



Administrative Rules Review Committee

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THE RULES DIGEST

January, 2008

Scheduled for committee review
Monday, Jan. 7, 2008 in Senate Committee Room #116

Reference
XXX IAB No. 14(12/05/07)
XXX IAB No. 15 (12/19/07)
XXX IAB No. 16 (01/05/08)

HIGHLIGHTS IN THIS ISSUE:

IOWA EDUCATIONAL SAVINGS PLAN, Treasurer1
NONDISCRIMINATION; ANTIHARASSMENT & ANTIBULLYING POLICY, Education Department2
OPEN ENROLLMENT, Education Department3
PHARMACY BENEFIT MANAGERS4

TREASURER

9:10

Iowa Educational Savings Plan, IAB Vol. XXX, No. 16,
ARC 6506B, NOTICE.

This program began in 1998 as a trust investment plan located within the Treasurer's office, it allows Iowans to pool savings for future college expenses. This is the first update in five years. The program was created in Code Chapter 12D. It is based on section 529 of the Internal Revenue Code. These so-called 529 plans are also known as "qualified tuition plans". All fifty states have some version of this program. This is NOT a pre-paid tuition program, which generally allows college savers to purchase units or credits at participating colleges and universities for future tuition. This savings programs does not establish a lock on college costs.

Each participant enters into an agreement to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a named beneficiary. The participant is not be required to make an annual contribution on behalf of a beneficiary. That contribution may be deducted for Iowa income tax purposes the maximum contribution is adjusted each year by the Treasurer, based on the inflation rate The

Treasurer sets an account balance limit in compliance with federal law.

Payments from the plan may be made either to the beneficiary or an institution of high education. Non-qualifying uses of the fund are subject to federal and state taxation. Qualifying uses can include: tuition, fees, books, supplies, equipment and reasonable room and board expenses.

The proposed rules add language to address online applications. They also require that each plan have a program description setting forth the terms of the plan and describing the investments and procedures applicable to that plan. The program description may be changed at any time by the program administrator and any such change may impact the rights of participants and beneficiaries under the plan. The rules specify what actions require the completion of an appropriate form.

The proposed rules do not change the participant eligibility criteria. They do make some changes to the rules governing beneficiary eligibility. The rules would no longer require a beneficiary to be under 18 years of age at the time the participation agreement is executed.

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The current rules allow participation agreements to require participants to invest a specific amount in the trust for a specific period of time, not to exceed 2,000 dollars per beneficiary per year. The proposed rules remove that 2,000 dollar maximum. The proposed rules allow participants to make contributions at any time during the calendar year provided that each contribution is made in accordance with the requirements of the program description.

The proposal removes language stating that participant's account balance shall be refunded, less endowment fund earnings, and less a refund penalty, in the event an account balance remains in the account for a 30-day period following the beneficiary's thirtieth birthday.

Under the proposed rules, benefits will be paid in one of three ways after the request is received by the program administrator: Paid directly to the institution of higher learning; paid directly to the participant for qualified or non-qualified expenses; or paid directly to the beneficiary for qualified expenses. The proposed rules also provide procedures and criteria for canceling a participation agreement at will.

CREDIT UNION DIVISION

9:20

Debt cancellation products, IAB Vol. XXX No. 14, ARC 6430B, NOTICE.

This proposal is a re-notice from July. 2007 Iowa Acts, Senate File 557, codified in Iowa Code Supplement section 533.315(9)“b”, authorizes the division to offer debt cancellation products. A debt cancellation product is an agreement between a financial institution and a borrower modifying loan terms under which the institution agrees to suspend or cancel all or part of the borrower’s obligation to repay a loan. A debt cancellation product may involve an optional member paid fee which provides protection for such unforeseen events as death, disability, involuntary unemployment, total loss of a vehicle, and other contingencies. To the consumer debt cancellation may appear similar to credit life or disability insurance, but debt cancellation is not an insurance product and it is regulated by the credit union division as part of the loan process; the authority for these products is codified within the general loan provisions.

