



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

September 2006

Scheduled for committee review
October 10th Senate Committee Room #22

Reference
XXVIX IAB No. 06(09/14/06)
XXVIX IAB No. 07(09/28/06)

HIGHLIGHTS IN THIS ISSUE:

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VETERANS AFFAIRS
DEPARTMENT

(postponed from August)
9:10

Injured veterans grant program, IAB Vol. XXIX, No. 01,
ARC 5179B, EMERGENCY.

Senate File 2312 created the Injured Veterans Grant Program. This program provides immediate financial assistance to the veteran so that family members may be with the veteran during recovery and rehabilitation from an injury or illness received in the line of duty in a combat zone or in a designated hostile fire zone. Eligibility for assistance is retroactive to September 11, 2001. The veteran must be an Iowa resident and the injury or illness must be so severe that the resident was evacuated from the combat zone.

The Act utilizes the word "veteran", which implies that the individual is no longer a member of the military. The rules prevent any possible misinterpretation by defining the term to include a person who is currently serving or has served (honorable discharge required) in the active military, naval, coast guard, or air force armed services. Financial assistance grants are available in increments of \$2,500 up to a maximum of \$10,000 in the following manner:

- \$2,500 when veteran is medically evacuated from the combat zone.
• \$2,500 30 days after evacuation date if still hospitalized, receiving medical treatment or rehabilitation.
• \$2,500 60 days after evacuation date if still hospitalized, receiving medical treatment or rehabilitation.
• \$2,500 90 days after evacuation date if still hospitalized, receiving medical treatment or rehabilitation.

HUMAN SERVICES DEPARTMENT
SPECIAL REVIEW 9:20

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

These proposals were initially reviewed by the committee at its' September meeting; both filings are part of the overall re-write of the Medicaid plan; these changes will impact adults receiving adult rehabilitation option (ARO) services and children receiving rehabilitative treatment services (RTS).

A significant part of these two rulemaking efforts is to limit Medicaid coverage to rehabilitative services; i.e., services which will restore or improve the mental health of the client. Under these revisions some current services can no longer be paid for using federal Medicaid funds.

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A variety of concerns were raised and in response the department has met extensively with stakeholders, scheduled numerous training sessions and has made some changes in the rules themselves. A "safety-net transition time frame" has been developed to prevent loss of service and to prevent disruption of services for people that, as of November first, will not be covered by Medicaid under the new rules. Under this safety net the deadline is extended for two months, allowing the Medicaid recipient to continue receiving remedial services or the current ARO or RTS services beyond November first. Services could be authorized through June 30, 2007, at the latest.

The department is working on a Medicaid waiver service that will meet the needs of persons requiring *care* services more than rehabilitation. It is possible such a program could be in place early in 2007.

### ENVIRONMENTAL PROTECTION COMMISSION

1:00

Discarded appliance demanufacturing, IAB Vol. XXIX, No. 07, ARC 5387B, NOTICE.

In 2001 the EPC replaced an old set of rules, "removal and disposal of polychlorinated biphenyls (pcbs) from white goods prior to processing," with the current regulatory program, which now begins its' fourth update. Essentially, the program ensures that oils, gasses, refrigerants and other hazardous materials are removed from discarded appliances before they are crushed, bailed or shredded for recycling. These pollutants include polychlorinated biphenyls (PCB) and elemental mercury; they are commonly found in such things as refrigerators, freezers, air conditioners, furnaces or ballasts.

The regulatory program is essentially a permitting process for the "demanufacture" {scrapping} of discarded appliances; anyone wishing to enter this business must obtain the permit prior to starting operation. Individual permits may contain specific conditions that are "necessary to ensure the appliance demanufacturing facility can be operated in a safe and effective manner." At least one owner or employee must have a training certificate from a department-approved training course. A person who has completed the training must be on site at all times

when discarded appliances are being demanufactured.

Generally, discarded appliances must be collected and stored so as to prevent electrical capacitors, refrigerant lines and compressors, and components containing mercury from being damaged and allowing a release into the environment. No more than 1,000 appliances may be stored at a location prior to demanufacturing; appliances may be stored for only 270 days. Specific requirements are set out for refrigerant removal, disposing of mercury containing items (Note: this includes fluorescent tubes and bulbs, both mercury containing items and capacitors must be processed following strict procedures as set out in the rules), and capacitor removal.

Annual reports are required that detail the type and number of items process in the facility, and document the transfer or shipment of any refrigerant, mercury switches, or PCB-containing materials.

### ENVIRONMENTAL PROTECTION COMMISSION

1:00

Mercury-added switch recovery, IAB Vol. XXIX, No. 07, ARC 5386B, NOTICE.

