



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

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HIGHLIGHTS IN THIS ISSUE:

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HUMAN SERVICES DEPARTMENT

Tuesday-1:10p.m.

Medicaid services, IAB Vol. XXIX, No. 10. ARC 5514B
EMERGENCY AFTER NOTICE.

In a March 1, 2006 letter to the federal Centers for Medicare and Medicaid Services, Regional Office 7 the department committed itself to revising the Iowa state plan to bring elements of the Medicaid program in compliance with federal law; implementation of this letter agreement was specifically authorized in 2006 Iowa Acts, House File 2734, §10, subsection 11.

ARC 5514B relates to Medicaid payment for remedial services that are designed to minimize or, if possible, eliminate the symptoms or causes of a psychological disorder. With the intent of providing mental health services on a more medical-type model, the revisions remove "rehabilitative" treatment services as covered Medicaid services and substitute a new service category, remedial services.

Remedial services providers will implement the treatment plans developed by "licensed practitioners of the healing arts". All Medicaid recipients will be required to have assessment and

treatment planning completed by a licensed practitioner of the healing arts, who must have an ongoing practitioner/client relationship with the recipient and be responsible for ongoing reassessment and review of the treatment plan. The plan must be approved by the Iowa Medicaid enterprise medical services unit.

These provisions were initially reviewed by the committee in September. A large number of issues were discussed, particularly in regard to the disruption of services to persons with chronic mental illness, the increased cost to counties to pay for services not covered by Medicaid, and the future of non-remedial services cannot be funded with federal dollars.

In response to these and other concerns a number of changes have been made. The rules now specifically define "remedial services". The term includes:

- Community psychiatric supportive treatment;
• Crisis intervention;
• Health or behavior intervention;
• Rehabilitation program to enhance a member's independent living, social, and communication skills;
• Skills training and development to enhance independent living;

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A definition is also added for services *not* covered, referred to as "habilitative" services. These are services that are designed to assist individuals in acquiring new skills or capabilities. In short, Medicaid pays for services that work to restore lost or diminished capabilities, it does not pay for services to acquire those capabilities.

The adopted rules also provide needed detail concerning the "licensed practitioner of the healing arts" (LPHA), who establishes the medical necessity for these services. The rules provide examples of licensed professionals: physicians, advanced registered nurse practitioners, psychologists, independent social workers, marital and family therapists, and mental health counselors.

To minimize disruption of services the new program will be implemented in stages through June, 2007.

HUMAN SERVICES DEPARTMENT

Tuesday-1:10p.m.

Medicaid services: child welfare services, IAB Vol. XXIX, No. 10. ARC 5515B EMERGENCY.

Part of the Medicaid revisions establish "remedial services" as a new service category; as a result the department now revises the child welfare services rules. Under these revisions Medicaid-eligible children who need *rehabilitative-type* services will receive these so-called remedial services through the Medicaid program; children in group foster care will also receive those services. New reimbursement rates for welfare services are established on the assumption that that group care providers will provide an average of one hour per day of group remedial services and one hour per week of individual remedial services.

HUMAN SERVICES DEPARTMENT

Tuesday-1:10p.m.

Smoking cessation, IAB Vol. XXIX, No. 10. ARC 5536B ADOPTED.

2005 Acts, House File 825 expanded the Medicaid program to include smoking cessation drugs. These rules identify some specific prescription-only medication, along with the nicotine patch and gum, as the only Medicaid-eligible items. This program was controversial

when initially reviewed by the committee in August; opponents of these limitations noted that effective treatment requires a support program as well as the listed medications. Department representatives responded that the Act requires only medication and that the addition of counseling would be a major additional expense. Department representatives noted that the drug plan alone could cost almost two million dollars per year.

HUMAN SERVICES DEPARTMENT

Tuesday-1:10p.m.

Comprehensive family support program, IAB Vol. XXIX, No. 10. ARC 5535B, ADOPTED.

