



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; and agricultural credit corporation maximum loan rates [535.12].

PLEASE NOTE: Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

NOTE: In accordance with Iowa Code section 2B.5A, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

Schedule for Rule Making 2018

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 27 '17	Jan. 17 '18	Feb. 6 '18	Feb. 21 '18	Feb. 23 '18	Mar. 14 '18	Apr. 18 '18	July 16 '18
Jan. 12	Jan. 31	Feb. 20	Mar. 7	Mar. 9	Mar. 28	May 2	July 30
Jan. 26	Feb. 14	Mar. 6	Mar. 21	Mar. 23	Apr. 11	May 16	Aug. 13
Feb. 9	Feb. 28	Mar. 20	Apr. 4	Apr. 6	Apr. 25	May 30	Aug. 27
Feb. 23	Mar. 14	Apr. 3	Apr. 18	Apr. 20	May 9	June 13	Sep. 10
Mar. 9	Mar. 28	Apr. 17	May 2	May 4	May 23	June 27	Sep. 24
Mar. 23	Apr. 11	May 1	May 16	***May 16***	June 6	July 11	Oct. 8
Apr. 6	Apr. 25	May 15	May 30	June 1	June 20	July 25	Oct. 22
Apr. 20	May 9	May 29	June 13	***June 13***	July 4	Aug. 8	Nov. 5
May 4	May 23	June 12	June 27	June 29	July 18	Aug. 22	Nov. 19
May 16	June 6	June 26	July 11	July 13	Aug. 1	Sep. 5	Dec. 3
June 1	June 20	July 10	July 25	July 27	Aug. 15	Sep. 19	Dec. 17
June 13	July 4	July 24	Aug. 8	Aug. 10	Aug. 29	Oct. 3	Dec. 31
June 29	July 18	Aug. 7	Aug. 22	***Aug. 22***	Sep. 12	Oct. 17	Jan. 14 '19
July 13	Aug. 1	Aug. 21	Sep. 5	Sep. 7	Sep. 26	Oct. 31	Jan. 28 '19
July 27	Aug. 15	Sep. 4	Sep. 19	Sep. 21	Oct. 10	Nov. 14	Feb. 11 '19
Aug. 10	Aug. 29	Sep. 18	Oct. 3	Oct. 5	Oct. 24	Nov. 28	Feb. 25 '19
Aug. 22	Sep. 12	Oct. 2	Oct. 17	Oct. 19	Nov. 7	Dec. 12	Mar. 11 '19
Sep. 7	Sep. 26	Oct. 16	Oct. 31	***Oct. 31***	Nov. 21	Dec. 26	Mar. 25 '19
Sep. 21	Oct. 10	Oct. 30	Nov. 14	***Nov. 14***	Dec. 5	Jan. 9 '19	Apr. 8 '19
Oct. 5	Oct. 24	Nov. 13	Nov. 28	Nov. 30	Dec. 19	Jan. 23 '19	Apr. 22 '19
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PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
25	Wednesday, May 16, 2018	June 6, 2018
26	Friday, June 1, 2018	June 20, 2018
1	Wednesday, June 13, 2018	July 4, 2018

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the filing deadline unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

911 telephone systems, 10.2, 10.4(2), 10.7, 10.9, 10.13 IAB 5/9/18 ARC 3778C	Cyclones Conference Room, Suite 500 7900 Hickman Rd. Windsor Heights, Iowa	May 29, 2018 11 a.m.
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NATURAL RESOURCE COMMISSION[571]

Zoning of the Iowa River, Iowa Falls, Hardin County—buoys, speed restrictions, 40.36 IAB 5/9/18 ARC 3782C	Conference Room 4W Wallace State Office Bldg. Des Moines, Iowa	May 29, 2018 1 to 2 p.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Chiropractic physicians—colleges, continuing education, 42.2(2), 42.5(1), 42.6, 44.1, 44.2, 44.3(2) IAB 5/9/18 ARC 3774C	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	May 29, 2018 8 to 8:30 a.m.
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Chiropractic physicians—practice, discipline, 43.3, 43.4(2), 43.10, 45.2 IAB 4/25/18 ARC 3754C	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	May 15, 2018 7:30 to 8 a.m.
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Physical therapists and physical therapist assistants, occupational therapists and occupational therapy assistants—licensure, continuing education, 200.6, 203.3(2), 206.8 IAB 4/25/18 ARC 3762C	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	May 15, 2018 8 to 8:30 a.m.
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TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Purchasing—ICN sole-source agreements, 5.1 IAB 5/9/18 ARC 3781C	Executive Director's Conference Room First Floor Grimes State Office Bldg. Des Moines, Iowa	June 4, 2018 11 a.m. to 12 noon
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TRANSPORTATION DEPARTMENT[761]

Highway bridge program for cities and counties; swapping of surface transportation block grant funds, amendments to chs 161, 162 IAB 5/9/18 ARC 3777C	Administration Building First Floor, South Conference Room 800 Lincoln Way Ames, Iowa	May 31, 2018 10 a.m. (If requested)
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Reimbursable services and supplies, 174.3(1)“a” IAB 5/9/18 ARC 3776C	Administration Building First Floor, South Conference Room 800 Lincoln Way Ames, Iowa	May 31, 2018 11 a.m. (If requested)
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Aeronautics and aviation vertical infrastructure—correction of citations, amendments to chs 700, 710, 715, 716, 717 IAB 4/25/18 ARC 3755C	Administration Building First Floor, South Conference Room 800 Lincoln Way Ames, Iowa	May 17, 2018 1 p.m. (If requested)
Railroad transportation and safety, amendments to chs 800, 810, 813 IAB 4/25/18 ARC 3756C	Administration Building First Floor, South Conference Room 800 Lincoln Way Ames, Iowa	May 17, 2018 10 a.m. (If requested)
Notification of railroad accidents/incidents, amendments to ch 802 IAB 4/25/18 ARC 3757C	Administration Building First Floor, South Conference Room 800 Lincoln Way Ames, Iowa	May 17, 2018 11 a.m. (If requested)
Railroad revolving loan and grant fund program, amendments to ch 822 IAB 4/25/18 ARC 3759C	Administration Building First Floor, South Conference Room 800 Lincoln Way Ames, Iowa	May 17, 2018 9 a.m. (If requested)
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Inmate calling rates, 22.19(8) IAB 5/9/18 ARC 3773C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	July 10, 2018 1 to 3 p.m.
Electric utility services, amendments to ch 20 IAB 4/11/18 ARC 3726C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	May 16, 2018 9 a.m. to 12 noon
Universal service, 39.2, 39.3, 39.6, 39.7, 39.8(1) IAB 4/25/18 ARC 3753C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	June 20, 2018 9 a.m. to 12 noon

The following list will be updated as changes occur.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies are included alphabetically in SMALL CAPITALS at the left-hand margin.

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ARC 3778C

**HOMELAND SECURITY AND EMERGENCY
MANAGEMENT DEPARTMENT[605]****Notice of Intended Action****Proposing rule making related to the 911 network and providing an opportunity for public comment**

The Department of Homeland Security and Emergency Management hereby proposes to amend Chapter 10, "911 Telephone Systems," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 34A.22.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 34A as amended by 2018 Iowa Acts, House File 2254.

Purpose and Summary

The proposed amendments are intended to implement 2018 Iowa Acts, House File 2254. The amendments provide for the elimination of the wireline 911 network and the merging of that associated 911 traffic onto the Next Generation 911 Network. Additionally, the amendments create a public safety answering point (PSAP) shared technology service for those answering points wishing to access 911 call processing equipment in a host remote environment. Thirdly, the amendments do not alter the surcharge funding streams related to the wireline surcharge and the emergency communications surcharge local PSAP pass through percentage. Finally, the consolidation grants remain in place while also removing the spending limitation that had been in place on the Emergency Communications Service Fund.

Fiscal Impact

This rule making has a fiscal impact to the State of Iowa. The Department is estimated to spend \$10.6 million to merge networks and create the shared service environment. With 100 percent PSAP participation, this process will create an annual savings of \$6.6 million in expenses for the local 911 service boards and PSAPs.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Administrative Rules Coordinator no later than 4:30 p.m. on May 29, 2018. Comments should be directed to:

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

John Benson
 Department of Homeland Security and Emergency Management
 7900 Hickman Road, Suite 500
 Windsor Heights, Iowa 50265
 Email: john.benson@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

May 29, 2018	Cyclones Conference Room, Suite 500
11 a.m.	7900 Hickman Road
	Windsor Heights, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** definitions in rule **605—10.2(34A)**:

“911 call processing equipment” means equipment owned by the department that functions in a host remote environment, provides 911 call processing functionality to public safety answering points, and utilizes the next generation 911 network. “911 call processing equipment” includes but is not limited to computer aided dispatch, voice logging recorders, mapping, and emergency medical dispatch.

“911 call processing equipment provider” means a vendor or vendors selected by the department to provide 911 call processing equipment.

“911 call transport provider” means a vendor or vendors selected by the department to deliver aggregated wireline 911 call traffic to the next generation 911 network and from the next generation 911 network to public safety answering points.

“Next generation 911 network service provider” means a vendor or vendors selected by the department to provide next generation 911 network functionality.

ITEM 2. Amend rule **605—10.2(34A)**, definitions of “911 service plan,” “Next generation 911 network,” and “Voice over internet protocol service” as follows:

“911 service plan” means a plan, produced by a joint 911 service board, which includes the information required by Iowa Code subsection 34A.2(2) as ~~enacted~~ amended by 2017 2018 Iowa Acts, Senate File 500, section 3 House File 2254, section 2.

“Next generation 911 network” means an internet protocol-enabled system that enables the public to transmit digital information to public safety answering points and is responsible for the delivery of all 911 messages within the state. “Next generation 911 network” replaces enhanced 911 and ~~that~~ includes but is not limited to 911 voice and nonvoice messages generated by originating service providers, ESInet, GIS, cybersecurity, and other system components.

“Voice over internet protocol service” means a service to which all of the following apply:

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

1. The service provides real-time, two-way voice communications transmitted using internet protocol ~~and~~ or a successor protocol.

2. and 3. No change.

ITEM 3. Amend subrule 10.4(2) as follows:

10.4(2) The 911 service plan shall, at a minimum, encompass the entire county, unless a waiver is granted by the director. Each plan shall include:

a. to *g.* No change.

~~*h.* Identification of the agency responsible for management and supervision of the 911 emergency telephone communication system.~~

i. h. A statement of recurring and nonrecurring costs to be incurred by the joint 911 service board. These costs shall be limited to costs directly attributable to the provision of 911 service.

~~*j. i.*~~ *i.* The total number of telephone access lines by a telephone company or companies having points of presence within the 911 service area and the number of this total that is exempt from surcharge collection as provided in rule 605—10.9(34A) and Iowa Code subsection 34A.7(3).

~~*k. j.*~~ *j.* If applicable, a schedule for implementation of the plan throughout the 911 service area. A joint 911 service board may decide not to implement 911 service.

~~*l. k.*~~ *k.* The total property valuation in the 911 service area.

~~*m. l.*~~ *l.* Maps of the 911 service area showing:

(1) The jurisdictional boundaries of all law enforcement agencies serving the area.

(2) The jurisdictional boundaries of all firefighting districts and companies serving the area.

(3) The jurisdictional boundaries of all ambulance and emergency medical service providers operating in the area.

~~(4) Telephone exchange boundaries and the location of telephone company central offices, including those located outside but serving the service area.~~

~~(5) (4)~~ (4) The location of PSAP(s) within the service area.

~~*n. m.*~~ *m.* A block drawing for each telephone central office within the service area showing the method by which the 911 call will be delivered to the PSAP(s).

~~*o. n.*~~ *n.* A plan to migrate to an internet protocol-enabled next generation network.

ITEM 4. Amend rule 605—10.7(34A) as follows:

605—10.7(34A) ~~Wireless~~ NG911 Network Implementation and Operations Plan. Each joint 911 service board, the department of public safety, the 911 communications council, and ~~wireless communications~~ originating service providers shall cooperate with the 911 program manager in preparing the ~~Wireless~~ NG911 Network Implementation and Operations Plan for statewide implementation of ~~wireless~~ NG911 service.

10.7(1) *Plan specifications.* The ~~Wireless~~ NG911 Network Implementation and Operations Plan shall include, at a minimum, the following information:

~~1. *a.*~~ *a.* Maps showing the geographic location within the county of each PSAP that receives ~~wireless~~ 911 ~~telephone~~ emergency calls.

~~2. *b.*~~ *b.* A list of all public safety answering points within the state of Iowa.

~~3. *c.*~~ *c.* A set of guidelines for determining eligible cost as set forth in Iowa Code section 34A.7A.

~~4. *d.*~~ *d.* A schedule for the implementation and maintenance of the next generation 911 ~~systems to provide enhanced wireless 911 phase I and phase II service~~ network.

e. A schedule for the implementation, maintenance and cost sharing of 911 call processing equipment.

10.7(2) *Adoption by reference.* The “~~Wireless~~ NG911 Network Implementation and Operations Plan,” effective ~~August 30, 2015~~ July 1, 2018, and available from the Homeland Security and Emergency Management Department, 7900 Hickman Road, Suite 500, Windsor Heights, Iowa, or at the Law Library in the Capitol Building, Des Moines, Iowa, is hereby adopted by reference effective ~~December 30, 2015~~ August 8, 2018.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

ITEM 5. Amend rule 605—10.9(34A) as follows:

605—10.9(34A) 911 emergency communications fund.

10.9(1) and 10.9(2) No change.

10.9(3) Moneys in the fund shall be expended and distributed in the following manner and order of priority:

a. An amount as appropriated by the general assembly to the department shall be allocated to the director and program manager for implementation, support, and maintenance of the functions of the director and program manager and to employ the auditor of state to perform an annual audit of the 911 emergency communications fund.

b. The program manager shall allocate to each joint 911 service board and to the department of public safety a minimum of \$1,000 per calendar quarter for each ~~public safety answering point (PSAP)~~ PSAP within the service area of the department of public safety or joint 911 service board ~~that has submitted an annual written request to the program manager. The written request shall be made with the Request for Wireless 911 Funds form contained in the Wireless NG911 Implementation and Operations Plan. The request is due to the program manager by May 15, or the next business day, of each year.~~

(1) The amount allocated under paragraph 10.9(3) “*b*” shall be 60 percent of the total amount of surcharge generated per calendar quarter. The minimum amount allocated to the department of public safety and the joint 911 board shall be \$1,000 per PSAP operated by the respective authority.

(2) Additional funds shall be allocated as follows:

1. Sixty-five percent of the total dollars available for allocation shall be allocated in proportion to the square miles of the 911 service area to the total square miles in this state.

