



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

July, 2004

Scheduled for committee review
Tuesday, August 10th and Wednesday, August 11th 2004
Statehouse Room #116

Reference
XXVII IAB No. 01(07/07/04)
XXVII IAB No. 02(07/21/04)
XXVII IAB No. 03(08/04/04)

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ADMINISTRATIVE SERVICES
DEPARTMENT

No Representative

Payroll deductions for insurance, IAB Vol. XXVII, No. 02,
ARC 3365B, ADOPTED.

House File 2262 requires that state employee payroll deductions be established whenever 500 or more state employees request the deduction in order to allow those employees to purchase insurance from the same company. Essentially, the state will collect the premiums on behalf of the company. This replaces Code language that was repealed in 2002 (the old language required only 250 employees). Rules for the old program still appear as part of the Department of Revenue and Finance.

Under these rules companies currently participating under the old program are "grandfathered" in for the first twelve months. The

rules are similar to those promulgated by the Revenue Department, and provide a greater level of detail. Participation is limited to insurance coverage that is not otherwise offered through the state, such as: health and dental; term life; and long-term sickness or disability.

AGRICULTURE AND LAND
STEWARDSHIP DEPARTMENT

Tuesday-1:30

CWD in deer and elk, IAB Vol. XXVII, No. 01, ARC
3413B, EMERGENCY.

In 2003 the Department adopted rules for commercial hunting preserves and rules to control the spread of chronic wasting disease (CWD). At that time public comment generally supported the chronic wasting disease program, but speakers contended that it was unfair to charge inspection fees for cervid slaughtered at a locker in which the meat is going to be sold for public consumption,

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when similar inspection fees were not imposed for slaughtering beef, pork, or sheep. Speakers also opposed the \$100 fee for joining the voluntary CWD monitoring program. Department representatives responded that no money was appropriated for the program, which requires some \$170,000; the representatives stated that without these fees the program would not continue.

The Attorney General has informally advised the department that without statutory authority the various fees for the program cannot be collected. For that reason the department has emergency implemented rules to terminate the fee and the CWD inspection program for cervids. Fees already collected, some \$40,000, will be refunded. These actions were informally discussed at the committees' June meeting. Committee members and industry representatives were very concerned that without an inspection program it may be impossible to move cervids into other states, where inspection and certification is a condition for entry; it was also noted that federal rules currently being developed would require an inspection program. The department responded that no federal program was currently in place and that without additional funding the department could not absorb the cost of administering the program.

DENTAL BOARD OF EXAMINERS

Tuesday-11:20

Criminal background checks, IAB Vol. XXVII, No. 01, ARC 3522B, NOTICE.

These provisions are very similar to rules proposed by the Board of Medical Examiners and reviewed by the committee in July. Those same Medical Board rules, now in final form and serving as a template for this proposal, will also be reviewed at the August committee meeting. They require that a state and federal background check be performed on all new applicants for licensure. This entails fingerprinting applicants and checking that information through law enforcement databases. Like the Medical Board proposal, the fee is \$46.

There has been some controversy. The specific authority for this proposal comes from federal law.

The federal Volunteers for Children Act allows, under some circumstances, a state regulatory to obtain a nationwide background check to determine whether a care provider has been convicted of a crime relating to the safety and well-being of children, the elderly, or individuals with disabilities. Federal officials have interpreted this to include some health care licensing boards.

The controversy is not the background check itself, the issue is that Iowa law is silent on this type on extensive background check. There is specific language relating to criminal convictions, which implies the authority to conduct a background check. §147.4 provides authority to deny licensure on the same grounds for which a license may be revoked or suspended; under §153.34 this includes conviction of a felony, or any criminal violation relating to the profession.

EDUCATION DEPARTMENT

Wednesday-8:30

Open enrollment and voluntary desegregation, IAB Vol. XXVII, No. 01, ARC 3473B, ADOPTED.

These provisions were initially reviewed by the committee in June. For many years the department has maintained informal guidelines relating to minority enrollment and de-segregation in public schools; these guidelines merely provided advise to local school districts, they had no legal standing.

2003 Acts, Ch. 130, §35 requires the department to adopt criteria and standards that school districts must follow when developing a voluntary desegregation plan, as well as a review process. This legislation allows the department to promulgate rules with the force of law. A key part of this proposal relates to the handling of open enrollment requests when a district has a voluntary desegregation plan. Generally, under open enrollment the receiving district determines whether the transfer may be made. Under the proposed rules, when a district has a voluntary desegregation plan, the sending district may restrict open enrollment as part of an overall desegregation plan. Currently Iowa has five districts with a voluntary desegregation plans.

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Under this rule a school district may adopt a voluntary desegregation plan that affects open enrollments if the total student population has at least 20 percent minority students, or if the percentage of minority students in one or more attendance centers exceeds the percentage of minority students in the district as a whole by at least 20 percentage points. A desegregation plan cannot simply restrict open enrollment; such a restriction may only be used as one component of a broader plan to increase integration. The open enrollment component may only be used while minority enrollment exceeds 15 per cent.

