



Administrative Rules Review Committee

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THE RULES DIGEST

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Scheduled for committee review
FRIDAY, March 4th, 2005
Senate Room #22

Reference
XXVII IAB No. 16(02/02/05)
XXVII IAB No. 17(02/16/05)
XXVII IAB No. 18(03/02/05)

HIGHLIGHTS IN THIS ISSUE:

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DEPARTMENT OF EDUCATION

9:10

Certificate of need, IAB Vol. XXVII, No. 17, ARC 3978B, NOTICE.

Chapter 423E, Code 2005, provides for a county imposed sales and services tax, at a maximum rate of one per cent, for school infrastructure purposes. An election may be called by petition:

- signed by a number of persons equal to five per cent of the persons in the whole county who voted at the last preceding state general election;
•signed by school boards, located within the county and containing at least one-half of the population of the county; or
•by the county board of supervisors.

A district must submit a "revenue purpose statement" indicating the specific purpose or purposes for which the tax will be used, otherwise, the receipts will be used to reduce several school levies as set out in the statute. The revenues received must be used for the purposes indicated in the statement. The revenue purpose statement may include information regarding the school district's

use of the revenues to provide for property tax relief or debt reduction.

Chapter 423E creates a "secure an advanced vision for education fund" (SAVE) This special fund is for the collection of local option school taxes and provides a guaranteed amount for per student for schools in counties that impose the tax after April 1, 2003.

A district cannot expend the supplemental school infrastructure amount received for new construction or for payments for bonds without receipt of a "certificate of need" issued by the department of education. The criteria for the award of this certificate are set out in §423E.4(6) and include:

- enrollment trends at the new construction site.
•The infeasibility of remodeling, reconstructing, or repairing existing buildings.
•The fire and health safety needs.
•The distance, convenience, cost of transportation, and accessibility of the new construction site to the students.
•Availability of less costly or more effective alternatives.

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- The financial condition of the district.
- The broad and long-term ability of the district to support the facility and the quality of the academic program.
- The cooperation with other educational entities.

In addition to the statutory criteria, as part of the evaluation process the proposed rules re-state and expand the criteria, for use by a screening task force. Based on the evaluation of the application, one to ten points will be awarded for each criteria. The task force will make recommendations to the school budget review committee approval of certificates of need. That committee, in turn, will make recommendations on approval to the department for final consideration.

Districts with a total enrollment less than 300 students or districts with fewer than 30 students in each grade to be served in the building cannot obtain a certificate unless a feasibility study conducted within the past three years has determined that sharing or reorganization is not feasible.

HUMAN SERVICES DEPARTMENT

9:40

Refugee services foundation, IAB Vol. XXVII, No. 17, ARC 4018B, ADOPTED.

These provisions initially appears as an emergency filing in September, 2004. Senate File 2298 requires the department to create a non-profit refugee services foundation; its' role is to assist in funding refugee resettlement activities which would promote the welfare and self-sufficiency of non-citizen refugees who live in Iowa. The foundation must be organized so that donations and bequests qualify as tax deductible under federal and state income tax laws. The foundation is not a state agency and the state is not liable for any of its' debts. Under this concept federal funds for the re-settlement of refugees will be supplemented by fund-raising efforts of the foundation.

HUMAN SERVICES DEPARTMENT

9:40

Community care, IAB Vol. XXVII, No. 18, ARC 4016B, EMERGENCY AFTER NOTICE.

These rules were initially reviewed as a notice in January, 2005. 2003 Iowa Acts, chapter 178, §44 called or the department to begin a process to improve the outcomes relating to child welfare and juvenile justice. The Act called for a complete redesign of the system in order to develop an outcomes-based system for children. These rules implement that system.

Community care services will be provided throughout the state under a performance based contract. These services are essentially child protection and family preservation services. The contractor will provide, either directly or through the use of subcontractors:

- Services to all families at risk of child abuse or neglect referred through the contract.
- Assessments of individual child needs, family functioning, and potential child and family risk factors.
- Services to families in crisis.
- Access to a wide range of community resources and services that are responsive to the families' needs.
- Provide a service referral network that is readily accessible, available, and convenient to families in all areas served by the contract.
- Provide ongoing assessment of the services provided.
- Coordinate referrals from the department.
- Monitor and document service utilization.
- Meet minimum performance targets as specified in the contract.

Persons may appeal the decisions of the contractor only after exhausting the contractor's internal dispute resolution process; that process is not set out in the rules, instead, it is part of the contract. Once the dispute resolution process has been utilized, a contested case process is available from the department.

ENVIRONMENTAL PROTECTION COMMISSION

10:20

Non-attainment areas, IAB Vol. XXVII, No 16, ARC 4005B, NOTICE.