2. Thirty-five percent of the total dollars available for allocation shall be allocated in proportion to the wireless 911 calls taken at the PSAP in the 911 service area to the total number of wireless 911 calls originating in this state.

(3) The funds allocated in paragraph 10.9(3) “*b*” shall be used by the PSAPs for costs related to the receipt and disposition of 911 calls.

c. The program manager shall allocate 10 percent of the total amount of surcharge generated per calendar quarter to wireless carriers to recover their costs to deliver wireless E911 phase I services as defined in the Federal Communications Commission (FCC) Docket 94-102 and further defined in the FCC’s letter to King County, Washington, dated May 7, 2001. If this allocation is insufficient to reimburse all wireless carriers for the wireless service provider’s eligible expenses, the program manager shall allocate a prorated amount to each wireless carrier equal to the percentage of the provider’s eligible expenses as compared to the total eligible expenses for all wireless carriers for the calendar quarter during which expenses were submitted. When prorated expenses are paid, the remaining unpaid expenses shall no longer be eligible for payment under paragraph 10.9(3) “*c*.” This allocation is for the period beginning July 1, 2013, and ending June 30, 2026.

~~*d.* The program manager shall reimburse communications service providers on a calendar quarter basis for carriers’ eligible expenses for transport costs between the wireless selective router and the PSAPs related to the delivery of wireless E911 phase I services and the integration of an internet protocol-enabled next generation 911 network as specified in the Wireless NG911 Implementation and Operations Plan. The program manager may also provide grants to the joint 911 service boards and the department of public safety for the purpose of developing and maintaining GIS data to be used in support of the next generation 911 network. The program manager shall provide a notice of availability of such grants and provide guidance and application forms on the department’s Web site, www.homelandsecurity.iowa.gov.~~

e. d. 911 call delivery costs and GIS grants.

(1) The program manager shall reimburse wireline carriers next generation 911 network service providers, 911 call processing equipment providers, 911 call transport providers, and third-party 911 automatic location information database providers on a quarterly basis for the costs of maintaining and upgrading the next generation 911 components and functionalities beyond the input to the 911 selective router, including the 911 selective router network functionality, 911 call processing equipment, 911 call

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

transport from the next generation 911 network to public safety answering points and from the wireless originating service provider network to the next generation 911 network, and the automatic location information database.

(2) The program manager may also provide grants to joint 911 service boards and the department of public safety for the purpose of developing and maintaining GIS data to be used in support of the next generation 911 network. The program manager shall provide guidelines, application forms, and notice of the availability of such grants on the department's website, www.homelandsecurity.iowa.gov.

~~f. e.~~ The department may, in a reserve account established within the 911 emergency communications fund, credit each fiscal year an amount of up to 12½ percent of the annual emergency communications service surcharge collected pursuant to rule 605—10.8(34A) and the prepaid wireless 911 surcharge collected pursuant to rule 605—10.17(34A). However, the moneys contained in such reserve account shall not exceed 12½ percent of the total surcharges collected for each fiscal year. Moneys credited to the reserve account shall only be used by the department for the purpose of repairing or replacing equipment in the event of a catastrophic equipment failure, as determined by the director.

~~g. f.~~ If moneys remain in the fund after all obligations are fully paid under paragraphs 10.9(3) "a," "b," "c," "d," and "e," and "f," an amount of up to \$7,000,000 shall, for the fiscal year beginning July 1, 2017, and ending June 30, 2018, remaining funds shall be expended and distributed in the following priority order:

(1) The director, in consultation with the program manager and the 911 communications council, may provide grants for nonrecurring costs to the department of public safety or joint 911 service board operating a PSAP agreeing to consolidate. For purposes of this subparagraph, "consolidate" means the consolidation of all PSAP systems, functions, 911 service areas, and physical facilities of two or more PSAPs, resulting in responsibility by the consolidated PSAP for all call answering and dispatch functions for the combined 911 service area. Such a grant to a PSAP shall not exceed one-half of the projected cost of consolidation, or \$200,000, whichever is less. The department of public safety or joint 911 service board wishing to apply for such funds shall complete ~~an~~ the Intent to Consolidate Application form ~~prior to December 1, 2017. The form can be found on the department's Web site website, www.homelandsecurity.iowa.gov. Such applications shall provide a detailed consolidation plan and demonstrate that the proposed project shall be completed prior to June 30, 2018 timeline.~~

(2) The program manager, in consultation with the 911 communications council, shall allocate an amount, not to exceed \$100,000 per fiscal year, for development of public awareness and educational programs related to the use of 911 by the public; for educational programs for personnel responsible for the maintenance, operation, and upgrading of local 911 systems; and for the expenses of members of the 911 communications council for travel, monthly meetings, and training, provided, however, that the members have not received reimbursement funds for such expenses from another source.

(3) The program manager shall allocate an equal amount of moneys to each PSAP for the following costs:

1. Costs related to the receipt and disposition of 911 calls, including hardware and software for an Internet protocol-enabled next generation 911 network as specified in the ~~Wireless~~ NG911 Implementation and Operations Plan.

2. Local costs related to access the statewide interoperable communications system pursuant to Iowa Code section 29C.23.

(4) Any moneys remaining in the fund at the end of each fiscal year shall not revert to the general fund of the state but shall remain available for the purposes of the fund.

10.9(4) Payments to local communications service providers and wireless service providers next generation 911 network service providers, 911 call processing equipment providers, 911 call transport providers, and third-party 911 automatic location identification database providers shall be made quarterly, based on original, itemized claims or invoices presented within 20 days of the end of the calendar quarter. Claims or invoices not submitted within 20 days of the end of the calendar quarter are not eligible for reimbursement and may not be included in future claims and invoices. Payments to providers shall be made in accordance with these rules and the State Accounting Policy and Procedures Manual.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

10.9(5) ~~Local communications service providers~~ Next generation 911 network service providers, 911 call processing equipment providers, 911 call transport providers, and third-party 911 automatic location identification database providers shall be reimbursed for only those items and services that are defined as eligible in the ~~Wireless~~ NG911 Implementation and Operations Plan and when initiation of service has been ordered and authorized by the 911 program manager.

10.9(6) If it is found that an overpayment has been made to an entity, the 911 program manager shall attempt recovery of the debt from the entity by certified letter. Due diligence shall be documented and retained at the homeland security and emergency management department. If resolution of the debt does not occur and the debt is at least \$50, the homeland security and emergency management department will then utilize the income offset program through the department of revenue. Until resolution of the debt has occurred, the homeland security and emergency management department may withhold future payments to the entity.

ITEM 6. Amend rule 605—10.13(34A) as follows:

605—10.13(34A) Limitations on use of funds. Surcharge moneys in the 911 service fund may be used to pay recurring and nonrecurring costs including, but not limited to, ~~network equipment~~ 911 call processing equipment, internet and telephone access, software, database, addressing, initial training, and other start-up, capital, and ongoing expenditures. 911 surcharge moneys shall be used only to pay costs directly attributable to the provision of 911 telephone systems and services and may include costs directly attributable to the receipt and disposition of the 911 call.

ARC 3783C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to filing and withdrawal of appeals and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 7, “Appeals and Hearings,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 217.6.

Purpose and Summary

Federal regulations allow providers and authorized representatives to file an appeal on behalf of a Medicaid member for managed care appeals when the member has given the member’s express written consent. These proposed amendments implement the use of Form 470-5526, Authorized Representative for Managed Care Appeals, to obtain the member’s consent.

The proposed amendments will also allow child abuse and dependent adult abuse appeals to be withdrawn on the record before an administrative law judge or in writing and signed by the appellant or the appellant’s legal counsel. Previously, withdrawal requests could only be done in writing. This change provides better access to due process for the Department’s clients.

Federal regulations allow assistance to continue for managed care organization health care services when certain criteria are met. Currently, rule 441—7.9(17A) indicates that assistance only continues if it is for the original period covered by the original authorization. The first use of the term “original” in the rule is a duplication, and it is being removed for clarification purposes.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Fiscal Impact

This rule making has no fiscal impact to the state of Iowa. These rules will streamline existing processes and provide better access to due process for the Department's clients.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

These amendments do not include waiver provisions because they confer benefits on those affected and are generally required by federal law that does not allow for waivers. Individuals may request a waiver under the Department's general rule on exceptions at rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 29, 2018. Comments should be directed to:

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: policyanalysis@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **7.2(5)“b”** as follows:

b. If a provider or authorized representative is acting on behalf of a member by filing this type of appeal, the member's written consent to appeal must be submitted on Form 470-5526, Authorized Representative for Managed Care Appeals, with the appeal request. If the appeal is filed verbally, the managed care organization or agency is responsible for obtaining the member's written consent for the provider or authorized representative.

ITEM 2. Amend paragraph **7.5(2)“a”** as follows:

a. One of the following issues is appealed:
(1) to (17) No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(18) ~~An MCO~~ A provider or an authorized representative, for a managed care appeal, fails to submit a document Form 470-5526, Authorized Representative for Managed Care Appeals, providing the member's approval of the request for appeal.

(19) to (22) No change.

ITEM 3. Amend subrule 7.6(2) as follows:

7.6(2) Authorized representation or responsible party. Persons may be represented for purposes of this chapter by an authorized representative or an individual, ~~or~~ organization, or provider recognized by the department as acting responsibly for an applicant or beneficiary pursuant to policy governing a particular program (hereinafter referred to as a "responsible party"), unless otherwise specified by statute or federal regulations.

a. The designation of an authorized representative must be in writing and include the signature of the person designating the authorized representative. Medicaid members may appoint an authorized representative or provider to act on their behalf during the appeals process regarding an adverse benefit determination made by a managed care organization by signing Form 470-5526, Authorized Representative for Managed Care Appeals. Legal documentation of authority to act on behalf of a person, such as a court order establishing legal guardianship or a power of attorney, shall serve in place of a signed designation by the person.

b. No change.

c. A provider or staff member or volunteer of an organization serving as an authorized representative or responsible party must ~~sign an agreement~~ affirm that such provider, staff member or volunteer will adhere to the regulations in Part 431, Subpart F, of 42 CFR Chapter IV and in 45 CFR 155.260(f) (relating to confidentiality of information), § 447.10 of 42 CFR Chapter IV (relating to the prohibition against reassignment of provider claims as appropriate for a health facility or an organization acting on the facility's behalf), as well as other relevant state and federal laws concerning conflict of interest and confidentiality of information.

d. to f. No change.

g. Designations of authorized representatives, legal documentation of authority to act on behalf of a person, and modifications or terminations of designations or legal authority may be submitted ~~online via the department's Web site~~, by mail, by electronic mail, by facsimile transmission or in person.

~~h. For purposes of this rule, the department shall accept electronic, including telephonically recorded, signatures and handwritten signatures transmitted by facsimile or other electronic transmission.~~

h. Designations of authorized representatives, legal documentation of authority to act on behalf of a person, and modifications or terminations of designations or legal authority previously submitted to the department that comply with the requirements of this rule will continue to apply for purposes of appeals, consistent with their terms.

ITEM 4. Amend paragraph **7.8(1)"e"** as follows:

e. A Medicaid provider or an authorized representative requesting a hearing on behalf of the member regarding an adverse benefit determination made by a managed care organization must have the prior express written consent of the member or the member's lawfully appointed guardian, ~~except when appealing a medical assistance eligibility determination on Form 470-5526, Authorized Representative for Managed Care Appeals.~~ Legal documentation of authority to act on behalf of a person, such as a court order establishing legal guardianship or a power of attorney, shall serve in place of a signed designation by the person. No hearing will be granted unless the provider submits a document providing the member's consent to the request for a hearing.

ITEM 5. Amend subrule 7.8(8) as follows:

7.8(8) Withdrawal. When the appellant desires to voluntarily withdraw an appeal, the worker, the presiding officer, or the appeals section shall accept a request from the appellant to withdraw the appeal by telephone, in writing or in person. A written request may be submitted in person, by mail or through an electronic delivery method, such as electronic mail, submission of an online form, or facsimile. The appellant may use Form 470-0492 or 470-0492(S), Request for Withdrawal of Appeal, for this purpose.

HUMAN SERVICES DEPARTMENT[441](cont'd)

For child abuse and dependent adult abuse appeals, the request to withdraw an appeal must be made on the record before an administrative law judge or in writing and signed by the appellant or the appellant's legal counsel.

ITEM 6. Amend subparagraph 7.9(5)“a”(4) as follows:

(4) The ~~original~~ period covered by the original authorization has not expired; and

ITEM 7. Amend paragraph 7.9(6)“d” as follows:

d. The ~~original~~ period covered by the original authorization has expired; or

ARC 3785C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to assessment levels for nursing facilities and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 36, “Facility Assessments,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4 and 2015 Iowa Acts, chapter 137 (Senate File 505).

Purpose and Summary

This proposed rule making will amend the assessment level for nursing facilities effective July 1, 2015. The assessment level was changed at the rebase of nursing facility costs on July 1, 2015. Providers were notified of the assessment level with Information Letter 1610 dated February 3, 2016. Providers have been remitting the amounts. This rule making ensures that the rules reflect current practice.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 29, 2018. Comments should be directed to:

HUMAN SERVICES DEPARTMENT[441](cont'd)

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: policyanalysis@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend subrule 36.6(2) as follows:

36.6(2) Assessment level. Effective July 1, 2012, the assessment level for each nursing facility shall be determined on an annual basis and shall be effective for the state fiscal year.

a. Effective July 1, ~~2011~~ 2015, nursing facilities with 46 or fewer licensed beds are required to pay a quality assurance assessment of ~~\$4~~ \$1.36 per non-Medicare patient day. Effective with assessment for the state fiscal year beginning July 1, 2012, the number of licensed beds on file with the department of inspections and appeals as of May 1 of each year shall be used to determine the assessment level for the following state fiscal year.

b. ~~Nursing~~ Effective July 1, 2015, nursing facilities designated as continuing care retirement centers (CCRCs) by the insurance division of the Iowa department of commerce are required to pay a quality assurance assessment of ~~\$4~~ \$1.36 per non-Medicare patient day. Effective with assessment for the state fiscal year beginning July 1, 2012, continuing care retirement center designations as of May 1 of each year shall be used to determine the assessment level for the following state fiscal year.

c. ~~Nursing~~ Effective July 1, 2015, nursing facilities with annual Iowa Medicaid patient days of 26,500 or more are required to pay a quality assurance assessment of ~~\$4~~ \$1.36 per non-Medicare patient day. Effective with assessment for the state fiscal year beginning July 1, 2012, the annual number of Iowa Medicaid patient days reported in the most current cost report submitted to the Iowa Medicaid enterprise as of May 1 of each year shall be used to determine the assessment level for the following state fiscal year.

d. ~~All~~ Effective July 1, 2015, all other nursing facilities are required to pay a quality assurance assessment of ~~\$5.26~~ \$7.13 per non-Medicare patient day.

