



Administrative Rules Review Committee

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THE RULES DIGEST

May 2006

Scheduled for committee review
Tuesday, May 9th 2006
Room 116

Reference
XXVIII IAB No. 20 (04/12/06)
XXVIII IAB No. 21 (04/26/06)

HIGHLIGHTS IN THIS ISSUE:

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HUMAN SERVICES DEPARTMENT
9:10

Medicaid eligibility: undocumented aliens, IAB Vol. XXVIII, No. 19, ARC 5047B, NOTICE.

Current Medicaid policy provides for limited Medicaid coverage for undocumented aliens for emergency medical conditions including labor and delivery. Coverage is limited to three days.

This proposal simplifies the current provisions and does not appear to expand the availability of coverage. Recipients must meet all other Medicaid eligibility standards relating to actual residency in Iowa.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT
9:25

Farmers market: nutrition program, IAB Vol. XXVIII, No. 20, ARC 5062B, ADOPTED.

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An earlier revision, published in August 2005, was withdrawn by the department for re-drafting.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.

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ETHICS AND CAMPAIGN DISCLOSURE BOARD

10:00

Use of corporate property, IAB Vol. XXVIII, No. 20, ARC 5060B, NOTICE.

Current board rules allow the “occasional, isolated, or incidental use” of corporate property for campaign purposes; that term is carefully defined, it basically covers a use which does not exceed one hour per week or four hours per month.

This exception differs from the statute. Iowa Code §68A.503 is a very detailed statute which prohibits the use of resources belonging to a financial institution, insurance company, or corporation to advocate for or against candidates except under certain circumstances which are specified in the statute itself.

ENVIRONMENTAL PROTECTION COMMISSION

10:25

Commercial septic tank cleaners, IAB Vol. XXVIII, No. 20, ARC 5042B, NOTICE.

Septic tank rules have been in place for 15 years; this update is similar to those currently in place. The most significant change is the fee structure. The current provision simply requires a \$25 fee. In the proposal the annual fee is \$150 per year for the first registered vehicle and \$50 for each additional vehicle. In addition, for the land application of waste there is additional fee of \$7 per 1,000 gallons of waste.

Violation of any program rules can result in the suspension or revocation of a license, plus a \$250 *per day* fine.

Disposal standards for the waste remain largely unchanged. Waste from portable toilets must be emptied into a publicly owned treatment works or other permitted wastewater treatment system. Waste from septic systems may also be emptied into such a system, or, it may be emptied into a septage lagoon or septage drying beds. The waste may also be applied on land, subject to specific and detailed limitations. Essentially, 30,000 gallons of waste per acre per year may be applied, with no more nitrogen than can be utilized by the crop planted. The rule sets specific limitations on the harvesting and use of crops by humans. There are

additional restrictions relating to the water table and the slope of the land.

ENVIRONMENTAL PROTECTION COMMISSION

10:25

Open feedlots, IAB Vol. XXVIII, No. 20, ARC 5046B, ADOPTED.

A notice of intended action was published on September 14, 2005 and at the same time these provisions were adopted and filed emergency.

2005 Acts, House File 805 created a specific division for open feedlot regulation, thus separating them from confinement operations. Concentrated Animal Feeding Operations (CAFOs) are considered point sources that must obtain an operating permit or national pollutant discharge elimination system (NPDES) permit. The NPDES program regulates the discharge of pollutants from point sources to waters of the United States.

An open feedlot is essentially an open area or a structure used to confine and feed animals; the term does not include a pasture or harvested cropland area where animals might be turned out to graze. An open feedlot must remove all "settleable solids" before wastewater may be discharged into a water of the state.

The Act requires the EPC to adopt rules relating to the construction, expansion, or operation of open feedlot operations, including related structures.

Categories are based on the number of animals an operation can hold; each category lists a variety of species and the number of animals for that operation. In some situations, the DNR may evaluate any animal feeding operation that is not defined as a large or medium CAFO, and designate it as a CAFO if it is a "significant contributor" of manure or process wastewater to federal waterways.

An operation which has an animal unit capacity of 1000 animal units or more, or an operation which is a large, medium or a designated CAFO, must obtain an NPDES permit prior to any discharge. An existing operation intending to expand to a size that will be a CAFO needs to apply for an NPDES permit at least 180 days prior to the scheduled expansion. An NPDES permit may be issued up to a five year period.

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An operation must obtain a construction permit for the construction of an effluent basin or alternative technology system if the operation is required to have an NPDES permit. The plan must be approved by the DNR.

The rules set out a series of construction and separation distance requirements for wells and stockpiles.

An operation which either 1) has an animal unit capacity of 1000 animal units or more; or, 2) which is required to be issued an NPDES permit must have a nutrient management plan. The proposed rules set out detailed standards for the plan contents. The plan must be approved by the DNR, following public notice and an opportunity for comment.

ENVIRONMENTAL PROTECTION COMMISSION

10:25

Underground storage tanks-compliance inspectors, IAB Vol. XXVIII, No. 20, ARC 5044B, ADOPTED.

Currently, underground storage tanks are inspected by EPC staff, with inspections occurring every three to five years. The EPC proposes a hybrid system using department trained private inspectors, with the goal of conducting annual inspections.