The purchase of a debt cancellation product must be voluntary, it cannot be a condition of the loan. The credit union must obtain from the borrower a written election to purchase the product and written acknowledgment of the disclosures required in by the rules. This includes:

- Disclosure that the product is optional;
- An explanation of debt suspension agreement;
- The amount of fee;
- Lump sum or installment payment of fee; .
- Policy of refund of the fee;
- Cancellation rights;
- Eligibility requirements.

A verbal, "short term" disclosure is required at the time the credit union first offers the debt cancellation product to the borrower. The credit union must make a "long-form disclosure" in writing before the borrower completes the purchase of the contract or agreement. The borrower must provide a written affirmative election to purchase the product and written acknowledgment of receipt of the disclosures.

IOWA FINANCE AUTHORITY

9:30

Water pollution control works and drinking water facilities financing, IAB Vol. XXX No. 14, ARC 6508B, FILED EMERGENCY, ARC 6509B, NOTICE.

The Iowa Finance Authority has adopted an amendment to its rules pertaining to water pollution control works and drinking water facilities financing. The previous rules did not allow prepayment of loan principal within the first ten years of the loan term, other than those repayments resulting from a loan agreement adjustment based on final costs. The authority believes such a restriction is burdensome. Accordingly, the authority has removed that provision from the rules and adopted language which allows a loan to be prepaid, in whole or in part, on any date with the prior written consent of the authority.

EDUCATION DEPARTMENT

10:50

Nondiscrimination; antiharassment and antibullying policy, IAB Vol. XXX No. 14, ARC 6472B, Filed.

Iowa's Civil Rights Act was amended in 2007 Acts, Senate File 427 by adding sexual orientation and gender identity to the list of protected classes (Iowa Code §216.9(1)), which also includes: race,

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creed, color, sex, national origin, religion, or disability. Accordingly, education programs are prohibited from discrimination on the basis of these characteristics. This revision adds these protections to department's accreditation standards. Those standards require all schools to provide equal opportunity in programs to students in a protected class. This proposal also creates a protected class which is not set out in the Civil Rights Act: socio-economic status. That particular status is protected against bullying or other harassment in 2007 Acts Senate File 61.

The revised accreditation standards also require each school district to maintain a policy which prohibits harassment and bullying. The Act mandates that local districts establish a policy by September 1, 2007 prohibiting harassment and bullying in schools, on school property, and at any school function, or school-sponsored activity regardless of its location. The prohibition applies to employees, students and volunteers. The phrase "harassment and bullying" includes any electronic, written, verbal, or physical action toward a student which is based on any actual or perceived trait or characteristic and which creates an objectively hostile school environment.

The traits or perceived traits set out in 2007 Iowa Acts, Senate File 61 are far broader than the protected classes under the Iowa Civil Rights Act and include (but are not limited to) physical attributes, physical or mental ability or, ancestry, political party preference, political belief, socio-economic status, or familial status.

Senate File 61 does not detail the legal or disciplinary consequences of a violation. Instead, the Act calls for the district policy to outline "*[t]he consequences and appropriate remedial action for a person who violates the antiharassment and antibullying policy.*" In evaluating complaints, the Act calls upon the investigator to "consider the totality of circumstances presented in determining whether conduct objectively constitutes harassment or bullying...."

These revisions have been adopted and will become effect on January 9, 2008. The department made three changes to the rules prior to adoption. First, the terms "sexual orientation" and "gender

identity" were added to the preamble. Second, a reference to the enabling statute was corrected. Third, the following sentence was added to subrule 12.3(13), paragraph "b": "The local board policy must set forth all 17 of the above enumerated traits or characteristics, but does not need to be limited to the 17 enumerated traits or characteristics."

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Open enrollment, IAB Vol. XXX No. 13, ARC 6480B, Notice.