ARC 3784C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action****Proposing rule making related to settings for home- and community-based services and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4, 42 CFR Section 441.301(c) and 42 CFR Section 441.710.

Purpose and Summary

The Centers for Medicare and Medicaid Services (CMS) has issued regulations that define the residential and nonresidential settings in which it is permissible for states to provide and pay for Medicaid home- and community-based services (HCBS). The purpose of the CMS regulations is to ensure that individuals receive Medicaid HCBS in settings that are integrated in and support full access to the greater community. These regulations also aim to ensure that individuals have a free choice of where they live and who provides services to them, as well as to ensure that individual rights are not restricted. While providing Medicaid HCBS in institutional settings has never been allowed, these new regulations clarify that HCBS may not be provided in settings that have the qualities of an institution. The federal regulations were effective March 17, 2014, with an initial five-year transition time period for all HCBS providers to be in full compliance with the regulations or lose federal HCBS funding for services provided in the setting. Due to the complexity of the changes required for full compliance, CMS extended the implementation time period by three years on May 9, 2017. The State has until March 17, 2022, to demonstrate full compliance with the HCBS settings regulations.

As part of a statewide transition plan developed to transition HCBS services to meet the federal regulations, CMS required the State of Iowa to complete a full assessment of the administrative rules in the Iowa Administrative Code for compliance with the federal regulations. These proposed amendments make changes to the Department’s administrative rules necessary for full compliance with federal regulations as cited above.

Fiscal Impact

This rule making’s fiscal impact to the State of Iowa cannot be determined. Issues with a specific provider setting or services that do not meet the settings guidelines would cause cost increases. These increases could be due to a member’s change in services, such as a switch to supported employment, and to changes in staffing ratios within the services. The settings rules will also require that more services be provided in community-based settings. There will be increased provider costs involving transportation and smaller staff-to-member ratios when providers take members into the community with some type of regularity. CMS did not offer any increase in rates for services in conjunction with the new setting requirements. It is also difficult to quantify the number of members affected or how soon cost increases will be realized. Therefore, the fiscal impact cannot be determined.

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Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 29, 2018. Comments should be directed to:

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: policyanalysis@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 441—77.25(249A), introductory paragraph, as follows:

441—77.25(249A) Home- and community-based habilitation services. To be eligible to participate in the Medicaid program as an approved provider of home- and community-based habilitation services, a provider shall meet the general requirements in subrules 77.25(2), 77.25(3), ~~and 77.25(4), and 77.25(5)~~ and shall meet the requirements in the subrules applicable to the individual services being provided.

ITEM 2. Adopt the following **new** definition of “Provider-owned or controlled setting” in subrule **77.25(1)**:

“*Provider-owned or controlled setting*” means a setting where the HCBS provider owns the property where the member resides, leases the property from a third party, or has a direct or indirect financial relationship with the property owner that impacts either the care provided to or the financial conditions applicable to the member.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 3. Renumber subrules **77.25(5)** to **77.25(9)** as **77.25(6)** to **77.25(10)**.

ITEM 4. Adopt the following **new** subrule 77.25(5):

77.25(5) Residential and nonresidential settings. Effective March 17, 2022, all home- and community-based services (HCBS), whether residential or nonresidential, shall be provided in integrated, community-based settings that support full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS. Settings shall optimize individual initiative, autonomy, and independence in making life choices, including but not limited to daily activities, physical environment, and with whom to interact.

a. Nursing facilities, institutions for mental diseases, intermediate care facilities for persons with an intellectual disability, and hospitals are not considered integrated, community-based settings.

b. Any HCBS setting that is located in a building that is also a publicly or privately operated facility, identified in paragraph 77.25(5) "a," that provides inpatient treatment or in a building on the grounds of, or immediately adjacent to, a public institution, identified in paragraph 77.25(5) "a," or any setting that has the effect of isolating members receiving Medicaid HCBS from the broader community will be presumed to be a setting that has the qualities of an institution unless the department conducts a site-specific review and determines otherwise.

c. Residential services may be provided in provider-owned or controlled settings. In provider-owned or controlled residential settings:

(1) The member selects the setting from among setting options, including non-disability-specific settings and an option for a private unit in a residential setting.

(2) The setting options are identified and documented in the person-centered service plan and are based on the member's needs, preferences, and resources available for room and board.

(3) Members have choices regarding services and supports received and who provides them.

(4) Members are assured the rights of privacy, dignity, respect, and freedom from coercion and undue restraint.

(5) Services and supports shall optimize, but not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to daily activities, physical environment, and with whom to interact.

(6) Each member shall be afforded privacy in the member's sleeping and living unit. Living unit entrance doors and bedroom doors may be locked by the member, and only appropriate staff shall have keys. Staff access to keys must be identified in the member's person-centered plan.

(7) Members shall have a choice of roommates in that setting.

(8) Members shall have the freedom to furnish and decorate their sleeping or living areas as desired as permitted by any operative lease or other agreement.

(9) Members shall have the freedom and support to control their own schedules and activities and shall have access to food at any time.

(10) Members may have visitors of their choosing at any time.

(11) The setting shall be physically accessible to the member.

ITEM 5. Amend rule 441—77.30(249A), introductory paragraph, as follows:

441—77.30(249A) HCBS health and disability waiver service providers. HCBS health and disability waiver services shall be rendered by a person who is at least 16 years old (except as otherwise provided in this rule) and is not the spouse of the member served or the parent or stepparent of a member aged 17 or under. People who are 16 or 17 years old must be employed and supervised by an enrolled HCBS provider unless they are employed to provide self-directed personal care services through the consumer choices option. A person hired for self-directed personal care services need not be supervised by an enrolled HCBS provider. A provider hired through the consumer choices option for independent support brokerage, self-directed personal care, individual-directed goods and services, or self-directed community support and employment is not required to enroll as a Medicaid provider. The following

HUMAN SERVICES DEPARTMENT[441](cont'd)

providers shall be eligible to participate in the Medicaid HCBS health and disability waiver program if they meet the standards in subrule 77.30(18) and the integrated, community-based settings standards in subrule 77.25(5) and also meet the standards set forth below for the service to be provided:

ITEM 6. Amend rule 441—77.33(249A), introductory paragraph, as follows:

441—77.33(249A) HCBS elderly waiver service providers. HCBS elderly waiver services shall be rendered by a person who is at least 16 years old (except as otherwise provided in this rule) and is not the spouse of the consumer served or the parent or stepparent of a consumer aged 17 or under. People who are 16 or 17 years old must be employed and supervised by an enrolled HCBS provider unless they are employed to provide self-directed personal care services through the consumer choices option. A person hired for self-directed personal care services need not be supervised by an enrolled HCBS provider. A person hired through the consumer choices option for independent support brokerage, self-directed personal care, individual-directed goods and services, or self-directed community support and employment is not required to enroll as a Medicaid provider. The following providers shall be eligible to participate in the Medicaid HCBS elderly waiver program if they meet the standards in subrule 77.33(22) and the integrated, community-based settings standards in subrule 77.25(5) and also meet the standards set forth below for the service to be provided:

ITEM 7. Amend rule 441—77.34(249A), introductory paragraph, as follows:

441—77.34(249A) HCBS AIDS/HIV waiver service providers. HCBS AIDS/HIV waiver services shall be rendered by a person who is at least 16 years old (except as otherwise provided in this rule) and is not the spouse of the consumer served or the parent or stepparent of a consumer aged 17 or under. People who are 16 or 17 years old must be employed and supervised by an enrolled HCBS provider unless they are employed to provide self-directed personal care services through the consumer choices option. A person hired for self-directed personal care services need not be supervised by an enrolled HCBS provider. A person hired through the consumer choices option for independent support brokerage, self-directed personal care, individual-directed goods and services, or self-directed community support and employment is not required to enroll as a Medicaid provider. The following providers shall be eligible to participate in the Medicaid HCBS AIDS/HIV waiver program if they meet the standards in subrule 77.34(14) and the integrated, community-based settings standards in subrule 77.25(5) and also meet the standards set forth below for the service to be provided:

ITEM 8. Amend rule 441—77.37(249A) as follows:

441—77.37(249A) Home- and community-based services intellectual disability waiver service providers. Providers shall be eligible to participate in the Medicaid HCBS intellectual disability waiver program if they meet the requirements in this rule and the subrules applicable to the individual service.

The standards in subrule 77.37(1) apply only to providers of supported employment, respite providers certified according to subparagraph 77.37(15) “a”(8), and providers of supported community living services that are not residential-based. The standards and certification processes in subrules 77.37(2) through 77.37(7) and 77.37(9) through 77.37(12) apply only to supported employment providers and non-residential-based supported community living providers.

The requirements in subrule 77.37(13) apply to all providers. EXCEPTION: A person hired through the consumer choices option for independent support brokerage, self-directed personal care, individual-directed goods and services, or self-directed community support and employment is not required to enroll as a Medicaid provider and is not subject to the review requirements in subrule 77.37(13). Also, services must be rendered by a person who is at least 16 years old (except as otherwise provided in this rule) and is not the spouse of the consumer served or the parent or stepparent of a consumer aged 17 or under. People who are 16 or 17 years old must be employed and supervised by an enrolled HCBS provider unless they are employed to provide self-directed personal care services through the consumer choices option. A person hired for self-directed personal care services need not

HUMAN SERVICES DEPARTMENT[441](cont'd)

be supervised by an enrolled HCBS provider. Consumer-directed attendant care and interim medical monitoring and treatment providers must be at least 18 years of age.

The integrated, community-based settings standards in subrule 77.25(5) apply to all HCBS intellectual disability waiver service providers.

77.37(1) to 77.37(32) No change.

This rule is intended to implement Iowa Code section 249A.4.

ITEM 9. Amend rule 441—77.39(249A) as follows:

441—77.39(249A) HCBS brain injury waiver service providers. Providers shall be eligible to participate in the Medicaid brain injury waiver program if they meet the requirements in this rule and the subrules applicable to the individual service. Beginning January 1, 2015, providers initially enrolling to deliver BI waiver services and each of their staff members involved in direct consumer service must have completed the department's brain injury training modules one and two within 60 days from the beginning date of service provision, with the exception of staff members who are certified through the Academy of Certified Brain Injury Specialists (ACBIS) as a certified brain injury specialist (CBIS) or certified brain injury specialist trainer (CBIST), providers of home and vehicle modification, specialized medical equipment, transportation, personal emergency response, financial management, independent support brokerage, self-directed personal care, individual-directed goods and services, and self-directed community supports and employment. Providers enrolled to provide BI waiver services and each of their staff members involved in direct consumer service on or before December 31, 2014, shall be deemed to have completed the required training.

Services shall be rendered by a person who is at least 16 years old (except as otherwise provided in this rule) and is not the spouse of the consumer served or the parent or stepparent of a consumer aged 17 or under. People who are 16 or 17 years old must be employed and supervised by an enrolled HCBS provider unless they are employed to provide self-directed personal care services through the consumer choices option. A person hired for self-directed personal care services need not be supervised by an enrolled HCBS provider. A person hired through the consumer choices option for independent support brokerage, self-directed personal care, individual-directed goods and services, or self-directed community support and employment is not required to enroll as a Medicaid provider and is not subject to review under subrule 77.39(11). Consumer-directed attendant care and interim medical monitoring and treatment providers must be at least 18 years of age.

In addition, behavioral programming, supported community living, and supported employment providers shall meet the outcome-based standards set forth below in subrules 77.39(1) and 77.39(2) evaluated according to subrules 77.39(8) to 77.39(10), and the requirements of subrules 77.39(3) to 77.39(7). Respite providers shall also meet the standards in subrule 77.39(1).

The integrated, community-based settings standards in subrule 77.25(5) apply to all HCBS brain injury waiver service providers.

77.39(1) to 77.39(30) No change.

This rule is intended to implement Iowa Code section 249A.4.

ITEM 10. Amend rule 441—77.41(249A), introductory paragraph, as follows:

441—77.41(249A) HCBS physical disability waiver service providers. Providers shall be eligible to participate in the Medicaid physical disability waiver program if they meet the requirements in this rule and the subrules applicable to the individual service. Enrolled providers shall maintain the certification listed in the applicable subrules in order to remain eligible providers. The integrated, community-based settings standards in subrule 77.25(5) apply to all HCBS physical disability waiver service providers.

ITEM 11. Amend rule 441—77.46(249A), introductory paragraph, as follows:

441—77.46(249A) HCBS children's mental health waiver service providers. HCBS children's mental health waiver services shall be rendered by provider agencies that meet the general provider standards in subrule 77.46(1) and the integrated, community-based settings standards in subrule

HUMAN SERVICES DEPARTMENT[441](cont'd)

77.25(5) and also meet the standards in subrules 77.46(2) to 77.46(5) that are specific to the waiver services provided. A provider that is approved for the same service under another HCBS Medicaid waiver shall be eligible to enroll for that service under the children's mental health waiver.

ITEM 12. Amend rule 441—78.27(249A), introductory paragraph, as follows:

441—78.27(249A) Home- and community-based habilitation services. Payment for habilitation services will only be made to providers enrolled to provide habilitation through the Iowa Medicaid enterprise. Effective March 17, 2022, payment shall only be made for services provided to members in integrated, community-based settings that support full access of members receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree as individuals not receiving Medicaid HCBS.

ITEM 13. Amend subrule **78.27(1)**, definition of “Comprehensive service plan,” as follows:

“*Comprehensive service plan*” means an individualized, person-centered, and goal-oriented plan of services written in language understandable by the member using the service and developed collaboratively by the member and the case manager.

ITEM 14. Amend paragraph **78.27(4)“a”** as follows:

a. Development. A comprehensive service plan or treatment plan shall be developed for each member receiving home- and community-based habilitation services based on the member's current assessment and shall be reviewed on an annual basis.

(1) The case manager or the integrated health home care coordinator shall establish an interdisciplinary team ~~for~~ as selected by the member or the member's legal representative. The team shall include the case manager or integrated health home care coordinator and the member and, if applicable, the member's legal representative, the member's family, the member's service providers, and others directly involved with the member.

(2) ~~With assistance from the member and the interdisciplinary team,~~ the case manager or integrated health home care coordinator shall identify the member's services based on the member's needs, the availability of services, and the member's choice of services and providers.

(3) to (8) No change.