EDUCATION DEPARTMENT

Wednesday-8:30

Educating the homeless, IAB Vol. XXVII, No. 01, ARC 3474B, ADOPTED.

These rules update a 1989 program. The revisions implement federal requirements set out in 42 USC §11431. The federal law requires that:

Each State educational agency shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youths.

* * *

Homeless children and youths should have access to the education and other services that such children and youths need to ensure that such children and youths have an opportunity to meet the same challenging State student academic achievement standards to which all students are held.

The rules adds detail to the definition of "homeless" by providing examples of living or sleeping arrangements that constitute being homeless. Under the broader interpretation of the term an increase in the eligible population would be possible. The rules goes on to prohibit a homeless student from being segregated from other students. It also require a homeless student to immediately enrolled regardless of any pending jurisdictional disputes, with placement based on the best interest of the child.

In addition, each district must provide a staff liaison to coordinate a broad array of services to be made available to the homeless children.

EDUCATIONAL EXAMINERS

Wednesday-11:15

Code of professional ethics, IAB Vol. XXVII, No. 03, ARC 3553B, ADOPTED.

This rulemaking began in January 2004 and was re-noticed in May with final adoption in July. It completely re-writes the existing standards of professional conduct and establishes eight general standards, each standard is then set out in detail.

Standard I deals with the most serious ethical or professional lapses: criminal convictions, sexual conduct with a student, and child or adult abuse; this section also includes fraud in procuring the professional license. Standard I details certain criminal convictions that constitute automatic disqualification, they include violent felonies and sexual offenses involving children. Other criminal convictions, and child abuse determinations, will be evaluated on a case-by-case basis.

Student abuse is also established as a standard I violation. This includes any sexual activity with a student, physical abuse of a student, or providing alcohol or drugs to a student or tolerating the use of drugs or alcohol by a student.

The remaining seven standards deal with non-criminal situations and behavior. Standard II relates to on the job alcohol or substance abuse by a licensee. Standard III relates to falsifying or misrepresenting professional credentials or student related information (e.g.: test answers). Standard IV relates to the misuse of public funds or property. Standard V relates to the violation of employment contract obligations. Standard VII requires compliance with state law governing student loan obligations and child support obligations. Standard VIII covers incompetence.

Standard VI is completely new and relates to unethical practice toward other professionals, parents, students, and the community. This standard sets out a long list of examples, including suppressing or distorting educational material;

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improperly denying a student access to a different point-of-view; repeatedly exposing the student or other members of the profession to embarrassment or disparagement; unlawful discrimination, attempting to sell goods or services to the student or the student's family for personal gain.

EDUCATIONAL EXAMINERS

Wednesday-11:15

Professional rights and responsibilities, IAB Vol. XXVII, No. 03, ARC 3554B, ADOPTED.

This rulemaking began in January 2004 and was re-noticed in April. As an adjunct to the code of professional conduct (see: previous) the board also implements a code of rights and responsibilities for licensees. These rights essentially already exist, but are now set out in rule form; they include:

- a right to be licensed and endorsed as provided by law;
- a right to refuse assignments for which the educator the appropriate endorsement or approval;
- a right, subject to board and administrator authority, to exercise professional judgment in the evaluation, selection, and use of teaching methods and instructional materials appropriate to the needs, abilities, and backgrounds of each student.

The rule also sets out a list of teacher responsibilities; as an example a summary of these standards include:

- A responsibility to maintain and improve professional competence.
- A responsibility to accept only assignments for which the educator is legally authorized and to maintain a safe and effective learning environment.
- A prohibition, "without just cause", from restraining independent student learning action or denying a student access to varying points of view.
- A prohibition against discrimination based on national or ethnic origin, religion, age, sex, disability, sexual orientation, or marital status, and a prohibition against granting "any discriminatory consideration or advantage".

The rights set out in this rule have a clear function; they can provide at least a partial defense against professional complaints since the rule has the fore and effect of law.

ELDER AFFAIRS DEPARTMENT

Wednesday-9:40

Miscellaneous amendments, IAB Vol. XXVII, No. 02, ARC 3530-31B, NOTICE.

In a series of notices the department proposes several small, but important changes. Several changes relate to assisted living programs; the department requires an alarm system connected to each exit. The proposal also adds a specific definition of the term "wandering" and requiring a program to establish policies dealing with residents at risk to wander. The complaint process for all programs is also revised; in cases where a complaint involves the possibility of immediate danger, the complaint will be investigated within 24 hours; the timeframe normally is 20 days.

ELDER AFFAIRS DEPARTMENT

Wednesday-9:40

Elder group homes, IAB Vol. XXVII, No. 02, ARC 3529B, NOTICE.

The department proposes a general re-write of existing rules regulating elder group homes; rule have been in place since 1994, with the last revision earlier this year. A similar proposal was noticed in May, but was later withdrawn. These facilities are basically descendants of the old boarding houses; they provide room, board and some personal services, but do not provide a level of assistance found in assisted living facilities. As detailed in Iowa Code Chapter 231B a group home houses three through five elders and provides such services as bathing, personal hygiene, dressing, grooming; initially, assisted living facilities did not provide nursing services, such as administration of self-administered medications; with the implementation of these new rules some of these services may be provided.

