



Administrative Rules Review Committee

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THE RULES DIGEST

October, 2008

Scheduled for committee review
Tuesday, October 14th, 2008 8:30 A.M.
Senate Committee Room #116

Reference
XXXI IAB No. 06(09/10/08)
XXXI IAB No. 07(09/24/08)

HIGHLIGHTS IN THIS ISSUE:

LONG-TERM CARE INSURANCE, Insurance Division.....1
2009 LOW-INCOME HOUSING TAX CREDIT, Iowa Finance Authority.....2
SMOKING RESTRICTIONS. Public Health Department.....4
HVAC LICENSING. Public Health Department5

INSURANCE DIVISION

8:35

Annual audit of insurers, IAB XXXI No. 6, ARC 7124B, NOTICE.

The Division proposes to monitor the financial condition of insurers by requiring an annual audit, conducted by independent certified public accountants, of financial statements reporting the financial position and the results of operations of insurers. Insurers with direct premiums written in this state of less than one million dollars in any calendar year and less than 1,000 policyholders or insurers which meet a substantially similar requirement in another jurisdiction are exempt from this requirement and insurers having premiums of less than \$100 million in any calendar year may request an exemption.

Each insurer must designate an independent certified public accountant to prepare the audit report; that report must include:

- Report of independent certified public accountant.
• Balance sheet reporting admitted assets, liabilities, capital and surplus.
• Statement of operations.
• Statement of cash flow.
• Statement of changes in capital and surplus.
• Notes to financial statements.

The rules set out a variety of qualifications for the independent accountant and for the audit itself, which must be conducted in accordance with generally accepted auditing standards. These requirements will be effective on January 1, 2010.

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Long-term care insurance: benefit trigger determinations/full and fair disclosure, IAB XXXI No. 7, ARC 7207B, 7200B, NOTICE.

2008 Iowa Acts, House File 2694 requires long-term care insurers to notify a claimant when the insurer denies the payment of benefits because the claimant's benefit trigger has not been met and to provide an internal review process of that determination. The claimant then has the right to request an independent review of the benefit trigger determination. The independent reviewer will be selected by the insurer from a list compiled by the commissioner; the rules set out detailed standards for these independent review entities.

The Act empowers the commissioner to provide standards for full and fair disclosure by setting forth the manner and content of disclosures required for the sale of long-term care insurance policies on a variety of issues specified in the statute.

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ARC 7200B relates to long-term care policies sold before 2003. As a condition of approval for a premium increase in an existing long-term care policy, the insurer must provide notice to all policyholders that in lieu of the requested premium rate increase, the insured may opt for a reduced benefit, a contingent benefit upon lapse, or any other alternative mechanism filed by the insurer and approved by the commissioner.

* * *

Pharmacy benefit managers, IAB Vol. XXXI, No. 4, ARC 7082B, 70 Day Delay.

This filing was reviewed in September, with a 70 day delay placed on portions of the filing. This has been a lengthy rulemaking effort; rulemaking initially began in January, 2008; with a re-notice published in May.

2007 Iowa Acts, Senate File 512 regulates pharmacy benefits managers; these managers coordinate the policy benefit between the insured, the pharmacy provider network, and the insurer. The rules relate to recordkeeping, auditing procedures, complaint procedures, and conditions of terminating a pharmacy agreement.

At the September meeting representatives of a benefit manager organization protested several portions of this filing, one of which was the auditing procedures set out in the rules. The representatives requested that pending the outcome of a fraud investigation the total payments to a pharmacy be limited to \$25,000, in order to limit the potential loss. Noting that initially the Division itself was to provide the required review, the representatives also raised several questions concerning the independent third party review process, including: Who pays for the cost of the review? How long will the review process last? May the parties be represented by legal representatives? Is the decision binding? How is the third party selected?

Committee members expressed some concern about third party audits and imposed a 70 day delay, with the request that the Division and the stakeholders meet privately to resolve these issues.

IOWA FINANCE AUTHORITY

9:30

2009 Low-income housing tax credit program, IAB XXXI No. 6, ARC 7124B, NOTICE.

Iowa is annually allocated tax credit authority based on a per-capita amount derived from population estimates. In 2008, IFA's per capita authority was almost six million dollars. The program will not allocate more than \$950,000 to a single developer. The maximum tax credit that will be awarded to any one project is \$780,000.