2002, the U.S. Environmental Protection Agency (EPA) revised rules relating to nonattainment new source review (NSR); Iowa has until 2006 to adopt these rules into the Iowa

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program. The EPC proposes to adopt this provisions into the Iowa Administrative Code. A new chapter 33 will contain Iowa rules to meet federal requirements relating to permit requirements for major sources located in nonattainment areas and relating to the prevention of significant deterioration of air quality for major sources located in areas designated attainment or unclassified.

The new chapter will establish special construction permitting requirements for new major stationary sources or modifications at existing major stationary sources. Facilities located in designated attainment areas (Areas that do not meet the National Ambient Air Quality Standards are referred to as nonattainment areas and are identified in 567 IAC 22.6) or unclassified areas must meet certain requirements to prevent of significant deterioration (PSD). Facilities that are located in, or will locate in, an area of the state classified as nonattainment are subject to specific permitting requirements for those areas.

NATURAL RESOURCES COMMISSION

10:40

Permanently moored vessels (PMV), IAB Vol. XXVII, No. 18, ARC 4031B, NOTICE

§99F.7(1), 2005 Code provides that a permanently moored gambling boat which is operated on inland waters is under the exclusive jurisdiction of the department of natural resources and meet all of the requirements of chapter 462A and is further subject to an inspection of its sanitary facilities to protect the environment and water quality before a certificate of registration is issued by the department of natural resources or a license is issued or renewed under this chapter. These vessels have been removed from navigation and are no longer regulated by the United States Coast Guard.

The rules basically establish an abbreviated licensing procedure for persons wishing to inspect these vessels. Eligibility criteria are set out in the rules, specifying both training and experience

requirements. Each application will be reviewed on an individual basis.

Each PMV will be inspected according to the standards set out in the "State of Iowa Permanently Moored Vessel Inspection Requirements," 2005 edition. This document is adopted by reference.

DENTAL BOARD OF EXAMINERS

10:50

Reporting misconduct, IAB Vol. XXVII, No. 16, ARC 3973B, NOTICE.

This proposal resolves a controversy from the August, 2004 committee meeting. The issue relates to the requirement that dentist report "acts or omissions" that could result in the imposition of licensee discipline. The report was required within seven days of the event. The earlier requirement applied only to more serious actions and the report had to be made within thirty days. Opponents stated that virtually any act or omission could result in some form of discipline, and contended the new requirement was too broad. They also contended that a seven day reporting requirement was much too short.

In this revision the thirty day reporting period is restored, but any act or omission which "poses an immediate threat to patient safety" must be filed within 24 hours after the licensee becomes aware of the action.

The issue that remain unresolved is *which* acts and omissions should be reported. Relating to reporting requirements, the change appears as follows:

"..any acts or omissions that could result in ~~the suspension or revocation~~ discipline..."

§272C.4(6) requires licensees to report acts or omissions that are grounds for revocation or suspension of a license, while the board rule instead refers to discipline. Board representatives state that any act or omission might be grounds for suspension or revocation, depending on the severity of the offense. Opponents that the proposed language is beyond the statute and is so broad that virtually anything a licensee does must be reported.

DENTAL BOARD OF EXAMINERS

10:50

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Volunteer service, IAB Vol. XXVII, No. 16, ARC 3975B, NOTICE.

Current rules allow temporary practice permits for emergency or educational purposes; this proposal would add volunteer services to that list. A dentist and dental hygienist is eligible for the permit to provide volunteer services at a specific free or nonprofit dental clinic site. The permit is valid only for the location specified in the permit. Applicants must hold the appropriate educational degree, be licensed in at least one American jurisdiction and state the justification for the temporary permit, the duration of the service, and the location where service will be provided.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT

No Rep

Weights & measures: diesel fuel lubricity standard, IAB Vol. XXVII, No. 16, ARC 3965B, NOTICE.

The department proposes to adopt national "lubricity" standards established by the American Society for Testing and Materials (ASTM). There is an issue with this standard.

Lubricity is the fuel quality that prevents or minimizes wear in diesel fuel injection equipment. The standard will require an additive to increase lubricity; but doing that increases the fear that the residue of the additive might contaminate other fuels which may more through the same pipeline--- such as jet fuel. Some major common carrier pipeline companies have stated that they would not allow the transport of diesel fuels already treated with lubricity additives, due to their concerns about "trail back" of the lubricity additive into jet fuel tenders following the lubricity-additized diesel, which are not allowed to contain these additives. As a result, most lubricity additive usage in the U.S. will need to take place at fuel terminals.