House File 2362 mandates that all accessible mercury switches be removed from a motor vehicle before it is scrapped. The manufacturers of vehicles which utilize these switches are required to develop and publish a plan for the implementation of a system to remove, collect, and recover the switches from those vehicles when the vehicles are scrapped. All *accessible* mercury switches must be collected; switches that can only be accessed with significant damage to the surrounding area are excluded. The total cost of the removal, collection, and recovery system for the switches must be paid by the manufacturer.

The plan must contain:

- an educational component to inform the public about the program, including detailed information about what vehicles contain mercury switches, their location and methods to remove them;
- a method for implementing, operating, maintaining, and monitoring the collection system;
- a method to arrange and pay for the transportation of collected switches to permitted facilities and for their recycling;

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- a method to track participation in the system including a database of recyclers;
- a targeted capture rate of not less than 90% and an alternative if the target is not met.

### ENVIRONMENTAL PROTECTION COMMISSION

1:00

Construction permit requirements for major stationary sources, IAB Vol. XXIX, No 07, ARC 5388B, ADOPTED.

Since Iowa does not currently have any air quality non-attainment areas, this new rulemaking relates only to standards to prevent significant deterioration. In the event a non-attainment area occurs, a separate regulatory program applies and additional rulemaking may be required. A new chapter 33 establishes a preconstruction review and permitting program relating to requirements for major stationary emission sources located in Iowa; the EPC estimates there are 300 such sources in this state. These sources are such facilities as electric generation plants, refineries, or foundries; the term also includes any other facility which emits, or has the potential to emit, 250 tons per year of the pollutants specified by the program. These pollutants include lead, ozone, carbon monoxide and hydrogen sulfides.

### ENVIRONMENTAL PROTECTION COMMISSION

1:00

Commercial septic tank cleaners, IAB Vol. XXIX, No. 07, ARC 5389B, ADOPTED.

Septic tank rules have been in place for 15 years; with the county boards of health responsible for the enforcement of the standards and licensing requirements.

In 2005 the legislature enacted House File 834, relating to the regulation of servicing for septic tanks. Under that revision the department is exclusively responsible for adopting the standards and issuing licenses. However, county boards of health are *required* to enforce the standards and licensing requirements established by the department. The department is empowered to delegate the authority for inspection of land application sites, record reviews, and equipment inspections to a county board of health.

As a condition of licensure the Act requires that "septic disposal management plans" be submitted

to the department and approved annually, and also be filed annually with the county board of health in the county where a proposed septage application site is located. Fines were raised from \$25 to \$250 *per day*.

Under the previous statute, the annual license or license renewal fee was set at \$25. Under the Act the fee is established by the department based on the volume of septage that is applied to land. Under that authority the annual fee is raised to \$150 per year for the first registered vehicle and \$50 for each additional vehicle. In addition, for the land application of waste there is an additional fee of \$7 per 1,000 gallons of waste.

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.

At its' May 2006 meeting the administrative rules review committee requested a regulatory analysis of this revision. Members were concerned about the impact on Iowa counties, which have the responsibility of enforcing the application and licensing standards. That analysis, presented to the committee in August, indicated s that the licensing fees will raise approximately \$85,000, which was thought adequate to provide for inspections. The EPC may contract with perhaps 10 large counties to do the inspections and each county would receive about \$8,500.

### IOWA FINANCE AUTHORITY

2:00

2007 Qualified Allocation Plan (low-income housing tax credits), IAB Vol. XXIX, No. 06, ARC 5381B, ADOPTED.

Iowa law authorizes the authority to issue tax credits as an incentive to developers for construction or rehabilitation of low income

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housing. Each year the authority updates the program for the current fiscal year.

The 2007 amendments make minor, technical changes to the current program. The program contains several earmarked projects; this was the only issue discussed when these rules were initially reviewed in July. Earmarked projects include rural projects, assisted living projects, projects for persons with disabilities. Developers argued that the primary purpose of the program was to provide affordable housing for families, and that set-asides eroded this goal. Developers noted that earmarks constitute 70 percent of the credits and contended that no more than 50 percent of the credits should be earmarked. Agency representatives disputed that funding for family projects is being eroded, they noted that with the exception of assisted living, all projects are available for families.

### IOWA FINANCE AUTHORITY

Special Review 2:00

Wastewater treatment financial assistance program, IAB Vol. XXIX, No. 5 ARC 5346B, NOTICE.

At its September meeting the committee reviewed rules noticed by the Iowa Finance Authority (IFA) implementing the wastewater treatment financial assistance program. This program was established under 2006 Iowa Acts, House File 2782, §63 to assist "disadvantaged communities" with populations less than 3000, by providing 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. The General Assembly appropriated \$4 million to provide this assistance.