In the 2009 program, there will be six set-asides. Ten percent of the credit is set aside for the preservation of qualifying federally assisted housing units. Ten percent is set aside for counties that are not located in metropolitan statistical area (MSA) and have not received an allocation in the past five years. Ten percent is set aside for qualified nonprofit organizations and cannot be used for any other purpose.

Forty percent is set aside for the construction of projects located in: Linn, Louisa, Black Hawk, Johnson, Muscatine, Butler, and Bremer counties; if needed, no less than sixty percent of those credits will be awarded to projects located in Linn County.

Five percent set aside for USDA-rural development rental housing program properties.

Five percent will be reserved for credit fluctuations and contingencies.

PUBLIC SAFETY DEPARTMENT

9:45

Reduced burn cigarettes, IAB XXXI No. 7, ARC 7180B, NOTICE.

Iowa Code Supplement chapter 101B provides for cigarette fire safety standards that will restrict sales of cigarettes in Iowa to "fire-safe cigarettes." Under the statute cigarette brands must be tested and certified by the manufacturer that no more than 25 percent of the cigarettes tested in a test trial shall exhibit full-length burns, in forty tests.

Civil fines are imposed on a sliding scale. For a manufacturer, the first offense penalty cannot exceed \$5,000. For each subsequent offense the penalty is not to exceed \$10,000. For a retailer the first offense penalty is not to exceed \$500; and for

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each subsequent offense the penalty not to exceed \$2,000 for each sale.

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Electrical inspection program, IAB XXXI No. 7, ARC 7176B, NOTICE.

2007 Iowa Acts, chapter 197, created the new electrician licensing program, now in effect, and a state electrical inspection program within the fire marshal division, which will become effective January 1, 2009. These detailed rules establish the qualifications for inspectors and establish requirements for a permit and inspection system, including a fee schedule, for commercial, industrial single facility and multi-family structures, and alarm systems. Failure to comply with the inspection requirements may result in a civil penalty of no more than \$750.

ENVIRONMENTAL QUALITY COMMISSION

12:45

Wastewater disposal, IAB XXXI No. 6, ARC 7152B, NOTICE.

This highly detailed rulemaking revises several chapters of rules relating to wastewater disposal. Some changes provide additional detail to the NPDES permitting process and adds three classes of facilities that will be exempted from obtaining operation permits.

Other changes relate to prohibited discharges, listing pollutants that cannot be discharged to public or private domestic sewage. New language on effluent limits includes requirements for the reuse of treated effluent on golf courses and the calculations used to determine the secondary treatment standard requirement for 85% removal. The proposal also revises and expands monitoring requirements.

* * *

Commission voting requirements, IAB XXXI No. 01, ARC 7140B, ADOPTED.

This provision, reviewed in July and August as an "emergency" rule, was controversial because of the use of the emergency rulemaking procedure. The EPC now supplants that emergency rulemaking with a filing following the regular process.

Substantively, this rule changes the number of commissioners needed to take commission action; i.e., it changes the quorum requirement. The previous quorum requirement that a majority of the commission constituted a quorum and that "the concurrence of a majority of the members of the commission is required to determine any matter." In short, five members (of nine statutory positions) constituted a quorum and an affirmative vote of five members was required to take action. Under this filing the required number of affirmative votes for official action will vary depending on the number of commissioners currently appointed by the Governor. Essentially the rule provides that that four votes are sufficient to take action when there are only seven appointed members.

Note that the EPC has specific statutory authority for this rulemaking. Iowa Code §455A.6 states:

5. A majority of the members of the commission is a quorum, and a majority of a quorum may act in any matter within the jurisdiction of the commission, unless a more restrictive rule is adopted by the commission.

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Technical standards and corrective action requirements for owners and operators of underground storage tanks, IAB XXXI No. 1, ARC 6892B, FILED. 70 DAY DELAY.

This rulemaking was initially reviewed by the Committee in March, May, July and September, a seventy day delay was placed on the filing in July. It amends current rules relating to the risk-based corrective action (RBCA) assessment process for underground storage tank releases and the use of computer modeling. Sites are classified based on the level of risk and a three-tiered process is used to evaluate risk to nearby water sources.

At the July meeting all stakeholders supported the adoption of the new computer model, noting that its improved accuracy will save cleanup costs. The rulemaking generally was supported by representatives of public water supplies. Opponents of these rules contended that costs for a "screening" assessment for all newly discovered releases was \$2,000 per site, and an estimated assessment and modeling expense was \$100,000 at 20% of all new release sites each year. EPC representatives stated that the rules had been developed with the full participation of the

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stakeholders and representatives also questioned the accuracy of the cost estimates.

