



Administrative Rules Review Committee

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THE RULES DIGEST

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XXVIX IAB No. 08(10/11/06)
XXVIX IAB No. 09(10/25/06)

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PHARMACY BOARD

Monday, 1:10

Delegation of duties to a pharmacy technician, IAB Vol. XXIX, No. 09, ARC 5466B, NOTICE.

Current board rules state that a pharmacy is closed when the pharmacist is absent; but the rules do allow some access, in emergency situations, to obtain drugs, devices or chemicals. This revision restates and emphasizes that policy, and specifies the activities that may and may not be performed by an assistant when the pharmacist is absent from the facility. A technician may assist another authorized, licensed health care professional to locate a drug or devise in an emergency but cannot actually dispense the drug or deliver the devise or verify that it is correct.

An assistant is specifically prohibited from:

- dispensing medications or devises;
• verifying the accuracy of a prescription or an order;
• evaluating a medication record;
• provide counseling or drug information;
• prepare compounded medications with verification by the pharmacist.

AGRICULTURAL DEVELOPMENT AUTHORITY

Monday, 2:15

Beginning farmer tax credit program, IAB Vol. XXIX, No. 09, ARC 5483B, EMERGENCY.

The Agricultural Development Authority is located in the state treasurer's office of state and is responsible for administering a number of programs to assist agricultural producers. The authority is emergency adopting new rules to implement 2006 Iowa Acts, Senate File 2268. This new program creates an agricultural assets transfer tax credit against income taxes for agricultural asset owners who lease those agricultural assets to a beginning farmer. These assets include agricultural land, agricultural improvements or depreciable agricultural property which is used for farming purposes. The tax credit is five percent of the rental income received on cash rental agreements and 15 percent of the rental income received on share agreements.

To be eligible the farmer be an Iowa resident with a net worth of less than \$300,000 and materially and substantially participate in the

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operation of the farm. The farmer must also have sufficient education, training or experience in farming; and have access to adequate working capital, equipment and other items necessary to operate the farm.

ETHICS AND CAMPAIGN DISCLOSURE BOARD

Monday, 2:30

Miscellaneous revisions, IAB Vol. XXIX, No. 09, ARC 5471B, 5461B 5479B, 5480B, 5472B, 5475B, 5478B, 5476B, ADOPTED.

The board completes action on a variety of small revisions, some in response to new legislation, some implementing policy changes and some just basic clean-up. House File 2415 empower the board to adopt and enforce rules relating to the reporting of gifts, bequests, and grants under Code §8.7. That section was enacted in 2005 and requires all gifts, bequests, and grants received by a department or accepted by the governor on behalf of the state to be reported the board and the government oversight committees. The board proposes several editorial changes to reflect this responsibility, but substantive rules are not yet proposed.

In a second statutory revision, House File 2593 amends current provisions requiring that an official or employee of a *regulatory* agency obtain consent prior to selling goods or services subject to the regulatory authority of the official's or employee's agency. The revision expands this requirement to cover leases and allows blanket consents to be given, when appropriate.

The board also implements a code of ethics specific to its own board members. A board member cannot make a monetary in-kind contributions to candidates for Iowa public office or serve on their campaign committees. Board members cannot contribute to a political action committee; however, contributions to a state party or a county central committee are permitted. Board members cannot run for office or endorse a particular candidate or ballot issue or serve as a delegate to a county or state convention. These prohibitions do not apply to federal elections since the board has no jurisdiction over federal candidates.

Another change relates to the payment for meals from campaign funds. Iowa law permits a candidate to use campaign funds to purchase tickets to a meal so long as the candidate's sole purpose in attending the event is to enhance the candidacy of any person. The current rule places a \$25 cap on the cost of a ticket for the candidate and another \$25 for one guest. That cap is eliminated.

INSURANCE DIVISION

Monday, 3:30

Individual basic medical expense coverage, IAB Vol. XXIX, No. 08 ARC 5444B, ADOPTED.

The division implements minimum standards for individual basic medical expense coverage; these standards are based on model language issued by the national association of insurance commissioners. Under this proposal basic medical expense coverage 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 may 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.

A deductible stated either on a per person, per family, per illness, per benefit period, 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;

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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.

EDUCATION DEPARTMENT

Monday, 3:50

Open enrollment, appeals, IAB Vol. XXIX No. 08, ARC 5415B, NOTICE.

Once the March first deadline for open enrollment has passed the receiving district may only accept a transferring student for "good cause." Numerous examples of good cause are set out in the existing rules and include such things as a change in the *family* residence, a parental divorce, a change in guardianship or if the student is the victim of repeated acts of harassment or if the student has a serious health condition that the current district cannot deal with appropriately.

Under the current rules, the resident (sending) district really has no appeal right to contest whether good cause actually existed; Iowa Code §282.18(4)"c" empowers the department to take "appropriate action", but existing rules only allow the sending district to complain to the department, which can "*counsel the receiving district that its approval was unreasonable.*" There is no significant remedy for abuse of the good cause exception.