The solution is to temporarily delay the standard until equipment is in place to inject the additive at the fuel terminal, thus leaving the pipeline uncompromised. The proposed rule would accomplish this by delaying enforcement of the standard until October 1, 2005. The issue is that regardless of enforcement, the rule change will be

in effect 35 days after adoption and publication--- roughly May, 2005. This poses a legal question: If a standard is in effect, but agency enforcement of that standard is postponed for a period of time, does the regulated industry have a legal obligation to comply with the rule at the time it goes into effect? Rather than deal with the complexities of this issue, it might be advisable simply to establish a separate October 1 effective date for the lubricity portion of the standard.

INSPECTIONS & APPEALS

No Rep

Quality awards for nursing facilities, IAB Vol. XXVII, No. 16, ARC 3949B, ADOPTED.

In 1999 §135C.20B was enacted to create a "Governor's Award for Quality Care", awarded annually by the governor to a health care facility in the state which demonstrates provision of the highest quality care to residents. The winner receives a framed certificate in recognition of its designation as the quality health care provider of the year. The first award was made in 2001; there has been a total of 23 recipients. The certificate is be awarded by the governor in a recognition ceremony held at the annual Governor's Conference on Aging.

The department has established by rule the criteria to determine quality care, considering consider all of the following:

- The report cards completed by department inspectors;
- Any unique services provided by a facility to its residents to improve the quality of care in the facility.
- Any information submitted by care review committee members or residents with regard to the quality of care of the facility.
- Whether the facility accepts Medicaid residents.
- Whether there are any outstanding complaints against the facility, as well as the resolution of any complaint already investigated by the department.
- Whether the annual fiscal review conducted by the department indicated any irregularities in the residents' accounts.

There was some opposition to these rules when initially reviewed in January, 2004. An individual opposed the entire award program, protesting that it awarded facilities for doing what they were paid to

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do in the first place and contending that facilities won the award in spite of having listed deficiencies on their inspection reports. The individual contended that only facilities with a completely clean record should be eligible for consideration. At the January meeting the committee decided to refer the rules and the enabling statute back to the General Assembly; no legislative action has occurred.

IOWA FINANCE AUTHORITY

No Rep

Iowa aftercare services rent subsidy program, IAB Vol. XXVII, No. 18, ARC 4020B, ADOPTED.

The Foster Care Independence Act Of 1999, Public Law 106-169, in part provides expanded services to former recipients of foster care; the Act provides for:

"...financial, housing, counseling, employment, education, and other appropriate support and services to former foster care recipients between 18 and 21 years of age to complement their own efforts to achieve self-sufficiency..."

The authority now implements a rent subsidy component as part of this program. The program is available to persons between the ages of 18 and 21 who must pay more than 30 percent of the person's gross for rent and no other rental assistance is available. The subsidy cannot exceed \$350.

LATINO AFFAIRS DIVISION

No Rep.

Standards for interpreters, IAB Vol. XXVII, No. 18, ARC 4030B, NOTICE.

§216A.15, subsection 9, 2005 requires that the commission Adopt rules, with stakeholder input, setting out qualifications for Spanish language interpreters and maintaining a list of those deemed qualified to interpret for Iowa courts, administrative agencies, social service agencies, and health agencies. These rules have been developed after extensive public review.

A certified language interpreter must be at least 18 years of age, possess a high school degree or equivalent and complete a training program that has been approved by the division. Training programs must provide a minimum of 150 student

contact hours and must monitor a minimum of 30 supervised practice hours. The program must instruct in a variety of areas, including:

- Cultural competency.
- Ethics.
- Interpretation methodology.
- Professionalism and etiquette.
- Written translation skills.
- Interpreter self-evaluative assessment tools and techniques.
- Overview of state and national interpreter certification and credentialing requirements.
- Idioms, slang, and vocabulary development.

A more specialized advance program is also available. Once certified, an interpreter attend a specialization program consisting of a minimum of 80 student contact hours in the particular area and an additional 20 supervised practice hours.

The rules conclude with a detailed code of ethics designed to ensure the confidentiality and accuracy of the communications. The basic obligation of the certified interpreter is to preserve the meaning of what is said, as faithfully as possible and without editing. The interpreter must provide a complete and accurate interpretation by reproducing in the target language the closest natural equivalent of the source language message, without altering, omitting, or adding anything to the meaning of what is stated or written, and without explanation.

DEPARTMENT OF MANAGEMENT

No Rep.

Open records, IAB Vol. XXVII, No. 15, ARC 3943B, ADOPTED.

The department sets out an expanded and detailed policy concerning record management and retention policies; a process is also established for open records requests and access. Iowa Code Chapter 22 does allow an agency to charge for a copy of a record, for the time spent finding a record and for the cost of supervision. Those costs are clearly detailed in the rule: non-incident retrieval or supervisory services are \$15.00 per hour; copies will be provided at no charge for the first 25 pages, and 20 cents per page for each additional page.

