



Administrative Rules Review Committee

STATEHOUSE * ROOM 116 * DES MOINES, IOWA 50319 * (515) 281-3084/3355/4800
FAX (515) 281-5995/4424 * E-MAIL jroyce@legis.state.ia.us; egardysz@legis.state.is.us

THE RULES DIGEST

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Scheduled for committee review
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Senate Room #116

Reference
XXVIII IAB No. 16 (02/15/06)
XXVIII IAB No. 17 (03/01/06)

HIGHLIGHTS IN THIS ISSUE:

MEDICAID SERVICES: PROVIDER DOCUMENTATION, Department of Human Services1
SPANISH-SPEAKING INTERPRETERS, Latino Affairs Division1
WATER QUALITY: STREAM DESIGNATIONS, Environmental Protection Commission4

HUMAN SERVICES DEPARTMENT

8:10

Medicaid services: provider documentation, IAB Vol. XXVIII, No. 16, ARC 4890B, NOTICE.

Adequate provider documentation for Medicaid services has been an issue for a number of years. As recently as 2005 problems developed concerning accredited school districts which were allowed to participate in the medical assistance program (Medicaid) as providers of school-based health services that qualify for Medicaid reimbursement.

The basic provider requirement is set out in 441 IAC rule 77.44, which requires that eligible Medicaid services must be rendered by practitioners who meet any applicable professional licensure requirements; that rule also requires documentation of all services including:

- Date, time, duration, location, and description of each service delivered and identification of the individual rendering the service by name and professional or paraprofessional designation.
• An assessment and response to interventions and services.
• Progress toward goals in the individual education plan (IEP) or individual health plan (IHP).

The practitioners and the services they provide are identified and extensively detailed in 441 IAC Chapter 78.

This proposal is a re-write of rule 79.3, setting out Medicaid recordkeeping requirements. The current rule requires that fiscal and clinical records be maintained for a minimum of five years from the date when a charge was made to the Medicaid program. The rule specifically states that failure to maintain supporting fiscal and clinical records may result in claim denials or recoupment. The rule sets out very specific standards for fiscal and clinical records.

The proposal maintains the current policy towards recordkeeping and claim recoupment and clearly establishes the importance of adequate documentation, stating: "Failure to maintain records or failure to make records available to the department or to its authorized representative timely upon request may result in claim denial or recoupment." The required documentation must identify:

- the specific service, procedures, or treatments performed, including any medications or supplies dispensed;
• the date when the service was provided and its duration;
• the first and last name of the person who delivers the service;
• the need for the service;
• the recipient's progress in response to the service.

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LATINO AFFAIRS DIVISION

9:10

Standards for interpreters, IAB Vol. XXVIII, No. 17, ARC 4930B, NOTICE.

Code §216A.15(9) requires that the commission adopt rules, with stakeholder input, setting out qualifications for Spanish language interpreters and providing for a list of those deemed qualified to interpret for Iowa courts, administrative agencies, social service agencies, and health agencies. Rules were initially placed under notice in 2005; after extensive review and comment that notice has been re-drafted.

A certified language interpreter must be at least 18 years of age, possess a high school degree or equivalent, attend a training program and pass a Spanish/English proficiency test approved by the commission. 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:

- Culture;
- 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; and
- Idioms, slang, and linguistic development.

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

Once qualified, an interpreter must complete a minimum of 30 contact hours of continuing education every two years.

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 by the client, 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.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT

9:20

Farmers market: nutrition program, IAB Vol. XXVIII, No. 16, ARC 4892B, NOTICE.

The farmer's market program is a federal/state cooperative effort administered by the Department; part of this program includes a Farmers Market Nutrition Food Program. This program serves persons who are currently enrolled in the Special Supplemental Food Program for Women, Infants and Children (WIC). The WIC program offers additional nutrition for women before, during and after a pregnancy, and provides a supplemental source of fresh fruits and vegetables for the diets of women, infants, and children. Farmers' Market Nutrition Program checks can only be used at authorized farmers markets and for eligible purchases of fresh fruits and vegetables from state Certified Farmers Market Vendors.