The home must be staffed by an on-site manager 24 hours per day, seven days per week and staffed sufficiently to meet the "identified needs" of the tenants. Personal care providers must have completed a home care aide training program. Every employee must pass a criminal background check. The rules also establish some general standards for the facility itself. There must be at least 150 square feet of common living space; each

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bedroom must have at least 70 square feet of space. There must be at least one sink and one toilet for each four tenants.

The proposal adds a detailed provision relating to medication. The administration of medicine must be provided by an R.N. or an advanced registered nurse practitioner. The program itself must document and store any medication other than self-administered medication.

The proposal sets out detailed tenant admission requirements; they are similar to those already in place for assisted living facilities. No tenant may remain in group living if the person:

- Is bed-bound;
- Requires routine assistance with standing, transfer or evacuation;
- Is dangerous to self or others;
- Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness; or
- Is under age 18;
- Requires more than part-time or intermittent health-related care;
- On a routine basis has unmanageable incontinence

A newly proposed mobility requirement states that the tenant must be physically and mentally capable of immediately and without assistance traveling a normal path to safety, including the ascent and descent of stairs.

Waivers, on a limited-time basis, are a possibility when a tenant requires more care than provided in the group living program. "Clear and convincing" evidence must be provided that the tenant wishes to remain in the home, that the staff can provide the needed care, that the criteria set out in the above paragraph will not be violated, and the waiver will not jeopardize the care, health, safety or welfare of the tenant or other persons. This is similar to the current provision.

ENVIRONMENTAL PROTECTION DIVISION

Tuesday-9:45

Non-public water supplies, IAB Vol. XXVII, No. 02, ARC 3516B, ADOPTED.

As part of the water well contractor certification program, any person who commercially services or installs a well in Iowa must be certified by the

state; the certification is based on related work experience and by passing a competency test on Iowa well rules. Once certified a well driller must maintain competency by obtaining continuing education.

These rules revise the minimum standards for installation of water well pumps or equipment employed in withdrawing or obtaining water from a well including such seals and safeguards as may be necessary to protect from contamination the water in the aquifer and water being pumped from the well. The rules update existing provisions relating to pumps, well caps and seals, piping, backflow prevention and a variety of other technical issues.

This filing also revises the certification and testing requirements for well drillers and pump installers. A certified well driller must have two years employment and 2000 hours of relevant well drilling services work experience. A pump installer must have two years employment and 1000 hours of relevant pump services work experience. Education may be substituted for up to one half the required work experience, at the rate of one educational unit for 100 hours of work experience. The relevance of any work experience will be determined by a peer review committee.

ENVIRONMENT PROTECTION COMMISSION

Tuesday-9:45

Phosphorus index, IAB Vol. XXVII, No. 02, ARC 3517B, ADOPTED.

Section 459.312, Code Supplement 2003 requires the EPC to establish a "phosphorus index" setting the manner and timing, on a field basis, of land application of manure from a confinement feeding operation. The index will determine application rates, based on the number of pounds of phosphorus that may be applied per acre and application practices.

Commencing sixty days after this rule become effective persons who submit an original manure management plan must include the phosphorus

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index as part of their original manure management plan and updated manure management plans. Persons who have already submitted manure management plans will have 2 to 4 years before compliance is required.

Under this index an estimate of the number of acres required for manure application is calculated either by dividing the total phosphorus available to be applied by the ability of the corn crop to remove phosphorus; or by totaling the quantity of manure that can be applied to each available field based on application rates determined by the phosphorus index. The phosphorus index must be used on each individual field in the manure management plan. Soil samples must be obtained from each field, in 10 acre segments, at least once every 4 years. Each soil sample must be analyzed for phosphorus and pH.

ENVIRONMENTAL PROTECTION DIVISION

Tuesday-9:45

Iowa land recycling, IAB Vol. XXVII, No. 02, ARC 3518B, ADOPTED.

In 1997 the legislature enacted Iowa Code Chapter 455H to encourage the voluntary clean up of contaminated real property. Under this legislation incentives are established to encourage competent persons to voluntarily develop and implement cleanup plans and thus recycle otherwise unusable property. The reward for such efforts is a measure of limited liability and regulatory closure, thus restoring at least some measure of the property's value.

Any person may enroll property in the land recycling program to reduce, minimize, eliminate, clean up, control, assess, or monitor a release; as necessary to protect the public health and safety or the environment.

The EPC now revises these provisions, implementing 2002 legislation and some federal requirements. The rules have always specified statewide standards for contaminants in groundwater, soil, and surface water, based on concentrations at which normal exposure is considered unlikely to pose a threat to human

health. The rules specify two means of exposure to soil based contaminants: oral and dermal.

A new addition to the assessment process will require study of the likelihood that a contaminant will migrate from the initial contamination area. The rules require that any pond, lake or stream on the site or within 300 feet of the site must be sampled and analyzed. Groundwater at the location on the site most likely to be impacted by soil contamination must also be sampled and analyzed. Lastly, soil vapors in each area that is most likely to be impacted by known groundwater or soil contamination must be sampled and analyzed for the volatile organic contaminants of concern.

