



Administrative Rules Review Committee

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THE RULES DIGEST

April 2006

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Senate Room #22

Reference
XXVIII IAB No. 18 (03/15/06)
XXVIII IAB No. 19 (03/29/06)

HIGHLIGHTS IN THIS ISSUE:

EXTRA-CURRICULAR COMPETITION, Department of Education.....1
DECATEGORIZATION OF CHILD WELFARE & JUVENILE JUSTICE FUNDING, DHS1
NATIONAL CHANGE OF ADDRESS PROGRAM, Voter Registration Commission2
REGULATORY ANALYSIS: NPDES PERMITS, Environmental Protection Commission.....3
OTTER SEASON, Natural Resources Commission3

EDUCATION DEPARTMENT

8:10

Extracurricular competition, IAB Vol. XXVIII, No. 19, ARC 4986B, ADOPTED.

The department has revised a number of provisions relating to extracurricular competition, in part implementing 2005 Iowa Acts, House File 423. In regard to extracurricular interscholastic contests or competitions, Iowa law imposes some residency requirements on students who transfer into a different school district; the goal is to discourage the recruiting of especially talented students. Under the Act, a transfer student who is ineligible to play at the "varsity" level of competition will be allowed to compete at lesser levels. The term "varsity" is defined as: "the highest level of competition offered by one school or school district against the highest level of competition offered by an opposing school or school district." This provision is actually substantially similar to a rulemaking earlier proposed by the department.

The rules also revises the "scholarship" rules for extracurricular competition. Under the December notice, the student must be passing all coursework and be making "adequate progress" toward graduation, as defined in local policy. Under the

initial proposal, grades would have been evaluated no less than once every four weeks, to ensure that the contestants remain in compliance with this subrule. In the final rule grades are checked only at the time when a final grade is given.

If the student fails to pass all such coursework, the student cannot compete in interscholastic athletic contests and competitions for 20 consecutive school days. That 20 day prohibition can be renewed if the student does not improve.

HUMAN SERVICES DEPARTMENT

8:30

Decategorization of child welfare and juvenile justice funding, IAB Vol. XXVIII, No. 20, ARC 5008B, ADOPTED.

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. Code §232.188 calls 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

THE RULES DIGEST

-2-

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.

HUMAN SERVICES DEPARTMENT

8:30

Children's mental health services waiver, IAB Vol. XXVIII, No. 19, ARC 5007, ADOPTED.

These provisions were initially implemented on an emergency basis in October, 2005. The federal government has approved a new demonstration waiver, administered as a Medicaid home and community based services (HCBS) waiver. This project, for up to 300 children under the age of 18, will provide in-home support services for children suffering from a "serious emotional disturbance" who would qualify for care in a psychiatric hospital. Available services will include: environmental modifications, adaptive devices and therapeutic resources; family and community support services; in-home family therapy; and respite care for the primary care givers.

HUMAN SERVICES DEPARTMENT

8:30

Consumer choices option: Medicaid waiver services, IAB Vol. XXVIII, No. 18, ARC 4980B, NOTICE.

Home and Community-Based Services Waivers provide a Medicaid alternative to providing comprehensive long-term services in institutions; waivers allow these services to be delivered in community settings.

Under the consumer choices option, a waiver consumer may "cash out" the value of certain services such as assistive devices, chore service, attendant care, day habilitation, home and vehicle modification, home-delivered meals, homemaker service, prevocational services, basic individual respite care, senior companion, specialized medical equipment, supported community living, supported

employment, and transportation. The cash value of these services becomes an "individual budget" which the consumer can use to hire people to provide services, equipment, or supplies.

The consumer does not receive the actual cash, which will be held by a financial management service such as a bank or credit union; this service actually pays for the services. An independent support broker plans the consumer's individual budget for services. Both the management service and the broker are paid for out of the individual budget.

ELDER AFFAIRS DEPARTMENT

8:50

NOTICE RESCINDED: Case management program for frail elders, IAB Vol. XXVIII, No. 19, ARC 4994B, EMERGENCY.

2005 Iowa Acts, chapter 167, the "IowaCare Act" and §231.23A provide for case management services for the frail elderly; specifically persons who are at least 60 years old and do not reside in a nursing home. Approval by the federal Centers for Medicare and Medicaid Services is required to add case management as a medical assistance covered service.

An initial rulemaking, implemented on an emergency basis was review by the committee in February. However, the required approval from the federal authority has been delayed and for that reason the emergency rules have been rescinded.

ELDER AFFAIRS DEPARTMENT

8:50

General re-write, IAB Vol. XXVIII, No. 18, ARC 4659B-4669B, ADOPTED.

The department implements a new provision relating to elder abuse. The department will develop and maintain a dependent adult abuse mandatory reporter training manual and instruct and certify (three years) trainers for the dependent adult abuse mandatory reporter curriculum. Iowa Code §231.56A authorizes state funding of elder abuse initiative, emergency shelter, and support services projects administered by local area aging agencies. Funding is provided by the senior living trust. Another addition is the family caregiver program, an existing program that is funded through a small federal grant; the program provides information services to caregivers.