The IFA rules provide that the DNR will certify wastewater treatment projects needed to meet water quality standards. The estimated cost to reduce effluents from treatment facilities is roughly \$800,000 to \$1,000,000,000.

The committee raised questions regarding the process and priorities used by the DNR in the stream designation and subsequent certification of a particular community's project for financial

assistance. The committee also raised questions regarding the timetable for the DNR stream designations; priorities for making designations; and, how many communities might be impacted upon a designation.

The committee reviewed these DNR rule filings in October, 2005 and March, 2006 amending the state's water quality standards to comply with the federal Environmental Protection Agency mandate for "fishable and swimmable" waters. (ARC 4895B and ARC 4897B) No formal committee action was taken.

The General Assembly later enacted 2006 Iowa Acts, Senate File 2363 to address the state's water quality standards. Under the Act the DNR is required to designate stream segments pursuant to designated uses, e.g., agriculture, aquatic, or recreational use. For each designated use, the DNR is required to adopt water quality standards. The DNR must determine whether a designated use is attainable, and prior to any change in a national pollutant discharge elimination system (NPDES) permit, a use attainability analysis is required. The Act requires that all new or revised stream segment use designations be adopted through the rulemaking process. The DNR will bring each specific designation before this committee for its review.

### IPERS

No Rep.

Anti-spiking: calculating IPERS benefits, IAB Vol. XXIX, No. 07, ARC 5389B, NOTICE.

Code §97B.1A, subsection 24, paragraph "a" contains an "anti-spiking" mechanism to limit the effect on pension benefits from end-of-career salary adjustments. The IPERS system proposes rules to add detail to the statutory limitation.

IPERS benefits are based on the "three-year average covered wage", which is the average calendar year wage for the highest three years of the member's service. Basically, this anti-spiking provision limits the growth of an IPERS member's high three-year average.

Since many members do not retire at years end, IPERS may determine wages for the third year by computing the final quarter or quarters of wages to complete the year. The computed year shall not

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exceed the member's highest actual calendar year of covered wages by more than 3 percent.

### PUBLIC SAFETY DEPARTMENT

No Rep.

State fire marshal, IAB Vol. XXIX, No. 06 ARC 5375B, NOTICE.

Unlike the state building code, which has limited applicability, the state fire marshal is empowered, by Code §100.35, to adopt rules:

"...which include standards relating to exits and exit lights, fire escapes, fire protection, fire safety and the elimination of fire hazards, in and for churches, schools, hotels, theaters, amphitheatres, hospitals, health care facilities as defined in section 135C.1, boarding homes or housing, rest homes, dormitories, college buildings, lodge halls, club rooms, public meeting places, places of amusement, apartment buildings, food establishments as defined in section 137F.1, *and all other buildings or structures in which persons congregate from time to time, whether publicly or privately owned* [emphasis added]."

Those rules are required to be "substantially in accord" with the state building code. Rules have been in place for many years, with many amendments and additions over the years; now the department proposes to re-draft the fire marshal rules in order to update and re-order the entire regulatory program.

The current program is based on the National Fire Protection Association (NFPA) standards; in addition to retaining certain NFPA standards, the proposal adopts new fire safety requirements based on the 2006 edition of the International Fire Code, and provisions of the 2006 edition of the International Building Code relating to fire safety. The proposal does note that an existing building or facility is *generally* subject to the code requirements which were in effect on the date on which the "current continuous use" of the building or facility began. There are exceptions, particularly when an "imminent threat to the safety of individuals or the public" exists.

There are rules for specific types of occupancies or facilities; these include foster care facilities, bed and breakfast inns and jails. These are substantially the same as rules currently in place. Specific rules are also set out for smoke detectors.

### TREASURER

No Rep.

Revised LIFT program, IAB Vol. XXIX, No. 06, ARC 5384B, EMERGENCY.

Under the LIFT program the treasurer deposits idle state funds in local financial institutions at an interest rate favorable to the institution. The deposit is in the form of a short term certificate of deposit. The institution agrees to provide loans to eligible persons or entities and a reduced interest rate.

House File 2661, revises the LIFT program by eliminating the focused small business, horticulture and alternative crops, rural small business, value added agriculture, and traditional livestock components with one small business program that injects capital into Iowa-owner small businesses owned and operated by Iowa residents. One-half of the moneys invested will be available for targeted small businesses (51 percent or more owned and operated by a woman, minority, or a person with disabilities). The minimum interest rate on certificates of deposit deposited with lenders will *decrease* from two to one percent. Borrowers or businesses will be able to borrow up to \$200,000 through this program.