The revision introduces the concept of "cumulative risk" into the existing standards. This is basically the combined level of risk posed by exposure to a number of contaminants. The property owner must now comply with two standards, one for individual contaminants and a second for cumulative risk.

The rules also provide for notification of persons owning land adjacent to a recycling site; the EPC is required to give those persons the opportunity to obtain updates regarding the status of activities relating to the site which is enrolled in the land recycling program.

ETHICS BOARD

Wednesday-8:40

Executive branch ethics, IAB Vol. XXVII, No. 02, ARC 3503B, NOTICE.

The board proposes a new chapter relating to ethical issues in the executive branch. The rule begins with a description of the types of advice the board may provide. An advisory opinion as detailed in this proposal and a traditional declaratory order (§17A.9) are the same thing. The advisory order is specially created in §68B.32A(11), Code Supplement 2003 and amended by Senate File 2179. It allows state and local officials and employees to seek the boards' opinion concerning the applicability of Chapter 68A or B in a particular fact situation. Any advice contained in an advisory opinion, if followed, constitutes a defense to any

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complaint based on the same facts and circumstances. The declaratory order is a more general mechanism, available to *any* person, which does the same thing. This mechanism is part of Chapter 17A.

The rules establish several divisions: conflict of interest and misuse of property, sales of goods or services, and employment restrictions. The provisions relating to the sale of goods or services are services and employment restrictions are "boilerplate" provisions implementing long-time statutory restrictions. Basically, state officials and employees of a regulatory agency cannot have business dealings with the interests the agency regulates.

ETHICS BOARD

Wednesday-8:40

Personal financial disclosure, IAB Vol. XXVII, No. 02, ARC 3501B, NOTICE.

This proposal revises existing rules relating to the filing and availability of personal financial disclosure statements filed by executive branch officials, employees, and candidates for statewide office. As provided in §68B.35 certain executive branch officials must file personal financial disclosures; these include agency heads, including certain specified board or commission members, deputy heads, or the head of a "major subunit" of an agency if that position involves a substantial exercise of administrative discretion or the expenditure of public funds. The board is now required by law to conduct an annual review to determine if additional board or commission members should be required to submit statements.

ETHICS BOARD

Wednesday-8:40

Use of public property for political purposes, IAB Vol. XXVII, No. 02, ARC 3504B, ADOPTED.

Iowa Code Supplement §68A.505 prohibits the expenditure of "public moneys" for political purposes, including expressly advocating the passage or defeat of a ballot issue. The board now

completes action on rules to implement and interpret this statute.

The rules clearly establish that these interpretations apply only to the executive branch of state government, a county, city, public school, or other political subdivision by state and local campaigns in Iowa. It does not apply to federal campaigns.

The board construes the phrase "expenditure of public moneys for political purposes" broadly to include the use of public resources generally. Note that "public resources" is a far broader term than "public moneys" and for that reason the interpretation is an issue for consideration. Chapter 68A is a criminal statute; §68A.701 states that "Any person who willfully violates any provisions of this chapter shall upon conviction, be guilty of a serious misdemeanor." The criminal penalty can range from a fine of at least two hundred fifty dollars through one thousand five hundred dollars and imprisonment to one year. As a general proposition, criminal statutes are to be construed *narrowly*.

A narrow constriction of §68A.505 would mean that only the expenditure of public money for a political purpose would be prohibited, while the use of public property or equipment would not be prohibited. To avoid this inconsistency the "public resources" provisions of 351 IAC Chapter 5 should be applicable only to the non-criminal, administrative remedies available to the board pursuant to §68B.32D. Any criminal prosecution would then be based only on the language of §68A.505 itself.

The basic principle that public property cannot be used for political purposes is not absolute under these rules. For example, using government property for a public forum or for a debate is allowable; renting a site for fair market value is permitted. The use of job titles and job-related uniforms is permitted. Candidate debates or forums at public facilities are permitted

Under newly revised subrule 5.5(4) a person may use a public resource for a political purpose as

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long as the governmental body is fully reimbursed for the value of that use and if it can be demonstrated that the "use of the resource was also for a public purpose or furthered a public interest." This provision requires further explanation; the terms "public purpose" and "public interest" need some definition to ensure that any political activity does not automatically translate into a public purpose. For example, providing security during a presidential visit to the state capitol is automatically a public purpose---protection of the public order. Conversely, making copies of an advertisement for a candidates' rally probably would never qualify. In any case, these parameters need to be more fully set out in rule.

The rules also set out some specific prohibitions. For example, using public property to solicit contributions or votes is prohibited. Using public vehicles or public equipment for campaign purposes is prohibited.

The rule concludes with a very wise provision offering concerned persons the opportunity to seek an advisory opinion from the board (see: §68B.32A(11)), in order to determine how these principles would apply to a specific fact situation. The boards advise provides a defense against any subsequent complaint arising out of the specified fact situation. This provision is basically copied from a similar mechanism set out in Chapter 1 of the boards rules.