A related component of the nutrition program is the *Senior* Farmers Market Nutrition Program. The program is very similar to the Special Supplemental Food Program; low-income seniors, generally defined as individuals who are at least 60 years old and who have household incomes of not more than 185% of the federal poverty income guidelines are eligible to participate.

An earlier revision, published in August 2005, was withdrawn by the department for re-drafting. This proposal does not add any significant new regulation of farmers market, it simply adds some detail to the existing provisions.

UTILITIES DIVISION

9:40

Tax credits: wind energy, IAB Vol. XXVIII, No. 16, ARC 4878B, FILED.

House File 882 created a tax credit program for large wind energy projects; rules implementing this program, as well as a similar program established in Senate File 390 were initially filed on an "emergency" basis and was reviewed by the committee in July, August and September, 2005. In

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September the committee objected to the emergency provisions.

One of these objections was to the emergency adoption itself, putting the rules into effect prior to public comment. These adopted rules have now completed the "regular" rulemaking process; and thus that particular objection has been resolved.

A second objection was that the rules for both programs were combined into a single program. The board contended that the programs were in fact so similar that only a single set of rules was needed; however, in response to the objection, the two programs have now been separated.

Another committee concern related to the documentation needed to demonstrate that a purchaser for the wind energy was committed to the project. House File 882 required: "A copy of an executed power purchase agreement or other agreement to purchase electricity...", while the initial rule allowed "a binding statement from the applicant that designates which party will be eligible to apply for the renewable energy tax credit..." In deference to the committees' position, the final rule now requires a written agreement, similar to a contract.

The last issue dealt with limitations on ownership of facilities receiving credits. House File 882 stated: "[a]n owner shall not be an owner of more than two qualified facilities.", while the initial rules required only separate corporate structures. Several of the facilities receiving credits had the same equity owners. In this revision the rules consider the equity owners of a facility to be the owners for purposes of this restriction.

MEDICAL EXAMINERS BOARD

9:50

Licensing discipline, IAB Vol. XXVIII, No. 16, ARC 4871B, NOTICE.

The board proposes a complete re-write of existing procedures relating to licensee investigation and discipline. Essential the proposal takes one very large chapter of rules and breaks them down into subject-specific chapters; one dealing with mandatory reporting, one dealing with acts and omissions that can lead to discipline; one setting out the procedures to adjudicate these allegations, and one dealing with general standards of practice.

This proposal begins with requirements for mandatory reporting by licensees. Similar provisions promulgated by the board of dental examiners have already been controversial. Proposed subrule 653 IAC 22.2(1) defines reportable conduct as "a wrongful act or omission that may constitute a basis for disciplinary action under this chapter or any state law or administrative rule that gives the board jurisdiction over the conduct of a licensee.[emphasis added]". This language is not substantially different from the current provision. The issue is whether the term "disciplinary action" is beyond the scope of the statute, which provides in Code §272C.4(6), Code 2005, requires licensees to report acts or omissions that are grounds for *revocation or suspension* of a license. The dental board provisions are currently under review by the legislature.

The rules also set out, in great detail, 35 acts or offenses for which the board can impose discipline. Again, these rules are not substantially different from the current provisions. A separate chapter establishes standards of practice; these standards detail required practice in the area of prescribing medications.

COLLEGE STUDENT AID COMMISSION

10:20

Registered nurse recruitment program, IAB Vol. XXVIII, No. 16, ARC 4868B, ADOPTED.

Code chapter 261 establishes a funding program to encourage the growth of nursing students. The program has both a forgivable loan program and a tuition scholarship program for students and a loan repayment program for registered nurses.

These particular rules relate to a very specialized program, the "registered nurse forgivable loan program". This is a forgivable loan program established under the registered nurse recruitment program for Iowans enrolled in programs that will qualify them to teach nursing in Iowa colleges and universities.