(9) The initial comprehensive service plan or treatment plan and annual updates to the comprehensive service plan or treatment plan must be approved by the IME medical services unit in ISIS before services are implemented. Services provided before the approval date are not payable. The written comprehensive service plan or treatment plan must be completed, signed and dated by the case manager, ~~or integrated health home care coordinator, or service worker~~ within 30 calendar days after plan approval.

(10) No change.

ITEM 15. Amend paragraph **78.27(8)“b”** as follows:

b. Setting. Day habilitation shall take place in a community-based, nonresidential setting settings separate from the member's residence. ~~Services shall not be provided in the member's home. When the member lives in a residential care facility of more than 16 beds, day habilitation services provided in the facility are not considered to be provided in the member's home if the services are provided in an area apart from the member's sleeping accommodations.~~

ITEM 16. Amend rule 441—78.34(249A), introductory paragraph, as follows:

441—78.34(249A) HCBS ill and handicapped waiver services. Payment will be approved for the following services to members eligible for HCBS ill and handicapped waiver services as established in 441—Chapter 83 and as identified in the member's service plan. Effective March 17, 2022, payment shall only be made for services provided in integrated, community-based settings that support full access of members receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal

HUMAN SERVICES DEPARTMENT[441](cont'd)

resources, and receive services in the community, to the same degree as individuals not receiving Medicaid HCBS.

ITEM 17. Amend subparagraph **78.34(8)“d”(4)** as follows:

(4) Interim medical monitoring and treatment services shall be provided ~~only~~ in the following settings that are approved by the department as integrated, community-based settings: the member's home; in a registered child development home; in a licensed child care center, residential care facility, or adult day care facility; or during the time when the member is being transported to and from school.

ITEM 18. Reletter paragraphs **78.34(14)“c”** and **“d”** as **78.34(14)“d”** and **“e.”**

ITEM 19. Adopt the following new paragraph **78.34(14)“c”**:

c. All rights restrictions must be implemented in accordance with 441—subrule 77.25(4). The member service plan or treatment plan shall include documentation of:

(1) Any restrictions on the member's rights, including the rights of privacy, dignity, respect, and freedom from coercion and restraint.

(2) The need for the restriction.

(3) The less intrusive methods of meeting the need that have been tried but did not work.

(4) Either a plan to restore those rights or written documentation that a plan is not necessary or appropriate.

(5) Established time limits for periodic reviews to determine if the restriction is still necessary or can be terminated.

(6) The informed consent of the member.

(7) An assurance that the interventions and supports will cause no harm to the member.

(8) A regular collection and review of data to measure the ongoing effectiveness of the restriction.

ITEM 20. Amend rule 441—78.37(249A), introductory paragraph, as follows:

441—78.37(249A) HCBS elderly waiver services. Payment will be approved for the following services to members eligible for the HCBS elderly waiver services as established in 441—Chapter 83 and as identified in the member's service plan. Effective March 17, 2022, payment shall only be made for services provided in integrated, community-based settings that support full access of members receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

ITEM 21. Reletter paragraphs **78.37(19)“c”** and **“d”** as **78.37(19)“d”** and **“e.”**

ITEM 22. Adopt the following new paragraph **78.37(19)“c”**:

c. All rights restrictions must be implemented in accordance with 441—subrule 77.25(4). The member service plan or treatment plan shall include documentation of:

(1) Any restrictions on the member's rights, including the rights of privacy, dignity, respect, and freedom from coercion and restraint.

(2) The need for the restriction.

(3) The less intrusive methods of meeting the need that have been tried but did not work.

(4) Either a plan to restore those rights or written documentation that a plan is not necessary or appropriate.

(5) Established time limits for periodic reviews to determine if the restriction is still necessary or can be terminated.

(6) The informed consent of the member.

(7) An assurance that the interventions and supports will cause no harm to the member.

(8) A regular collection and review of data to measure the ongoing effectiveness of the restriction.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 23. Amend rule 441—78.38(249A), introductory paragraph, as follows:

441—78.38(249A) HCBS AIDS/HIV waiver services. Payment will be approved for the following services to members eligible for the HCBS AIDS/HIV waiver services as established in 441—Chapter 83 and as identified in the member’s service plan. Effective March 17, 2022, payment shall only be made for services provided in integrated, community-based settings that support full access of members receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

ITEM 24. Reletter paragraphs **78.38(10)“c”** and **“d”** as **78.38(10)“d”** and **“e.”**

ITEM 25. Adopt the following **new** paragraph **78.38(10)“c”**:

c. All rights restrictions must be implemented in accordance with 441—subrule 77.25(4). The member service plan or treatment plan shall include documentation of:

- (1) Any restrictions on the member’s rights, including the rights of privacy, dignity, respect, and freedom from coercion and restraint.
- (2) The need for the restriction.
- (3) The less intrusive methods of meeting the need that have been tried but did not work.
- (4) Either a plan to restore those rights or written documentation that a plan is not necessary or appropriate.
- (5) Established time limits for periodic reviews to determine if the restriction is still necessary or can be terminated.
- (6) The informed consent of the member.
- (7) An assurance that the interventions and supports will cause no harm to the member.
- (8) A regular collection and review of data to measure the ongoing effectiveness of the restriction.

ITEM 26. Amend rule 441—78.41(249A), introductory paragraph, as follows:

441—78.41(249A) HCBS intellectual disability waiver services. Payment will be approved for the following services to members eligible for the HCBS intellectual disability waiver as established in 441—Chapter 83 and as identified in the member’s service plan. Effective March 17, 2022, payment shall only be made for services provided in integrated, community-based settings that support full access of members receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

ITEM 27. Amend subparagraph **78.41(9)“d”(4)** as follows:

(4) Interim medical monitoring and treatment services shall be provided ~~only~~ in the following settings that are approved by the department as integrated, community-based settings: the member’s home; a registered child development home; a licensed child care center, residential care facility, or adult day care facility; or during the time when the member is being transported to and from school.

ITEM 28. Reletter paragraphs **78.41(16)“c”** and **“d”** as **78.41(16)“d”** and **“e.”**

ITEM 29. Adopt the following **new** paragraph **78.41(16)“c”**:

c. All rights restrictions must be implemented in accordance with 441—subrule 77.25(4). The member service plan or treatment plan shall include documentation of:

- (1) Any restrictions on the member’s rights, including the rights of privacy, dignity, respect, and freedom from coercion and restraint.
- (2) The need for the restriction.
- (3) The less intrusive methods of meeting the need that have been tried but did not work.
- (4) Either a plan to restore those rights or written documentation that a plan is not necessary or appropriate.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- (5) Established time limits for periodic reviews to determine if the restriction is still necessary or can be terminated.
- (6) The informed consent of the member.
- (7) An assurance that the interventions and supports will cause no harm to the member.
- (8) A regular collection and review of data to measure the ongoing effectiveness of the restriction.

ITEM 30. Amend rule 441—78.43(249A), introductory paragraph, as follows:

441—78.43(249A) HCBS brain injury waiver services. Payment shall be approved for the following services to members eligible for the HCBS brain injury waiver services as established in 441—Chapter 83 and as identified in the member’s service plan. Effective March 17, 2022, payment shall only be made for services provided in integrated, community-based settings that support full access of members receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

ITEM 31. Amend subparagraph **78.43(14)“d”(4)** as follows:

(4) Interim medical monitoring and treatment services shall be provided ~~only~~ in the following settings that are approved by the department as integrated, community-based settings: the member’s home; in a registered child development home; in a licensed child care center, residential care facility, or adult day care facility; or during the time when the member is being transported to and from school.

ITEM 32. Reletter paragraphs **78.43(16)“c”** and **“d”** as **78.43(16)“d”** and **“e.”**

ITEM 33. Adopt the following **new** paragraph **78.43(16)“c”**:

c. All rights restrictions must be implemented in accordance with 441—subrule 77.25(4). The member service plan or treatment plan shall include documentation of:

- (1) Any restrictions on the member’s rights, including the rights of privacy, dignity, respect, and freedom from coercion and restraint.
- (2) The need for the restriction.
- (3) The less intrusive methods of meeting the need that have been tried but did not work.
- (4) Either a plan to restore those rights or written documentation that a plan is not necessary or appropriate.
- (5) Established time limits for periodic reviews to determine if the restriction is still necessary or can be terminated.
- (6) The informed consent of the member.
- (7) An assurance that the interventions and supports will cause no harm to the member.
- (8) A regular collection and review of data to measure the ongoing effectiveness of the restriction.

ITEM 34. Amend rule 441—78.46(249A), introductory paragraph, as follows:

441—78.46(249A) Physical disability waiver service. Payment shall be approved for the following services to members eligible for the HCBS physical disability waiver as established in 441—Chapter 83 and as identified in the member’s service plan. Effective March 17, 2022, payment shall only be made for services provided in integrated, community-based settings that support full access of members receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

ITEM 35. Reletter paragraphs **78.46(7)“c”** and **“d”** as **78.46(7)“d”** and **“e.”**

ITEM 36. Adopt the following **new** paragraph **78.46(7)“c”**:

c. All rights restrictions must be implemented in accordance with 441—subrule 77.25(4). The member service plan or treatment plan shall include documentation of:

HUMAN SERVICES DEPARTMENT[441](cont'd)

- (1) Any restrictions on the member's rights, including the rights of privacy, dignity, respect, and freedom from coercion and restraint.
- (2) The need for the restriction.
- (3) The less intrusive methods of meeting the need that have been tried but did not work.
- (4) Either a plan to restore those rights or written documentation that a plan is not necessary or appropriate.
- (5) Established time limits for periodic reviews to determine if the restriction is still necessary or can be terminated.
- (6) The informed consent of the member.
- (7) An assurance that the interventions and supports will cause no harm to the member.
- (8) A regular collection and review of data to measure the ongoing effectiveness of the restriction.

ITEM 37. Amend rule 441—78.52(249A), introductory paragraph, as follows:

441—78.52(249A) HCBS children's mental health waiver services. Payment will be approved for the following services to members eligible for the HCBS children's mental health waiver as established in 441—Chapter 83 and as identified in the member's service plan. Effective March 17, 2022, payment shall only be made for services provided in integrated, community-based settings that support full access of members receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

ITEM 38. Reletter paragraphs **78.52(1)“c”** and **“d”** as **78.52(1)“d”** and **“e.”**

ITEM 39. Adopt the following **new** paragraph **78.52(1)“c”**:

c. All rights restrictions must be implemented in accordance with 441—subrule 77.25(4). The member service plan or treatment plan shall include documentation of:

- (1) Any restrictions on the member's rights, including the rights of privacy, dignity, respect, and freedom from coercion and restraint.
- (2) The need for the restriction.
- (3) The less intrusive methods of meeting the need that have been tried but did not work.
- (4) Either a plan to restore those rights or written documentation that a plan is not necessary or appropriate.
- (5) Established time limits for periodic reviews to determine if the restriction is still necessary or can be terminated.
- (6) The informed consent of the member.
- (7) An assurance that the interventions and supports will cause no harm to the member.
- (8) A regular collection and review of data to measure the ongoing effectiveness of the restriction.

ITEM 40. Amend rule **441—83.1(249A)**, definition of “Service plan,” as follows:

“Service plan” means a ~~written consumer-centered~~ person-centered, outcome-based plan of services developed using an interdisciplinary process, which is written by the member's case manager with input and direction from the member and which addresses all relevant services and supports being provided. It may involve more than one provider. The service plan is developed by the interdisciplinary team, which includes the member and, if appropriate, the member's legal representative, member's family, service providers, and others directly involved with the member.

ITEM 41. Amend rule **441—83.21(249A)**, definition of “Service plan,” as follows:

“Service plan” means a ~~written consumer-centered~~ person-centered, outcome-based plan of services developed using an interdisciplinary process, which is written by the member's case manager with input and direction from the member and which addresses all relevant services and supports being provided. It may involve more than one provider. The service plan is developed by the interdisciplinary team, which includes the member and, if appropriate, the member's legal representative, member's family, service providers, and others directly involved with the member.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 42. Amend rule ~~441—83.41(249A)~~, definition of “Service plan,” as follows:

~~“Service plan” means a written consumer-centered person-centered, outcome-based plan of services developed using an interdisciplinary process, which is written by the member’s case manager with input and direction from the member and which addresses all relevant services and supports being provided. It may involve more than one provider. The service plan is developed by the interdisciplinary team, which includes the member and, if appropriate, the member’s legal representative, member’s family, service providers, and others directly involved with the member.~~

ITEM 43. Amend rule ~~441—83.60(249A)~~, definition of “Service plan,” as follows:

~~“Service plan” means a written consumer-centered person-centered, outcome-based plan of services developed using an interdisciplinary process, which is written by the member’s case manager with input and direction from the member and which addresses all relevant services and supports being provided. It may involve more than one provider. The service plan is developed by the interdisciplinary team, which includes the member and, if appropriate, the member’s legal representative, member’s family, service providers, and others directly involved with the member.~~

ITEM 44. Amend rule ~~441—83.81(249A)~~, definition of “Service plan,” as follows:

~~“Service plan” means a written consumer-centered person-centered, outcome-based plan of services developed using an interdisciplinary process, which is written by the member’s case manager with input and direction from the member and which addresses all relevant services and supports being provided. It may involve more than one provider. The service plan is developed by the interdisciplinary team, which includes the member and, if appropriate, the member’s legal representative, member’s family, service providers, and others directly involved with the member.~~

ITEM 45. Amend rule ~~441—83.101(249A)~~, definition of “Service plan,” as follows:

~~“Service plan” means a written consumer-centered person-centered, outcome-based plan of services developed using an interdisciplinary process which is written by the member’s case manager with input and direction from the member and which addresses all relevant services and supports being provided. It may involve more than one provider. The service plan is developed by the interdisciplinary team, which includes the member and, if appropriate, the member’s legal representative, member’s family, service providers, and others directly involved with the member.~~

ITEM 46. Amend rule ~~441—83.121(249A)~~, definition of “Service plan,” as follows:

~~“Service plan” means a written, consumer-centered person-centered, outcome-based plan of services developed by the consumer’s interdisciplinary team that is written by the member’s case manager with input and direction from the member and that addresses all relevant services and supports being provided. The service plan may involve more than one provider. The service plan is developed by the interdisciplinary team, which includes the member and, if appropriate, the member’s legal representative, member’s family, service providers, and others directly involved with the member.~~

ARC 3779C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Proposing rule making related to economic assistance fraud bureau and providing an opportunity for public comment

The Inspections and Appeals Department hereby proposes to rescind Chapter 74, “Economic Assistance Fraud Bureau,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 10A.104 and 10A.401 to 10A.403.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 10A.104 and 10A.401 to 10A.403.

