



Administrative Rules Review Committee

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THE RULES DIGEST

June 2006

Scheduled for committee review
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Senate Committee Room #22

Reference
XXVIII IAB No. 23(05/10/06)
XXVIII IAB No. 24(05/24/06)

HIGHLIGHTS IN THIS ISSUE:

"EMERGENCY" FILINGS, Human Services Department1
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HUMAN SERVICES DEPARTMENT

9:10

Proof of legal presence, IAB Vol. XXVIII, No. 23, ARC 5101B, FILED WITHOUT NOTICE.

Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 USC 1621, §411) only citizens or persons who have "national" status (lawfully admitted aliens) may obtain public benefits. These rules set out a variety of documents that can be used; for example, a birth certificate in combination with some other identification, such as a driver's license. A driver's license alone is not sufficient identification unless the state that issued the license has verified the person's citizenship before issuing the license. An Iowa driver's license does not meet this standard.

It should be noted that the Iowa Department of Transportation already has a rigorous proof of identity program for drivers licenses; it has three parts. A social security number must be verified by using one of six documents specified in the rule. Proof of age and identity requires one "primary" document and one "secondary" document, from two separate lists. Primary documents include a drivers license, DOT identification card, a birth certificate and a long list of federal documents.

Secondary documents include and variety of federal, state, local and even private documents, such as an expired drivers license, marriage license or certificate or a medical insurance identification card.

HUMAN SERVICES DEPARTMENT

9:10

Special "emergency" filings, special review.

House File 2734, in §31 empowers the department to adopt a series of rules on an "emergency" basis, with the proviso that the rules be presented to the committee prior to their effective date; this ensures that the committee will have an opportunity to delay those rules.

Topics in these filings include:

- Medicaid coverage for young adults leaving foster care;
• Increase in nursing facility personal needs allowance;
• Medicaid state plan conformity;
• Three percent increase in reimbursement rates for most Medicaid providers, social service providers, and rehabilitative treatment service providers;
• Shelter care reimbursement maximum;
• Increase foster family maintenance payments;
• Continued support for young adults leaving foster care.

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The proposals relating to the Medicaid state plan conformity are the most significant, involving revisions to DHS rule chapters: 77, 78, 81, 82, 83, 84, 85, and 185. E-mail copies of these rules are available at the address listed in the Digest heading.

BANKING DIVISION

10:00

Mortgage bankers and mortgage brokers, IAB Vol. XXVIII, No. 23, ARC 5011B, ADOPTED.

Under current law mortgage bankers and mortgage brokers are licensed by the banking division. This statute was revised by 2005 Iowa Acts, Chapter 83 and in 2006 by Senate File 2353; 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 or one of the entities specifically exempted from licensure pursuant to §535B.2. Under this revised statute the state now licenses institutions and registers individuals.

An individual cannot function as a broker or a banker unless the individual is affiliated with either a licensed entity or an exempt entity. 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.

Institutional mortgage bankers and mortgage brokers pay substantially higher fees: the initial application is \$500; an annual renewal license as a broker is \$200 and the annual renewal license for a banker is \$500.

With the enactment of the recent pieces of legislation the division is implementing rules to set out both the existing licensing requirements and the new registration requirements.

EDUCATIONAL EXAMINERS

BOARD

10:30

Proof of legal presence, IAB Vol. XXVIII, No. 23, ARC 5101B, NOTICE.

As discussed under the Department of Human Services rules, only lawfully admitted aliens may obtain public benefits; that term includes a professional license and the board now proposes

rules detailing the required proof of lawful residence.

Acceptable documents must either establish citizenship or lawful alien status. Examples are set out in the rules, they include: a birth certificate from a state or possession of the United States, a passport, a certificate of naturalization or a number of specified immigration and naturalization forms.

EDUCATIONAL EXAMINERS

BOARD

10:30

Letter of reprimand, IAB Vol. XXVIII, No. 23, ARC 5097B, NOTICE TERMINATED.

In February the board published a notice of intended action that would have allowed a licensee to request to have a letter of reprimand removed from the board's website access files. The proposal met with a mixed response, both from the stakeholders and the committee. For that reason the notice has been withdrawn.

DIVISION OF LABOR

10:45

Wage payment collection, IAB Vol. XXVIII, No. 23, ARC 5097B, NOTICE.