HUMAN SERVICES DEPARTMENT

Tuesday-2:45

Day habitation services, IAB Vol. XXVI, No. 21, ARC 3464B, EMERGENCY AFTER NOTICE.

As required in 2003 Iowa Acts, Chapter 118 the department adds day habitation to the list of services that may be provided as part of the Medicaid home and community-based services waiver for persons with mental retardation. The program offers a wide array of services to teach daily living skills to the mentally retarded; these services can include training for the family. Services are limited to 10 hours per month.

IOWA FINANCE AUTHORITY

Wednesday-10:45

2005 Qualified Allocation Plan (low-income housing tax credits), IAB Vol. XXVII, No. 03, ARC 3558B, NOTICE.

Iowa law authorizes the authority to issue tax credits as an incentive to developers for construction or rehabilitation of low income housing. Each year the authority updates the program for the current fiscal year. Generally, by issuing tax credits the program encourages private developers to build or refurbish low income housing.

The 2005 amendments make minor, technical changes to the current program. No more than \$700,000 in tax credits will be awarded to a single developer/consultant who has multiple projects; with a \$500,000 cap for single projects. This cap may be raised 30% if there are projects located in certain target areas.

The program contains several earmarked projects. Ten percent of the grant ceiling is set-aside for qualified non-profit organizations. Thirty percent of the ceiling is set aside for projects in which at least 60% of low-income units are both rent restricted and occupied by individuals whose income is 40% or less of median gross income, and up to 40% of the low-income units are both rent restricted and occupied by individuals whose income is 60% or less of the median. Ten percent of the ceiling is set aside for affordable assisted living projects that include low-income units. Twenty percent of the ceiling is set aside for the preservation of qualifying projects.

IOWA FINANCE AUTHORITY

Wednesday-10:45

Senior living revolving trust program, IAB Vol. XXVII, No. 03, ARC 3557B, NOTICE.

2004 Iowa Acts, Senate File 2298, §170, created the senior living revolving loan program fund; with the funds to be used by the authority for the development and operation of a revolving loan program to provide financing to construct affordable assisted living and "service-enriched" affordable housing for seniors and persons with disabilities. Eligible projects include new construction, acquisition and rehabilitation. Money in the fund, interest and repayments do not revert.

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The program will offer loans for both affordable assisted living and service-enriched programs; the portion allocated to each type of program will vary as the authority deems appropriate. Loan amount can vary from \$100,000 to a maximum of \$2,000,000. Eligible projects must meet the following criteria:

- Projects must use low-income housing tax credits;
- Applicants must satisfy all of the requirements of the applicable qualified allocation plan and other legal requirements;
- The project must maintain financial feasibility and affordability;
- Maintenance and debt service reserve funds must be adequately funded.

IOWA FINANCE AUTHORITY

Wednesday-10:45

Home and community-based revolving loan program, IAB Vol. XXVII, No. 03, ARC 3557B, NOTICE.

2004 Iowa Acts, Senate File 2298, §171, created the home and community based services revolving loan program to assist developers in the development and expansion of adult day services, respite services, and congregate meals programs; with the goal of allowing older low-income persons to remain in their homes. Money in the fund does not revert. Loans may vary from \$50,000 to \$1,000,000.

All projects must meet criteria similar to those outlined for assisted living projects (see above); in addition, adult day care projects must:

- Set aside 40 percent of the admissions for those with incomes at or below 40 percent of area median income (AMI);
- Establish a service fee that is affordable to those with incomes at or below 40 percent of AMI;
- Accept third-party reimbursement such as Medicaid and meet Medicaid standards;
- Be certified as an adult day services provider by the Department of Elder Affairs.

IOWA FINANCE AUTHORITY

Wednesday-10:45

Title guarantee, IAB Vol. XXVII, No. 03, ARC 3560B, ADOPTED.

Title insurance cannot be sold in Iowa; however; in order to re-sell a mortgage on the national secondary market, such insurance is a necessity. For that reason the Iowa Title Guarantee Program

was created, to ensure that mortgages could be sold on the national market. The cost of a guarantee is set in an amount sufficient to permit the program to operate on a self-sustaining basis. The guarantees may be issued either by the program itself or by a participating attorney. To provide a guarantee an abstract of title must be brought up to date and a title opinion issued.

Any attorney in good standing, who maintains errors and omissions liability coverage, is eligible to participate in the program. Liability coverage is a significant requirement because in the event of a claim against a guarantee, the issuing attorney *may* be responsible, unless the defect or omission was beyond the control of the attorney.

An attorney must also complete a training program and agree to abide by the policies of the program. A participating attorney may issue a guarantee based on 'underwriting considerations'. These include:

"insuring access, reviewing gap searches, possible judgments, survey matters (including encroachments), unreleased mortgages or other liens, and any other matters disclosed by the opinion, commitment or other sources of title information."

