



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

February, 2006

Scheduled for committee review
Friday, February 10th 2006
Senate Room #116

Reference
XXVIII IAB No. 14 (01/0406)
XXVIII IAB No. 15 (01/18/06)
XXVIII IAB No. 16 (02/01/06)

HIGHLIGHTS IN THIS ISSUE:

IOWA CARE, Department of Human Services .....1
CASE MANAGEMENT FOR FRAIL ELDER, Elder Affairs Department .....1
CAIR/CAMR CLEAN AIR RULES, Environmental Protection Commission.....2
STATE BUILDING CODE, Public Safety Department .....3

HUMAN SERVICES DEPARTMENT

8:10

'IowaCare", IAB Vol. XXVIII, No. 14, ARC 4799B, EMERGENCY.

2005 Iowa Acts, chapter 167, divisions I and II create the IowaCare program, this Medicaid initiative expands medical, dental and other health-related care. It will only be implemented if federal waivers and funds are available, and will remain in effect only so long as those funds remain available.

The program will cover persons 19 though 64 year of age, whose income is less than 200% of the poverty guideline; pregnant women, or the newborn child of a woman whose income is less than 300% of the guideline but within medical expenses that would reduce income to 200%.

IowaCare members must pay a monthly fee, based on income; the monthly fee ranges from \$1 to \$75. Services are available only at: the University of Iowa Hospitals and Clinics; Broadlawns Medical Center in Des Moines; or a state mental health institute.

HUMAN SERVICES DEPARTMENT

8:10

Decategorization of child welfare and juvenile justice funding, IAB Vol. XXVIII, No. 14, ARC 4800B, NOTICE.

This program is the culmination of a 16 year effort to replace individual categorical funding

programs with pools of funding that can be used for more community based programs. \$232.188 call for the formation of decategorization projects consisting of one or more counties; representatives from the department, juvenile court services, and county government will then develop a project agreement. Each project will have a governing board made up of representatives designated by the department and by juvenile court services and officials representing county government. Other representatives may also be added.

The department will combine appropriate funding categories into a "decategorization services funding pool" for that project. The board for a has authority over the project's funding pool and will manage the pool to provide more "flexible, individualized, family-centered, preventive, community-based, comprehensive, and coordinated service systems for children and families served in that project area." [232.118(5)"a"] The pool will also be used for child welfare and juvenile justice systems enhancements.

ELDER AFFAIRS DEPARTMENT

8:45

Case management program for frail elders, IAB Vol. XXVIII, No. 14, ARC 4805B, EMERGENCY.

2005 Iowa Acts, chapter 167, the "IowaCare Act" [see: Human Services, infra], and §231.23A

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provide for case management services for the frail elderly. Case management has been included as a medical assistance covered service. Case management assists the elderly in obtaining needed medical or personal services and will be provided by local area aging agencies or by a contract provider.

Eligible recipients must be at least 60 years old and not reside in a nursing home. The level of services will be determined after assessment of the client; the services will be documented in the service plan.

### ENVIRONMENTAL PROTECTION COMMISSION

9:30

Clean Air Interstate Rule (CAIR), IAB Vol. XXVIII, No. 15, ARC 4823B, NOTICE.

Early in 2005 the federal EPA issued the "Clean Air Interstate Rule" (CAIR), which will mandate the largest reduction in air pollution in more than a decade. Over the next ten years CAIR will require large reductions of sulphur dioxide (SO<sub>2</sub>) and nitrogen oxide (NO<sub>x</sub>) emissions in 28 states, including Iowa. These emissions form harmful levels of ozone.

Ultimately this program will reduce SO<sub>2</sub> emissions in these states by over 70 percent and NO<sub>x</sub> emissions by over 60 percent from 2003 levels.

The federal rule allowed several options to control these emissions, Iowa's EPC has selected the "cap and trade" approach. Under this system the federal EPA allocates emission "allowances" for SO<sub>2</sub> and NO<sub>x</sub> and Iowa will allocate those allowances to those emission sources in the state. The allowances can be traded like a commodity; thus an emission source could opt to install pollution control devices or could buy allowances from other sources that did not need the full allotment. That concept is currently in place for the acid rain program.

