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IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

# THE RULES DIGEST

October  
2014

**Scheduled for Committee review**

**Tuesday, October 14, 2014**  
**Senate Committee Room #116**

Reference

XXXVII IAB No. 06(09/17/14)  
XXXVII IAB No. 07 (10/01/14)

## **HIGHLIGHTS IN THIS ISSUE:**

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## **HUMAN SERVICES DEPARTMENT**

9:10

*HCBS brain injury waiver training*, 10/01/14 IAB, ARC 1638C, ADOPTED.

This amendment clarifies the training requirements for home- and community-based services (HCBS) brain injury (BI) waiver service providers and direct service staff. The effect of this amendment is that any provider or direct service worker providing BI waiver services on or before December 31, 2014, will be presumed to be in compliance with the training requirement in effect when the provider or direct service worker began providing services and is not required to complete the Department's BI waiver training modules. After January 1, 2015, direct service workers will have 60 days to complete the Department's BI waiver training modules.

The Department's BI training may also be completed at any time by any other person who wishes to do so.

## **MEDICINE BOARD/DENTAL BOARD/PUBLIC HEALTH/PHARMACY BOARD/PROFESSIONAL LICENSURE**

9:50

*Military reciprocity*, 09/17/14, 10/01/14, IAB, ARC 1632C, 1645C, 1646C, 1641C, 1630C, NOTICE.

2014 Iowa Acts, Senate File 303 §34 requires that all licensing boards adopt rules to provide credit towards qualifications for licensure education, training, and service obtained while serving honorably on federal active duty, state active duty, or national guard duty. The Act also provides for the expedited licensing of a veteran who is

licensed in another state. If the licensing requirements of the state where the veteran is licensed are substantially equivalent to the licensing requirements of Iowa, the veteran shall be licensed. If the requirements are not substantially equivalent the veteran must be allowed provisional licensing for a period of time to obtain a substantial equivalent to Iowa licensing requirements.

The Attorney General's office has prepared a template which the licensing boards are using as the base for their own regulation.

## **ECONOMIC DEVELOPMENT AUTHORITY**

10:25

*Workforce housing tax incentives program, 09/17/14 IAB, ARC 1628C, NOTICE.*

2014 Iowa Acts, House File 2448, created a new tax incentive program for assisting the development of workforce housing projects. This credit is available for multiple dwelling unit buildings or four or more single-family dwelling units. To be eligible a project must be:

- Rehabilitation, repair, or redevelopment at a brownfield site or grayfield site that results in new dwelling units.
- The rehabilitation, repair, or redevelopment of dilapidated dwelling units.
- The rehabilitation, repair, or redevelopment of dwelling units located in the upper story of an existing multi-use building.
- The new construction, rehabilitation, repair, or redevelopment of dwelling units in a "distressed workforce housing community", as that term is defined in the rules.

IFA will allocate not more than \$20 million for the program. The maximum amount of tax incentives used for a housing project shall not exceed \$1 million and shall not exceed 10 percent of the qualifying new investment of the project.

As set out in the rules proposed by the Department of Revenue and Finance (ARC 1654C), any tax credit in excess of the taxpayer's liability for the tax year is not refundable but may be credited to the tax liability for the following five years or until depleted, whichever is earlier. To claim the credit the taxpayer must receive a tax credit certificate from authority to claim the eligible housing business tax credit.

## **PUBLIC EMPLOYMENT RELATIONS BOARD**

10:50

*Mediators; arbitrators, 10/01/14 IAB, ARC 1642C, ADOPTED.*

The Department periodically revises its regulations relating to the qualifications for arbitrators and mediators. This proposal takes a current "bare bones" provision relating

to the fees of neutrals and expands it into a full program for the selection and regulation of arbitrators and mediators, similar to licensing provisions. PERB maintains a list of mediators who meet the standards set by the Board. A mediator must have ONE of the following:

- At least three years of collective bargaining experience in the public or private sector;
- At least three years of actual mediation experience;
- At least five years of other relevant experience in labor-related fields;
- A law degree or a master's or equivalent degree in industrial or labor relations or alternative dispute resolution;
- Experience that is a combination of the above.

An arbitrator serves as a neutral decision-maker in arbitrations, grievance arbitrations, or teacher terminations. PERB maintains a roster of arbitrators who comply with the standards set by the Board. Listing on the roster must be renewed every three years. The rules set out specific experience standards for each type of arbitrator, interest arbitrator, grievance arbitrator, or teacher termination adjudicator.

General standards for all mediators and arbitrators include the following:

- Good verbal and written communication skills;
- The ability and willingness to travel and to work prolonged and unusual hours;
- Knowledge of Iowa Code chapter 20, the agency's rules, and principles and practices of contracts, public finance, and labor relations;
- The ability to conduct fair, impartial, and timely evidentiary hearings.