Code §91A.10 empowers the commission of labor to investigate and adjudicate wage payment complaints; but individuals retain the right to maintain a private cause of action and the commission has discretion to decline to take action. The current rule outlines this discretion in very general terms, the proposed sets out detailed criteria for a decision not to pursue a claim; these criteria include:

- a. Doubtful legal validity or complexity of the claim.
- b. Doubtful ability to collect money from the employer.
- c. The claim may require extensive discovery or involve protracted proceedings.
- d. The potential value of the claim is such that the cost of the claimant's obtaining legal counsel for a private action would not be prohibitive.
- e. The claimant is not responsive to the reasonable requests of the division, including, but not limited to, requests to provide information and to participate in a legal action.
- f. The claimant fails to notify the division of an address change.
- g. The inequity of the claim in the particular situation.
- h. Another jurisdiction or forum is preferable for the claim.
- i. A substantial probability that the claimant was not an employee.
- j. The claim has been included in a bankruptcy estate.

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These criteria do not represent a change in policy so much as an explanation of the current policy used to prioritize claims. The claimant remains free to pursue a claim in district court. This individual remedy is useful and can be rewarding because in this type of litigation, the claimant pay receive attorney fees, thus making litigation feasible. . The statute provides that if the failure to pay wages or expenses was deliberate on the part of the employer, the claimant may be awarded *liquidated damages, court costs and any attorney's fees* incurred in recovering the unpaid wages and determined to have been usual and necessary. In other instances the employer is liable only for unpaid wages, expenses, court costs and usual and necessary attorney's fees incurred in recovering the unpaid wages or expenses.

DIVISION OF LABOR

10:45

Elevator safety board/Boiler and pressure vessel board, IAB Vol. XXVIII, No. 23, ARC 5102B and ARC 5082B, NOTICE.

In 2004 the legislature created the nine member elevator safety board to promulgate rules for the safe and proper installation, repair, maintenance, alteration, use, and operation of elevator. The board also hears appeals concerning actions by elevator inspectors. Decisions of the board are not reviewable by the Commissioner of Labor and may be appealed to district court.

The rulemaking proposed in ARC 5102B basically establishes the general rules of organization and operation for the board; for the most part it is "boilerplate" language common to many agencies. However, the proposed rules set out a specific procedure for waivers and variances--a significant subject that has long been an issue with elevator regulation. Code §89A.11 specifically authorizes the issuance of variances and sets out limited criteria; the proposed rules create a process also based on the waiver provisions of Code §17A.9A. It should be noted that the statutory scheme makes it difficult to obtain a waiver or a variance. The petitioner has the burden of proving by "clear and convincing" evidence that the board should grant a waiver from a rule. The board may do so only on a showing of *all* of the following:

- The application of the rule would impose an undue hardship;
- The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
- The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law;
- Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested; and
- There is a reasonable relationship between the age of the facility and the variance requested.

Similar to the elevator safety board, the legislature also created a nine member boiler and pressure vessel board to promulgate rules for the safe and proper installation, repair, maintenance, alteration, use, and operation of boilers and pressure vessels.

In ARC 5082B the board proposes rules of organization and operation similar to those proposed by the elevator board in ARC 5882. In addition, this notice contains a series of small amendments to the substantive regulations of boilers. New rules include updated pre-inspection preparation requirements that the boiler operator must meet and general standards for the inspection itself.

MEDICAL EXAMINERS BOARD

11:20

Collaborative drug therapy management, IAB Vol. XXVIII, No. 24, ARC 5097B, NOTICE.

Following the procedures outlined in these rules, a supervising physician may only delegate aspects of drug therapy management to an authorized pharmacist pursuant to a written protocol with a pharmacist. A protocol is a written agreement between a physician and an authorized pharmacist establishing drug therapy management for one or more of the physician's patients. A protocol is subject to review by the Board of Pharmacy Examiners. A collaborate practice may occur either in a community or hospital setting.

The rules set out 17 specific items that must be addressed in a community practice protocol; in part these items specifically list the activities which the pharmacist may perform under the protocol; as examples this includes such things as:

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- modifying dosages or providing therapeutic interchanges;
- obtaining or conducting tests as long as the tests relating to the drug therapy management;
- checking physical findings, such as vital signs;
- monitoring patient activities.

A hospital protocol is developed by a special committee of hospital staff, following general standards set out in the rule.

This set of rules will be complimented by a similar set promulgated by the Board of Pharmacy Examiners; a notice was published in February, 2006.

SECRETARY OF STATE

1:00

Memory cards in voting machines, IAB Vol. XXVIII, No. 23, ARC 5103B, ADOPTED-emergency after notice.

Certain voting systems require memory cards that contain the data files of the election. Each card must be clearly labeled with a serial number. An inventory record of each card must be maintained, which includes:

- The date each memory card was acquired;
- Each use of each memory card in an election;
- Each maintenance activity to a memory card, such as changing the battery;
- Any problems or errors;
- Records of the disposal of any memory cards.

A chain-of-custody type of form must be maintained to detail every use of the card. When the card is placed in a voting machine it is sealed in place and the appropriate notation logged into the form. The election information on all memory cards used for an election is retained on the memory cards until after the time to file requests for recounts and election contests has passed.