Purpose and Summary

The proposed amendment is the result of a comprehensive review of the Department's Investigations Division rules. Another rule making (published herein as **ARC 3792C**, IAB 5/9/18) combines the content of current Chapter 74 with that of Chapter 72 to create a new chapter that more clearly and accurately describes the work of the Investigations Division's Economic Fraud Control Bureau. Therefore, current Chapter 74 is obsolete and unnecessary.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 29, 2018. Comments should be directed to:

David Werning
Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319-0083
Fax: 515.242.6863
Email: david.werning@dia.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

The following rule-making action is proposed:

Rescind and reserve **481—Chapter 74.**

ARC 3782C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rule making related to Iowa River buoys and speed restrictions and providing an opportunity for public comment

The Natural Resource Commission hereby proposes to amend Chapter 40, “Boating Speed and Distance Zoning,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 462A.26 and 462A.32.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 462A.26 and 462A.32.

Purpose and Summary

Pursuant to Iowa Code section 17A.7, the Scenic City Empress Boat Club (SCEBC) petitioned the Commission to amend Chapter 40 regarding regulation of buoys and speed restrictions in waters under the jurisdiction of the Commission. SCEBC operates riverboat cruises from its property at 1113 Union Street in Iowa Falls on the Iowa River. The petitioner has indicated that the safety of passengers loading and unloading from its Empress Riverboat is put at risk by the wakes of passing boats rocking the riverboat at its dock. SCEBC requested that the Commission designate a no-wake zone, marked by buoys, extending no more than 75 feet into the river channel, beginning at SCEBC’s west property boundary and ending at its east property boundary. The Commission supports this proposed rule change for the following reasons: (1) a no-wake zone will ensure passenger safety while passengers are boarding and unloading at the SCEBC dock, (2) ensuring safe operations of the Empress Riverboat will help support tourism which the riverboat cruises bring to Hardin County, and (3) placement of buoys will clearly mark the no-wake zone for all river users.

Therefore, the Commission proposes new subrules 40.36(3) and 40.36(4) to change the zoning of the Iowa River in Hardin County to add a no-wake zone adjacent to the SCEBC property in Iowa Falls, Iowa. This change is proposed in order to create a safe environment for the operation of the Empress Riverboat by reducing rocking of the boat caused by boat wakes during loading and unloading at its dock. The proposed subrules do not significantly affect general use of the river in this area, as the no-wake zone will not extend more than 75 feet into the Iowa River channel.

The proposed subrules also clarify that the SCEBC is responsible for the placement and maintenance of the buoys designating the no-wake zone. The language retains the provision that the City of Iowa Falls is responsible for the existing speed zone between the River Street Bridge and the dock at Dougan’s Landing.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. However, the Empress Riverboat is a large tourist draw for the county and positively impacts the local economy.

NATURAL RESOURCE COMMISSION[571](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 29, 2018. Comments should be directed to:

Susan Stocker
Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.725.8477
Fax: 515.725.8201
Email: susan.stocker@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held. Upon arrival, attendees should proceed to the fourth floor to check in at the Department reception desk and to be directed to the appropriate hearing location.

May 29, 2018
1 to 2 p.m.

Conference Room 4W
Wallace State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** subrule 40.36(3):

40.36(3) All vessels operated in a designated zone beginning at the west property boundary and ending at the east property boundary of the Scenic City Empress Boat Club property located at 1113 Union Street shall be operated at a no-wake speed. The zone shall not extend more than 75 feet into the Iowa River channel.

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 2. Adopt the following **new** subrule 40.36(4):
40.36(4) The Scenic City Empress Boat Club shall designate and maintain the no-wake zone with marker buoys approved by the natural resource commission.

ARC 3774C

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Proposing rule making related to colleges and continuing education for chiropractic physicians and providing an opportunity for public comment

The Board of Chiropractic hereby proposes to amend Chapter 42, “Colleges for Chiropractic Physicians,” and Chapter 44, “Continuing Education for Chiropractic Physicians,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 147.76, 151.11, and 272C.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 151.

Purpose and Summary

The proposed amendments remove outdated or redundant references and reduce the number of continuing education hours required per biennium.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Division of Professional Licensure are subject to the waiver provisions accorded under 645—Chapter 18.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on May 29, 2018. Comments should be directed to:

Susan Reynolds
Professional Licensure Division
Department of Public Health
Lucas State Office Building
Des Moines, Iowa 50319-0075
Email: susan.reynolds@idph.iowa.gov

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

May 29, 2018	Fifth Floor Board Conference Room 526
8 to 8:30 a.m.	Lucas State Office Building
	Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Rescind and reserve subrule **42.2(2)**.

ITEM 2. Amend subrule 42.5(1) as follows:

42.5(1) The board shall approve a chiropractic physician to be a chiropractic physician preceptor if the chiropractic physician meets the following criteria:

a. The chiropractic physician holds a current Iowa chiropractic license and has continuously held licensure in the United States for the previous five years prior to preceptorship;

b. The chiropractic physician is currently fully credentialed by the sponsoring chiropractic college and approved by the board; and

c. The chiropractic physician has not had any formal disciplinary action or has not, within the past three years, been a party to a malpractice settlement or judgment within the past three years which the board has determined to be disqualifying.

~~The preceptor shall supervise no more than one chiropractic intern or one chiropractic resident for the duration of the preceptorship period.~~

ITEM 3. Amend rule 645—42.6(151) as follows:

645—42.6(151) Termination of preceptorship. A preceptorship ~~shall~~ may terminate upon the occurrence of one of the following events:

42.6(1) Interns. The intern graduates from a board-approved college of chiropractic.

42.6(2) Residents. Twelve months have passed since the resident graduated from a board-approved college of chiropractic.

42.6(3) Formal disciplinary action is taken against the preceptor or the preceptor is a party to a final malpractice judgment or settlement agreement.

ITEM 4. Amend rule 645—44.1(151) as follows:

645—44.1(151) Definitions. For the purpose of these rules, the following definitions shall apply:

“Active license” means a license that is current and has not expired.

~~*“Approved program/activity”* means a continuing education program/activity meeting the standards set forth in these rules.~~

“Audit” means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

“*Board*” means the Iowa board of chiropractic.

“*Clinical case management*” means coursework pertaining to diagnosis, treatment, and appropriate referral or coordination of care.

“*Continuing education*” means planned, organized learning acts meeting the standards set forth in these rules, acquired during licensure, and designed to maintain, improve, or expand a licensee’s knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of chiropractic practice, education, or theory development to improve the safety and welfare of the public.

“*Hour of continuing education*” means at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*Independent study*” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest and certificate of completion.

“*License*” means license to practice chiropractic in Iowa.

“*Licensee*” means any person licensed to practice as a chiropractic physician in ~~the state of~~ Iowa.

ITEM 5. Amend rule 645—44.2(272C) as follows:

645—44.2(272C) Continuing education requirements.

44.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on July 1 of each even-numbered year and ending on June 30 of each even-numbered year two years later. ~~Each~~ Starting with the 2018-2020 biennium, each person who is licensed to practice as a licensee in this state shall be required to complete a minimum of ~~60~~ 40 hours of continuing education approved by the board.

~~44.2(2) Rescinded IAB 8/3/05, effective 9/7/05.~~

~~44.2(3)~~ **44.2(2)** Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses with the exception of two hours in the content areas of ~~Iowa Administrative Code, 645—Chapters 40 41 through 46 45~~ and Iowa Code chapter 151. Continuing education hours acquired anytime from the initial licensing until the second license renewal, with the exception of two hours in the content areas of ~~Iowa Administrative Code, 645—Chapters 40 41 through 46 45~~ and Iowa Code chapter 151, may be used. The new licensee will be required to complete a minimum of ~~60~~ 40 hours of continuing education per biennium for each subsequent license renewal.

~~44.2(4)~~ **44.2(3)** Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

~~44.2(5)~~ **44.2(4)** No hours of continuing education shall be carried over into the next biennium except as stated in ~~44.2(3)~~ 44.2(2) and 44.3(2) “a”(3). A licensee whose license is reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

~~44.2(6)~~ **44.2(5)** It is the responsibility of each licensee to finance the cost of continuing education.

ITEM 6. Amend subrule 44.3(2) as follows:

44.3(2) Specific criteria.

a. Continuing education hours of credit shall be obtained by completing:

(1) At least 36 hours of continuing education credit obtained from a program that directly relates to clinical case management of chiropractic patients. ~~Beginning with the July 1, 2014, to June 30, 2016, renewal cycle, at~~ At least 20 of these hours shall be earned by completing a program in which an instructor conducts the class by employing a traditional in-person, classroom-type presentation and the licensee is in attendance in the same room as that instructor. The remaining 16 hours of continuing education credit relating to clinical case management of chiropractic patients may be obtained by independent

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

study, including any ~~on-line~~ online instruction, that complies with conditions specified in ~~645—44.1(151)~~ 44.3(1).

(2) A minimum of two hours per biennium in professional boundaries regarding ethical issues related to professional conduct that may include but are not limited to sexual harassment, sensitivity training and ethics.

(3) ~~Starting with the 2006 renewal cycle, a~~ A minimum of 12 hours per biennium of continuing education in the field of acupuncture if the chiropractic physician is engaged in the practice of acupuncture. ~~Continuing education hours in the field of acupuncture earned between December 31, 2003, and June 30, 2004, up to a maximum of 12 hours may be used to satisfy licensure renewal requirements for either the 2004 or 2006 renewal cycle. The licensee may use the earned continuing education credit hours only once. Credit can not be duplicated for both the 2004 and 2006 compliance periods. Chiropractic physicians not engaged in the active practice of acupuncture may take continuing education hours in the field of acupuncture for continuing education credit.~~

(4) Classes on child abuse and dependent adult abuse that meet the criteria in subrule 44.3(1).

(5) Two hours of continuing education credit at the time of the first biennial renewal period and one hour every biennial renewal period after that in the content areas of ~~Iowa Administrative Code, the administrative rules related to chiropractic physicians in Iowa, found at 645—Chapters 40 41 through 46 45~~ and the statutory provisions specific to the practice of chiropractic in Iowa, found at Iowa Code chapter 151.

b. Continuing education hours of credit may be obtained by:

(1) Teaching at a Council on Chiropractic Education (CCE)-approved program or board of chiropractic-approved institution. A maximum of 15 hours per biennium may be obtained for each course taught.

(2) Completing electronically transmitted programs/activities or independent study programs/activities that have a certificate of completion ~~that meets criteria in 645—44.3(151,272C)~~.

(3) A licensee who is a presenter of a continuing education program ~~that meets criteria in 645—44.3(151,272C)~~ may receive credit once per biennium for the initial presentation of the program.

(4) Completing ~~continuing education that meets criteria in 645—44.3(151,272C)~~ or a program provided by a CCE-accredited chiropractic college in the United States, the Iowa Chiropractic Society, American Chiropractic Association or International Chiropractors Association.

(5) Completing continuing education courses/programs that are certified by the Providers of Approved Continuing Education (PACE) through the Federation of Chiropractic Licensing Boards (FCLB).

(6) Proctoring at the NBCE examination. Fifteen hours of continuing education hours per NBCE examination event may be claimed up to a maximum of 30 hours of continuing education credit per biennium. The proctoring hours may apply toward the clinical requirement.

c. Continuing education may not be obtained by completing or teaching classes in basic anatomy and physiology or undergraduate level coursework.

ARC 3780C

REGENTS BOARD[681]

Notice of Intended Action

**Proposing rule making related to PharmD application fee
and providing an opportunity for public comment**

The Board of Regents hereby proposes to amend Chapter 1, “Admission Rules Common to the Three State Universities,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 262.9(3).

REGENTS BOARD[681](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 262.9(3).

Purpose and Summary

The Board proposes amending rule 681—1.7(262) to reduce the University of Iowa PharmD application fee from \$100 to \$50. The purpose of this amendment is to encourage application for admission to the College of Pharmacy.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on May 29, 2018. Comments should be directed to:

Aimee Claeys
Board of Regents
11260 Aurora Avenue
Urbandale, Iowa 50322-7905
Fax: 515.281.6420
Email: aimee.claeys@iowaregents.edu

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

REGENTS BOARD[681](cont'd)

Amend rule 681—1.7(262) as follows:

681—1.7(262) Application fees. Application fees required for admission to the University of Iowa, Iowa State University and the University of Northern Iowa are as follows:

University of Iowa

Undergraduate domestic student and nondegree student	\$40
Undergraduate international student	\$85
Graduate/professional domestic student	\$60
Graduate/professional international student	\$100
PharmD student	\$100 <u>\$50</u>
Reentry fee	\$20
Iowa dental advanced standing program (international DDS student)	\$250

Iowa State University

Undergraduate domestic student and nondegree student	\$40
Undergraduate international student	\$50
Graduate/professional domestic student	\$60
Graduate/professional international student	\$100
Veterinary Medicine	\$75

University of Northern Iowa

Undergraduate domestic student and nondegree student	\$40
Undergraduate international student	\$50
Graduate/professional domestic student	\$60
Graduate/professional international student	\$75
Reentry fee	\$20

This rule is intended to implement Iowa Code section 262.9(3).

ARC 3781C

**TELECOMMUNICATIONS AND TECHNOLOGY
COMMISSION, IOWA[751]
Notice of Intended Action**

**Proposing rule making related to sole-source agreements and providing an opportunity for
public comment**

The Iowa Telecommunications and Technology Commission hereby proposes to amend Chapter 5, "Purchasing," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 8D.3.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 8D.11 and 8D.13.

Purpose and Summary

This rule making will increase the Commission's oversight and accountability of potential sole-source agreements being considered by the Iowa Communications Network. Specifically, the rule making would accomplish two things: (1) eliminate a general and overly broad justification for a sole-source agreement, and (2) require that any sole-source justification form be approved and signed by both the Executive Director and the Chief Financial Officer.

Fiscal Impact

The Commission is unable to determine the number of potential agreements this rule making will impact and is therefore unable to determine if there will be any fiscal impact.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 751—Chapter 9.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Commission no later than 4:30 p.m. on May 29, 2018. Comments should be directed to:

Mark Johnson
Iowa Telecommunications and Technology Commission
Grimes State Office Building
400 East 14th Street
Des Moines, Iowa 50319
Phone: 515.725.4608
Email: mark.johnson@iowa.gov

Public Hearing

June 4, 2018
11 a.m. to 12 noon

Executive Director's Conference Room
First Floor
Grimes State Office Building
Des Moines, Iowa

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend paragraphs **5.1(2)“g”** and **“h”** as follows:

g. The item is maintenance services for the network for which the vendor supplies remote maintenance service for network components or software or the vendor supplies software upgrades, patches, modifications or the like electronically or for which the service will preserve equipment or software warranties; ~~or.~~

~~*h.*—The executive director or the commission’s designee determines that the best interests of the commission will be served by exemption from the bidding process.~~

ITEM 2. Amend subrule 5.1(3) as follows:

5.1(3) When the annual value of the contract exceeds \$5,000 or when the estimated value of the multiyear contract in the aggregate, including renewals, is equal to or greater than \$15,000, the commission shall complete a sole-source justification form. ~~The executive director or the executive director’s designee shall sign the sole-source justification form~~ The sole-source justification form shall be reviewed, approved and signed by both the executive director and the chief financial officer before the commission proceeds with the sole-source procurement.

