



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

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XXVIV IAB No. 04(08/16/06)
XXVIV IAB No. 05 (08/30/06)

HIGHLIGHTS IN THIS ISSUE:

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HUMAN SERVICES DEPARTMENT

Tuesday-9:10

Medicaid services, IAB Vol. XXIX, No. 05. ARC 5368B, 5372B NOTICE.

In a March 1, 2006 letter to the federal Centers for Medicare and Medicaid Services, Regional Office 7 the department committed itself to revising the Iowa state plan to bring elements of the Medicaid program in compliance with federal law; implementation of this letter agreement was specifically authorized in 2006 Iowa Acts, House File 2734, §10, subsection 11.

ARC 5368B relates to Medicaid payment for remedial services that are designed to minimize or, if possible, eliminate the symptoms or causes of a psychological disorder. The revisions remove rehabilitative treatment services as covered Medicaid services and substitute a new service category, remedial services.

Remedial services providers will implement the treatment plans developed by "licensed practitioners of the healing arts", which at present is an undefined term. All Medicaid recipients will

be required to have assessment and treatment planning completed by a licensed practitioner of the healing arts, who must have an ongoing practitioner/client relationship with the recipient and be responsible for ongoing reassessment and review of the treatment plan. The plan must be approved by the Iowa Medicaid enterprise medical services unit.

ARC 5872B relates to remedial services. These proposals are also part of the general redraft of the Iowa state plan; they remove references to rehabilitative and non-rehabilitative family-centered, family preservation, family foster care, and group care services. Children who need rehabilitative services will be served through the Medicaid program under the new remedial services category.

HUMAN SERVICES DEPARTMENT

Tuesday-9:10

Comprehensive family support program, IAB Vol. XXIX, No. 05. ARC 5367B, NOTICE.

This program, also known as "children at home", is designed to assist families, with incomes less

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than \$60,000 per year who are raising a child with a disability, in obtaining needed services and supports in order to maintain that child at home. It provides these families with assistance in locating resources and with funding when other sources of support are not available; the families maintain control over decision making regarding what is best for their children.

Services and supports available under this program includes such things as equipment, respite care, supplies, or assistive technology, parent-to-parent support, and various adaptations that allow children with disabilities to participate more fully in family and community life.

To the extent possible the department will contract with local agencies to implement the children at home program, utilizing competitive bidding procedures. Each contractor is required to establish a local advisory council of at least seven members to advise the children at home program coordinator in developing local policies and procedures.

### HUMAN SERVICES DEPARTMENT

Tuesday-9:10

Medicaid services: provider documentation, IAB Vol. XXVIX, No. 05, ARC 4890B, ADOPTED.

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 filing 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.

### EDUCATIONAL EXAMINERS BOARD

Tuesday-10:45

Statement of professional recognition, IAB Vol. XXIX, No. 5, ARC 5341B, ADOPTED.

Iowa school districts may employ registered nurses to provide nursing services in the school setting. A school nurse endorsement is available for nurses who hold a baccalaureate degree, a license from the nursing board and complete the education core curriculum. The endorsement does not authorize general teaching; however, it does authorize the holder to teach health at all grade levels

In response to requests from the nursing profession, the educational examiners board has adopted a new classification: a "statement of professional recognition". This designation is

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basically a practice authorization; it requires only that the applicant be licensed as a registered nurse. This registration allows the nurse to *"promote the health and safety of the students"* and provide medical treatment as allowed under a nursing license, but it does not authorize any educational function.

### EDUCATION DEPARTMENT

Tuesday-11:00

Community college accreditation, IAB Vol. XXIX, No. 04, ARC 5318B, ADOPTED.

Iowa's community colleges provide a wide array of educational opportunities and services, which include such things as:

- The first two years of college work;
- Vocational and technical training;
- Worker training programs;
- GED programs; and
- Programs for high school students providing advanced college placement courses.