VOTER REGISTRATION COMMISSION

1:15

National change of address program, IAB Vol. XXVIII, No. 23, ARC 5093B, ADOPTED.

These rules were initially published as emergency rules in March. This is the first revision of the national change of address program since 1994. The rules provide local registrars with the opportunity to participate in the state contract with an authorized vendor, in order to update address changes. The commission, which is affiliated with the Secretary of State, now completes action on an

update to the program; it remains similar to the previous rules.

DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

1:30

Grape and wine development funding program, IAB Vol. XXVIII, No. 24, ARC 5118B, NOTICE.

Code Chapter 175A establishes a program assisting the Iowa wine industry in establishing, improving, and expanding wineries, vineyards and winemaking operations. Services are provided by the department, with oversight by the grape and wine development commission; this commission also approves financial assistance under grape and wine development programs. The commission is fully detailed in the statute. The commission and the program were created in 2001. The board has nine members---four of them non-voting: the secretary of agriculture; the dean of the college of agriculture of Iowa State University; the director of the Department Of Economic Development; and the director of the Department of Natural Resources. Voting members, appointed by the Agriculture Secretary, include two growers, two wine makers and a retailer.

The department and the commission work together to develop a development program for the winemaking industry. Both technical and financial assistance is available. Technical assistance includes improving the quality and the productivity of the vineyard and assistance with the winemaking process itself.

Financial assistance is available up to \$10,000 and this amount can be increased to \$25,000, with the mutual consent of the commission and the department; this assistance can be a loan, forgivable loan, cost share, indemnification of costs, or any combination. Assistance is available, for use in Iowa, for persons beginning or engaged in grape growing or winemaking. A business plan is required to demonstrate the viability of the proposed business. The rules set out criteria both for the approval and rejection of an application for assistance. Financial assistance is also available to help offset losses resulting from fire, damaging weather, natural occurrence, or a related condition.

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PUBLIC SAFETY DEPARTMENT

1:50

Certification of automatic fire extinguishing system contractors, IAB Vol. XXVIII, No. 24, ARC 5022B, ADOPTED.

2004 legislation provided for the certification of automatic fire extinguishing system contractors; the annual fee is \$500, with an additional \$50 for each endorsement and \$50 for each "responsible managing employee" beyond the first.

These systems automatically detect a fire and discharge an approved fire extinguishing agent onto the fire. There are a variety of systems, including: automatic sprinkler systems, carbon dioxide extinguishing systems, deluge systems, automatic dry-chemical extinguishing systems, foam extinguishing systems, and halogenated extinguishing systems.

Each contractor must obtain an annual certification and have an endorsement on the certificate for each type of system the contractor uses, and must maintain liability insurance in the amount of \$500,000 per person, \$1,000,000 per occurrence, and \$1,000,000 property damage. 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.

LATINO AFFAIRS DIVISION

2:15

Standards for interpreters, IAB Vol. XXVIII, No. 23, ARC 5087B, ADOPTED.

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 and the rulemaking is now in final form.

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 five years (the notice proposed a two year period).

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.

ELDER AFFAIRS DEPARTMENT

2:30

Case management program for frail elders, IAB Vol. XXVIII, No. 24, ARC 5121B, ADOPTED.

These rules were initially published as "emergency" rules in January, 2006; however, they were later rescinded in order to allow further study of the program, before permanent rules were implemented. 2005 Iowa Acts, chapter 167, the "IowaCare Act", and §231.23A provide for case management services for the frail elderly. The term "frail" includes a physical or mental disability (e.g.: Alzheimer's disease) that restricts the ability of an

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individual to perform normal daily tasks or that threatens the capacity of an individual to live independently. Case management services are provided to maintain persons in their own homes or communities who would otherwise require institutional care.

Case management has been included as a Medicaid waiver service, with additional rules promulgated by the Department of Human Services in Chapters 441 IAC 78 and 83. A wide variety of services are available, for example: homemaker services that could include shopping and some housecleaning, health services such as personal hygiene assistance, nursing services, and counseling.

The management part of case management assists the elderly by first providing a needs assessment of the client followed by the development of a service plan to deliver the needed medical or personal services; services will be provided by local area aging agencies or by a contract provider. Case management also includes periodic assessment of the outcomes from the provided service and re-evaluation and adjustment of the service plan as needed. These reassessments must be performed whenever there is a significant change in the status of the client; in any event reassessments must be performed annually.

The case manager must have a college degree (or can substitute two years of actual service) or be a registered nurse; ongoing training is required. The manager is responsible for arranging whatever services are required under the needs assessment and will meet with the client at least quarterly.

Eligible recipients must be at least 60 years old, *not* reside in a nursing home (which would already provide the needed services), and require at least two case management services. The level of services will be determined after assessment of the client; the services will be documented in the service plan.