ARC 3777C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to highway bridge program and surface transportation block grant program and providing an opportunity for public comment

The Transportation Department hereby proposes to amend Chapter 161, “Federal-Aid Highway Bridge Program,” and Chapter 162, “Surface Transportation Block Grant Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 307A.2(4).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 307.44 and 313.4(1).

Purpose and Summary

The Department is proposing to amend Chapters 161 and 162 to add language stating that primary road funds may be swapped with Surface Transportation Block Grant (STBG) funds allocated to cities and counties for road and bridge construction projects. The highway bridge program is funded through STBG funds. These amendments are necessary to make the rules consistent with 2017 Iowa Acts, chapter 13, which amended Iowa Code section 313.4(1) and allows for the swap of STBG funds.

The following list explains the additional proposed amendments to Chapters 161 and 162:

- Amend the title of Chapter 161 by striking “federal-aid” and adding “for cities and counties.” The change in the title is being made to clarify that the highway bridge program is for cities and counties and that with the addition of the swap language, the funds will no longer be federal aid.
- Strike “federal-aid” within rule 761—161.1(307) for consistency.
- Amend rules 761—161.2(307) and 761—162.2(307) to add references to the Department’s website where additional information may be found about the swap process.

TRANSPORTATION DEPARTMENT[761](cont'd)

- Amend rule 761—161.3(307) to add the words “Block Grant” to the name of the Surface Transportation Program and to amend the wording of the federal citation for consistency.
- Amend the implementation sentences within both chapters to add references to Iowa Code section 313.4(1). The implementation sentence for Chapter 162 is also amended to strike the reference to 2016 Iowa Acts, Senate File 2320, and to add a reference to Iowa Code section 307.44 for consistency.
- Correct the parenthetical implementation statutes of existing rules within Chapter 162 to reference Iowa Code chapter 307 and to strike the reference to 2016 Iowa Acts, Senate File 2320.

Iowa Code section 313.4(1)“c” allows the Transportation Commission to allocate money from the primary road fund to be swapped. The Transportation Commission approved the proposed amendments to Chapters 161 and 162 at its April 10, 2018, meeting.

Fiscal Impact

2017 Iowa Acts, chapter 13, amended Iowa Code section 313.4(1)“c” to increase efficiency and reduce project costs. The Department is implementing this legislation and, because it is early in the implementation stage, swap projects have not yet been constructed. Therefore, a fiscal impact cannot be determined, but the Department believes the impact will be positive.

Jobs Impact

After analysis and review of this rule making, the Department has determined that the proposed amendments may have a positive impact on private sector jobs and employment opportunities in Iowa. The amendments will result in cost savings that will in turn be reinvested into additional construction projects throughout the state. The additional projects should increase the number of jobs for the contracting and consulting industry.

Waivers

Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 29, 2018. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Strategic Communications and Policy
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

A public hearing to hear requested oral presentations will be held as follows:

TRANSPORTATION DEPARTMENT[761](cont'd)

May 31, 2018
10 a.m.

Department of Transportation
Administration Building
First Floor, South Conference Room
800 Lincoln Way
Ames, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George, the Department's rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend **761—Chapter 161**, title, as follows:

~~FEDERAL-AID HIGHWAY BRIDGE PROGRAM~~ FEDERAL-AID HIGHWAY BRIDGE PROGRAM FOR CITIES AND COUNTIES

ITEM 2. Amend rule 761—161.1(307) as follows:

761—161.1(307) Purpose. The purpose of these rules is to establish requirements for the counties' and cities' ~~federal-aid~~ highway bridge program, in accordance with Iowa Code section 307.44.

ITEM 3. Amend rule 761—161.2(307) as follows:

761—161.2(307) ~~Contact information~~ Information. ~~Questions regarding~~ Information relating to this chapter may be ~~directed to~~ obtained from the Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; or on the department's website at www.iowadot.gov.

ITEM 4. Amend rule 761—161.3(307) as follows:

761—161.3(307) Source of funds. The Surface Transportation Block Grant Program established in ~~Section 133 of Title 23 of the United States Code~~ 23 U.S.C. Section 133 provides for the use of federal funds to replace or rehabilitate public road bridges. The department, in consultation with county and city officials through their representative organizations, has dedicated a portion of these funds for replacement and rehabilitation of city and county bridges.

ITEM 5. Renumber rule **761—161.4(307)** as **761—161.5(307)**.

ITEM 6. Adopt the following new rule 761—161.4(313):

761—161.4(313) Swapping of funds. Surface Transportation Block Grant funds allocated to city and county road or bridge construction projects may be swapped with primary road funds in accordance with Iowa Code section 313.4(1).

ITEM 7. Amend **761—Chapter 161**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section~~ sections 307.44 and 313.4(1).

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 8. Amend rule 761—162.1(86GA,SF2320), parenthetical implementation statute, as follows:

761—162.1(86GA,SF2320 307) Purpose.

ITEM 9. Amend rule 761—162.2(86GA,SF2320) as follows:

761—162.2(86GA,SF2320 307) Contact information Information. Information relating to this chapter may be obtained from the Office of Program Management, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1661; or on the department's website at www.iowadot.gov.

ITEM 10. Amend rule 761—162.3(86GA,SF2320), parenthetical implementation statute, as follows:

761—162.3(86GA,SF2320 307) Source of funds.

ITEM 11. Amend rule 761—162.4(86GA,SF2320), parenthetical implementation statute, as follows:

761—162.4(86GA,SF2320 307) Administration of funds.

ITEM 12. Renumber rule **761—162.4(307)** as **761—162.5(307)**.

ITEM 13. Adopt the following **new** rule 761—162.4(313):

761—162.4(313) Swapping of funds. Surface Transportation Block Grant funds allocated to city and county road or bridge construction projects may be swapped with primary road funds in accordance with Iowa Code section 313.4(1).

ITEM 14. Amend **761—Chapter 162**, implementation sentence, as follows:

These rules are intended to implement ~~2016 Iowa Acts, Senate File 2320, section 4~~ Iowa Code sections 307.44 and 313.4(1).

ARC 3776C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to reimbursable services and supplies and providing an opportunity for public comment

The Transportation Department hereby proposes to amend Chapter 174, “Reimbursable Services and Supplies,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 307.12.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 307.12.

Purpose and Summary

This proposed amendment concerns the list of the reimbursable services and supplies that counties and cities may request from the Department and pertains to structural analysis. The Department is clarifying paragraph 174.3(1)“a” because it was unclear as written.

TRANSPORTATION DEPARTMENT[761](cont'd)

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 29, 2018. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Strategic Communications and Policy
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

A public hearing to hear requested oral presentations will be held as follows:

May 31, 2018	Department of Transportation
11 a.m.	Administration Building
	First Floor, South Conference Room
	800 Lincoln Way
	Ames, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George, the Department's rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

TRANSPORTATION DEPARTMENT[761](cont'd)

Amend paragraph **174.3(1)“a”** as follows:

a. Structural analysis: The department will provide ~~standards~~, an initial load-rating analysis for standard bridge types issued by the department. The department will provide a detailed field inspection of an existing or proposed structure to determine condition or load-carrying capacity and advise on capacity calculations.

ARC 3773C

UTILITIES DIVISION[199]

Amended Notice of Intended Action

Providing for a public hearing on rule making related to inmate calling rates

The Notice of Intended Action published in the Iowa Administrative Bulletin on March 14, 2018, as **ARC 3674C**, proposes to amend Chapter 22, “Service Supplied by Telephone Utilities,” Iowa Administrative Code. In order to receive oral comments concerning **ARC 3674C**, the Utilities Board hereby gives notice that a public hearing will be held as follows:

July 10, 2018
1 to 3 p.m.

Board Hearing Room
1375 E. Court Avenue
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.4, 17A.7, 476.2 and 476.91.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 476.91.

Purpose and Summary

The proposed rule making in **ARC 3674C** implements rate caps on charges that may be assessed to inmates in Iowa correctional facilities and their families for local and intrastate telephone calls.

The Board issued an order commencing rule making on February 9, 2018. The order is available on the Board’s electronic filing system, efs.iowa.gov, under Docket No. RMU-2017-0004.

The Notice of Intended Action is being amended to include a public hearing date and time.

Fiscal Impact, Jobs Impact, Waivers

Statements related to the fiscal impact, jobs impact, and waiver of this rule making may be found in the preamble of **ARC 3674C**.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

ARC 3775C**WORKERS' COMPENSATION DIVISION[876]****Notice of Intended Action****Proposing rule making related to payroll tax tables and providing an opportunity for public comment**

The Workers' Compensation Commissioner hereby proposes to amend Chapter 8, "Substantive and Interpretive Rules," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 86.8.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 85.61(6).

Purpose and Summary

This amendment updates references to the tables which determine payroll taxes, as required by Iowa Code section 85.61(6).

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

This amendment does not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers' Compensation Division rules.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Division no later than 4:30 p.m. on May 29, 2018. Comments should be directed to:

Heather Palmer
Workers' Compensation Division
1000 East Grand Avenue
Des Moines, Iowa 50319
Email: heather.palmer@iwd.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

WORKERS' COMPENSATION DIVISION[876](cont'd)

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend rule 876—8.8(85,17A) as follows:

876—8.8(85,17A) Payroll tax tables. Tables for determining payroll taxes to be used for the period July 1, ~~2017~~ 2018, through June 30, ~~2018~~ 2019, are the tables in effect on July 1, ~~2017~~ 2018, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Internal Revenue Service, Employer's Supplemental Tax Guide, Publication 15-A [~~2016~~ 2018].)
2. Iowa Withholding Tax Guide. (Iowa Department of Revenue Iowa Withholding Tax Rate Tables [Effective April 1, 2006].)
3. Social Security and Medicare withholding (FICA) at the rate of 7.65 percent. (Internal Revenue Service, Circular E, Employer's Tax Guide, Publication 15 [~~2016~~ 2018].)

This rule is intended to implement Iowa Code section 85.61(6).

ARC 3786C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Rule making related to new NPDES general permits

The Environmental Protection Commission hereby amends Chapter 64, “Wastewater Construction and Operation Permits,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 455B.173(11).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455B.173(11) and 455B.186.

Purpose and Summary

The purpose of this rule making is to allow the use of two new National Pollutant Discharge Elimination System (NPDES) general permits known as General Permit No.8 (GP8) and General Permit No.9 (GP9). The discharges that will be authorized by GP8 and GP9 currently require authorization under an individual permit. Compared to general permits, individual permits have more complicated application requirements, have higher fees, and take longer to issue. Covering these discharges under general permits will protect the environment and will provide a benefit to regulated entities. The general permits may be viewed online at www.iowadnr.gov/Environmental-Protection/Water-Quality/NPDES-Wastewater-Permitting/NPDES-General-Permits.

GP8 authorizes the discharge of (1) hydrostatic testing water used to verify the integrity of pipes, pipelines, tanks, containers, and other vessels designed to hold liquids or gases; (2) water used as ballast during the installation of a new underground storage tank before any other liquid or gas is added to the tank; and (3) water used to disinfect, flush, or test potable water lines and associated equipment. GP8 includes eligibility criteria and best management practices to ensure that discharges will comply with water quality standards. Most discharges that meet the eligibility requirements will be automatically authorized; an electronic Notice of Intent (eNOI) will only need to be submitted in order to obtain authorization for a few higher-risk discharges. Discharges from water lines are automatically authorized, as are discharges from new or previously used containers that store or are used in the transport of water, natural gas, natural gas liquids, or refined petroleum products that contain no chemical additives (other than chlorine/dechlorination agents). Discharges to the ground surface are automatically authorized provided that no chemicals are added (other than chlorine/dechlorination agents). There are no fees associated with GP8.

GP9 authorizes discharges resulting from (1) excavation dewatering associated with construction activity where pumps, sumps, or similar tools are used within or near excavation areas to remove accumulated groundwater, surface water, and storm water; (2) groundwater dewatering through the installation of temporary dewatering wells, vacuum well points, eductors, or similar tools to cause localized lowering of the water table to facilitate construction activity; and (3) residential open-loop geothermal heating and cooling systems that use water as a heat transfer medium. GP9 includes operating requirements to ensure that discharges will comply with water quality standards. Most discharges will be automatically authorized; an eNOI will only need to be submitted for a few higher-risk discharges. Discharges from residential open-loop geothermal systems are automatically authorized, as are dewatering discharges where no site contamination is expected. There are no fees associated with GP9. The amendments also clarify that a dewatering discharge from the installation, maintenance, or repair of an agricultural drainage system which does not reach a water of the state is not considered the operation of a wastewater disposal system and does not require an operation permit.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 14, 2018, as **ARC 3625C**. Public hearings were held on March 7, 2018, at the Coralville Public Library, Coralville, Iowa; March 8, 2018, at the Harlan Community Library, Harlan, Iowa; and March 14, 2018, at the Urbandale Public Library, Urbandale, Iowa. Fifteen people attended the public hearings. Public comments were received from representatives of water supplies, a manufacturing plant, convenience stores, and the Iowa Department of Transportation (Iowa DOT). Water supplies' representatives requested clarification of the GP8 requirements that pertained to water line discharges and had some concerns regarding GP9 and the need to determine the potential for soil or groundwater contamination, the ground surface operating requirements, and the amount of record keeping required. The manufacturing plant had concerns about the 30-day requirement to submit an eNOI and requested the ability to use one antidegradation document for multiple eNOIs or be exempted from antidegradation requirements. An association representing petroleum marketers and convenience stores had concerns that the federal Resource Conservation and Recovery Act (RCRA) contains some pollutant action levels that are more stringent than the limits found in GP8. The association was concerned that owners of underground tanks may not understand that discharges in compliance with GP8 may not necessarily comply with RCRA. The Iowa DOT questioned why some of the requirements of GP9 were waived for residential construction that disturbs less than one acre. A summary of the response by the Department of Natural Resources (Department) to comments is available at the Department's website at www.iowadnr.gov/Environmental-Protection/Water-Quality/NPDES-Wastewater-Permitting/NPDES-General-Permits.