This program, also known as "children at home", is designed to assist families, with incomes less than \$60,000 per year who are raising a child with a disability, in obtaining needed services and supports in order to maintain that child at home. It provides these families with assistance in locating resources and with funding when other sources of support are not available; the families maintain control over decision making regarding what is best for their children.

Services and supports available under this program includes such things as equipment, respite care, supplies, or assistive technology, parent-to-parent support, and various adaptations that allow children with disabilities to participate more fully in family and community life.

To the extent possible the department will contract with local agencies to implement the children at home program, utilizing competitive bidding procedures. Each contractor is required to establish a local advisory council of at least seven members to advise the children at home program coordinator in developing local policies and procedures.

DEPARTMENT OF TRANSPORTATION

Tuesday-2:10p.m.

Public transit infrastructure grant program, IAB Vol. XXIX, No. 10, ARC 5523B, NOTICE.

This new grant program was created by 2006 Iowa Acts, House File 2782; it is designed to provide funding for improvement of the "vertical infrastructure" of Iowa's public transit systems. Vertical infrastructure is a term specifically defined in Code §8.57, subsection 6 as: "...only land

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acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development, and recreational trails."

The program is available only to regional and urban transit systems. To be eligible a project must already be part of a locally approved transportation improvement program and in the statewide transportation improvement program; a local match of at least 20% must be available; and the project must be eligible for completion in 18 months. Priority in funding will go to:

- Enhancement of the life of the transit vehicle fleet;
- Enhancement to transit services; and
- Increased ridership.

IOWA FINANCE AUTHORITY

Tuesday-3:10p.m.

Wastewater treatment financial assistance program, IAB Vol. XXVIX No. 11, ARC 5548B, ADOPTED.

2006 Iowa Acts, House File 2782, §63 establishes a wastewater treatment financial assistance program, for disadvantaged communities with populations less than 3000, in order to provide grants to these communities for the enhancement of water quality and to assist communities to comply with water quality standards adopted by the department of natural resources (DNR). the Act calls for a "minimum" of \$4 million to be appropriated each fiscal year to the Wastewater Treatment Financial Assistance Fund. Assistance may be used to install or upgrade wastewater treatment facilities and systems, and for engineering or technical assistance for facility planning and design.

In March 2006, the DNR implemented rules designated all perennial streams and intermittent streams with perennial pools as "Class A1, B(WW-1)" waters for protection of recreational and aquatic life uses: the so-called "fishable-swimmable" standard. Attaining this standard will require the upgrading of many Iowa water treatment facilities. The twenty-year cost to achieve this reduction is estimated to be roughly \$800 million to \$1 billion.

A "disadvantaged community" is defined in the DNR policy manual as a public water system serving a populations containing 51 percent of low to moderate income (LMI) persons; low to

moderate income is defined as 80 percent of the median household income.

An eligible community must provide matching funds as specified in the Act. A community with a population of less than 500 must provide a five percent match. A community with a population of less than 1000 is required to provide a 10 percent match. A community with a population of 1000 to 1500 must provide a 20 percent match. A community with a population of over 1500 to 2000 must provide a 30 percent match. A community with a population over 2000 to 3000 must provide a 40 percent match.

NATURAL RESOURCES DEPARTMENT (DNR)

Tuesday-3:30p.m.

Dock fees, IAB Vol. XXIX, No. 10. ARC 5532B, NOTICE.

The department regulates the placement and construction of docks adjacent to Iowa's *public* waterways. This proposal is the DNR's second attempt to revise dock fees; an earlier attempt in 2005 was withdrawn for additional study. In this proposal the department sets out a complete re-write of the dock chapter.

There are a number of different types of docks. A commercial dock is a dock is used as part of a business and includes a dock extending from residential property if one or more mooring spaces at the dock are rented for profit. A public dock provides public access from public land. A private dock is located on the private property of a riparian landowner and is not used for commercial or public purposes.