The department proposes these amendments in response to the June 28, 2007 decision of the United States Supreme Court, which held student attendance assignments may not be based solely or primarily on race; see: *Parents Involved in Community Schools v. Seattle School District*, 05-908, 551 U.S. ___ (2007). The proposed rules amend the definition of "minority student" and establish definitions for "diversity plan", "voluntary diversity plan", and "eligible district". Rather than defining "minority student" solely in terms of race, the amendments allow eligible districts to define the term for themselves as long as race is not the sole or the determinative factor.

Under the proposed rules, eligible school districts will still be able to deny open enrollment requests if the enrollment or release of the student will negatively impact the district's voluntary diversity plan. The proposed rules also declare all voluntary desegregation plans adopted prior to June 28, 2007 to be invalid. Districts that desire to adopt a voluntary diversity plan for open enrollment must do so by March 1, 2008.

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Administrator quality program, IAB Vol. XXX No. 15, ARC 6475B, NOTICE

2007 Iowa Acts, Senate File 277 contains a variety of revisions to the student achievement and teacher quality program. The Acts calls for an administrator quality program and requires evaluation standards for administrators and ongoing professional development. This new program provides mentoring and opportunities for professional development along with an evaluation process based on the newly developed Iowa standards for school administrators. At the conclusion of a beginning administrator's first year of employment, the beginning administrator shall

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be comprehensively evaluated to determine if the administrator meets expectations to move to a standard administrator license. The proposed rules set out a series of criteria to evaluate the administrator. Generally, The criteria look to the vision of the administrator as evidenced by the educational program and student achievement, support for a culture of learning, management skills, family and community efforts, and ethics.

Senate File 277 also calls for each district to establish a teacher quality committee, consisting of administrators and teachers. This committee will monitor the implementation of the program; determine the use and distribution of the professional development; monitor the professional development to ensure that the professional development meets professional development plans; ensure that agreements determine the compensation for teachers on the committee for the extra work; and make recommendations concerning the use of market factor incentives for classroom teachers.

NATURAL RESOURCES COMMISSION

11:25

Water trails development program and low-head dam safety program, IAB Vol. XXX No. 14, ARC 6444B, NOTICE

The water trails development program and the low-head dam safety program provide funds to two types of projects. The water trails development program provides funds to cities, counties and nonprofit organizations in the state of Iowa to assist and encourage the development of water trails and appropriate river management through the design and spacing of accesses. Grant proposals for water trails development projects do not require cost share; however, cost sharing is strongly encouraged through the selection criteria.

The low-head dam safety program provides funds to cities and counties to warn the general public about drowning hazards related to low-head dams or that remove or otherwise modify the dams. Grant proposals for low-head dam safety projects must provide at least 50 percent of the funds required to complete small, medium-sized, and large projects.

DEPARTMENT OF INSPECTIONS AND APPEALS

11:40

Food and consumer safety, IAB Vol. XXX, No. 14, ARC 6454B, NOTICE.

These proposed rules in part implement Iowa Acts, Senate File 601; §215 of that legislation specifically raised the statutorily set inspection fees for food service establishments. That section also provides for a fifty dollar discount if the manager holds an active certified food protection manager certificate from an approved program, and the food service establishment has not been issued a critical violation during the previous year.

The proposed rules make a variety of changes to the food inspection program. The definition of a food service establishment is expanded to include a salvage or distressed food operation (§211 of the Act). The proposal also excludes from the definition of a food service establishment a nonprofit organization which serves on the premises as no more than one day per calendar week and not on two or more consecutive days; twice per year serves food to the public for up to three consecutive days; or uses the premises of another nonprofit organization not more than twice per year for one day to serve food. this provision primarily exempts from coverage the pancake breakfasts and luncheons held by fraternal groups, veterans organizations and churches as periodic fund raisers.

The proposal also modifies the imposition of fines. Current provisions impose a penalty of 100 dollars for each violation. The amendment defines each critical violation as a separate violation. A critical violation that is uncorrected after the required date will be considered a violation for *each day* it remains uncorrected.