Each community college is accredited by the state board of education, as provided in Iowa Code §260C.47, upon meeting the standards established by rule. For the first time in a decade the department proposes to revise the standards for community college accreditation. The standards come from the Higher Learning Commission and specific standards adopted by the department. The Higher Learning Commission conducts an accreditation evaluation of each community college, while the department conducts an on-site evaluation. This team is established by the department and includes department staff, staff members from other community colleges, and any other technical experts as needed. After a visit, the accreditation team will evaluate whether the accreditation standards have been met and make a report and recommendation to the department. A community college may respond to the accreditation team's report. The state board will make the final decision on accreditation.

The national standards are broad policy statements, looking at the mission and goals of the community college, its plans for the future, its dedication to knowledge and technology and its relationships with various constituencies and the community.

The state standards are more pragmatic, setting out specific requirements. For example, career and technical education instructors must hold any license or certification which is necessary for their area of instruction. They must also have either a baccalaureate degree, or at least 6,000 hours of recent and relevant work experience.

Arts and sciences instructors must have a master's degrees with a concentration of at least 12 credit hours in the appropriate area. In certain professional areas where post-baccalaureate education or a license is required, the instructor may substitute two years or work experience for the master's degree requirements. College parallel instructors may teach 16 credit hours per term, while career or technical instructors may teach six hours per day or 30 hours per week.

### ECONOMIC DEVELOPMENT DEPARTMENT

Tuesday-2:00

Definition of "benefit", IAB Vol. XXVIX No. 04 (08/16/06), ARC 5300, EMERGENCY.

These emergency rules change the method by which benefit values must be calculated as part of the application process for financial assistance from the grow Iowa values fund. Under the provisions of §15I.1(2) the term benefits includes: medical and dental insurance plans; pension and profit sharing plans; child care services; life insurance coverage; plus other benefits identified by rule. The department now adds much detail to this statutory provision.

- For medical and dental plans the value of the benefit is the business's portion of the annual premium;
- For a pension program the value is the business's contribution;
- For a profit sharing program the value is the three year average;
- For a child care program the value is based on contributions made by the business for that service, less any employee-paid costs;
- For an insurance program the value is the portion of the annual premium or cost paid by the business for life insurance and disability coverage.

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### ECONOMIC DEVELOPMENT DEPARTMENT

Tuesday-2:00

Enterprise zones, IAB Vol. XXVIX No. 04 (08/16/06), ARC 5302, EMERGENCY.

As provided in Iowa Code Chapter 15E, an Iowa county or city may create an enterprise zone to promote new economic development in economically distressed areas. The department now offers a number of amendments relating to the establishment of enterprise zones. A standard definition of agricultural land is added, taken from definitions used in urban renewal laws (Iowa Code Chapter 403). Agricultural land must be:

"...owned by a person in tracts of ten acres or more and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, and that has been used for the production of agricultural commodities during three out of the past five years."

A definition of the term "blighted area" is also taken from Chapter 403; the term includes:

"...substantial number of slum, deteriorated, or deteriorating structures; defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility, or usefulness; insanitary [*sic*] or unsafe conditions; deterioration of site or other improvements..."

The rules also set out standards for a "transportation enterprise zone". A transportation enterprise zone must be located in a blighted area within a city and must be located within four miles of three of the following:

- A commercial service airport.
- A barge terminal or a navigable waterway.
- Entry to a rail line.
- Entry to an interstate highway.
- Entry to a commercial and industrial highway network.

A city may establish more than one transportation enterprise zone. The area being designated cannot exceed four square miles. Between July 1, 2007, through June 30, 2010, the cumulative total of benefits awarded to eligible businesses cannot exceed \$25 million per year.

### ECONOMIC DEVELOPMENT DEPARTMENT

Tuesday-2:00

Port authority grant program, IAB Vol. XXVIX No. 04, ARC 5305, EMERGENCY.

The concept of a "port authority" comes from Iowa Code Chapter 28J, enacted in 2005. It is an entity created by two or more cities or counties. The authority is created to provide or promote transportation, economic development, housing, recreation, education, governmental operations, culture, or research within its jurisdiction.

