



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

July 2006

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Senate Committee Room #24

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XXVIII IAB No. 26(06/21/06)

HIGHLIGHTS IN THIS ISSUE:

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EDUCATION DEPARTMENT

9:10

Community college accreditation, IAB Vol. XXVIII, No. 25, ARC 5135B, NOTICE.

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 section 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

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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.

### EDUCATION DEPARTMENT

9:10

School transportation, IAB Vol. XXVIII, No. 25, ARC 5136B, NOTICE.

The department proposes a series of amendments relating to the required equipment on a school bus; these rules have not been revised for seven years. The rules are basically updates reflecting changes in automotive technology and manufacturing. Detailed requirements are added for brakes and fuel tanks.

Some new safety features are required: a noise suppression switch must be in place to immediately deactivate certain noise producing items like fans or radios. A "child check" monitor is also added, which will require the driver to physically walk to the back of the bus to disengage the system after having first shut off the engine of the bus.

As part of the overall requirement that busses be painted national school bus yellow the new rules prohibit commercial advertising on the exterior and in the interior of all school buses.

### EDUCATIONAL EXAMINERS BOARD

9:25

Statement of professional recognition, IAB Vol. XXVIII, No. 25, ARC 5157B, NOTICE.

The board of educational examiners currently issues an endorsement to school nurses. Holders of the endorsement must have at baccalaureate degree, a license from the nursing board and complete the education core curriculum. The program requires special study in the area of children's health needs, the administration of a school health program, the coordination of community and school health resources and the health needs of exceptional children. The endorsement does not authorize general teaching; however, it does authorize the holder to teach health at all grade levels.

Both the Nursing Board and the Educational Examiners Board are adopting a new classification: a "statement of professional recognition". This designation is 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.

### EDUCATIONAL EXAMINERS BOARD

9:25

Requirements for special education endorsements, IAB Vol. XXVIII, No. 25, ARC 5158B, NOTICE.

This revision of existing rules details the endorsements available for 18 special education support positions; the proposal also sets out the requirements for each endorsement. All specify either a baccalaureate or master's degree, plus experience, and six endorsements (e.g.: audiologist) require a professional license.

The proposal does establish a new license: the orientation and mobility specialist. This license allows the holder to teach students with a visual impairment, including those who are deaf and blind.

Applicants must have a baccalaureate or master's degree with a minimum of 21 semester credit hours in specified courses relating to blindness and mobility, complete at least 350 hours of fieldwork and training and complete a three years probationary period.

### STATE PUBLIC DEFENDER

9:40

Fee increase, IAB Vol. XXVIII, No. 26, ARC 5167B, EMERGENCY.

2006 Acts, House File 2789, has raised the fees for indigent defense by five dollars across-the-board. This means that as of July 1, 2006, compensation will be \$65 per hour for class "A" felonies, \$60 per hour for all other felonies, \$60 per hour for misdemeanors, and \$55 per hour for all other cases. These cases include such actions as appeals, juvenile cases, probation/parole violation cases, and postconviction relief cases. The rules

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also set caps for reimbursement on certain types of actions.

Expenses, such as necessary investigation and trial costs, will also be reimbursed.

### PHARMACY EXAMINERS BOARD

9:50

Collaborative drug therapy management, IAB Vol. XXVIII, No. 25, ARC 5097B, ADOPTED.

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

A supervising physician may delegate, with the consent of the patient, aspects of drug therapy management to an authorized pharmacist pursuant to a detailed written protocol with a pharmacist.

There are two types of protocol, a community practice protocol and a hospital protocol. A community protocol may:

- authorize the therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol.
- authorize the pharmacist to obtain or to conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.
- authorize the pharmacist to check certain physical findings that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions, or determine if the patient should be referred back to the patient's physician for follow-up.
- authorize the pharmacist to monitor specific patient activities.

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

### INSURANCE DIVISION

10:00

Unfair trade practices, IAB Vol. XXVIII, No. 26, ARC 5173B, NOTICE.