The board conducts a mentorship program to increase the number of arbitrators in Iowa.

## **INSPECTIONS AND APPEALS**

10:35

*Involuntary discharge or transfer*, 10/01/14 IAB, ARC 1648C, NOTICE.

The Department re-writes existing rules for the involuntary discharge of a resident in a nursing facility, a residential care facility for persons with mental illness, a residential care facility for the intellectually disabled, an intermediate care facility for the intellectually disabled, and an intermediate care facility for persons with mental illness.

A resident can be involuntarily discharged for the following reasons:

- Medical reasons;
- The resident's welfare or that of other residents;

- Nonpayment;
- Due to action relating to the hospitalization of a person with mental illness;
- negative action by the department of human services;
- negative action by a quality improvement organization.

Working under contract with the federal Centers for Medicare & Medicaid Services, a quality improvement organization monitors the appropriateness, effectiveness, and quality of care provided to Medicare patients. It is made up of health quality experts, clinicians, and consumers.

A resident cannot be transferred or discharged solely because the cost of care is being paid by the Medicaid or because the resident's source of payment is changing from private support to Medicaid payment. A resident is entitled to notice of the proposed action and an opportunity to contest the involuntary discharge. A contested case hearing will be heard by a Department of Inspections and Appeals administrative law judge.

## **ENVIRONMENTAL PROTECTION COMMISSION**

11:00

*Animal feeding operations--NPDES compliance, 09/17/14 IAB, ARC 1627 C, ADOPTED.*

This rulemaking implements the Work Plan Agreement (Work Plan) entered into between the DNR and the federal EPA on September 11, 2013, relating to state enforcement of National Pollutant Discharge Elimination System (NPDES) standards for concentrated animal feeding operations (CAFOs). A CAFO is an animal feeding operation that confines animals for more than 45 days during a growing season, is located in an area that does not produce vegetation, and meets certain size thresholds set out in federal rules. Iowa Code §459.311 provides that CAFOs must comply with applicable NPDES permit requirements. The owner or operator of a CAFO must obtain an NPDES permit if the CAFO discharges is designed, constructed, operated, or maintained such that a discharge will occur. Pursuant to Iowa Code §459.311(2), state rules implementing the NPDES permitting requirements “shall be no more stringent” than the requirements set out in EPA rules. The Work Plan requires that the DNR recommend to the Commission the adoption of certain rules, including the adoption by reference of “federal regulations necessary to fully implement the NPDES permitting program for confinement CAFOs that discharge to waters of the U.S.” Therefore, the Commission has adopted a rule that incorporates by reference the EPA’s CAFO rule.

In addition, the amendments incorporate the Work Plan requirement that the DNR recommend to the Commission that it “adopt by reference federal regulations that fully implement the NPDES permitting program with respect to land application setback and separation distances for open feedlot CAFOs.” To ensure equivalency with the open feedlot program, the Commission has amended this setback requirement for confinement feeding operations as well.

The Commission also rescinded the outdated term “operation permit” from the confinement feeding operation rules. The amendments eliminate the need for “operation permits” in the confinement animal feeding operation program. The rulemaking includes other conforming changes as well.

By letter dated January 23, 2014, U.S. EPA Region 7 informed the DNR that the amendments “meet the requirements ... of the Work Plan and ensure that Iowa’s NPDES authorities are consistent with federal requirements.”

## **PUBLIC HEALTH DEPARTMENT**

12:50

*Medical cannabidiol*, 10/01/14 IAB, ARC1640C, ADOPTED.

2014 Iowa Acts, Senate File 2360 establishes new Code chapter 124D, the “Medical Cannabidiol Act”, to allow for the medical use of a certain type of marijuana derivative for alleviating symptoms caused by intractable epilepsy. A neurologist who has physically examined and treated a patient suffering from intractable epilepsy may provide a written recommendation for the patient’s medical use of cannabidiol to treat or alleviate symptoms of intractable epilepsy if there are no other satisfactory treatment options.

“Cannabidiol” is a nonpsychoactive preparation that has a tetrahydrocannabinol level of no more than 3 percent. “Intractable epilepsy” is an epileptic seizure disorder for which standard medical treatment does not prevent or significantly ameliorate recurring, uncontrolled seizures or for which standard medical treatment results in harmful side effects.

The Department of Public Health authorizes a picture ID registration card issued by the Department of Transportation; this registration file is confidential and must be annually renewed.

The substance of the program is detailed in the Act itself; the rule sets out the procedural steps to authorize registration.

Several changes were made to the noticed rule, including a revised definition of “permanent resident”, an additional option for valid photo identification in the application process, increased flexibility in the renewal process, and removal of the requirement that the recommending neurologist physically examine a patient before issuing a written recommendation.

The rule will become effective on January 30, 2015.