



Administrative Rules Review Committee

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THE RULES DIGEST

September, 2005

Scheduled for committee review
Tuesday, September 13th 2005
Senate Room #116

Reference
XXVIII IAB No. 04 (08/17/05)
XXVIII IAB No. 05 (08/31/05)

HIGHLIGHTS IN THIS ISSUE:

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HUMAN SERVICES DEPARTMENT

9:10

Juvenile court services-directed programs, IAB Vol. XXVIII, No. 04, ARC 4439B, NOTICE.

This general revision updates department rules relating to certain services provided through an appropriation made to the department; however the services themselves are ordered by the juvenile court system pursuant to the authority of pursuant to Iowa Code §232.141. The services are available for persons who have been adjudicated as delinquent or are at risk of such an adjudication. Persons must be under the age of 18 years but in some cases persons up to 19½ may be covered.

The court and juvenile court officers have primary responsibility for the administration of court-ordered services and "graduated sanction services" for children, which consist of early intervention and follow-up services or community based delinquency programs. There are four basic services: Life skills teaches the skills needed for day-to-day living; school-based supervision uses juvenile court school liaisons to provide on-site services at middle and high schools; supervised

community treatment provides supervised educational support and treatment during the day to children who are experiencing social, behavioral, or emotional problems; and tracking, monitoring, and outreach provides individualized and intensive one-to-one intervention to a child.

The rules detail the administration and disbursement of funds appropriated for these services; up to 10% may be designated for administrative expenses. Each chief juvenile court officer is responsible for the administration of the court-ordered services and graduated sanction services within one of Iowa's eight judicial districts. The officer purchases court-ordered services and graduated sanction services from public or private entities, on behalf of eligible children within the district. Individuals may also be compensated for services up to \$1,000.

HUMAN SERVICES DEPARTMENT

9:10

Shelter care, IAB Vol. XXVIII, No. 01, ARC 4313B, EMERGENCY.

This review is continued over from the August meeting. House File 825, §30 required the

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department to revise a request for proposal (RFP), relating to the statewide availability of emergency juvenile shelter care services, by increasing the statewide daily average number of beds covered under the RFP to an average 280 beds and a 337 maximum, in order to include roughly 34 unallocated beds statewide for emergency placements.

The initial emergency rule provided that the Department would contract for approximately 325 shelter beds statewide, but guarantee payment for approximately only 240 beds. §16 of the Act appropriated \$200,000, in specially allocated or earmarked additional funding, to shelter care so that 15 emergency beds are available statewide, within the statewide average of 288 beds.

Representatives of the shelter care facilities maintain that the 288 bed figure is intended to guarantee 273 beds with 15 beds available on a where-needed basis; thus assuring local facilities of a guaranteed minimum income. Department representatives respond that a 273 bed guarantee would commit 98% of the appropriation to specific shelters. The representatives also note that the appropriation language does not guarantee any specific number of beds, the Act requires a daily average of 288 beds. It was also noted that the \$200,000 appropriation was not adequate to guarantee 288 beds and that it could not exceed that \$200,000 level. The department now revises the rule by putting the actual statutory language in the rule; it specifically provides for a statewide daily average number 288 beds (with 15 unallocated beds statewide for emergency placements); and specifically provides that state funding for shelter care shall be limited to \$7,452,955.

IOWA FINANCE AUTHORITY

9:50

2006 Qualified Allocation Plan (low-income housing tax credits), IAB Vol. XXVIII, No. 05, ARC 4475B, 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 housing must include affordable units for individuals or families having an income that is at 60 percent or below the area median gross income (AMGI). The units must remain in compliance for a minimum period of 30 years.

The 2006 amendments make minor, technical changes to the current program. No more than 15% of the available tax credits will be awarded to a single developer/consultant who has multiple projects; with a \$600,000 cap for single projects (up from \$500,000 in 2005). This cap may be raised 30% if there are projects located in certain target areas.

The program contains several earmarked projects. 10% of the grant ceiling is set-aside for qualified non-profit organizations. 20% 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. This is reduced from the current level of 30% of the tax credits. 10% of the credits are set aside for affordable assisted living projects that include low-income units. 20% of the ceiling is set aside for the preservation existing housing.

Applications are evaluated according to a detailed set of weighted criteria. In *very* abbreviated form the criteria can be summarized as:

- Tenant related categories. (100 points maximum). Projects serving larger families or "special needs" groups receive additional points.
- Compliance period related categories. (20 points maximum). Projects committed to longer than 15 years and projects that can result in tenant ownership receive additional points.
- Location related categories. (55 points maximum). Projects located in certain designated areas or near certain specified services or amenities receive additional points.

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- Project characteristics related categories. (130 points maximum). Rehab or restoration projects receive additional points.
- Developer characteristics related categories. (20 points maximum). These points have been drastically reduced with the elimination of 110 points for the leveraging of funding from other sources.

EDUCATIONAL EXAMINERS BOARD

10:30

Late payment penalties, IAB Vol. XXVIII, No. 04, ARC 4441B, ADOPTED.