Some requirements are applied to all docks. Docks must be located "to limit their adverse impacts on the aquatic ecosystem." To the extent practicable docks must be placed near the center of the shoreline frontage, perpendicular to the shoreline in order to maximize offsets from neighboring properties. Docks may extend into the water only the distance necessary for reasonable access to the water and must be removed from public water not later than December 15, unless the removal is waived by the department.

There are special provisions and a separate fee structure for a dock management area (DMA). A DMA is designated by the director and consists of a

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water body which adjoins a state park, wildlife management area, recreation area or land dedicated to the public use---i.e.: public land. Boathouses are not allowed in dock management areas. There are approximately 250 existing docks in dock management areas and all of them are public docks because they extend from public land rather than private land. Some of these docks extend into lakes from shorelines of State parks. Others extend from areas dedicated for public use. Dock sites, where feasible, must be at least 50 feet apart. While these docks are designated as public docks, the dock permittees have priority use of the docks for mooring of vessels. These docks may be used by the public for fishing and emergency mooring when the public use does not interfere with the permittee's use.

There are several categories for dock permits. A general permit exempts the owners of most private docks from obtaining individual permits and paying administrative fees; it allows one dock and up to two hoists per residence. Docks may extend no more than 100 feet, *or* far enough so that the outer 50 feet of the dock is in 3 feet of water up to a maximum of 300 feet. "L" or "T" docks can extend no more than 20 feet or contain more than 200 square feet. An individual private dock permit is available for a fee.

A commercial permit is also available; it may extend a maximum of 300 feet from the water's edge. However, the applicant must provide justification for a length greater than 150 feet. Commercial boathouses are allowed; however, they may be restricted as needed to minimize adverse visual impact on owners of other property and the public.

There are exemptions for length limitations for docks that were in place prior to the implementation of these rules. A dock permit creates no property interest in the land beneath the dock to the high water mark.

The key issue in the 2005 proposal was the fee structure. This proposal is far more modest. There is no fee for a general permit. The fee is \$125 for a individual private dock and \$250 for commercial docks. A private dock permittee must pay an annual fee of \$50 for each hoist or slip in excess of

a total of four hoists or slips. A commercial dock permittee must pay an annual fee of \$50 for each hoist or slip in excess of a total of six hoists. There is a special fee structure for docks located in a DMA, with each fee specific to the location. Fees run from \$100 to \$600 for a dock and from \$25 to \$50 to \$100 for a hoist or slip.

PROFESSIONAL LICENSURE DIVISION

Wednesday-8:30a.m.

Physicians assistants: prescribing stimulants, IAB Vol. XXIX, No. 10, ARC 5521B, ADOPTED.

Code §147.107, subsection 5, provides that a physician may delegate the function of prescribing drugs, controlled substances, and medical devices to a physician assistant; that section also empowers the board of physician assistant examiners to promulgate rules relating to the authority of physician assistants to prescribe drugs, controlled substances, and medical devices.

There was one significant restriction set out in that section: the rules could not allow a physician assistant to prescribe schedule II controlled substances which are listed as stimulants or depressants. That restriction was amended in 2006 is to give the physician assistant examiners board the discretion to eliminate the restriction regarding the prescribing of such schedule II stimulants; note that the Act itself did not actually eliminate the restriction automatically, a board rulemaking was required. In this rulemaking the board exercises that discretion to allow physician assistants to prescribe these medications.

PROFESSIONAL LICENSURE DIVISION

Wednesday-8:30a.m.

Physicians assistants, IAB Vol. XXIX, No. 10, ARC 5522B, NOTICE.

The board of physician assistant examiners proposes several revisions to its licensure rules; two relate directly the physician supervision requirements of the physician assistant. Under the current rules a physician assistant must report any addition or replacement of a supervising physician to the board within 90 days of that change. Under this revision the report must be made at the time of license renewal. The second change allows the supervising physician to train the assistant in a new

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medical procedure without being physically present. The third change eliminates a current requirement that the physician assistant notify the supervising physician when the physician is listed as a supervising physician. The change places the burden on both the physician and assistant to be aware of their respective responsibilities.