A port authority seems to complement the establishment of a foreign trade zone (FTZ). An FTZ is a site within the United States, in or near a United States Customs port of entry, where foreign and domestic merchandise is generally considered to be in international commerce. Foreign and domestic merchandise may be brought into zones for storage, testing, relabeling, displaying, manufacturing, and the eventual purpose of entry into United States commerce or exportation from the United States.

This grant program offers up to \$80,000 in assistance, with a dollar-for-dollar match for the start up of an authority. Iowa has only one port authority at the present time---Keokuk and Ft. Madison have created the Southeast Iowa Regional Economic and Port Authority.

### ECONOMIC DEVELOPMENT DEPARTMENT

Tuesday-2:00

Targeted jobs tax withholding, IAB Vol. XXVIX No. 04, ARC 5307, EMERGENCY.

2006 Iowa Acts, House File 2731 provides for up to four pilot projects in urban renewal areas utilizing a targeted jobs credit from withholding; this credit is provided to businesses that are or will locate in the urban renewal area; a business must create ten new jobs or invest \$500,000. The credit is three percent of the amount of gross wages paid to the employees who hold the targeted jobs, which must pay a wage equal to at least the average county wage. The city must provide a dollar-for-dollar match of cash or in-kind contribution. The credit is paid to the pilot project city to be used to pay for debts incurred or assistance provided by the city for urban renewal projects related to the business in the area.

Of these pilots, one must border Nebraska, one must border South Dakota and two must border other adjacent states. In the event more than two

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cities qualify for these last two pilot projects, the department of management, in consultation with the department of economic development, will determine which two cities hold the most potential to create new jobs or generate the greatest capital in their areas; the final decision will be made by the DED board.

### ECONOMIC DEVELOPMENT DEPARTMENT

Tuesday-2:00

Housing fund, IAB Vol. XXVIX No. 05, ARC 5336, NOTICE.

The housing fund is a DED program often used in conjunction with Iowa Finance Authority low-income housing tax credits. The fund is made up of federal community development block grant and HOME funds and is designed to expand or retain the supply of decent and affordable housing for low- and moderate-income Iowans. This is the first major re-write of this program since 2003. Eligible projects under the home fund include: transitional housing, rental assistance, rental housing rehabilitation and new construction, home ownership assistance and rehabilitation. A related program, the American dream down payment initiative (ADDI), which provides down payment and closing cost or acquisition assistance, up to \$10,000, for the purchase of a home.

Rental projects participating in the program must be "affordable". Rents must be the lesser of either the area fair market rents or less than 30 percent of 65 percent (previously 80 percent) of the area median family income. For projects with five or more units, 20 percent of the assisted units shall rent at the lesser of the fair market rent or less than 30 percent of 50 percent of the area median family income. Assisted units shall remain. Units funded through the home program must remain affordable for a number of years, as set out in the rules the minimum period is 20 years.

For home ownership assistance, the purchase price or rehabilitation value cannot exceed 95 percent of the median area purchase price. The projects must also remain affordable for a specified number of years.

Participants must meet income guidelines. Rental units must be rented to households with incomes at

or below 80 percent of the median family income. At the initial occupancy, 90 percent of the units must be rented to households with incomes at or below 60 percent of the area's median family income. For projects with five or more units, 20 percent of the units must be rented initially to households with incomes at or below 50 percent of the area's median family income. For home ownership assistance rehabilitation, only applicants with incomes at or below 80 percent of the area median family income qualify.

The program has a number of caps and set-asides. 10 percent of the state's annual allocation from HUD may be used for administrative costs. Not less than 15 percent is reserved for activities developed, sponsored or owned by a non-profit community housing development organization. Up to 60 percent may be reserved for rental housing jointly funded with IFA low-income housing tax credits. Awards are limited to no more than \$500,000 for all single-family activities (\$24,999 per unit) assisting homeowners or buyers and to no more than \$800,000 for all multifamily rental activities (\$50,000 per unit).