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.

### ENVIRONMENTAL PROTECTION COMMISSION

10:20

Non-attainment areas, IAB Vol. XXVIII, No 25, ARC 5154B, NOTICE.

In 2002 the federal Environmental Protection Agency (EPA) revised rules relating to non-attainment new source review (NSR); the EPC proposed rules to implement these requirements in 2005. Subsequently, portions of the federal rules were struck down by a federal appellate court. The EPC now re-notices new proposals for the regulation of non-attainment areas. A new chapter 33 will contain a preconstruction review and permitting program relating to permit requirements for major stationary sources located in areas designated attainment or unclassified. 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.

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### ENVIRONMENTAL PROTECTION COMMISSION

10:20

Clean Air Interstate Rule (CAIR), IAB Vol. XXVIII, No. 25, ARC 5139B, ADOPTED.

Early in 2005 the federal EPA issued the "Clean Air Interstate Rule" (CAIR), which will mandate the largest reduction in air pollution in more than a decade. Over the next ten years CAIR will require large reductions of sulphur dioxide (SO<sub>2</sub>) and nitrogen oxide (NO<sub>x</sub>) emissions in 28 states, including Iowa. These emissions form harmful levels of ozone. Compliance is set in two phases; the first phase begins in 2009. The second phase begins in 2015. Ultimately this program will reduce SO<sub>2</sub> emissions in these states by over 70 percent and NO<sub>x</sub> emissions by over 60 percent from 2003 levels.

The federal rule allowed several options to control these emissions, Iowa's EPC has selected the "cap and trade" approach. Under this system the federal EPA allocates emission "allowances" for SO<sub>2</sub> and NO<sub>x</sub> and Iowa will allocate those allowances to those emission sources in the state. The allowances can be traded like a commodity; thus an emission source could opt to install pollution control devices or could buy allowances from other sources that did not need the full allotment. That concept is currently in place for the acid rain program.

To ensure compliance automatic and punitive penalties on sources that do not hold the required number of allowances at the end of each year.

### ENVIRONMENTAL PROTECTION COMMISSION

10:20

Clean Air Mercury Rule (CAMR), IAB Vol. XXVIII, No. 25, ARC 5140B, ADOPTED.

At the same time the federal EPA issued the CAIR rule (supra) it also issued the Clean Air Mercury Rule to permanently cap and reduce mercury emissions from coal-fired power plants for the first time ever. Mercury is a toxic, persistent pollutant that accumulates in the food chain. When fully implemented, these rules will reduce utility emissions of mercury from 48 tons a year to 15 tons, a reduction of nearly 70 percent.

The first phase of this reduction occurs in 2010, with a nationwide, 38-ton cap. The second phase is a nationwide, 15-ton cap on mercury emissions, which will occur in 2018. Iowa's EPC has selected the "cap and trade" approach to control mercury emissions. This process is similar to that adopted for CAIR; however, in specific situations the director may modify such permits to mitigate excessive mercury deposition.

### ENVIRONMENTAL PROTECTION COMMISSION

10:20

Composting dead animals, IAB Vol. XXVIII, No. 25, ARC 5149B, ADOPTED.

The EPC revises and expands existing regulation of farm animal composting facilities; the rules were initially promulgated in 2002. The rules do not apply to farmers disposing of their own livestock; farm animal composting facilities must obtain a permit from the EPC. Generally, the rules provide guidelines for the composting process and for the application of the final composted material to farmland. New provisions minimize any leakage during transportation and to ensure that animals which have died from an infectious disease that can be spread by scavengers or insects or that died from a reportable disease are handled separately from other compost.

### NATURAL RESOURCES COMMISSION

10:40

Otter season, IAB Vol. XXVIII, No. 25, ARC 5144B, ADOPTED.