This proposal would allow the sending district to appeal a transfer to the director of the department. The director will first attempt to mediate the dispute. If that fails the director will hold either a telephonic or in-person hearing. Following the directors' decision, the "aggrieved" board may appeal the decision to the state board of education.

Although this hearing clearly determines the parties rights, duties and responsibilities, the rules are unclear whether this is a contested case proceeding; this should be clarified as to whether the procedures and due process protections set out in chapter six of the boards' rules apply.

INSPECTIONS & APPEALS DEPARTMENT

Monday, 4:10

Long-term acute care hospital located within a general hospital, IAB Vol. XXIX, No. 08, ARC 5431B, NOTICE.

Under current regulations a single hospital building may hold only a single type of license. This proposal details the types of licensures, but more importantly authorizes the licensure of a "long-term acute care hospital located within a general hospital." This facility is essentially a skilled nursing facility co-located within a hospital. It provides medical and rehabilitative care services for an extended period; services can include comprehensive rehabilitation, respiratory therapy, head trauma treatment, and pain management.

This rulemaking also details the types of licenses that are available. A "general hospital" provides medical care for two or more individuals for more than 24 hours. A "specialized hospital" provides specialized care to persons with chronic or long term illness, injury, or infirmity. A "critical access hospital" must be located in a rural area and be certified by the Iowa department of public health as a necessary provider of health care services to residents of the area. A critical access hospital makes available 24-hour emergency care.

RECORDS COMMISSION

Monday, 4:30

State records, IAB Vol. XXIX, No. 08, ARC 5447B, NOTICE.

Records retention is a perennial problem in state government—deciding what is to be kept and for how long. Code §305.2 basically defines a record as any item containing information "*produced, executed, or received pursuant to law in connection with the transaction of official business of state government.*"

The commission proposal offers additional detail clarifying what is *not* a record; these non-records include: library and museum material used as reference material or for exhibition, stocks of publications and unprocessed forms, and extra copies of documents made, acquired or received only for convenience or reference purposes. The rule also defines the "office of record"; i.e.: the entity responsible for maintenance and disposition of the record. It is defined as the agency where the

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record is *"created, produced, executed or received in connection with official business of that agency."*

HUMAN SERVICES DEPARTMENT

Tuesday, 8:30

Subsidized guardianship, IAB Vol. XXIX No. 08, ARC 5420B, ADOPTED.

2006 Iowa Acts, House File 2734 suspended a moratorium which had been imposed in 2000. The effect of this suspension is to authorize the department to operate a subsidized guardianship program, *if* the federal government approves a waiver allowing Title IV-E funding to be used for these guardianships. This program was initially established, by administrative rule, in 1999, but in 2000 the legislature delayed implementation of these rules until funds were appropriated.

The department will now implement a demonstration project to obtain data sufficient to justify a waiver. This program is for children who have been in a licensed foster care placement and has lived in foster care for at least 6 of the last 12 months. The subsidy is based on a flat daily foster care rate adjusted according to the needs of the child and the circumstances of the family. The subsidy will continue until the child turns 18 or graduates from high school.

HUMAN SERVICES DEPARTMENT

Tuesday, 8:30

Elderly waiver: case management services, IAB Vol. XXIX No. 08, ARC 5417B, EMERGENCY.

The Medicaid Home and Community Based Services Elderly (HCBS Elderly) provides service funding and individualized supports to maintain eligible persons in their own homes or communities, who would otherwise require care in a medical institution. 2006 Iowa Acts, House File 2734, §1 appropriated almost three million dollars for case management for the frail elderly. Approximately one million dollars of this amount is transferred to the Department of Human Services for reimbursement of case management services provided under the medical assistance elderly waiver. That section specifically provides that *"[t]he monthly cost per client for case management for the frail elderly services provided shall not exceed an average of \$70 [emphasis added]."*

The department now emergency adopts rules to implement the case management program; the filing became effective October 1st, 2006. (Note: this means that the committees' delay powers are not applicable) Under these rules the maximum monthly cost per client for case management under the elderly waiver is set at \$70. The main issue with this filing is that the rule applies a payment cap of \$70 per client, while the legislation calls for an average cost of \$70. A preliminary analysis by the legislative services agency states that as a general policy the department sets maximum reimbursement rates for all waiver services but then allows exceptions to policy if it is determined that higher reimbursements are appropriate. The department is following that policy for the frail elderly waiver.

Case management services assist an individual in gaining access to medical, social, and other needed services; those services include an initial assessment of the problems and specific the needs or disabilities of the individual, followed by the development of a service plan. Case management is provided at the direction of the individual and an interdisciplinary team. This team includes the individual, the case manager, and other persons who are directly involved in the individual's care.