MEDICAL EXAMINERS BOARD

Wednesday-9:00a.m.

Temporary licenses, IAB Vol. XXIX, No. 10. ARC 5510B, ADOPTED.

The board has re-written existing policies concerning temporary licensure for out-of-state licensed physicians who are *briefly* providing medical services in Iowa. The current rules provide an exemption from licensure for physicians who are "incidentally called into this state in consultation with a physician or surgeon..." This revision sets out five criteria which limit the applicability of this exemption. In essence the visiting physician must act in an advisory capacity, practice for not more than 10 consecutive days and for not more than 20 total days in any calendar year. There are additional exemptions for physicians who enter the state to provide disaster relief, to serve as expert witnesses, to observe patient care, or to participate in a residency program.

The filing makes some changes in temporary licensure requirements. A temporary license, issued for up to a year is required for a number of specific activities; these include:

- Covering for an Iowa-licensed physician who is unexpectedly unavailable;
- Demonstrating or proctoring that involves providing hands-on patient care;
- Conducting a procedure on a patient in Iowa when the consultant's expertise in the procedure is greater than that of the Iowa-licensed physician who requested the procedure;
- Providing medical care to patients in Iowa, if the physician is enrolled in an out-of-state resident training program and does not hold a resident or permanent license in the home state of the resident training program;
- Serving as a camp physician;
- Participating as a learner in a program of further medical education that allows hands-on patient care

when the physician does not currently hold a license in good standing in any United States jurisdiction; or

- Any other activity approved by the board.

PROFESSIONAL REGULATION BUREAU

Wednesday-9:20a.m.

Agency reorganization, IAB Vol. XXIX, No. 10, ARC 5539B, NOTICE.

The professional licensing and regulation division was created in the Reorganization Act of 1986, as a division within the newly created department of commerce. The division consists of seven business-related licensing boards:

- The engineering and land surveying examining board;
- The Iowa accountancy examining board;
- The real estate commission;
- The architectural examining board;
- The landscape architectural examining board;
- The real estate appraiser examining board;
- The interior design examining board.

2006 Acts, House File 2521 has reconstituted this division as a *bureau* (one step down on the organization chart) within the division of banking.

This change relates mainly to administrative support, the only significant difference in the change from a division to a bureau is that the administrator is no longer a gubernatorial appointee; instead the administrator is appointed by the superintendent of banking and is no longer required to staff one of the licensing boards. The boards retain their autonomy in rulemaking and licensing discipline.

PUBLIC HEALTH DEPARTMENT

Wednesday-9:30a.m.

Prescription drug donation program, IAB Vol. XXIX, No. 11, ARC 5563B, NOTICE.

2005 Acts, chapter 97 (Code chapter 135M) created the "prescription drug donation repository". This new program, now implemented by the department in consultation with the board of pharmacy, allows medical facilities and pharmacies to accept and dispense donated prescription drugs and supplies, and sets out the eligibility criteria for individuals to receive those prescription drugs and supplies.

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Participating facilities include a doctor's office, a hospital, a health clinic or a charitable organization.

Any person who is 18 years of age or older may donate prescription drugs or supplies to a repository; drugs must be in the original packaging and controlled substances cannot be accepted. A pharmacist must inspect donated prescription drugs and supplies to determine, "to the extent reasonably possible" that the drugs and supplies are not adulterated or misbranded, are safe and suitable for dispensing, and are not ineligible drugs or supplies.

To receive drugs or supplies an individual must "certify" that the individual is an indigent Iowa resident with no third-party prescription drug reimbursement coverage for the drug prescribed.

PUBLIC HEATH DEPARTMENT

Wednesday-9:30a.m.

Public health response teams, IAB Vol. XXIX, No. 11, ARC 5563B, NOTICE.