Under the previous rules there was a continuously closed season on the taking of otters. The commission now implements a trapping season allowing the taking of two otters per trapper, with a 400 otter statewide limit. There will be a 72 hour grace period after the 400 statewide limit is reached to allow trappers to clear their traps and collect any otters found in those traps. The trapper may retain the otter if the trapper has not yet reached the personal limit.

The commission estimates that there are some 7000 otters scatters throughout the state, with a growth rate of 16%. There has been both support and opposition to this rule change. Department representatives state that a controlled season is

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good wildlife management and note that complaints have been received about fish depredation in ponds due to river otters. Opponents respond that evidence of damage by otters is anecdotal and that the available evidence does not support a season

### ECONOMIC DEVELOPMENT DEPARTMENT

11:00

Renewable fuel infrastructure board, IAB Vol. XXVIII, No. 26, ARC 5160B, EMERGENCY.

House File 2754, Division III creates the renewable fuel infrastructure program and §34 of the Act calls for emergency rules. §29 of the Act creates a renewable fuel infrastructure board is established within the department of economic development, which is required to provide logistical support to the board. The board is made up of 11 members, with six serving as a quorum; they are appointed by the Governor, however, the Act sets out specific criteria for membership. One member must be knowledgeable concerning underground storage tanks, and second must be knowledgeable concerning the petroleum industry and nine members representing the following associations: the agribusiness association; the Iowa corn growers; the Iowa motor truck association; the Iowa soybean association; the petroleum marketers and convenience stores of Iowa; the Iowa petroleum equipment contractors association; the Iowa renewable fuels association; the Iowa grocery industry association; and the Iowa farm bureau federation.

The board is responsible for directing the renewable fuel infrastructure program. The program provides financial incentives for gas stations to install the necessary tanks and equipment to store and dispense E-85 gasoline or biodiesel. Applications for assistance are first reviewed by the underground storage tank fund board, which forwards its comments to the infrastructure board for final action. The financial incentive comes as a grant; however, assistance is available for infrastructure on only one tank per location. The incentives cannot exceed 50 percent of the actual cost of making the improvement or \$30,000, whichever is less.

A similar cost-share program is established for terminal facilities that store and dispense biodiesel or biodiesel blended fuel. The grant awarded under this program cannot exceed 50 percent of the actual cost of making the improvements or \$50,000, whichever is less.

### HUMAN SERVICES DEPARTMENT

1:30

Medicaid eligibility for nursing home care: transfer of assets, IAB Vol. XXVIII, No. 25, ARC 5134B, EMERGENCY.

These provisions were initially reviewed in draft form in May. The Medicaid program pays for nursing home care when a resident has largely exhausted their resources and income. For decades there have been restrictions on a clients ability to transfer assets to another person instead of retaining those assets to fund nursing home care. These three revisions to the existing rules are intended to bring the Iowa Medicaid program into compliance with the provisions of the federal Deficit Reduction Act of 2005. It is estimated that roughly one third of the couples who file appeals for protection of a higher amount of resources for the at-home spouse may be affected by being required to pay for several more months of care before becoming eligible for Medicaid coverage for the institutionalized spouse.

In apportioning resources between an "at-home" spouse and an institutionalized spouse, in addition to considering the income of the spouse at home, the income that the spouse in the institution has available to give to spouse at home will also be considered before allocating a higher amount resources to the at-home spouse.

A second change provides that entrance fees paid on admission to a continuing care retirement community or an equity interest in a home that exceeds \$500,000 (unless the at-home spouse or a disable child resides in the home) will be considered a resource.

The third change relates to the transfer of assets for less than fair market value. The look-back is increased from 36 to 60 months for all assets transfers prior to the application for Medicaid. The penalty for asset transfers is changed to begin the 1st of the month in which the assets were transferred or the date the person is otherwise eligible for Medicaid long-term care, whichever is

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later. Pursuant to the Deficit Reduction Act, partial months of penalty will no longer be rounded down or dropped.

### HUMAN SERVICES DEPARTMENT

1:30

'IowaCare': payments in cash, IAB Vol. XXVIII, No. 25, ARC 5153B, NOTICE.