PUBLIC HEALTH DEPARTMENT

1:20

Smoking restrictions, IAB XXXI No. 3, ARC 6990B & 6989B, NOTICE & EMERGENCY FILED.

2008 Iowa Acts, House File 2212 sets out specific restrictions on smoking; section 8 of the Act delegates both enforcement and rulemaking duties to the Department of Public Health. Rules were adopted on an "emergency" basis, effective July 1 and placed under notice at that same time. The Department has held dozens of hearings via five ICN sites.

In essence, the Act prohibits smoking in any *enclosed* space including places of employment or places of public use; exceptions include tobacco shops, private residences, personal motor vehicles, certain commercial motor vehicles, and the gaming area of a casino. The prohibition also applies to a variety of outdoor locations; these include:

- Outdoor sports and entertainment events;
- Restaurant patios;
- "School grounds, including parking lots, athletic fields, playgrounds, tennis courts, and any other outdoor area under the control of a public or private educational facility including inside any vehicle located on such school grounds" [Note: the school grounds restriction is very broad and would appear to include the entire campus; there is nothing in the Act that indicates that the term "school" is limited to K-12 schools or public schools];
- The grounds of public buildings, excluding the state fairgrounds, corrections institutions or parts of the Iowa National Guard.

The "grounds" restriction is a significant issue; the proposed rules define this term, adding needed detail and somewhat limiting the scope of the statutory term:

"an outdoor area of a public building that is used in connection with the building, including but not limited to a sidewalk immediately adjacent to the building; a sitting or standing area immediately adjacent to the building; a patio; a deck; a curtilage or courtyard; a swimming or wading pool; a beach; or any other outdoor area as designated by the person having custody or control of the public building. A person having custody or control of a public building may exclude from the designated grounds of any public building the following: a parking lot, the course of play at a golf course, a hiking trail, locations of

an individual campsite or campfire, or a lake, river, or other body of water..."

This definition may allow smoking in parking lot and parks and similar areas at the discretion of the supervisor. Otherwise, smoking near government buildings is curbside.

The Act has extensive enforcement provisions. All government inspectors, such as hotel, food service, building or other inspectors are required to assess compliance with these requirements and report any violations to the Department. An employee or private citizen may bring a legal action to enforce the restrictions or may file a complaint with the Department.

Note that enforcement of these restrictions, including the imposition of fines, are through the judicial process, not through the contested case process. The Department or any other person aggrieved or adversely affected by a violation of these restrictions may seek injunctive relief in the courts. Violations are designated a public nuisance and the Department may seek a restraining order, injunction, or take other legal action to abate the nuisance, including action to recover the costs of the abatement. Under the rules the Department has delegated authority to local law enforcement agencies to enforce these provisions.

The proposed rules detail the so-called bar exemption. §3(2)"b" of the Act prohibits outdoor smoking at the: "[o]utdoor seating or serving areas of restaurants." This would allow smoking at the outdoor seating or serving areas of bars. The proposed rules have construed the definition of bar to mean an establishment where food preparation: "...is limited to the service of ice, prepackaged snack foods, popcorn, peanuts, and the reheating of commercially prepared foods that do not require assembly, such as frozen pizza, prepackaged sandwiches, or other prepackaged, ready-to-serve products." This definition has been controversial, with bar owners contending that it is too restrictive.

A second issue involves smoking restrictions in certain motor vehicles. the Act requires that a no smoking sign be placed in the vehicle, while the rules require that sign to be 24 square inches (e.g.: 4x6). Opponents contend this sign is too large.

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Regulatory analysis: smoking restrictions, IAB XXXI No. 6.

As part of the overall rulemaking, an eligible stakeholder requested a small business requested a regulatory analysis pursuant to Iowa Code §17A.4A(1), which states in part that an agency:

“shall issue a regulatory analysis of a proposed rule ...if the rule would have a substantial impact on small business and if, within thirty-two days after the published notice of the proposed rule adoption, a written request for analysis is submitted to the agency by ...an organization representing at least twenty-five [persons who qualify as small business owners].”

The statement identifies the toxic or carcinogenic chemicals found in secondhand smoke, and provided statistics to quantify the risk. The analysis noted that the U.S. Surgeon General has concluded that the only way to fully protect employees and the public is to completely eliminate smoking in indoor spaces.