An abstractor may also participate in the program, acting as an agent of the division. Each abstractor must qualify for participation in a manner similar to that of an attorney, and additionally must maintain and use in the preparation of abstracts an up-to-date abstract title plant including tract indices for real estate for each county in which abstracts are prepared for real property titles guaranteed by the division.

MEDICAL BOARD OF EXAMINERS

Tuesday-11:00

Criminal background checks, IAB Vol. XXVII, No. 03, ARC 3420B, ADOPTED.

The federal Volunteers for Children Act provides in part that under some circumstances a state regulatory agency may obtain a nationwide background check to determine whether a care provider has been convicted of a crime relating to the safety and well-being of children, the elderly, or individuals with disabilities.

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Pursuant to this authority the board implements a state and federal background check for all new applicants for licensure. Board representatives noted this check would make it easier to uncover previous offenses that would make an applicant ineligible for licensure.

The fee for this service will be \$46, which is in addition to any other application fee that is required. According to Legislative Service Agency analysis, this requirement would generate \$37,000, to be used to offset state and federal search, FBI fees, and the cost of additional staff to conduct the checks. Committee members were concerned about the lack of specific statutory authority for this proposal, noting that similar checks by the Board of Education Examiners were based on specific statutory authority. Board representatives responded that they had sought legislation, but it was determined they already had sufficient authority under state and federal law. A similar rule is now being proposed by the Dental Board (see: *infra*).

PROFESSIONAL LICENSURE DIVISION

Tuesday-9:00

Physician supervision of a physician assistant, IAB Vol. XXVI, No. 23, ARC 3345B, 70 day delay.

This filing, initially reviewed at the June committee meeting, is currently subject to a seventy day delay. This rulemaking was initially sparked by House File 628 that legislation revised the regulatory scheme for the physician assistants; §12 provided that:

"...rules shall be designed to encourage the utilization of physician assistants in a manner that is consistent with the provision of quality health care and medical services for the citizens of Iowa through better utilization of available physicians and the development of sound programs for the education and training of skilled physician assistants well qualified to assist physicians in providing health care and medical services."

The rulemaking presents three areas of major controversy; there was vigorous discussion at the June committee meeting. The first issue relates to the delegation of duties by the supervising

physician. The prior rule provided that "diagnostic and therapeutic medical tasks common to the physician's practice" could be delegated to the physician assistant; under the new language the delegated tasks do not need to be common to the physician's practice as long as the physician assistant demonstrates "proficiency and competence" in that area, as determined by the supervising physician. A board representative noted that section nine of House File 628 eliminated current statutory language relating to scope of practice; it was also noted the word "common" could be misconstrued to mean tasks that were frequently performed. Opponents of this revision contended that the legal requirement of physician supervision requires that the physician and the physician assistant have a common area of practice to ensure that the physician can exercise a meaningful level of oversight..

A second change relates to the types of surgical procedures that could be performed by a physician assistant; current language limiting surgery to "office" procedures has been eliminated. The board representative stated that surgical procedures should not be limited to only the office; the representative contended that surgical procedures could be properly performed in a hospital setting, a care facility or an emergency room. Opponents contended that not all surgical procedures may properly be delegated to a physician assistant, but they did concede that procedures need not to be limited to the office setting. One suggestion was to add the phrase "surgical procedures commonly performed in an office setting."

A third significant change dealt with obstetrical care. The previous rule stated that the physician assistant provided prenatal and postnatal care and assisted a physician in obstetrical care. The reference to assisting the physician has been deleted, thus allowing the assistant to provide obstetrical care as delegated by the supervising physician. Representatives of the nursing profession contended that a high level of specialized training was required before any individual could provide obstetrical care. They

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stated that any delegation of obstetrical care to a physician assistant should also require specialized training in the area.

PUBLIC HEALTH DEPARTMENT

Tuesday-11:20

Center for congenital and inherited disorders, IAB Vol. XXVII, No. 03, ARC 3575B, ADOPTED.

House File 2362 has revised and renamed Iowa's Birth Defects Institute---now called the Center for Congenital and Inherited Disorders; the Act has also expanded the centers function. The program was last updated in 1995 and 2001. The term 'birth defects' is no longer used in the program; instead, the Act refers to 'congenital and inherited disorders'. Section six of the Act specifically requires that all newborns born in this state be screened for congenital and inherited disorders.

This program is not free. Under the rules the department will annually review and determine the fee to be charged for all activities associated with the neonatal metabolic screening program. Beginning August 1, 2003 the screening fee is set at \$56. The enabling statute does not specifically authorize the imposition of a fee

Part of this fee will fund the provision of special medical formula for eligible individuals identified through the program who have inherited diseases of amino acids and organic acids. The rules set out an income based test to determine eligibility to receive the service.

Generally, the newly-renamed center is charged with the responsibility to provide a clearinghouse for information relating to congenital and inherited disorders. It will administer a statewide screening program for these disorders and designate a laboratory to conduct these tests; under the rules the department has designated the University Hygienic Laboratory as the testing facility.

PUBLIC HEALTH DEPARTMENT

Tuesday-11:20

AIDS drug assistance, IAB Vol. XXVII, No. 03, ARC 3571B, NOTICE.