ECONOMIC DEVELOPMENT DEPARTMENT

Tuesday, 9:30

Targeted jobs tax withholding, IAB Vol. XXIX No. 08, ARC 5442B, ADOPTED.

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.

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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 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, 9:30

Definition of "benefit" for the Grow Iowa Values Fund, IAB Vol. XXIX No. 08, ARC 5439B, ADOPTED.

These provisions initially appeared as emergency rules in August; they 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.

IOWA FINANCE AUTHORITY

Tuesday, 11:00

Closing protection letters, IAB Vol. XXIX, No. 08, ARC 5452B, ADOPTED.

The title guarantee division of the authority proposes a new tool to ensure the integrity of the program—the closing protection letter. As part of a real estate closing mortgage lenders often entrust large sums of money to closing agents who handle

the details of a real estate closing. National lenders especially are hesitant to do this without some protection against loss caused by actions of the local closer; for title division guarantees this is an Iowa attorney or abstractor.

The closing protection letter is an agreement by a title guarantee division to indemnify a lender, for loss caused by a closer's fraud or dishonesty or by the closer's failure to follow the lender's written closing instructions. An attorney or abstractor wishing to become a "division closer" must make application to the title guarantee division and meet requirements relating to indemnity agreements, criminal background checks, and insurance requirements. Each closer must enter into a written agreement with the division which outlines the responsibilities of the closer, including the management of escrow accounts.

PUBLIC SAFETY DEPARTMENT

Tuesday, 11:10

Concealed weapons permits, IAB Vol. XXIX, No. 07, ARC 5396B, NOTICE-delayed from October.

Under Iowa law any person who can reasonably justify going armed *may* be issued a nonprofessional permit to carry weapons. The department proposes a re-write of existing rules relating to concealed weapons permits—the proposals are substantially similar to existing provisions. The department has general rulemaking authority over the permit program; for example, Code chapter 724 requires all applicants to successfully complete a public safety commissioner-approved safety training program. However, the commissioner controls the issuance of permits only for state personnel and for non-residents. The local sheriff is responsible for other weapons permits, both professional and non-professional. In addition to completion of the approved course, applicants must provide a complete fingerprint set and pass a criminal background check. §724.11 specifically provides that the sheriff may use discretion in determining whether or not to issue the permit; the department also provide that the sheriff may restrict or limit the authority of professional and nonprofessional permits.

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SECRETARY OF STATE

Tuesday, 12:10

Voting and voting equipment, IAB Vol. XXIX, No. 09, ARC 5482B, EMERGENCY AFTER NOTICE.

This filing contains a variety of amendments relating to voting procedures; these revisions were initially reviewed by the committee in September. 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.

DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

No Rep

Grape and wine development funding program, IAB Vol. XXIX, No. 08, ARC 5458B, ADOPTED.

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.

COLLEGE STUDENT AID COMMISSION

No Rep

Student loan defaults: income tax set-off, IAB Vol. XXIV, No. 09, ARC 5462B, ADOPTED.

These revisions initially appeared as emergency rules in August. The commission is reorganizing its powers in recovering defaulted student loans into one chapter; these are existing provisions that are being moved and updated. In addition to traditional debt collection procedures and a process for administrative garnishments, the commission can

follow a license sanction process to suspend, revoke or deny issuance or renewal of a variety of licenses, and may also seek to offset the debt from any state income tax refund or rebate that may be owing the debtor.

These income tax offset rules are not being revised, but are being moved into a new chapter. This recovery process is a significant tool to recover student loans. The rules set out a process for seizing the tax refund and a appeal process to contest that action.

PUBLIC SAFETY DEPARTMENT

No rep.

Missing persons clearinghouse—Amber Alert, IAB Vol. XXIX, No. 07, ARC 5393B, NOTICE-delayed from October.

The department updates existing rules related to the missing persons clearinghouse. The clearinghouse is established in Code Chapter 694 and serves to collect and disseminate information, relating to missing persons to educate law enforcement officers and the general public about the issues related to missing persons. As part of the program the department maintains a toll-free telephone line, available at all times, to collect and disseminate information concerning missing persons in Iowa.

The most important part of this update is the addition of "Amber Alert" rules. Amber Alert is a cooperative effort of state and local authorities and the broadcast media; it provides a public alert program when a child has gone missing under suspicious circumstances. The alert is issued by Iowa state patrol receipt of a request from a participating law enforcement agency. There a four criteria which must be met for an Amber Alert; these criteria are to be interpreted broadly to protect the safety of the abducted child and to maintain the integrity of the program:

- Law enforcement has confirmed that a person has been abducted.
- The person who has been abducted is under the age of 18.
- Law enforcement believes the circumstances surrounding the abduction indicate that the child is in danger of serious bodily injury or death.
- There is enough descriptive information about the child, abductor, or suspect's vehicle to believe that an immediate broadcast alert will help.