



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

October, 2004

Scheduled for committee review
Tuesday, October 12th
Statehouse Room #116

Reference
XXVII IAB No. 06(09/15/04)
XXVII IAB No. 07(09/29/04)

HIGHLIGHTS IN THIS ISSUE:

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CORRECTIONS DEPARTMENT

10:30

Sex offender registry, IAB Vol. XXVII, No. 06, ARC 3651B, NOTICE.

This proposal complements similar rules placed into emergency effect by the Department of Public Safety in July. Under Iowa law any person who has been convicted of a variety of sexually related offenses, 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 sexual offense. Depending on the level of risk, the statute required a greater level of public notification concerning the offender. 2004 Iowa Acts, Senate File 2298 repealed the risk assessment procedures and therefore, for purposes of the Sex Offender Registry, agencies will no longer assess the risk that any particular offender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.

CREDIT UNION DIVISION

No Rep Called

Investment and deposit activities for credit unions, IAB Vol. XXVII, No. 06, ARC 3643B, NOTICE.

These rules allow credit unions organized under Iowa law to engage in those investment and deposit activities which would be permitted if the credit union were federally chartered. Iowa credit unions must comply with generally accepted accounting principles (GAAP) applicable to reports or statements required to be filed with the division.

A credit union must establish written investment policies consistent with state and federal laws; the policies must be reviewed annually. They must detail the credit unions' investment strategies and policies.

A credit union must retain discretionary control over its purchase and sale of investments, except that control of up to 10 percent of total assets or 100 percent of net worth may be given over to an investment adviser registered with the Securities and Exchange Commission (SEC). Any broker utilized by the credit union must also be registered with the SEC.

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The proposal sets out a long list of permissible investments; a very brief overview of the list include such things as:

- Variable rate investments tied to domestic interest rates;
- Corporate credit union shares or deposits limited to 4 percent of assets;
- Registered investment company or collective investment funds;
- Collateralized mortgage obligation/real estate mortgage investment conduits;
- Municipal security;
- Commercial paper.

The proposal also sets out a list of prohibited investments, including most derivatives, certain mortgage-related investments, certain zero-coupon bonds and insurance annuities. There is a pilot program which will allow participants to make some types investments that remain prohibited under Iowa law but permitted by federal regulations.

DENTAL BOARD OF EXAMINERS

11:30

Criminal background checks, IAB Vol. XXVII, No. 07, ARC 3522B, ADOPTED.

These provisions are very similar to rules implemented by the Board of Medical Examiners. The rules 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.

ELDER AFFAIRS DEPARTMENT

No Rep

Assisted living, IAB Vol. XXVII, No. 07, ARC 3705B, NOTICE.

§231C.3(7), Code supplement, calls for a special classification for "affordable" assisted living programs. Many of these new programs are attempts by the low-income housing developers to blend construction or renovation projects with a service component to provide assisted living. The federal HUD department and the Iowa Finance Authority are active participants in these programs

These amendments essentially require these new programs to meet the same service, staffing and health care standards that are imposed on all other assisted living programs.

The role of the Iowa Finance Authority in underwriting these projects is set out in 265 IAC Chapter 20 (See below).

ELDER AFFAIRS DEPARTMENT

No Rep

Miscellaneous amendments, IAB Vol. XXVII, No. 07, ARC 3702B and 3704B, ADOPTED.

In these two filings the department makes several changes to the assisted living provisions and the general process for handling complaints. As relating to assisted living; the department requires an alarm system connected to each exit. The rules 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.

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ELDER AFFAIRS DEPARTMENT

9:00

Elder group homes, IAB Vol. XXVII, No. 07, ARC 37019B, ADOPTED.

The existing rules regulating elder group homes have been in place since 1994; 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 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 rules add 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 rules set 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.

ETHICS BOARD

10:00

Executive branch ethics, IAB Vol. XXVII, No. 06, ARC 3639B, ADOPTED.

The board has adopted 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 is specially created in §68B.32A(11); It is essentially the same thing as a traditional declaratory order (§17A.9). The opinion process 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 complaint based on the same facts and circumstances.

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

10:00

Personal financial disclosure, IAB Vol. XXVII, No. 02, ARC 3642B, ADOPTED.

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This rulemaking amends 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.