The program also creates a certification process which is similar to a license and sets out minimum qualifications for education and experience, training requirements, and provisions for certification suspension and revocation. The fee for initial certification is \$150, including the examination cost, and \$50 for each renewal application. Essentially the rules privatize the inspection process; and, by increasing the number of inspectors, the EPC hopes to increase the number of inspections. Applicants must complete an internet-based course and attend a course sponsored. The fee for the initial application and each renewal is \$500. A certificate is valid for two years.

Tank owners generally supported this program, with two exceptions. The proposal prohibits self-inspection. Tank owners contend that self-inspection is desirable because company employees are familiar with the facility and best able to detect

and remediate problems. The owners also contended that public safety is protected because any harm resulting from a poor inspection would be the responsibility of the company. Tank owners also stated that annual inspections are a needless expense and that bi-annual inspections were efficient and effective. Committee members voiced support for these two revisions and voice support for the program as a whole.

CORRECTIONS DEPARTMENT

10:55

Use of lie detectors in assessment procedures, IAB Vol. XXVIII, No. 20, ARC 5026B, NOTICE.

As a part of pre-sentence investigations for certain offenders a "psychosexual assessment" is performed as part of the information gathered to determine the appropriate sentence. The assessment has a number of components, including a lie detector test.

The department proposes to eliminate the lie detector test from the assessment. A recent Iowa Supreme Court decision, *State v. Shaneyfelt*, 695 N.W.2d 506 (Iowa App. 2005) has ruled that the failure to pass a polygraph examination cannot be used as evidence in a pre-sentence investigation.

TRANSPORTATION DEPARTMENT

1:00

Secondary road fund distribution committee, IAB Vol. XXVIII, No. 21, ARC 5050B, FILED.

2005 Acts, House File 674, provides for a new method of distribution of secondary and farm-to-market road funds among the counties for the construction and maintenance needs of county roads. By these rules, the Secondary Road Fund Distribution Committee adopts the "factor breakdown method" to replace the "quadrennial needs study" for distribution of the road use tax funds. The factors used in the new method or formula are similar to those used in the needs study; e.g., area, population, and miles of road.

The new distribution formula is to be phased in over a five-year period of time, beginning July 1, 2006. For fiscal year 2007, the distribution will be eighty percent need based (current method) and twenty percent new formula. And by fiscal year 2011, distribution will be based 100% on the new formula.

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While acknowledging that the new distribution formula should keep funding levels relatively stable, the rules set forth procedures to modify the distribution formula, as needed.

The rules detail the committee's organization and operation. Any county that is aggrieved by a decision of the committee may seek judicial review.

SECRETARY OF STATE

1:10

I-voters, IAB Vol. XXVIII, No. 21, ARC 5056B, NOTICE.

The secretary of state is also designated as the state commissioner of elections, heading a state division of elections, and supervising the county commissioners of elections. Iowa Code §47.7(2) for the establishment of a single, uniform, official, centralized, interactive computerized statewide voter registration file; the system will basically provide a cross-check to prevent multiple registrations or registrations by person who are not authorized to vote, such as incarcerated felons. The registrar will periodically search the files for likely duplicate or multiple voter registration records and forward those results to county commissioners of elections. The county commissioners have 15 days to review this material. If a voter is found to be registered in two or more counties, the county of most recent registration is considered the voter's current county.

The proposed rules establish the procedures for access to the state voter registration information; security, and access requirements require that all persons granted access to the file are provided a secure password and usage may be monitored.

With the implementation of this program counties cannot maintain a separate voter registration system. Each county shall provide to the state registrar the names, voter registration information, and voting history of each registered voter in the county.

PROFESSIONAL LICENSURE DIVISION

1:40

Fee overpayments, IAB Vol. XXVIII, No. 20 & 21, ARC 5025B, 5027B, 5029B, 5052B, NOTICE.

This division of the Department of Public Health provides administrative support for 19

health related licensing boards. All of these boards have a similar administrative structure, so it is common for these boards to adopt the same administrative policies.

In these rulemakings the division continues a process now into its third month, with board-by-board rulemaking to implement a policy that states any overpayment of ten dollars or less will not be refunded.

PROFESSIONAL LICENSURE DIVISION

1:40

Competency examinations, IAB Vol. XXVIII, No. 20 & 21, ARC 5024B, 5028B, 5067B, 5068B, NOTICE.

Iowa Code §272C.9 imposes a duty on all licensees to submit to a physical, mental, or clinical competency examination when ordered by the board for "cause". The resulting report can only be used in licensee discipline proceeding by the board or in district court for revocation of the licensee's privileges. Under the statute refusal by the licensee to submit to the examination empowers the licensing board to order that the allegations giving rise to the order for examination be taken to be established.

The 19 health related licensing boards are now completing rulemaking to establish the procedure for handling these orders. The board order must detail the facts that support the boards' probable cause finding, identify the type of examination that is required and specify who is to conduct that examination. All costs of the examination are the licensees' responsibility.

A licensee may a request a contested case hearing to contest the examination order. The request for hearing must be filed within 30 days of the date of the initial order. The hearing will be closed to the public and the decision is subject to judicial review.