Since 1990 the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act has provided grants to improve the quality,

accessibility, and organization of health care and support for those with HIV and AIDS. Under this federal Act services include direct health care and support, home and community-based care, assistance in continuing private health insurance coverage, and treatments and drugs that prolong life and/or prevent hospitalization through AIDS drug assistance programs. This Iowa program will pay for AIDS/HIV-related medications This is not an entitlement program; services will be provided only as long as funds are available.

The program is open to Iowa residents who:

- have inadequate health insurance to cover the cost of the drugs;
- are not fully covered under the Medicaid program;
- have an annual gross family income that is less than or equal to 200 percent of the poverty level;
- have liquid assets, not including major residence, household furnishings, and one vehicle, valued at less than \$10,000;
- have a medical diagnosis of HIV infection or AIDS or is an unborn infant or an infant under 18 months of age who has an HIV-infected mother.

PUBLIC SAFETY DEPARTMENT

Tuesday-2:40

Volunteer emergency services provider death benefit program, IAB Vol. XXVII, No. 01, ARC 3479B, EMERGENCY.

Current rules provide a death benefit if a volunteer fire fighter, reserve peace officer, or volunteer emergency medical provider suffers a "line-of-duty" death. Under those provisions a "line of duty" death was narrowly construed to exclude deaths resulting from stress, strain, or an illness, including a heart attack. Under this revision deaths from heart attacks or strokes which occur while the service provider is on duty or within 24 hours of being on duty will be presumed to qualify for the benefit if the provider was engaged in "non-routine stressful or strenuous physical activity within the scope of the provider's duties." Sedentary, clerical-type duties will not qualify.

PUBLIC SAFETY DEPARTMENT

Tuesday-2:40

Minimum training standards for volunteer fire fighters, IAB Vol. XXVII, No. 01, ARC 3482B, NOTICE.

THE RULES DIGEST

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Iowa Code §100B.2 empowers the department to adopt minimum training standards for volunteer firefighters. The department is adopting the 1001 standard of the National Fire Protection Association (2002 edition). This standard sets out the professional competence levels required of fire department members, especially the requirements for entrance into the fire department, and the first three levels of professional progression. Separate standards are provided for those who fight structural fires and those who fight other types of conflagrations.

Structural fires are a broader concept that simply fighting building fires; the term covers potentially hazardous situations where the fire fighter needs personal protective equipment and self-contained breathing apparatus. After July 1, 2006, every volunteer department must insure that its' members have completed the training requirements specified prior to the member's engaging in structural fire fighting.

The rules also specify a series of continuing education requirements. All volunteers must annually obtain at least 24 hours of continuing training. The rules set out seventeen subject areas where education may be obtained. These include such things as personal protective equipment and respiratory protection and structural fire fighting techniques.

PUBLIC SAFETY DEPARTMENT

Tuesday-2:40

Firefighting equipment and training fund, IAB Vol. XXVII, No. 01, ARC 3481B, NOTICE.

The legislature has consistently appropriated funds for firefighting equipment and training, but there has been no regulatory scheme in place for the administration of those funds. Recent legislation has established a permanent statutory scheme for volunteer training and equipment purchases, along with an appropriation for regional training facilities (\$50,000). These funds may be used to develop a plan for a regional facility, pay a portion of the construction cost, refurbish an existing facility or construct training props. The facility must meet the training requirements of the

1001 standard of the National Fire Protection Association (2002 edition).

PUBLIC SAFETY DEPARTMENT

Tuesday-2:40

Sex offender registry, IAB Vol. XXVII, No. 03, ARC 3549B, EMERGENCY.

As provided in Iowa Code 692A, any person who has been convicted of a variety of sexually related offenses in any jurisdiction, as specified in the statute, must register as a sex offender. Under prior law §692A.13A required the development of methods and procedures for assessing the risk that an offender will repeat that type of offense. Depending on the level of risk the statute required a greater level of public notification of offender's name, address, a photograph, locations frequented by the offender, and relevant criminal history information from the registry and other relevant information.

2004 Iowa Acts, Senate File 2298 repealed the risk assessment procedures and therefore, for purposes of the Sex Offender Registry, agencies will no longer assess the risk that any particular offender will re-offend. Instead, §464 of the Act authorizes the department to provide relevant information to a variety of law enforcement or criminal justice entities as well as: "*[t]he general public through the sex offender registry's web page, except that relevant information about an offender who was under twenty years of age...shall not be disclosed on the web page.*"

RACING AND GAMING

COMMISSION

Tuesday-2:00

Rescission of moratorium on new licenses, IAB Vol. XXVII, No. 01, ARC 3448B, NOTICE.

The commission proposes to rescind its long time ban on the issuance of new licenses. Under the current provisions there are thirteen licenses: one horse track, two dog tracks and ten boats. This proposal does not grant new licenses, it merely allows the commission to consider granting additional licenses.

THE RULES DIGEST

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Any new applications for licensure will be evaluated according to existing criteria set out in rule 1.7. Those criteria include such factors as compliance with applicable laws, viability of the project, revenue general for the state and local communities, operation of the facility, community impact, and the character and reputation of the applicant.