The rule embodies the concept that public access means not only that records be open to

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public inspection, but also that the records must be properly archived. The rule offers a succinct standard for document retention:

"Every record made or received under the authority of, or coming into the custody, control, or possession of, department of management personnel, in connection with the transaction of official business of state government, and that has sufficient legal, fiscal, administrative, or historical value shall be retained in accordance with Iowa law."

PUBLIC HEALTH DEPARTMENT

No Rep

Swimming pools and spas, IAB Vol. XXVII, No. 16, ARC 3970B, NOTICE.

Periodically the department updates its rules relating to spas and swimming pools; this is the first revision in roughly six years. The rules describe:

- the standards for the design, construction and operation of swimming pools and spas;
- qualifications for swimming pool and spa operators, lifeguards and inspectors;
- procedures and fees for plan review, registration, and inspection of swimming pools and spas.

These rules apply to swimming pools, spas, wading pools, water slides, wave pools, and bathhouses connected to swimming pools owned or operated by government, commercial or private entities including public or private school corporations, hotels, motels, camps, apartments, condominiums, health clubs and country clubs. The rules do not apply to a residential swimming pool or spa that is permanently installed in a single-family dwelling, to a decorative fountain or to a therapeutic swimming pool or spa which is under the *direct* supervision of qualified medical personnel. These provisions do not apply to a swimming pool or spa operated by a homeowners association representing 72 or fewer dwelling units if the association bylaws or any rental agreements: 1) include an exemption from the requirements of this chapter, 2) provide for inspection of the swimming pool or spa by an entity other than the department or local board of health, and 3) assume any liability associated with operation of the swimming pool and spa.

This chapter sets out minimum safety and water quality requirements for the operation of swimming pools and spas; standards for construction; procedures for registration; qualifications for swimming pool and spa inspectors; qualifications for swimming pool and spa operators and lifeguards; and procedures for health departments to provide for the inspection of swimming pools and spas and enforcement of these rules. Swimming pools and spas which are in compliance with these rules must also comply with the requirements of any other applicable federal, state or local laws, rules or ordinances.

PUBLIC HEALTH DEPARTMENT

No Rep

Emergency medical technician: training and certification, IAB Vol. XXVII, No. 16, ARC 3969B, ADOPTED.

Training and certification standards for emergency medical technicians (EMT) have been in effect for almost five years; this is the first major revision. Rules are developed by the department in consultation with the emergency medical care council. There are a variety of emergency care designations, based on function and specialty:

- Emergency medical technician-ambulance (EMT-A)
- Emergency medical technician-basic (EMT-B)
- Emergency medical technician-defibrillation (EMT-D)
- Emergency medical technician-intermediate (EMT-I)
- Emergency medical technician-paramedic (EMT-P)
- Emergency rescue technician (ERT)
- First responder (FR)
- First responder-defibrillation (FR-D)

Generally, EMT personnel provide emergency and non-emergency medical care in those areas for which the individual is certified; medical supervision is provided either by on-line consultation or in some situations through the use of a protocol. An EMT may provide service, within the EMTs' scope of practice:

- At the scene of an emergency;
- During transportation to a hospital;
- While in the hospital emergency department;
- Until patient care is directly assumed by a physician or by authorized hospital personnel; and
- During transfer from one medical care facility to another or to a private home.

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- In a hospital or health care facility when under the direct supervision of a physician as part of an educational program or when the EMT is employed as a member of an authorized service program.

The rules contain a great deal of "boilerplate" language, relating to licensee discipline, education approvals and appeal procedures. There are two highlights: as with any licensed profession an EMT must obtain biennial continuing education. The level varies depending on the designation, from 12 to 60 hours. At least 50% of the training must be in a formal educational setting. The initial certification fee is \$20; renewal fees vary from \$10-25. The rule also set out a variety of minor fees.

PUBLIC HEALTH DEPARTMENT

No Rep

Automated external defibrillator grant program, IAB Vol. XXVII, No 16, ARC 3955B, ADOPTED.

These rules were initially implemented on an emergency basis in December, 2004. §135.26, Code 2005 was enacted to create an "automated external defibrillator grant program". The program provides 50/50 matching funds to local boards of health, community organizations, or cities for providing increased access to automated external defibrillator equipment and training to rural emergency and community personnel.

Applicants may be a local board of health, a community organization, or a city. Under the rules the term "community organization" is defined as including an educational institution, nonprofit organization, social service agency, philanthropic organization, or business, trade, or professional association. The filing does not contain the evaluation process or the award criteria; instead that information will be set out in the request for proposals.