This late payment penalty is not new policy, it is an extension of the existing penalty to cover all forms of professional license. Under the existing rules and this revision a substantial late-payment penalty is assessed. The penalty for failure to have the appropriate license is an additional fee of \$25 per month, up to a maximum of \$150. If the applicant does not have a valid Iowa license, the penalty is \$100 per month, up to a maximum of \$500.

As a comparison, the late fee for a nursing license is \$50; for a dentist or dental hygienist, the late fee varies from \$100 to \$150; for a pharmacist, the fee is based on a complicate formula with a \$150 maximum.

EDUCATIONAL EXAMINERS BOARD

10:30

Licensing fees, IAB Vol. XXVIII, No. 04, ARC 4442B, EMERGENCY.

The Educational Examiners Board is essentially entitled to fund itself through fees, without the limitation of a specific legislative appropriation of actual dollars. §272.10, 2005 Code, provides that it is the intent of the general assembly that licensing fees be sufficient to finance the activities of the board. 2005 Acts, House File 816, §8 provides more detail to this statutory mandate, stating in part that:

"...the board of educational examiners shall deposit at least 27 percent of the fees collected annually with the treasurer of state which shall be credited to the general fund of the state. The remaining licensing fees collected during the fiscal year beginning July 1, 2005, and retained are appropriated to the board for the purposes related to the board's duties."

In addition, up to 10 percent of unexpended funds may be retained through the following fiscal year.

For the Educational Examiners Board, the rulemaking process has now replaced the appropriations process; with the board "appropriating" funds by adjusting fees while the notice and public participation requirements of the rulemaking process providing a safeguard against abuse of this authority. The board has "emergency" implemented increases to most board fees--most license fees will be increased \$25 for the five-year period (from \$60 to \$85). In 2005 the board has been authorized to add a number of positions; the increase is filed on an emergency basis to accumulate funding for those positions.

PHARMACY EXAMINERS BOARD

11:10

Dispensing of pseudoephedrine-containing drugs, IAB Vol. XXVIII, No. 05 ARC 4446B, ADOPTED.

These provisions were placed into emergency effect in May, 2005, implementing 2005 Iowa Acts, Senate File 169. That legislation has significantly changed the way in which over-the-counter cold remedies containing pseudoephedrine are sold. Any person who purchases more than 7500 milligrams of pseudoephedrine from a pharmacy or a retailer within a 30 day period commits a serious misdemeanor, unless the person has a prescription for more than that amount. A serious misdemeanor is punishable by a fine of at least \$250 up to \$1,500. In addition, the court may also order imprisonment not to exceed one year.

Senate File 169 goes on to place restrictions on the marketing of these products; the limitations apply to all retailers, including pharmacists. There is a limit on the amount of pseudoephedrine medication that can be sold, the product itself must be kept behind the counter and the retailer or the pharmacist must maintain a dispensing record containing the name and address of each purchaser, the date, name and quantity of the

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product purchased, of each purchase, and the name of the dispensing pharmacist.

It should be noted the legislation is working. According to the Governor's office of drug control policy the latest monthly meth lab count shows a continued downward trend since the new law took effect. Preliminary numbers currently reflect a 79% decrease for the first three full months after implementation of Iowa's new law (June-July-August) vs. the same time a year ago.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT

12:50

Registration of Iowa-foaled horses and Iowa-whelped dogs, IAB Vol. XXVIII, No. 01, ARC 4436B, NOTICE.

2005 Iowa Acts, House File 808 has empowered the department to establish, for the first time, a fee schedule for the registration of Iowa bred horses and dogs. Iowa bred animals are entitled to compete in special limited races with purses supplemented by a state fund. The Act authorizes up to a \$30 fee to be treated as "return receipts"; i.e., the funds are not deposited in the general fund, instead, they go to the department to fund the program.

Under the proposal the registration for all horses is set at \$30; for dogs, the fee is \$25 for a dam, \$10 for a litter and \$5 for a dog.

ENVIRONMENTAL PROTECTION COMMISSION

1:00

Bio-diesel fuels, IAB Vol. XXVIII, No. 04, ARC 4433B, ADOPTED.

Bio-diesel fuel is commonly made from soybean oil. Fuel blends of up to 2 percent bio-diesel in Number 1 and number 2 fuel oils can be used in most internal combustion engines. The EPC was approach by persons interested in burning bio-diesel fuel in large stationary engines. Many of these larger engines require construction and operating permits to control air pollution and the question was how bio-diesel would be treated under the regulatory process. Evidence indicates that the use of bio-diesel does increase levels of

nitrogen oxide, although newer-technology engines appear to reduce that level. Nitrous oxide is a generic term for a number of gasses; they are formed when fuel is burned at a high temperature. They contribute to the creation of smog and acid rain.

Based on testing the EPC has determined that a two percent mixture of bio-diesel will not significantly increase the level of pollution and no additional permits or modification of existing permits will be required.

NATURAL RESOURCES COMMISSION

1:15

Centralized reservation system, IAB Vol. XXVIII, No. 05, ARC 4462B, NOTICE.

