundable \$25 administrative fee for processing each special event application.

### PROFESSIONAL LICENSURE DIVISION

9:00

*Hearing aid dispensers*, IAB Vol. XXXIII, No. 18, ARC 9424B, ADOPTED.

This rule making contains a number of items, but only item nine presents a controversy; that provision sets out the contents for hearing aid dispenser advertisements. The change provides in part that advertisements for hearing aids contain:

- a. Hearing aid dispenser's name.
- b. Hearing aid dispenser's office address.
- c. Hearing aid dispenser's telephone number.
- d. The qualifying words in the same size type as the title of the business: "for the purpose of fitting, selection, adaption, and sale of hearing aids." However, the qualifying words are not required if the advertisement includes the words "hearing test," "hearing evaluation," "free hearing test," "free hearing evaluation," "hearing measurement," or "free hearing measurement," and the title of the business which is advertising appears in the advertisement and includes the words "hearing aid."

## THE RULES DIGEST

-3-

This 'rule' language actually comes from the Code itself, §154.24(3)"s". The rule making has now highlighted the existence of these statutory advertising requirements, which apparently have not been enforced.

### CITY DEVELOPMENT BOARD

9:30

*Smart planning principles*, IAB Vol. XXXIII, No. 19, ARC 9438B, NOTICE.

In 2010 the Iowa Smart Planning law, Iowa Code §18B.1 (SF 2389) was enacted; it requires that communities and state agencies consider "Smart Planning Principles" when planning for future development and provides guidance concerning important elements local plans should include. These principles include:

- Collaboration – Stakeholders are encouraged to be involved during deliberation of planning, zoning and development.
- Efficiency, transparency and consistency – Planning, zoning, development and resource management should be undertaken to provide efficient, transparent and consistent outcomes.
- Clean, renewable and efficient energy – All factors in smart planning should be undertaken to promote clean and renewable energy use and increased energy efficiency.
- Occupational diversity – Stakeholders should promote increased diversity of employment and business opportunities.
- Revitalization – Smart planning should result in revitalization of established town centers and neighborhoods.
- Housing diversity – Planning, zoning and development should encourage diversity in the types of available housing.
- Community Character – Efforts should be made to promote activities and development that are consistent with the character and architectural style of the community.
- Natural resources and agricultural protection.
- Sustainable design.
- Transportation diversity.

The proposed rules relate to the procedure for annexation. The proposal does not actually require the application of these principles as part of the process.

### ENVIRONMENTAL PROTECTION COMMISSION

10:10

*Lake quality -- lake criteria*, IAB Vol. XXXIII, No. 17, ARC 9371B, held over from March meeting.

The EPC proposes two criteria to measure suitability for swimming in each of Iowa's lakes. Both of these criteria are measures of the transparency of the water. One measures the penetration of light into the water; the second measures the amount of chlorophyll in the water. The EPC states that people are more likely to swim in lakes where the water is clearer than where it is turbid or green.

The EPC has developed a list of lakes to which the clarity criteria will apply. A lake was added to the list if the lake has a maintained beach, appears on the list of significant publicly owned lakes, or has a mean depth of more than three meters (about ten feet).

## THE RULES DIGEST

-4-

This filing was initially placed under Notice in March. At the March meeting, committee members questioned the EPC's authority to close or limit public access to lakes under this rule and expressed uncertainty as to what these standards are intended to accomplish and who would be impacted by them. The committee requested an informal regulatory analysis of how these standards will impact the use of the affected lakes and the impact on surrounding landowners. Such an analysis does not delay the rule-making process itself.

### INSURANCE DIVISION

10:45

*Health insurance: children under 19, IAB Vol. XXXIII, No. 17, ARC 9398B, NOTICE, held over from March.*

These proposed rules implement the federal "Patient Protection and Affordable Care Act". This proposal sets out the requirements and procedures to be followed by insurance companies for individual health insurance coverage for children under the age of 19. The effective date of these provisions is projected to be May 25, 2011.

The rules provide that it is an unfair trade practice to discriminate against a child under the age of 19 based on the child's health status, claims experience, industry, occupation, or geographic location. Insurance carriers are required to establish an open enrollment period for children under the age of 19. For child-only applications received during the open enrollment period, individual health insurance coverage shall be offered on a guaranteed-issue basis to individuals up to the age of 19. Under certain circumstances, generally involving hardship or a change in status, carriers must make coverage available on a case-by-case basis.

Child-only policies may be appropriately rated based on the health status of the child-only applicant.

### PUBLIC HEALTH DEPARTMENT

11:00:

*Cremation fees, IAB Vol. XXXIII, No. 19, ARC 9435B, NOTICE.*

The state medical examiner proposes to raise the fees for performing an autopsy and create a new cremation permit fee of \$75 for each permit investigated and authorized by the state medical examiner. The fee for an autopsy is raised from \$1200 to \$1400 and the fee for expert testimony is raised from \$350 per hour to \$450 per hour.

Iowa Code §691.6 (4) empowers the state medical examiner:

# THE RULES DIGEST

-5-

“To collect and retain autopsy fees as established by rule. Autopsy fees collected and retained under this subsection are appropriated for purposes of the state medical examiner’s office. Notwithstanding section 8.33, any fees collected by the state medical examiner that remain unexpended at the end of the fiscal year shall not revert to the general fund of the state or any other fund.....”

## HUMAN SERVICES DEPARTMENT

11:10

*Respite services*, IAB Vol. XXXIII, No. 18, ARC 9403B, ADOPTED.

Respite services is only one component of this large filing which deals with a variety of medical and remedial services, but it is the most controversial. A caregiver for certain disabled persons may be eligible for respite services from the department; these services give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that period. Under the previous rules, these services included attendance at day camp. Day camp is now considered a day care service which is not reimbursable under the home- and community-based services waivers. The intent of the rule change is to eliminate the use of respite care when the caregiver is at work, since respite services are not intended to be a substitute for day care. Respite provided by a 24-hour camp is an exception to the new rule, since for most of that time parents would not be working.

The current program is supported by parents who feel the day camp program provides socialization opportunities and physical activities for the child and a much needed break for the parents.

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*Quality improvement initiative grants*, IAB Vol. XXXIII, No. 18, ARC 9402B, EMERGENCY AFTER NOTICE.

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, or \$1,000 to \$10,000 per instance. 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

## **THE RULES DIGEST**

**-6-**

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. Money for these grants comes from the civil money penalty fund; however, at no time shall the grant set-aside cause the civil money penalty fund to drop below \$1 million.

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. Applications will be evaluated based on a point system.