THE RULES DIGEST

-3-

VOTER REGISTRATION COMMISSION

9:30

National change of address program, IAB Vol. XXVIII, No. 18, ARC 4966B, FILED EMERGENCY.

Rules implementing the national change of address program have been unchanged since 1994. The rule provides local registrars with the opportunity to participate in the state contract with an authorized vendor, in order to update address changes. The commission, by emergency rule, replaces now those rules with new provisions that are substantially similar. One significant change is the addition of a fee: under the new rule participating counties must pay the actual cost of the process. It is unclear whether this is a new policy or simply a re-statement, in rule, of existing requirements.

ENVIRONMENTAL PROTECTION COMMISSION (EPC)

9:50

Regulatory analysis: NPDES permits, IAB Vol. XXVIII, No. 18.

At its' December 2005 meeting the committee requested a regulatory analysis concerning an EPC proposal relating to a fee structure for certain wastewater permits. This proposal would restructure the fees imposed under the national pollutant discharge elimination system (NPDES) permitting program; it enumerates a series of new or increased fees that will be imposed for a wastewater construction permit, an NPDES General Permit #5, or individual non-stormwater NPDES permit. The committee members were concerned about the impact these fees will have on the regulated community, the amount of revenue generated by these fees and for those reasons requested an explanation of the need for the additional revenue.

Permit holders include cities, trailer parks, industry and certain large confined feeding operations. The proposed fees would raise approximately \$877,200 annually from those permit holders; the funds do not go directly to the department, instead they go into the general fund and may be appropriated back to the EPC. If the funds are appropriated by, the EPC will; hire three NPDES permit writers, one construction permit

engineer, one waste load allocation engineer, and six field office staff.

ENVIRONMENTAL PROTECTION COMMISSION (EPC)

9:50

Uniform Environmental Covenants Act (UECA), IAB Vol. XXVIII, No. 18, ARC 4983B, NOTICE.

2005 Acts, Senate File 375 enacts the Uniform Environmental Covenants Act (UECA). This nation-wide model was created by the National Conference of Commissioners on Uniform State Laws; the Act relates to environmental land use restrictions that can be placed on property subject to environmental remediation (e.g.: a Brownfields project). In essence an environmental covenant can be used control the future use of Brownfields property when it is transferred from one person to another.

By May, 2005 some seven states, including Iowa have adopted the Act.

The environmental covenant must contain a legal description of the property subject to the covenant and also describe the activity and use restrictions for the property, as well as the persons who hold of the covenant. The environmental covenants created under UECA are based upon traditional property law principles; they are recorded in the recorders office and will bind successive owners of the property. State and local governments have clear rights to enforce the land use restrictions.

Restrictions contained in an environmental covenant "run with the land"; i.e.: the restrictions will bind subsequent owners of the property---and can be perpetual.

NATURAL RESOURCES COMMISSION

10:30

Otter season, IAB Vol. XXVIII, No. 19, ARC 5017B, NOTICE.

Under current rules there is a continuously closed season on the taking of otters. The commission proposes a trapping season allowing the taking of two otters per trapper, with a 400 otter statewide limit. There will be a 72 hour grace period after the 400 statewide limit is reached to allow trappers to clear their traps and collect any otters found in

THE RULES DIGEST

-4-

those traps. The trapper may retain the otter if the trapper has not yet reached the personal limit.

PUBLIC HEALTH DEPARTMENT

10:40

Mandatory autopsies, IAB Vol. XXVIII, No. 19, ARC 4997B, ADOPTED.

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 filing 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.

BANKING DIVISION

No Rep requested

Mortgage bankers and mortgage brokers, IAB Vol. XXVIII, No. 19, ARC 5011B, NOTICE.

Under current law mortgage bankers and mortgage brokers are licensed by the banking division. This statute was revised by 2005 Iowa Acts, Chapter 83; that legislation requires *registration* by a "natural person" (i.e.: an individual, not a business entity) who is a mortgage banker or broker and who works for one of the licensed entities. The individual must register annually pay a registration fee of \$50, and

successfully complete a criminal background check. Twelve hours of continuing education are also required.

With the enactment of the 2005 legislation the division is now proposing rules to implement both the existing licensing requirements and the new registration requirements.

PUBLIC SAFETY DEPARTMENT

No Rep requested

Certification of automatic fire extinguishing system contractors, IAB Vol. XXVIII, No. 19, ARC 5022B, NOTICE.

2004 legislation provided for the certification of automatic fire extinguishing system contractors; the annual fee is \$500.. These systems automatically detect a fire and discharge an approved fire extinguishing agent onto the fire. A certified contractor must have a "responsible managing employee" who directs the work of the contractor's employees. This managing employee must obtain a specified national certification; alternative types of certification are available for contractors that provide a specific, limited type of installation.