2003 Acts, ch 33 (Code §135.143) created public health response teams and now the department proposes to establish the program to designate those teams, which will include five disaster medical assistance teams and an environmental health response team to assist local medical and public health personnel, hospitals in the event of a disaster. A hospital, public health agency, health care organization, licensed health care entity, or other entity may sponsor a team, with the approval of the department.

A disaster medical assistance team consists of at least 35 members who are specially trained to operate in a variety of disaster situations. An environmental health response team consists of 20 environmental health professionals. A team member is considered a state employee for purposes of workers' compensation, disability, and death benefits. The state will also defend and indemnify a team member in the event of litigation.

PUBLIC HEATH DEPARTMENT

Wednesday-9:30a.m.

Level II regional neonatology centers, IAB Vol. XXIX, No. 11, ARC 5567B, NOTICE.

The departments proposes an advance level of neonatal care: level II regional neonatology centers.

These facilities will have a neonatal intensive care unit and will manage high-risk pregnancies and infants born at less than 34 weeks' gestation or weighing less than 1500 grams. It is anticipated that four of these facilities will be established.

PUBLIC SAFETY DEPARTMENT

Wednesday-10:50a.m.

Missing persons clearinghouse—Amber Alert, IAB Vol. XXIX, No. 11, ARC 5558B, ADOPTED

The department updates existing rules related to the missing persons clearinghouse. The clearinghouse is established in Code Chapter 694 and serves to collect and disseminate information, relating to missing persons to educate law enforcement officers and the general public about the issues related to missing persons. As part of the program the department maintains a toll-free telephone line, available at all times, to collect and disseminate information concerning missing persons in Iowa.

The most important part of this update is the addition of "Amber Alert" rules. Amber Alert is a cooperative effort of state and local authorities and the broadcast media; it provides a public alert program when a child has gone missing under suspicious circumstances. The alert is issued by Iowa state patrol receipt of a request from a participating law enforcement agency. There a four criteria which must be met for an Amber Alert; these criteria are to be interpreted broadly to protect the safety of the abducted child and to maintain the integrity of the program:

- Law enforcement has confirmed that a person has been abducted.
- The person who has been abducted is under the age of 18.
- Law enforcement believes the circumstances surrounding the abduction indicate that the child is in danger of serious bodily injury or death.
- There is enough descriptive information about the child, abductor, or suspect's vehicle to believe that an immediate broadcast alert will help.

PUBLIC SAFETY DEPARTMENT

Wednesday-10:50a.m.

State fire marshal, IAB Vol. XXIX, No. 11 ARC 5557B, ADOPTED.

Unlike the state building code, which has limited applicability, the state fire marshal is empowered, by Code §100.35, to adopt rules:

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"...which include standards relating to exits and exit lights, fire escapes, fire protection, fire safety and the elimination of fire hazards, in and for churches, schools, hotels, theaters, amphitheaters, hospitals, health care facilities as defined in section 135C.1, boarding homes or housing, rest homes, dormitories, college buildings, lodge halls, club rooms, public meeting places, places of amusement, apartment buildings, food establishments as defined in section 137F.1, *and all other buildings or structures in which persons congregate from time to time, whether publicly or privately owned* [emphasis added]."

Those rules are required to be "substantially in accord" with the state building code. Rules have been in place for many years, with many amendments and additions over the years; now the department proposes to re-draft the fire marshal rules in order to update and re-order the entire regulatory program.

The current program is based on the National Fire Protection Association (NFPA) standards; in addition to retaining certain NFPA standards, the proposal adopts new fire safety requirements based on the 2006 edition of the International Fire Code, and provisions of the 2006 edition of the International Building Code relating to fire safety. The proposal does note that an existing building or facility is *generally* subject to the code requirements which were in effect on the date on which the "current continuous use" of the building or facility began. There are exceptions, particularly when an "imminent threat to the safety of individuals or the public" exists.

There are rules for specific types of occupancies or facilities; these include foster care facilities, bed and breakfast inns and jails. These are substantially the same as rules currently in place. Specific rules are also set out for smoke detectors.