2005 Iowa Acts, chapter 167, divisions I and II create the IowaCare program; this Medicaid initiative expands medical, dental and other health-related care. The program covers persons 19 through 64 years of age, whose income is less than 200% of the poverty guideline; pregnant women, or the newborn child of a woman whose income is less than 300% of the guideline but within medical expenses that would reduce income to 200%.

IowaCare members must pay a monthly fee, based on income; the monthly fee ranges from \$1 to \$75. Services are available only at: the University of Iowa Hospitals and Clinics; Broadlawns Medical Center in Des Moines; or a state mental health institute. In this rulemaking the department proposes that Broadlawns Medical Center will accept premium payments in cash, which will then be transported by armored car. The change is proposed in order to save clients the cost of a money order.

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### ADMINISTRATIVE SERVICES DEPARTMENT

Review in August

State purchasing: procurement center of excellence, IAB Vol. XXVIII, No. 25, ARC 5137B, NOTICE.

Under current rules a state agency may procure goods up to \$5,000 in value, which are not available under a master contract, by using an informal competitive process utilizing three bids. An agency may also purchase from a targeted small business. In this revision an agency certified by the director as a "*procurement center of excellence*" may procure non-master agreement goods up to \$50,000, using a competitive process. This designation may be obtained by completing a training course specified by the department. A master agreement is a contract, negotiated by the department, where the price of a good is already

determined and an agency may simply purchase the good from the vendor at the contract price.

### ENGINEERING AND LAND SURVEYING EXAMINERS BOARD

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Services offered by businesses, IAB Vol. XXVIII, No. 26, ARC 5169B, ADOPTED.

This is a revision of an existing rule; it establishes a general principle that businesses which offer professional engineering or surveying services to the public must be owned or staffed by one or more professional engineers or surveyors, "who are in responsible charge of all professional services offered and performed."

The rule does not specify a level of staffing; Noting that staffing must be decided on a case-by-case basis. However, businesses that hold themselves out as engineering or land surveying firms must employ full-time professional staff.

### SECRETARY OF STATE

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I-voters, IAB Vol. XXVIII, No. 26, ARC 5171B, EMERGENCY AFTER NOTICE.

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

The state registrar maintains a list of convicted felons and a list of convicted felons whose voting rights have been restored, based on information provided by the state or federal judicial branch and by the governor. Periodically, these lists shall be matched with I-VOTERS. The results are

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forwarded to the county registrars for further action.

These rules were initially discussed at the committee's May, 2006 meeting; there was no opposition. These rules establish the procedures for access to the state voter registration information; security, and access requirements require that all persons granted access to the file are provided a secure password and usage may be monitored. The system has a search function capable of detecting likely duplicates. County registrars are required to access this search function quarterly and resolve any duplications found.

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

### UTILITIES DIVISION

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Sale of goods or services to public, IAB Vol. XXVIII, No. 25, ARC 5156B, NOTICE.

This proposal, stating that sales of goods or services to the public is regulated by ethics board rules, will be adopted by all regulatory agencies. Until 2005 each agency controlled the activities of it's own employees concerning outside employment. 2005 Acts, Chapter 74 changed the existing law to vest rulemaking in the ethics and campaign disclosure board, with the rules being applied on a case-by-case basis by the agency. The ethics board rules are largely procedural, but they do contain general guidelines for the approval of requests, those guidelines provide:

- The person making the request cannot grant consent;
- The duties and functions performed by the person seeking consent are not related to the regulatory authority of the agency over the individual, association, or corporation to which the goods or services will be sold;
- The selling of the goods or services does not affect the persons duties or functions at the agency;
- The selling of the goods or services will not cause the person to advocate to the agency;
- The selling of the goods or services does not involve sales to the agency;
- The selling of the goods or services will not result in a conflict of interest;

- The request complies with the procedural requirements.

An agency decision relating to the sales of goods or services may be appealed to the ethics board.