As part of the overall process, the legislature has authorized a study analyzing the impact that additional licenses may have. That study should be complete by early 2005. The rulemaking which rescinds the moratorium will be final in the fall. This will allow the commission to begin accepting license applications, but final approval will not occur until after the study has been submitted to the commission and reviewed.

SECRETARY OF STATE

Wednesday-9:00

Absentee ballot couriers, IAB Vol. XXVII, No. 02, ARC 3538B, NOTICE.

Senate File 2269 creates a new category of individuals who may return completed absentee ballots to the election commissioner, the "absentee ballot courier." Only the voter, a close relative of the voter, or a courier may return a ballot. Ballots can also be returned by mail. When an absentee ballot courier retrieves a completed ballot from a voter, the courier must fill out a receipt to be retained by the voter. Ballots must be delivered to the commissioner within 72 hours.

A person who is an agent of a political party, candidate, or committee must register as an absentee ballot courier in order to deliver completed absentee ballots and must register for each election. A candidate whose name is on the ballot cannot serve. A courier must complete a training course in the laws, procedures, and penalties related to handling completed ballots.

The training course is to be established by the state commissioner by rule. The actual information sheet used for the training is set out in the rule; when available the training will include a video presentation prepared by the state commissioner of elections. Training must be obtained annually. For

all elections the commissioner of elections may provide the required training; for partisan elections training may be provided by the political parties or their state or county central committees of the political parties or the staff.

SECRETARY OF STATE

Wednesday-9:00

Counting ballots, IAB Vol. XXVII, No. 02, ARC 3537B, NOTICE.

In Senate File 2269 statutory language was added: *"For each voting system, the state commissioner shall, by rule adopted pursuant to chapter 17A, develop uniform definitions of what constitutes a vote."* This system sentence has resulted in a detailed rule explaining what mark constitutes a valid vote---along with graphic examples. The proposed rule begins with a series of definitions relating to ballot marks:

- "Hesitation mark" means a small mark made by resting a pen or pencil on the ballot.
- "Prescribed mark" means the mark shown in the voting instructions as the appropriate way to mark a vote. "Prescribed mark" includes a close approximation of the mark.
- "Random mark" means a mark on a ballot (other than the prescribed mark) that is used inconsistently, either in or near the voting target or the names of candidates.
- "Stray mark" means a mark on a ballot that appears to be accidental or appears to be unrelated to the act of filling in the voting target.

As part of the vote counting process both overvotes and undervotes will be recorded. "Overvote" means to vote for more than the permitted number of choices for any office or question on a ballot. "Undervote" means to vote for fewer than the permitted number of choices.

The proposal then establishes standards for accepting or rejecting a ballot. The general principle is established that a vote shall not be rejected solely because a voter failed to follow instructions for marking the ballot if the choice of the voter is clear from the marks. If for any reason it is impossible to determine the choice of the voter for a particular office or question, the vote for that office or question shall not be counted. Ballots that have an identifying mark which identifies the voter individually or as a group will be rejected.

THE RULES DIGEST

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The general principle is followed by a series of specific requirements, along with examples. If a voter uses both the prescribed (as detailed in the voting instructions) mark and other marks, only the prescribed marks shall be counted. Even if the prescribed mark is not used the vote will still be counted if some other mark is consistently used. Examples of acceptable marks are provided; basically a mark is acceptable if it unambiguously identifies the voters choice. Hesitation marks, identifying marks, random marks, stray marks, and marks for which there is no consistent pattern will not be counted. This process will pose some burden on local voting officials by requiring that ballots be scrutinized to determine whether the marks adequately establish the voters intention.

The proposal concludes with a simple process for handling recounts. A recount is handled by a three person board. One member is designated by the candidate making the request, a second is designated by the apparent winner of the election; the third member will be chosen by the two other members. The boards' function is simply to recount the votes; that action is open to public inspection, but the public may not participate in the count.

incompetent to vote, and records of deceased persons.

Another significant change requires more rigorous proof of identity. A first-time voter who has registered by mail, at the time of voting must present a current and valid photo identification card, or a current document that shows the name and address of the registrant; under the Act these include a utility bill, bank statement, paycheck government check or other government document. If the voter mails an absentee ballot a copy of the identification must accompany the ballot. Also under the Act a registration application must contain the name, sex, date of birth, driver's license, identification card number, social security card number or residence address of the registrant. If any of this information is omitted the registration cannot be processed and the applicant will be notified that registration has not been completed.

VOTER REGISTRATION COMMISSION Wednesday-9:30

Voter registration, IAB Vol. XXVII, No. 03, ARC 3428B,
ADOPTED.

Senate File 2269 has amended Iowa's voter registration laws in a variety of ways. Perhaps the most significant change requires, by January 1, 2006, that the state establish a statewide computerized voter registration file. The file will contain the name and registration information of every legally registered voter in the state. In an effort to purge the entire system of ineligible voters, this system will be coordinated with other state databases, including driver's license records, records of convicted felons and persons declared