### IOWA FINANCE AUTHORITY

Wednesday-10:10

Wastewater treatment financial assistance program, IAB Vol. XXVIX No. 05, ARC 5346, NOTICE.

2006 Iowa Acts, House File 2782, §63 establishes a wastewater treatment financial assistance program, for disadvantaged communities with populations less than 3000, in order to provide grants to these communities for the enhancement of water quality and to assist communities to comply with water quality standards adopted by the department of natural resources (DNR). Assistance may be used to install or upgrade wastewater treatment facilities and systems, and for engineering or technical assistance for facility planning and design.

A "disadvantaged community" is defined in the DNR policy manual as a public water system serving a populations containing 51 percent of low to moderate income (LMI) persons; low to moderate income is defined as 80 percent of the median household income.

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An eligible community must provide matching funds as specified in the Act. A community with a population of less than 500 must provide a five percent match. A community with a population of less than 1000 is required to provide a 10 percent match. A community with a population of 1000 to 1500 must provide a 20 percent match. A community with a population of over 1500 to 2000 must provide a 30 percent match. A community with a population over 2000 to 3000 must provide a 40 percent match.

### SECRETARY OF STATE

Wednesday-8:30

Voting and voting equipment, IAB Vol. XXIX, No. 05, ARC 5328B, NOTICE.

This proposal contains a variety of amendments relating to voting procedures; they represent "lessons learned" through recent election cycles. One revision adds detail to Iowa law which requires that the local commissioner submit to the state commission a turnout report. Under this brief rule, the report must contain:

- Who voted at the polls on election day,
- Whose absentee ballots were accepted for counting,
- Whose provisional ballots were accepted for counting.

The important revisions relate to the pre-election testing of the direct recording electronic (DRE) voting machines; such testing is currently required, but the proposed additions provide detail and added precautions are proposed. Two-person teams must test each machine. An accuracy test is performed on each function, follow by a public test which again tests and records each function. A public test must also be conducted on lever machines. Each person present at the test must sign a certificate of test as required by law.

Pre-election testing procedures are also detailed for optical scan systems, followed by requirements for the public test.

A procedure is proposed for handling device malfunctions; only persons authorized by the election commissioner may attempt repairs; any repair must be documented, identifying the malfunction, who corrected the malfunction and identifying what was done. Unless a malfunction can be easily resolved the equipment must be replaced "as soon as possible". Two election

officials, one from each political party, must witness repair or replacement of any voting equipment.

### SECRETARY OF STATE

Wednesday-8:30

Agricultural landowner reporting, IAB Vol. XXIX, No. 05, ARC 5328B, NOTICE.

Iowa Code Chapter 10B requires biennial reporting, to the secretary of state, by certain entities who own or lease Iowa farmland. The statute basically attempts to keep track of non-Iowa entities that own farmland. Foreign ownership of farmland is specifically restricted un Chapter 9I. The reporting requirement specifically applies to corporate entities other than a family farm corporation, cooperatives, limited partnerships other than a family farm limited partnership, fiduciaries or trustees, limited liability companies, other than a family farm limited liability company, or foreign businesses, governments or individuals.

A similar reporting requirement is proposed in ARC 5340B, relating to life science enterprises. These are biotechnology businesses which attempt to devise products from farm animals. Code Chapter 10C allows a life science enterprise to own or lease three hundred twenty acres of agricultural land with the approval of the economic development board.

### INSURANCE DIVISION

Wednesday-10:30

Individual basic medical expense coverage, IAB Vol. XXIX, No. 04 ARC 5322B, NOTICE.

The division proposes minimum standards for individual basic medical expense coverage; these standards are based on model language issued by the national association of insurance commissioners. Such a policy must cover hospital, medical and surgical expense coverage up to not less than \$250,000; with annual coinsurance not to exceed 50 percent of covered charges, with an annual out-of-pocket maximum of \$25,000. However, a policy have "special or internal limitations" for prescription drugs, nursing facilities, intensive care facilities, mental health treatment, alcohol or substance abuse treatment, transplants, experimental treatments, mandated benefits required by law.