The analysis stated that only 39 percent of restaurants (excluding fast food) and two percent of bars prohibited smoking. The analysis stated that a smokefree workplace has an immediate impact on air quality and improved health outcomes, citing a variety of statistics from other jurisdictions.

In terms of the economic impact of the new regulation the analysis states:

"Evidence from all the peer-reviewed studies that examine objective measures such as sales tax revenues, employment levels or business license applications shows that smoke-free laws do not have an adverse economic impact on business revenues, including revenues in the hospitality industry."

The analysis discusses the Department's decision to interpret the so-called "bar exemption" narrowly, applying the outdoor exception only to bars which did not actually prepare any food products for customers. The analysis states there is no other practical means to provide the exemption with detailed record-keeping and enforcement requirements.

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HVAC licensing, IAB XXXI No. 6, ARC 7133B, NOTICE.

With the enactment of 2007 Iowa Acts, chapter 198, and 2008 Iowa Acts, House File 2390, Iowa now licenses plumbers and mechanical professionals.

This legislation establishes a license for persons who provide plumbing, heating, ventilation, and air conditioning (HVAC) services performed in ducted systems, all gas lines associated with any component of a plumbing or mechanical system, or services performed on refrigeration or hydronic systems. These rules establish a licensing board, as part of the Department of Public Health, to test, license, and discipline persons licensed under the new law.

Licenses come in three categories and vary according to experience: apprentice, journeyman, and master. Master licensees must present proof of liability insurance as a condition of licensure.

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Water treatment systems, IAB XXXI No. 7, ARC 7171B, NOTICE.

The Department updates a chapter of existing rules relating to the sale of water treatment systems for which a claim is made that the system reduces health-related contaminants in drinking water. The rules are very similar to those currently in place, but provide greater detail. As part of these regulations a water treatment system must be registered in Iowa before being sold and a performance data sheet and a consumer information booklet must be given to the buyer before a sale is finalized. The rule prohibits false or deceptive claims and representations that a water treatment system is approved or endorsed by the state of Iowa.

ELDER AFFAIRS DEPARTMENT

Office of the substitute decision-maker, IAB XXXI No. 6, ARC 7133B, NOTICE.

Iowa Code chapter 231E was enacted in 2005, creating the state office of substitute decision maker; the office is to create and administer a statewide network of substitute decision makers to finalize a person's affairs after death or provide other services when there is no willing and appropriate person such as a guardian, conservator, personal representative, or other representative available to serve in that capacity. Under these rules all substitute decision makers must have graduated from an accredited four-year

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college or university and be currently certified by the National Guardianship Association. A substitute may serve no more than ten clients at a time.

The rules establish a detailed fee schedule for substitute decision maker services. Fees may be adjusted or waived based on ability to pay; fees cannot be assessed on income or support derived from Medicaid.

VETERANS AFFAIRS DEPARTMENT

Veterans trust fund, IAB XXXI No. 7, ARC 7162B, ADOPTED.

These provisions were originally adopted on an emergency basis in July, and reviewed by the Committee in August 2008. 2008 Iowa Acts, Senate File 2124 has significantly expanded the availability of the veterans trust fund and authorized the use of emergency rulemaking to speed these changes. Household income for eligibility purposes is raised from 200% to 300% of the poverty guideline. Travel expenses are expanded to include both the injured veteran and the veterans spouse, limited to \$1000 in a twelve month period. Training is expanded from a technical college or school, to include a postsecondary institution.

Health care expenses were previously limited to residents in a care facility; that limitation has been eliminated and benefits expanded to include dental care and dentures; vision care, including eyeglasses. This benefit is limited to \$2,500 for dental care, \$500 for vision care, \$1,500 per ear for hearing care, and \$1,500 for prescription drugs. This benefit is not available if available liquid assets of the veteran are in excess of \$5,000 (note this restriction has been raised from \$3,000).

The fund will also cover the purchase of durable equipment that allows the veterans to remain in their homes, up to a limit of \$2,500. Again, this benefit is not available if available liquid assets of the veteran are in excess of \$5,000.

Mental health, substance abuse, and family counseling services are expanded, to an annual limit of \$5,000. Individual counseling is eligible for up to \$2,500; substance abuse treatment and counseling combined are eligible for up to \$3,500,

and families counseling services are eligible for up to \$5,000.

Emergency expenses related to vehicle repair, housing repair, or temporary housing assistance may be covered up to \$2,500 for vehicle repair, \$3,000 for housing repair, and \$1,000 for transitional housing.