These adopted amendments are identical to the amendments published under Notice of Intended Action. However, several revisions were made to the general permits in response to public comments. Statements were added to GP8 to clarify that all of the requirements for hydrostatic testing of water lines are contained only within Part IV, that hydrostatic testing of new sanitary sewer lines also falls under Part IV, and that the narrative water quality standards only apply to water line discharges that reach a water of the state. The term "pressure testing" was substituted for the term "testing" to better conform to water industry terminology.

GP9 was revised to clarify that discharges necessary to repair water lines are not covered under the permit. These repairs are typically emergencies that may endanger public health or safety and are not the normal day-to-day operations that are the intended scope of GP9. Statements were added to GP9 to clarify that the requirements for residential open-loop geothermal systems are contained only within Part V.

Both general permits were revised to allow one antidegradation document to cover multiple eNOIs and to allow for the submittal of eNOIs less than 30 days from the commencement of discharge to accommodate situations that are more urgent. The ground surface operating requirements in both general permits have been revised to allow for minimizing erosion rather than preventing erosion, as prevention may not be possible in all situations.

Adoption of Rule Making

This rule making was adopted by the Commission on April 17, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. Overall, the rule making is anticipated to result in a cost savings to the permittees as they will now be able to obtain an authorization under a general permit faster than an individual permit, less paperwork will be required, and there are no fees for these permits.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found because state and federal law already require permits for these discharges. However, the issuance of these general permits will likely result in cost savings to these permittees. Obtaining an individual permit requires an investment of time and effort that is disproportionate to the impact these discharges usually have on the environment. GP8 and GP9 will benefit the regulated community by providing legal authorization to discharge without the time and effort of obtaining an individual permit.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on July 1, 2018.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** paragraph **64.3(1)“h”**:

h. Dewatering discharge from the installation, repair, or maintenance of agricultural drainage systems that does not reach a water of the state. This activity is not considered operation of a wastewater disposal system.

ITEM 2. Adopt the following **new** subparagraph **64.3(4)“b”(7)**:

(7) For any discharge from hydrostatic testing, tank ballasting and water lines, if required to be submitted by General Permit No. 8, on or after July 1, 2018.

ITEM 3. Adopt the following **new** subparagraph **64.3(4)“b”(8)**:

(8) For any discharge from dewatering or residential geothermal systems, if required to be submitted by General Permit No. 9, on or after July 1, 2018.

ITEM 4. Adopt the following **new** subparagraph **64.4(2)“a”(6)**:

(6) Discharges from hydrostatic testing, tank ballasting and water lines.

ITEM 5. Adopt the following **new** subparagraph **64.4(2)“a”(7)**:

(7) Discharges from dewatering and residential geothermal systems.

ITEM 6. Amend subrule 64.6(1), introductory paragraph, as follows:

64.6(1) Contents of a complete Notice of Intent. An applicant proposing to conduct activities covered by a general permit shall file a complete Notice of Intent by submitting to the department materials required in paragraphs “a” to “c” of this subrule except that a Notice of Intent is not required for discharges authorized under General Permit No. 6, for certain discharges under General Permit No. 8, or for certain discharges under General Permit No. 9.

ITEM 7. Adopt the following **new** subparagraph **64.6(1)“a”(7)**:

(7) General Permit No. 8 “Discharge from Hydrostatic Testing, Tank Ballasting and Water Lines.”

ITEM 8. Adopt the following **new** subparagraph **64.6(1)“a”(8)**:

(8) General Permit No. 9 “Discharge from Dewatering and Residential Geothermal Systems.”

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 9. Amend subparagraph **64.6(1)“c”(2)** as follows:

(2) General Permits No. 4, No. 5, No. 6, ~~and~~ No. 7, No. 8 and No. 9. There are no public notification requirements for these permits.

ITEM 10. Amend paragraph **64.6(3)“d”** as follows:

d. The department finds that discharges from biological pesticides and chemical pesticides which leave a residue are not managed in a manner consistent with the conditions specified in General Permit No. 7, or

ITEM 11. Adopt the following new paragraph **64.6(3)“e”**:

e. The department finds that discharges from hydrostatic testing, tank ballasting or water line testing are not managed in a manner consistent with the conditions specified in General Permit No. 8, or

ITEM 12. Adopt the following new paragraph **64.6(3)“f”**:

f. The department finds that discharges from dewatering or residential geothermal systems are not managed in a manner consistent with the conditions specified in General Permit No. 9.

ITEM 13. Adopt the following new subrule 64.15(8):

64.15(8) “Discharge from Hydrostatic Testing, Tank Ballasting and Water Lines,” NPDES General Permit No. 8, effective July 1, 2018, to June 30, 2023.

ITEM 14. Adopt the following new subrule 64.15(9):

64.15(9) “Discharge from Dewatering and Residential Geothermal Systems,” NPDES General Permit No. 9, effective July 1, 2018, to June 30, 2023.

ITEM 15. Renumber subrule **64.16(7)** as **64.16(9)**.

ITEM 16. Adopt the following new subrule 64.16(7):

64.16(7) “Discharge from Hydrostatic Testing, Tank Ballasting and Water Lines,” NPDES General Permit No. 8. No fees shall be assessed.

ITEM 17. Adopt the following new subrule 64.16(8):

64.16(8) “Discharge from Dewatering and Residential Geothermal Systems,” NPDES General Permit No. 9. No fees shall be assessed.

[Filed 4/19/18, effective 7/1/18]

[Published 5/9/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.

ARC 3787C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to appeals

The Human Services Department hereby amends Chapter 7, “Appeals and Hearings,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 217.6 and 42 CFR 438.424.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Purpose and Summary

Federal regulations recently changed the time frame within which individuals would be allowed to file a request for a state fair hearing regarding managed care organization appeals. The time frame has been extended from 90 days to 120 days. These amendments update the time that individuals have to file a state fair hearing request regarding a managed care organization decision.

Federal regulations also changed the effectuation of a reversed appeal resolution for managed care organization appeals. Federal regulations indicate that if a state fair hearing officer reverses a managed care organization's decision to deny, limit or delay services that were not furnished while the appeal was pending, the managed care organization must authorize or provide the disputed services promptly and expeditiously as the enrollee's health condition requires but no later than 72 hours from the date the managed care organization receives notice reversing the determination. The federal regulation previously did not include the 72-hour requirement. These amendments are updated to include this requirement.

In a previous rule making, the Department adopted amendments removing the requirement that Notices of Hearing for an intentional program violation be mailed both by certified mail and by first-class mail. However, after those amendments were adopted, the Department realized a second reference to the certified mail requirement had erroneously not been removed. The remaining reference to the certified mail requirement is removed in these amendments to eliminate confusion.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 28, 2018, as **ARC 3652C**. The Department received no comments from the public. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on April 11, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. There have been recent changes in federal regulations regarding state fair hearings for managed care organization appeals. These amendments bring the Department's rules into alignment with the federal regulations. These amendments are beneficial to the Department's customers and to Department staff.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

These amendments do not include waiver provisions because the amendments confer benefits on those affected and because the amendments are generally required by federal law that does not allow for waivers. Individuals may request a waiver under the Department's general rule on exceptions at rule 441—1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

HUMAN SERVICES DEPARTMENT[441](cont'd)

Effective Date

This rule making will become effective on July 1, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 7.5(4) as follows:

7.5(4) *Time limit for granting hearing to an appeal.* Subject to the provisions of subrule 7.5(1), when an appeal is made, the granting of a hearing to that appeal shall be governed by the following timeliness standards:

a. No change.

b. Food assistance, medical assistance eligibility, fee-for-service medical coverage, family planning program or autism support program standard. For appeals regarding food assistance, medical assistance eligibility, fee-for-service medical coverage, the family planning program or the autism support program, a hearing shall be held if the appeal is made within 90 days after official notification of an action. ~~For appeals regarding a health care decision made by a managed care organization, a hearing shall be held if the appeal is made within 90 days after written notification that the first-level review process through the managed care organization has been exhausted. A hearing shall be held if the appeal is made within 90 days after the appeal is deemed to have exhausted the managed care organization's appeals process, as provided in paragraph 7.2(5)“c.”~~

c. Managed care organization medical coverage. For appeals regarding a health care decision made by a managed care organization, a hearing shall be held if the appeal is made within 120 days after written notification that the first-level review process through the managed care organization has been exhausted. A hearing shall be held if the appeal is made within 120 days after the appeal is deemed to have exhausted the managed care organization's appeals process, as provided in paragraph 7.2(5)“c.”

e. d. Offset standards. For appeals regarding state or federal tax or debtor offsets, a hearing shall be held if the appeal is made within 15 days after official notification of the action. Counties have 30 days to appeal offsets, as provided in 441— subrule 14.4(3). When the appeal is made more than 15 days but less than 90 days after notification, the director shall determine whether a hearing shall be granted.

(1) The director may grant a hearing if one or more of the following conditions existed:

1. There was a serious illness or death of the appellant or a member of the appellant's family.
2. There was a family emergency or household disaster, such as a fire, flood, or tornado.
3. The appellant offers a good cause beyond the appellant's control, which can be substantiated.
4. There was a failure to receive the department's notification for a reason not attributable to the appellant. Lack of a forwarding address is attributable to the appellant. A hearing may be granted if an appellant provides proof that a forwarding address was not supplied due to fear of domestic violence, homelessness, or other good cause.

(2) The time in which to appeal an offset action shall not exceed 90 days. Appeals made more than 90 days after notification shall not be heard.

(3) The day after the official notice is sent is the first day of the period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

d. e. Abuse standard.

(1) For appeals regarding dependent adult abuse, a hearing shall be held if the appeal is made within six months after official notification of the action as provided in Iowa Code section 235B.10.

(2) For appeals regarding child abuse, a hearing shall be held if the appeal is made by a person alleged responsible for the abuse within 90 days after official notification of the action as provided in Iowa Code section 235A.19. A subject of a child abuse report, other than the alleged person responsible for the abuse, may file a motion to intervene in the hearing within 10 calendar days after the appeal notification.

(3) The day after the official notice is sent is the first day of the period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

HUMAN SERVICES DEPARTMENT[441](cont'd)

e. f. Displacement and discrimination standard. PROMISE JOBS displacement and discrimination appeals shall be granted hearing on the following basis:

(1) An appeal of an informal grievance resolution on a PROMISE JOBS displacement grievance shall be made in writing within 10 days of issuance (i.e., mailing) of the resolution decision or within 24 days of the filing of the displacement grievance, whichever is the shorter time period, unless good cause for late filing as described in subparagraph 7.5(4)“a”(1) is found.

(2) An appeal of a PROMISE JOBS discrimination complaint shall be made within the time frames provided in paragraph 7.5(4)“a” in relation to the action alleged to have involved discrimination.

f. g. Risk assessment standard. An appeal of a sex offender risk assessment shall be made in writing within 14 calendar days of issuance of the notice.

ITEM 2. Amend rule 441—7.16(17A) as follows:

441—7.16(17A) The appeal decision.

7.16(1) to 7.16(5) No change.

7.16(6) Appeal of the proposed decision by the department. The appeals advisory committee acts as an initial screening device for the director and may recommend that the director review a proposed decision. That recommendation is not binding upon the director, and the director may decide to review a proposed decision without that committee’s recommendation.

A request by the department for director’s review of the proposed decision must be made in writing. The written request must be submitted to the appeals ~~section~~ advisory committee in person or submitted through an electronic delivery method, such as electronic mail or facsimile, within ten calendar days of the date on which the proposed decision was sent. The day after the proposed decision is sent is the first day of the time period within which a request for director’s review must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

When the director grants a review of a proposed decision on the department’s request, the appeals section shall notify all other parties to the appeal of the review and send a copy of the request to all other parties. All other parties shall be provided ten calendar days from the date of notification to submit further written arguments or objections for consideration upon review.

Written arguments or objections must be mailed or submitted in person to the appeals section or submitted through an electronic delivery method, such as electronic mail, submission of an online form, or facsimile.

The day after the notification is sent is the first day of the time period within which a response to the department’s request for review must be filed. When the time limit for responding falls on a holiday or a weekend, the time will be extended to the next workday.

7.16(7) Appeal of the proposed decision by the managed care organization. The appeals advisory committee acts as an initial screening device for the director and may recommend that the director review a proposed decision. That recommendation is not binding upon the director, and the director may decide to review a proposed decision without that committee’s recommendation.

A request by the managed care organization for director’s review of the proposed decision must be made in writing. The written request must be submitted to the appeals advisory committee in person or submitted through an electronic delivery method, such as electronic mail or facsimile, within 72 hours of the date on which the proposed decision was sent. The day after the proposed decision is sent is the first day of the time period within which a request for director’s review must be filed.

When the director grants a review of a proposed decision on the managed care organization’s request, the appeals section shall notify all other parties to the appeal of the review and send a copy of the request to all other parties. All other parties shall be provided ten calendar days from the date of notification to submit further written arguments or objections for consideration upon review.

Written arguments or objections must be mailed or submitted in person to the appeals section or submitted through an electronic delivery method, such as electronic mail, submission of an online form, or facsimile.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The day after the notification is sent is the first day of the time period within which a response to the department's request for review must be filed. When the time limit for responding falls on a holiday or a weekend, the time will be extended to the next workday.

~~7.16(7)~~ **7.16(8)** *Appeal of the proposed decision by the appellant.* When the director grants a review of a proposed decision, all other parties shall be so notified.

~~7.16(8)~~ **7.16(9)** *Opportunity for oral presentation of appeal of the proposed decision.* In cases where there is an appeal of a proposed decision, each party shall be afforded an opportunity to present oral arguments with the consent of the director. Any party wishing oral argument shall specifically request it. When granted, all parties shall be notified of the time and place.

~~7.16(9)~~ **7.16(10)** *Time limits.*

a. A final decision on the appeal shall be issued within the following time frames:

(1) Appeals for all programs, except food assistance, shall be rendered within 90 days from the date of the appeal.

(2) Food assistance-only decisions shall be rendered within 60 days.