ENVIRONMENTAL PROTECTION COMMISSION

11:00

Landfarming of oil-contaminated soil, IAB Vol. XXVII, No. 06, ARC 3397B, ADOPTED.

This program regulates the disposal of soil contaminated by petroleum products such as gasoline, diesel fuel, kerosene, jet fuel, motor oil, or hydraulic fluid. The concept behind this program is that petroleum contaminants break down under exposure to air and sunlight. The program provides for the issuance of a permit allowing petroleum contaminated soil to be spread out over a field (landfarm) and aerated to allow the petroleum to bio-degrade.

Two types of permits are available. One is for a single application of contaminated soil, the second allows multiple applications at a specific location. For a single use permit, no land within 15 feet of the boundary of the proposed operating area can have been used as a petroleum landfarm site in the past three years. For both types of permits the site cannot be within 500 feet of a well or a sinkhole; or within 200 feet of a residence, drainage tile, stream, lake, pond, wetland, or other surface water. Crops may not be grown within 15 feet of the landfarm. The landfarm cannot be located on a 100 year floodplain or a slope greater than five percent. Any area used for temporary storage of contaminated soil must be covered and have an impervious base.

A groundwater monitoring process must be in place to measure any movement of the contaminants. Single use landfarms are deemed closed after the single application; multi-use farms may be closed only after two tests at down gradient monitoring wells measure within two standard deviations of the mean of up gradient wells, for each of three years after the final application.

The "landfarm season" runs from April 1 and ending October 31 of each year. PCS arriving at the site during the season may be stored no more than 7 days. Under some circumstances PCS may be applied off-season. Maximum application rates are established in a table based on the type of contaminant.

IOWA FINANCE AUTHORITY

9:20

2005 Qualified Allocation Plan (low-income housing tax credits), IAB Vol. XXVII, No. 07, ARC 3681B, ADOPTED.

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 establish some significant cap limits for developers and consultants. No more than \$700,000 in tax credits will be awarded to a single developer or a 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 which are underserved.

Another change provides: "IFA reserves the right not to reserve Tax Credits to any Developer of a Project, regardless of the proposal's aggregate scoring or ranking."

When this provision was initially reviewed in August commentators stated this authority makes the point and ranking system meaningless. IFA representatives responded that the discretion is necessary to ensure there is a balance of projects

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around the state. Another controversy involves a required market feasibility study, paid for by the developer, but actually ordered by the authority. A commentator noted it is actually more expensive than allowing the developer to simply order a study.

The program also contains several earmarked projects. 10% of the grant ceiling is set-aside for qualified non-profit organizations. 30% 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. 10% of the ceiling is set aside for affordable assisted living projects that include low-income units. 20% of the ceiling is set aside for the preservation of qualifying projects.

IOWA FINANCE AUTHORITY

9:20

Senior living revolving trust program, IAB Vol. XXVII, No. 07, ARC 3682B, ADOPTED.

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.

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

9:20

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.

MEDICAL EXAMINERS BOARD

1:15

Iowa Physician Health Committee, IAB Vol. XXVII, No. 07, ARC 3690B, NOTICE.

Iowa Code §272C.3(1)"k" empowers all professional licensing boards to

"Establish a licensee review committee for the purpose of evaluating and monitoring licensees who are impaired as a result of alcohol or drug abuse, dependency, or addiction, or by any mental or physical disorder or disability, and who self-report the impairment to the committee, or who are referred by the board to the committee."

The Medical Board now re-names their committee the "Iowa Physician Health Committee" and gives some added detail to its operation. All the health-related licensing boards have a similar committee; these rules provide good examples as to how these programs generally operate. The programs attempt to divert licensees who have

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some type of substance abuse problem away from licensing discipline and into monitoring and treatment programs.

Under the Medical Board program the licensee agrees in a contract to abide by the requirements to the program developed for that licensee; the program involves treatment and can involve practice restrictions. Failure to abide by the terms of the contract can result in formal licensee discipline.

NATURAL RESOURCES COMMISSION

11:15

Lands and waters conservation fund (LWCF), IAB Vol. XXVII, No. 07, ARC 3706B, NOTICE.

This 40 year-old federal program funds projects by the state, a city or a conservation board, relating to the acquisition and development of lands and waters for public use. The size of grants varies depending on the population served, from \$50,000 to \$200,000. The grant is a 50% match.