At issue in this filing is a single rule:

283—34.3(261) *Student eligibility. An applicant must be an Iowa resident who is a registered nurse with a bachelor's degree in nursing and who is enrolled full-time as a graduate student at an eligible college or university located*

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in Iowa. Full-time enrollment shall be defined by the college or university. [emphasis added]

The statute which authorizes the program, Code §261.23(2) specifically states:

2. A forgivable loan may be awarded to a resident of Iowa who is enrolled at an accredited school of nursing, which is located in this state, on a **full-time or part-time** basis in a course of study leading to a collegiate or associate degree of nursing, a diploma in nursing, or a graduate or equivalent degree in nursing, if the student agrees to practice in this state for a period of time to be determined by the commission at the time the loan is awarded.[emphasis added]

Note this statutory provision, which provides for both "full-time or part-time" study, applies specifically to graduate studies.

ENVIRONMENTAL PROTECTION COMMISSION (EPC)

10:35

Water quality: stream designations, IAB Vol. XXVIII, No. 16, ARC 4895B and ARC 4897B, ADOPTED.

These filings were reviewed by the committee in October, 2005. The federal Clean Water Act (CWA) established a goal that perennial streams and pools be "fishable/swimmable". Every state is required to have water quality standards approved by the federal Environmental Protection Agency (EPA). The EPA reviews each state's water quality standards to ensure standards are kept up to date based upon scientific advances and other considerations. Iowa's standards have not been formally disapproved by the EPA; however, the EPA, has raised issues with several of Iowa's standards contending that some of these standards are inconsistent with the goals and intentions of the federal CWA.

These final rules provide that all perennial streams and intermittent streams with perennial pools be designated as Class A1, B(WW-1) waters for protection of recreational and aquatic life uses.

This rulemaking is the first part of a two-part rulemaking; it does not immediately require any local action. Future rulemaking proceedings will then establish specific designation for every Iowa stream. this would be a multi-year process and emphasized that the designation of each stream would be determined after a field study using specific criteria and would be accomplished through a rulemaking process, providing for public notice and comment as well as legislative oversight. As

specific designations are established effluents from treatment facilities must be reduced. This will result in reduced levels of ammonia and bacteria. The twenty year cost to achieve this reduction is estimated to be roughly 800,000,000 to 1,000,000,000 dollars.

During the public comment process concern was expressed by representatives from local utilities and municipalities, especially regarding the high long-term cost. It was noted that only limited help was available from the state and federal government and that most of the cost would appear as user fees. Comments suggested that these increased fees would fall largely on smaller, poorer communities. These commentators also stated that the multi-million dollar cost would only address 10%-20% of the water quality problem; they contended that 80-90% of the water pollution in Iowa comes from the watershed areas, not treatment facilities.

Supporters of the rule note that most states have already come into compliance with similar requirements and that Iowa must take similar action. They contend that the financial burden would be eased by the lengthy compliance period. Proponents also note that currently only 3% of Iowa streams were protected for swimming, 17% were protected for aquatic life; and that after the rule becomes effective this level would only raise to 33%.

NATURAL RESOURCES DEPARTMENT

No rep.

Nuisance wildlife control, IAB Vol. XXVIII, No. 17, ARC 4923B, ADOPTED.

The department re-writes its' existing program for the control of "nuisance" wildlife; the program has been in effect since 2001. Persons wishing to offer nuisance wildlife control services to the public must pass a test and obtain a permit from the department; the permit fee is unchanged at \$20. The person holding the permit and any designated helper must hold a fur harvested license and pay the required habitat fee. This profession is essentially a form of fur taking. Permittees are authorized to use traps or snares, preferably live-catch, to capture nuisance wildlife. When those

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methods fail chemicals, smoke or mechanical devices may be used. Captured wildlife may be release or destroyed. This license does not authorize the taking or possession of endangered or threatened species. In these cases department representatives must be contacted.

This revision creates a special program for the control of Canadian geese. A special permit must be obtained from the county biologist to trap and re-locate to kill Canada geese.