The proposed rules adopt the 2005 Food Code with Supplement of the Food and Drug Administration, and follow that general adoption with specific Iowa amendments.

INSURANCE DIVISION

1:30

Pharmacy benefit managers, IAB Vol. XXX, No. 16, ARC 6511B, NOTICE.

These proposed rules implement Iowa Acts, Senate File 512; a public hearing is scheduled for January 22, 2008, at the Insurance Division offices.

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The new legislation regulates the activities of pharmacy benefits managers; these individuals administer or manage prescription drug benefits provided by a insurer, health benefit plan, health maintenance organization or similar third-party payor program. Pursuant to the Act these managers must be certified (similar to a three-year license; like a license, it can be suspended or revoked) as third-party administrators under Code Chapter 510.

The pharmacy benefits manager coordinates the policy benefit between the insured, the pharmacy provider network and the insurer. Under the Act, The manager cannot impose recordkeeping requirements on the pharmacy network that is more stringent than state or federal law; if the insurer elects to terminate the benefit the manager must notify the pharmacy network within ten days, notifying the pharmacies of the effective days of that termination.

If a manufacturer or supplier gives notice of a price increase, the manager must adjust payments to the pharmacy network within three days.

The proposed rules contain additional requirements. Section three of the Act specifically requires rulemaking for timely payment of pharmacy claims and for a process for adjudication of complaints and settlement of disputes related to pharmacy auditing practices, termination of pharmacy agreements, and timely payment of pharmacy claims.

A claim that requires no further information or adjustment must be paid within twenty-five days of electronic receipt or thirty days after receipt of a paper copy. If the claim is not timely paid, the manager must pay the pharmacy or pharmacist interest at the annual rate of ten percent annum.

The pharmacy benefits manager must develop a complaint process; all complaints and the ultimate resolution must be submitted to the division a quarterly basis.

The rules contain detailed provisions relating to the auditing of the pharmacy network. The pharmacy benefits manager may audit a pharmacist, providing one weeks notice. A pharmacist must be consulted when the audit involves professional or clinical judgment. An audit period may not exceed two years, Each

pharmacy must be audited under the same standards and parameters as other similarly situated pharmacies. Allegations of overpayment must be supported by adequate documentation, identifying the specific claims at issue.

An audit appeal process must be provided, followed by an opportunity for external review by the Insurance Division.

A pharmacy agreement cannot be terminated solely because of filing a complaint, grievance or appeal, or because of any dispute relating to a decision of the pharmacy benefits manager to deny or limit benefits to covered persons, or any assistance provided to covered persons by the pharmacy or pharmacist in obtaining reconsideration of the decision. Prior to any termination the manager must provide written explanation to the pharmacy or pharmacist of the reason for the termination at least 30 days prior to the termination date unless the termination is based on the loss of the pharmacy's license to practice, cancellation of professional liability coverage or conviction of fraud. Termination is subject to external review by the division.

HUMAN SERVICES DEPARTMENT

2:00

Nursing facilities: renovation or reconstruction, IAB Vol. XXX No. 14, ARC 6452B, EMERGENCY AFTER NOTICE.

This filing provides Medicaid reimbursement to nursing facilities for the cost of major renovation or new construction for the purpose of rectifying a violation of Life Safety Code requirements or developing home- and community-based waiver program services. The program establishes mechanisms for immediately increasing reimbursements based on capital expenditures. Normally facility rates are recalculated biennially.

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Personal needs allowance for veterans, IAB XXX No. 14, ARC 6518B, Filed.

The department adopted this amendment to revise Medicaid policy regarding personal needs allowances for members who reside in a long-term care facility and receive a pension from the U.S. Department of Veterans Affairs. The prior rule allowed the pension recipient to receive a 90 dollar personal needs allowance from the pension in lieu

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of an allowance from the other income. The amended rule allows a veteran to retain the standard personal needs allowance in addition to the 90 dollar allowance from the pension.