As part of a general re-write of the parks and preserves rules the commission proposes a reservation system to accept and process reservations for camping and rental facilities in state parks, recreation areas and state forest campgrounds. Fifty percent of the total number of campsites in each individual campground will be designated as "reservable" sites; unreserved sites will be available on a first-come-first-served basis. A nonrefundable reservation fee is charged for each reservation. This one-time fee is in addition to the camping fees or rental fees. For camping, reservation made be made up to three months in advance; for rental facilities reservations may be made for up to one year.

The proposal also details the various fees for campgrounds, cabins, shelter and other facilities.

PROFESSIONAL LICENSING DIVISION

1:30

Fee increase, IAB Vol. XXVIII, No. 05, ARC 4457B, 4454B, 4450B, 4460B, NOTICE.

This division of the Department of Public Health provides administrative support for 19 health related licensing boards. All of these boards will be raising licensing fees this year, roughly 20%; in the fast half of fiscal 2005 this is estimated to raised roughly \$175,000. Part of this increase

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will be used to purchase a new computer system. The present system is 30 years old and has very limited capabilities. The increase will also be used to fund additional investigative staff; the division currently has some 123 cases pending with 69 over a year old and 19 over two years old.

UTILITIES DIVISION

2:00

Tax credits: wind energy. IAB Vol. XXVIII, No. 02, ARC 4342B, EMERGENCY. Held over from August.

This review is continued over from the August meeting. Senate File 390 created a tax credit program for renewable energy projects where the ownership group includes at least one eligible owner for each 2.5 MW of capacity; the Act was effective on enactment (June 15, 2005). At the same time House File 882 amended an existing tax credit program for larger, commercial scale wind projects; the provisions House File 882 did not have an immediate effective date and thus became effective July 1, 2005. Because of their similarities, the board emergency adopted a single set of procedures and filing requirements for both programs. The rules were made effective June 20, 2005.

The wind project program under House File 882 presents three issues. The first is whether the rules and the awards made under those rules, as relating to the House File 882 program, are void because the rules were placed in effect prior to the date the amendment to the existing statute became effective. Board representatives contend the rules relate only to procedures for filing applications and do not contain any substantive standards for the evaluation of those applications. The committee has sought an informal opinion from the Attorney General on this point.

The second issue involves the ownership of the facilities. §476B.5, 2005 Code, states that an owner may not be the owner of more than two qualified facilities. Under the process set out in the rules, the board looks only at the identity of the actual applicant, not the identity of those who have an ownership interest in the applicant. In other words, the board did not attempt to pierce the corporate

veil. A commentator has noted that several of the successful applicants had interlocking ownerships with one another.

The third issue relates to the documentation required in order to establish a market for the wind generated power. §476B.5(1)"e" requires: "*[a] copy of an executed power purchase agreement or other agreement to purchase electricity upon completion of the project.*" One commentator suggests that only the power purchase agreement should be accepted as adequate documentation.

It should be noted these are not ongoing programs. The wind project in House File 882 is limited to 450 megawatts. The total available under Senate File 390 is 100 megawatts (90 for wind energy). The credits have been awarded in July; however, it is possible some successful applicants will be unable to meet the 18 month deadline and those credits could be later re-issued to projects that are currently on the list.

STATE PUBLIC DEFENDER

No Rep.

Claims relating to Chapter 600A, Iowa Code. IAB Vol. XXVIII, No. 04, ARC 4431B, ADOPTED.

The state public defender is charged with the responsibility of providing legal representation to indigent persons, in a variety of legal settings. Under House File 683 an indigent person is defined as having an income at or below 100% of the federal poverty guideline. The Act provides for the appointment of counsel in termination of parental rights hearings where the indigent person has at least a colorable defense and "*because of lack of skill or education, would have difficulty in presenting the person's version of the facts in dispute...*". The Act also provides for the appointment of counsel for indigent persons in parole revocation hearings, using criteria similar to those used for termination of parental rights.

Claims in a termination of parental rights case will be paid at the rate of \$50 per hour, with a fee limitation of \$500. Claims will not be approved for travel time, paralegal time, or out-of-pocket

expenses. Rules initially were published on an "emergency" basis in June.

**IOWA VOLUNTEER SERVICE
COMMISSION**

No Rep

Retired and Senior Volunteer Program (RSVP), IAB Vol. XXVIII, No. 05, ARC 4346B, EMERGENCY AFTER NOTICE.

2005 Iowa Acts, House File 478 codifies the Iowa Volunteer Service Commission. The commission was initially established in 1994 by Executive Order No. 48. Under the Act the commission remains part of the Governor's Office; its' mission is to advise and assist in the development and implementation of a comprehensive, statewide plan for promoting volunteer involvement and citizen participation and serve as the state's liaison to national and state organizations which support volunteer service activities

The retired and senior volunteer program (RSVP) was initiated in 1986 and administered by the Department of Elder Affairs. It is now transferred to the Volunteer Service Commission. RSVP is part of a network of national service programs that provides older Americans the opportunity to provide public service in their local communities. It is a federal program that is part of Senior Corps. RSVP is open to people age 55 and over. Public and private receive grants to sponsor and operate RSVP projects in their community. The average commitment is four hours a week.