The program contains a set of weighted eligibility criteria. Each criterion is given a score of from 1 to 10 which is then multiplied by the weight factor. This score, in turn, can be either increased or decreased based on other factors. For example, points are deducted for having prior projects; points are added for serving a minority population. Under this proposal two additional points will be available for the use of recycled material.

The federal government gives final approval for all projects.

NATURAL RESOURCES COMMISSION

11:15

Use of metal detectors in parks and recreation areas, IAB Vol. XXVII, No. 07, ARC 3707B, NOTICE.

The commission proposes its first update of these rules in 17 years. The use of metal detector in public areas has always been a somewhat contentious issue; detectors want the freedom to pursue their hobby, while conservationists fear damage to plant life and park rangers are concerned about disputes over ownership of found property.

The proposal would significantly restrict the use of these detectors. Under the current rules metal detectors may be used in all areas of state park and recreation areas at certain times, excepting unmowed areas, campgrounds and archeological sites. The proposed rule limits access to beach areas and the beds of drained lakes.

NATURAL RESOURCES COMMISSION

11:15

Stocking private ponds, IAB Vol. XXVII, No. 07, ARC 3709B, NOTICE.

Iowa Code § 481A.78 provides that the commission may stock a privately owned pond or water if the owner agrees to allow public fishing. If the commission finds a farm pond suitable, it may provide a breeding stock of fish for privately owned ponds on request of the owner. The commission now proposes rules to detail this program. The pond must be new, drained and refilled, or free of fish. Livestock must be separated by at least 60 feet. The pond must be at least eight feet deep at its deepest point and between one half and ten acres in size. The cost for stocking varies with the size of the pond, ranging from \$25 to \$250.

PUBLIC HEALTH DEPARTMENT

2:00

AIDS drug assistance, IAB Vol. XXVII, No. 07, ARC 3696B, ADOPTED.

Since 1990 the federal 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

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medications This is not an entitlement program; services will be provided only as long as funds are available. The program is open to Iowa Aids victims who have an annual gross family income that is less than or equal to 200 percent of the poverty level.

PUBLIC SAFETY DEPARTMENT

10:45

Sex offender registry, IAB Vol. XXVII, No. 07, ARC 3686B, NOTICE.

These revisions implement 2004 Iowa Acts, Senate File 2298. Similar provisions were adopted on an emergency basis in July. 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. With limited exceptions relevant information from the registry will be available the public as well as to law enforcement or criminal justice agencies.

PUBLIC SAFETY DEPARTMENT

10:45

Voluntary certification standards for volunteer fire fighters, IAB Vol. XXVII, No. 07, ARC 3685B, ADOPTED.

These provisions establish certification standards for firefighters, they are not training standards. Iowa Code §100B.2 empowers the department to adopt voluntary certification 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.

SECRETARY OF STATE

2:10

Help America Vote Grants, IAB Vol. XXVII, No. 06, ARC 3643B, FILED EMERGENCY.

In 2004 Senate File 2298 appropriated \$765,000 for the purchase and installation of voting machines to implement the federal Help America Vote Act (HAVA); additionally, the Act mandates that of the federal funds drawn down pursuant to HAVA, at least 80 percent shall be distributed to counties for the implementation of that federal Act. Under Parts II and III of the federal Act the federal government will fund a variety of state and local projects; these include projects to make voting places handicapped accessible, and to research and develop improvements to the quality, reliability, accuracy, accessibility, affordability, and security of voting equipment, election systems, and voting technology.

SECRETARY OF STATE

2:10

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Counting ballots, IAB Vol. XXVII, No. 06 ARC 3662B,
EMERGENCY AFTER NOTICE.

Pursuant to 2004 Iowa Acts, Senate File 2269, the State Commissioner of Elections is required to detail, in rule uniform definitions of what constitutes a vote. These provisions were not controversial when initially reviewed by the committee in August.

Past attempts to provide clear voting instructions and simple ballots have not worked to establish compliance. These rules establish the general principle that local commissioners must make reasonable effort to determine the intent of the voter and honor that intent. Graphic examples are provided for each type of voting system. The rules also prohibit placing identifying marks on ballots' because such marks could be used to improperly identify some interest groups or to curry favor with a particular candidate.