To ensure compliance automatic and punitive penalties on sources that do not hold the required number of allowances at the end of each year.

### ENVIRONMENTAL PROTECTION COMMISSION

9:30

Clean Air Mercury Rule (CAMR), IAB Vol. XXVIII, No. 15, ARC 4824B, NOTICE.

At the same time the federal EPA issued the CAIR rule (supra) it also issued the Clean Air Mercury Rule to permanently cap and reduce mercury emissions from coal-fired power plants for the first time ever. Mercury is a toxic, persistent pollutant that accumulates in the food chain. When fully implemented, these rules will reduce utility emissions of mercury from 48 tons a year to 15 tons, a reduction of nearly 70 percent.

The first phase of this reduction occurs in 2010, with a nationwide, 38-ton cap. The second phase is a nationwide, 15-ton cap on mercury emissions, which will occur in 2018. Iowa's EPC has selected the "cap and trade" approach to control mercury emissions. This process is similar to that adopted for CAIR; however, in specific situations the director may modify such permits to mitigate excessive mercury deposition.

### NATURAL RESOURCES COMMISSION

9:50

Barge fleeting regulation, IAB Vol. XXVIII, No. 15, ARC 4826B, ADOPTED.

The commission revises the fee structure for authorizing areas for barge fleeting. Barge fleeting is an area used for temporarily mooring barges and providing some towing services---primarily on the Mississippi river. The existing rules use a table to determine the appropriate charge for a barge fleeting area. The table cross-reference frontage and depth of fleeting areas to establish a rental cost that will vary from \$125 to \$5,000.

This new procedure sets out a \$500 application fee for an initial permit and a \$1000 fee for the renewal of an existing permit. The annual base fee is \$3.18 per each 100 square feet, each subsequent year the fee per 100 square feet will be adjusted on a cumulative basis, by the percentage of the Consumer Price Index.

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### PUBLIC HEALTH DEPARTMENT

10:40

Mandatory autopsies, IAB Vol. XXVIII, No. 16, ARC 4847B, NOTICE.

The primary role of the medical examiner (ME) is to take charge of a body which died under violent, suspicious or unknown circumstances, conducting an investigation of the cause and manner of the death. In the event the county ME cannot be contacted, a ME from an adjacent county may be substituted. The current rules set out situations where autopsies are either mandated or suggested.

This proposal makes a number of revisions to the autopsy list. A death in any detention facility *must* be autopsied, unless caused by a natural disease; previously, an autopsy was only a recommendation. The proposal also expands the list of autopsies which must be performed by the state ME; these include:

- Deaths of adolescents through 18 if there is not a known or preexisting natural cause of death;
- All cases of homicide or suspected homicide;
- Deaths of children under the age of 2 years if death results from an unknown cause or if the circumstances surrounding the death indicate that Sudden Infant Death Syndrome may be the cause of death.
- All suspicious suicides.
- All high-profile deaths including, but not limited to, deaths of elected officials in municipal, state or federal government.
- All deaths of inmates within the department of corrections, excluding those deaths that result from a preexisting medical condition.

### PUBLIC SAFETY DEPARTMENT

11:10

State building code: plumbing and mechanical requirements, IAB Vol. XXVIII, No. 13, ARC 4772B, ADOPTED.

The department is authorized to adopt a state building code by Code chapter 103A. Most of the state building code is not mandated on a state-wide basis; generally, it applies to construction of state-owned buildings and facilities and buildings and facilities in local jurisdictions which have adopted that code. Portions of the code do apply statewide: handicapped accessibility to public buildings; minimum plumbing facilities in places of public assembly, restaurants, pubs, and

lounges; energy conservation requirements and requirements for factory-built structures.

This adopted filing was initially reviewed at the committee's January meeting and was re-scheduled for additional review. The core of the new adopted State Building Code is the International Building Code, supplemented by the adoption of several more specialized codes, such as the International Energy Conservation Code and the National Electrical Code. One portion of this very extensive rulemaking is controversial, relating to the adoption of plumbing and mechanical requirements; the department adopted the International Mechanical Code and, for plumbing requirements, referenced the State Plumbing Code, which is adopted by the Department of Public Health. The department states the International Building Code has been adopted by over 40 other states and numerous local jurisdictions in Iowa, Groups opposing the adoption of the International Codes favor instead the adoption of the Uniform Plumbing Code and the Uniform Mechanical Code.