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A deductible stated on a per person, per family, per illness, per benefit period, or per year basis, or a combination of these bases cannot exceed 10 percent of the aggregate maximum limit under the policy for each covered person for at least:

- Hospital room and board for a period of not less than 31 days during continuous hospital confinement;
- Miscellaneous hospital, in-hospital medical, surgical and anesthesia expenses;
- Physicians' services for diagnosis and treatment of sickness or injury, diagnostic X-ray, laboratory services, radiation therapy and hemodialysis ordered by a physician; and
- Not fewer than three days of the following additional benefits:
  1. In-hospital private duty registered nurse services;
  2. Convalescent nursing home care;
  3. Diagnosis and treatment by a radiologist or physiotherapist;
  4. Rental of special medical equipment, as defined by the insurer in the policy;
  5. Artificial limbs or eyes, casts, splints, trusses or braces;
  6. Treatment for functional nervous disorders, and mental and emotional disorders; or
  7. Out-of-hospital prescription drugs and medications.

### INSURANCE DIVISION

Wednesday-10:30

Unfair trade practices, IAB Vol. XXIX, No. 04 ARC 5323B, ADOPTED.

2006 Acts, Senate File 2364, §25 created a new set of unfair trade practices relating to annuities. Under the Act a person who markets an annuity product must have "reasonable grounds to believe" that the annuity is suitable for that consumer, "based on a reasonable inquiry into the individual's financial status, investment objectives, and other relevant information." This rather brief statutory mandate requires a very detailed rulemaking.

Essential the rules require that the recommendation be reasonable under all the circumstances *actually known to the person* making the recommendation at the time of the recommendation. The person is not held responsible for facts or circumstances that were not divulged by the consumer. To meet the "reasonable inquiry" mandate in the Act, the proposal requires the person making the recommendation to make

reasonable efforts to obtain the following information from the consumer:

- The consumer's financial status;
- The consumer's tax status;
- The consumer's investment objectives; and
- Such other information used or considered to be reasonable in making recommendations to the consumer.

The Act and the proposed rules require that a system be in place to monitor the recommendations and ensure compliance with these provisions. The rules encourage the use of an independent third-party reviewer.

### INTERIOR DESIGN LICENSING BOARD

Wednesday-11:00

Rules or organization and operation, IAB Vol. XXIX No. 04, ARC 5311, NOTICE.

This new licensing board was created in 2005, as part of the professional licensing and regulation bureau within the division of banking. Iowa State University offers a four-year bachelor of fine arts in interior design. The profession involves the design of building interiors, dealing with such things as ergonomics, lighting, history, structures, color, materials, building and fire codes. A graduate degree is also available.

These rules are the standard "boilerplate" language common to many licensing boards. Additional rulemaking will be necessary to detail registrant disciplinary procedures and continuing education requirements.

### AGRICULTURE AND LAND STEWARDSHIP

No Rep.

Embryo transfers, IAB Vol. XXIX, No. 04, ARC 5309B, NOTICE.

An issue discussed by the committee early in 2006 has now been resolved by a rule change. The issue related to the breeding of quarter horses through embryo transfer; a process which allowed an embryo from a valuable donor mare to be transferred to, and the foal delivered by, a less valuable brood mare. Current department rules require that both the donor mare and recipient mare remain together at the same address until the foal was born and inspected by the department.

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This rule effectively precluded any movement of the donor mare and reduced the usefulness of an embryo transfer, because it limited the use of the more valuable horse. The department agrees to review this policy and now proposes a rule which requires that only the recipient mare remain in Iowa until foaling.

### **DIVISION OF LABOR**

No Rep.

Boiler and pressure vessel board, IAB Vol. XXIX, No. 04, ARC 5309B, ADOPTED.

In 2004 the legislature 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 this filing the board implements rules of organization and operation similar to those of most licensing boards. 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.