### ADMINISTRATIVE SERVICES DEPARTMENT

No Rep

Information technology management, IAB Vol. XXVIII, No. 15, ARC 4821B, ADOPTED.

2005 Iowa Acts, House File 839 establishes the Technology Governance Board, replacing the Information Technology Council. Membership includes: the director of the department of administrative services, the director of the department of management, three representatives from large state agencies, two from medium-sized agencies, one from a small agency and two public members. Essentially the board operates as an advisory group on information technology and budgeting. One major and substantive role of the board is to review and *approve* all requests for proposals for all information technology devices, hardware acquisition, technology services, software development projects, and outsourcing for agencies that exceed the greater of a total cost of \$50,000 or a total involvement of 750 agency staff hours. The board also develops information technology operational and procurement standards applicable to all agencies.

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### CIVIL RIGHTS COMMISSION

No Rep.

Mailing documents, IAB Vol. XXVIII, No. 14, ARC 4790B, NOTICE.

2005 Act, Chapter 23 strikes certain provisions which require the Civil Rights Commission to provide notification by certified mail to the parties in a complaint. However, commission staff must still use certified mail to notify the first (main) respondent in a complaint.

The revision came at the request of the commission, largely because of the expense caused by the commission's high volume of certified mail. The rules implementing this provision also state that: *"When mailing is by regular mail, the date of mailing is presumed to be the date on the cover letter accompanying the administrative action or decision unless the date is shown to be in error."* This provision points out the one of the inherent differences between certified and regular mail---documentation of delivery.

### EDUCATIONAL EXAMINERS BOARD

No Rep.

Letter of reprimand, IAB Vol. XXVIII, No. 15, ARC 4805B, NOTICE.

The board is empowered to impose licensing sanctions under the provisions of Code §272.2(4). The board also maintains a public information system to provide all interested persons with information about the status of individual practitioner licenses; that system contains information concerning any sanction that has been imposed.

Under this proposal a licensee may request to have a letter of reprimand removed from this system after five years. The licensee must show that *"the basis for issuance of the reprimand no longer exists and that it will be in the public interest to remove reference."* Factors that the board will consider include:

- whether further disciplinary action has been taken;
- whether the applicant's current employer supports the application;
- current board rules related to the type of misconduct; and other factors the executive director deems appropriate.

### REAL ESTATE COMMISSION

No Rep

Prohibited practices-out of state licensees, IAB Vol. XXVIII, No. 15, ARC 4809B, ADOPTED.

Iowa Code §543B.60A was enacted in 1999 to prohibit the practice of requiring a buyer to use the services of a particular broker or salesperson. Effective July 1, the prohibition was further clarified by HF 882 to prohibit real estate practices that interfere with contractual arrangements, place improper restrictions on consumer choice, compromise a licensee's fiduciary obligations, and create conflicts of interest. The revised statutory language provides:

#### 543B.60A Prohibited Practices.

\* \* \*

3. A licensee shall not offer, promote, perform, provide, or otherwise participate in any marketing plan that requires a consumer to receive brokerage services, including referral services, from two or more licensees in a single real estate transaction, as a required condition for the consumer to receive either of the following:

- a. Brokerage services from one or more of such licensees.
- b. A rebate, prize, or other inducement from one or more such licensees.

The rule clarifies the H.F. 882 prohibitions to include persons who are not licensed in Iowa but who are licensed in another state or in a foreign country.

These prohibited types of arrangements have become a greater problem as use of the internet has provided out-of-state brokers and salespersons with greater access to Iowa markets. The issue has arisen that the bare language of the statute applies only to a "licensee", meaning an Iowa-licensed broker or salesperson. Under that very narrow interpretation, a person licensed in some other jurisdiction was not subject the statutory restrictions. However, since the intent of the language was to prohibit certain types of business activity, regardless of the jurisdiction of the licensee, it follows that the term licensee should include brokers and salespersons licensed in another jurisdiction.