(3) PROMISE JOBS displacement grievance decisions shall be rendered within 90 days from the date the displacement grievance was filed with the PROMISE JOBS contractee.

b. Failure to reach a decision within the time frames set forth in paragraph ~~7.16(9)~~ "a" **7.16(10)** "a" shall not affect the merits of the appellant's appeal.

c. Time frames may be extended based on continuances or additional time frames as approved by the presiding officer. Should the appellant request a delay in the hearing in order to prepare the case or for other essential reasons, reasonable time, not to exceed 30 days except with the approval of the administrative law judge, shall be granted and the extra time shall be added to the maximum for final administrative action.

d. For an appeal regarding child abuse, if the proposed decision is not appealed within 10 days from the date of the proposed decision, the proposed decision shall be the final agency action. If a party files an appeal within 10 days from the date of the proposed decision, the director has 45 days from the date of the proposed decision to issue a ruling. If the director does not rule within that 45-day period, the proposed decision becomes the final decision as provided in Iowa Code section 235A.19.

e. The department shall take prompt, definite and final administrative action to carry out the decision rendered within seven calendar days of receipt of a copy of the final decision. ~~When the final decision is favorable to the appellant, or when the department decides in favor of the appellant before the hearing, the department shall make any additional corrective payments due, retroactive to the date of the incorrect action.~~ for all programs, except as provided in paragraph 7.6(10) "f."

f. If the administrative law judge reverses a decision to deny, limit or delay services that were not furnished while the appeal was pending, the managed care organization must authorize or provide the disputed services promptly and as expeditiously as the appellant's health condition requires but no later than 72 hours from the date on the proposed decision.

If the administrative law judge reverses a decision to deny authorization of services and the appellant received the disputed services while the appeal was pending, the managed care organization must pay for those services pursuant to subrules 7.9(5) and 7.9(6).

g. When the final decision is favorable to the appellant or when the department decides in favor of the appellant before the hearing, the department shall make any additional corrective payments due, retroactive to the date of the incorrect action.

~~7.16(10)~~ **7.16(11)** *Final decision.* The department shall mail the final decision to the appellant at the appellant's last-known address by first-class mail, postage prepaid.

ITEM 3. Amend subrule 7.21(3) as follows:

7.21(3) *Conduct of a food assistance administrative disqualification hearing.* Hearings over disqualification of a household member for an intentional program violation shall be conducted by a presiding officer.

a. The department of inspections and appeals shall serve an Intentional Program Violation Hearing Notice upon the household member ~~both by certified mail, return receipt requested, and by first-class~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

mail, postage prepaid, addressed to household member at the last-known address 30 calendar days before the initial hearing date.

b. and c. No change.

ITEM 4. Amend rule 441—7.46(17A) as follows:

441—7.46(17A) Request for review of the proposed decision. A request for review of the proposed decision shall follow the provisions outlined in subrules 7.16(5) to ~~7.16(7)~~ 7.16(8).

[Filed 4/11/18, effective 7/1/18]

[Published 5/9/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.

ARC 3788C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to eligibility to participate in autism support program

The Human Services Department hereby amends Chapter 22, "Autism Support Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 225C.6 and 2017 Iowa Acts, House File 215.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 225C.6 and 2017 Iowa Acts, House File 215.

Purpose and Summary

These amendments bring the rules in Chapter 22 into alignment with 2017 legislative changes to Iowa Code chapter 225D. 2017 Iowa Acts, House File 215, requires certain health insurance policies, contracts, or plans to provide coverage of applied behavior analysis (ABA) treatment for certain individuals with autism spectrum disorder. Individuals who gain private insurance as a result of this legislation will no longer be eligible for participation in the Autism Support Program (ASP).

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 14, 2018, as **ARC 3619C**. The Department received comments from four respondents. A summary of the comments and the Department's responses are as follows:

Comment 1: Four respondents commented that insurance plans for companies with fewer than 50 employees, plans that are self-funded, and plans purchased through the health care exchanges continue to be excluded from the requirement to provide ABA coverage and that families with those plans may not qualify for the ASP because they have incomes over 500 percent of the federal poverty level (FPL). The respondents commented that there is a need for more flexibility in funding alternatives for ABA services.

Department response: The Autism Support Program's family income limitation requirement is established by the legislature and Iowa Code. The Department does not have the authority to change the limitation through the rule-making process. The ASP rules have been revised to conform to the changes in ABA insurance coverage made by the legislature's enactment of House File 215. The Department does not have authority to expand the type of plans included or to increase the flexibility of ASP funds.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Comment 2: Two respondents commented that the increased coverage of ABA services by private insurance carriers may have an unintended consequence of increasing the costs to families, whose out-of-pocket costs to their insurer may be higher than the cost share they paid through the ASP, and that this increased cost may make ABA services cost prohibitive for some families.

Department response: The Department does not have authority to expand the eligibility requirements established by the legislation.

Comment 3: One respondent commented that the ASP's current family income limitation of 500 percent of FPL should be raised to make the program available to more families and that the family cost-share requirement should be lowered because the out-of-pocket costs to families may restrict their ability to access the program.

Department response: The ASP's family income limitation and cost-share requirement are established by the legislature and Iowa Code, and the Department does not have the authority to change the limitation of the cost-share requirement through the rule-making process.

Comment 4: One respondent commented that the income limitation of 500 percent of FPL (or about \$125,500 for a family of four) is too low when compared to the cost of intensive full-time ABA services, which may cost more than \$50,000 annually. The respondent commented that the income limitation should be increased to facilitate access.

Department response: The ASP's family income limitation is established by the legislature and Iowa Code, and the Department does not have the authority to change it through the rule-making process.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Mental Health and Disability Services Commission on April 19, 2018.

Fiscal Impact

This rule making does not result in any additional costs to the Department. It may result in some reduction to the costs of the Autism Support Program, which is funded with 100 percent state dollars, but savings are expected to be less than \$100,000 annually.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on July 1, 2018.

The following rule-making actions are adopted:

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend rule **441—22.1(225D)**, definition of “Eligible individual,” as follows:

“*Eligible individual*” means a child less than 14 years of age who has been diagnosed with autism based on a diagnostic assessment of autism, is not otherwise eligible for coverage for applied behavioral analysis treatment or applied behavior analysis treatment under the medical assistance program, Iowa Code section 514C.28, Iowa Code section 514C.31, or private insurance coverage, and whose household income does not exceed 500 percent of the federal poverty level.

ITEM 2. Amend subrule 22.2(4) as follows:

22.2(4) An individual shall be determined ineligible for coverage of applied behavioral analysis services under the medical assistance program, Iowa Code section 514C.28, Iowa Code section 514C.31, or other private insurance coverage. Proof of insurance coverage and noneligibility for coverage for applied behavioral analysis shall be provided at the time of application and shall include a written denial of coverage or a benefits summary indicating that the applied behavioral analysis treatment or applied behavior analysis treatment is not a covered benefit for which the applicant is eligible under the Medicaid program, Iowa Code section 514C.28, Iowa Code section 514C.31, or other private insurance coverage.

[Filed 4/19/18, effective 7/1/18]

[Published 5/9/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.

ARC 3789C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to psychiatric bed tracking system

The Human Services Department hereby amends Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 87.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 87.

Purpose and Summary

This amendment requires hospitals providing inpatient psychiatric services, including the state mental health institutes (MHI), to update the inpatient psychiatric bed tracking system at least two times per day with the number of available, staffed beds by gender, child, adult, and geriatric.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 28, 2018, as **ARC 3659C**. The Department received no public comments during the comment period. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on April 11, 2018.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. The new subrule requires that hospitals update the psychiatric bed tracking system twice daily. The Department has already spent the funds to develop the tracking system to be used by the institutions. There are no additional expenses to the State related to this rule making.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on July 1, 2018.

The following rule-making action is adopted:

Adopt the following **new** subrule 77.3(3):

77.3(3) Psychiatric bed tracking system. As a condition of participation in the medical assistance program, hospitals must establish procedures for participating in and updating the statewide psychiatric bed tracking system.

a. Definitions.

“*Adult beds*” means the number of staffed and available psychiatric beds ready for admission to individuals 18 years of age to 60 years of age.

“*Child beds*” means the number of staffed and available psychiatric beds ready for admission to individuals up to the age of 18.

“*Gender*” means female or male.

“*Geriatric beds*” means the number of staffed and available psychiatric beds ready for admission to individuals 60 years of age and older.

“*Hospital*,” for purposes of this subrule, means any licensed hospital providing inpatient psychiatric services and the state mental health institutes.

“*Psychiatric bed tracking system*” means a web-based electronic system managed by the department that can be searched to locate inpatient psychiatric services at an Iowa hospital.

b. Hospitals are required to participate in the psychiatric bed tracking system.

c. Hospitals shall update the psychiatric bed tracking system, at a minimum, two times per day. The first update shall be entered between 12:00:01 a.m. and 9:59:59 a.m. each day; the second update shall be entered between 8:00:00 p.m. and 11:59:59 p.m. each day.

d. Each update must include the number of child beds by gender, the number of adult beds by gender, and the number of geriatric beds by gender.

HUMAN SERVICES DEPARTMENT[441](cont'd)

e. Failure to comply with the psychiatric bed tracking reporting may result in sanctions in accordance with rule 441—79.2(249A).

[Filed 4/11/18, effective 7/1/18]

[Published 5/9/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.

ARC 3790C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to rate-setting methodology

The Human Services Department hereby amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 93.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 93.

Purpose and Summary

These amendments change the rate-setting methodology used to develop supported community living (SCL), day habilitation, and adult day care service rates in the home- and community-based services (HCBS) intellectual disability waiver. The SCL methodology is changed from the retrospectively limited prospective rate-setting process to a fee schedule using a tiered-rate methodology. Day habilitation and adult day care service rates established through a fee schedule are changed to a fee schedule using tiered rates. The tiered-rate methodology establishes a tiered system of reimbursement based on the acuity level identified from the results of the Supports Intensity Scale® (SIS) core standardized assessment.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 6, 2017, as **ARC 3476C**. This rule making was also Adopted and Filed Emergency and published in the Iowa Administrative Bulletin as **ARC 3481C** on the same date. An Amended Notice of Intended Action to provide for two public hearings was published in the Iowa Administrative Bulletin on January 31, 2018, as **ARC 3602C**.

A public hearing was held on February 21, 2018, at 1 p.m. at the Coralville Public Library, E. Jean Schwab Auditorium, 1401 Fifth Street, Coralville, Iowa, and a second public hearing was held on February 23, 2018, at 1:30 p.m. at the Nesler Centre, Third Floor Conference Room, 799 Main Street, Dubuque, Iowa.

The Department consolidated the comments received from the public regarding **ARC 3476C** and **ARC 3481C** into a single document that also includes responses from the Department. The comments consisted of concerns in one of three groups. The first group of comments received when the Department filed the initial Notice of Intended Action requested that the Department conduct public hearings on the rule making. The second group of comments received dealt primarily with the perceived impact of the implementation of the amendments on individual cases. The final group of comments

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dealt with proposed technical changes to the administrative rules. All of the consolidated comments and the Department's responses are published in a document posted to the Department's website at dhs.iowa.gov/sites/default/files/ARC%203476C%20and%20ARC%203602C%20Comments%20and%20Responses.pdf.

As a direct result of the comments received during the public comment period and technical review of the amendments, the following changes from the Notice and Adopted and Filed Emergency rule makings have been made:

1. The Department further amended the introductory paragraph of 78.41(1)"f" in Item 1 by striking the words "reflect all staff-to-member ratios and shall" and the phrase "for travel and transportation, consulting, instruction, and environmental modifications and repairs," so that the introductory paragraph will read as follows:

"f. Provider budgets shall reflect costs associated with members' specific support needs as determined necessary by the interdisciplinary team for each member. The specific support needs must be identified in the Medicaid case manager's service plan, and the provider must maintain records to support the expenditures. A unit of service is:"

2. The Department added a new Item 3 to amend subrule 78.41(12) and has renumbered subsequent items accordingly. The amendment to subrule 78.41(12) pertains to units of service for adult day care services under the HCBS intellectual disability waiver.

3. The Department further amended the "supported community living" entry under the HCBS waiver service provider listing in subrule 79.1(2) in Item 5 to revise the basis-of-reimbursement statement for the intellectual disability waiver by adding the following: "Retrospectively limited prospective rate for SCL 15-minute unit. See 79.1(15)."

4. The Department further amended the introductory paragraph of subrule 79.1(15) in Item 6 by adding the words "HCBS intellectual disability waiver supported community living for 15-minute services" so that the introductory paragraph will read as follows:

"**79.1(15) HCBS retrospectively limited prospective rates.** This methodology applies to reimbursement for HCBS brain injury waiver supported community living; HCBS intellectual disability waiver supported community living for 15-minute services; HCBS family and community support services; and HCBS interim medical monitoring and treatment when provided by an HCBS-certified supported community agency."

5. The Department revised the introductory paragraph of paragraph 79.1(30)"d" in Item 7 to clarify the meaning of "SIS activities score" by changing the phrase "the sum total of scores" to "the sum total of the subscale raw SIS scores converted to standard scores." The introductory paragraph will read as follows:

"d. For this purpose, the 'SIS activities score' is the sum total of the subscale raw SIS scores converted to standard scores on the following subsections:"

6. The Department revised paragraph 79.1(30)"h" in Item 7 by deleting subparagraph (3), which read:

"(3) A member's acuity tier assignment does not affect the services that the member will receive and is not considered an adverse action, and therefore there are no appeal rights."

7. The Department revised paragraph 83.67(4)"i" in Item 8 by adding the word "standard" before the word "scores" in the introductory paragraph and in subparagraph (3) so that paragraph 83.67(4)"i" will read as follows:

"i. For members receiving daily supported community living, day habilitation or adult day care: the following standard scores from the most recently completed SIS assessment:

"(1) Score on subsection 1A: Exceptional Medical Support Needs.

"(2) Score on subsection 1B: Exceptional Behavioral Support Needs.

"(3) Sum total of standard scores on the following subsections:

"1. Subsection 2A: Home Living Activities;

"2. Subsection 2B: Community Living Activities;

"3. Subsection 2E: Health and Safety Activities; and

"4. Subsection 2F: Social Activities."

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Adoption of Rule Making

This rule making was adopted by the Council on Human Services on April 11, 2018.

Fiscal Impact

The move to tiered rates as a funding methodology will be cost neutral to the Department. The tiered-rate funding methodology assigns a standardized service rate based on member need, unlike the current methodology of services reimbursement based on provider costs. With this change, some providers will see increased revenues compared to current service reimbursement and other providers will see decreased revenues.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on June 13, 2018, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **78.41(1)**“f,” introductory paragraph, as follows:

f. Provider budgets shall ~~reflect all staff to member ratios and shall~~ reflect costs associated with members' specific support needs for travel and transportation, consulting, instruction, and environmental ~~modifications and repairs~~, as determined necessary by the interdisciplinary team for each member. The specific support needs must be identified in the Medicaid case manager's service plan, ~~the total costs shall not exceed \$1570 per member per year~~, and the provider must maintain records to support the expenditures. A unit of service is:

ITEM 2. Amend subrule 78.41(11) as follows:

78.41(11) Transportation. Transportation services may be provided for members to conduct business errands and essential shopping, to travel to and from work or day programs, and to reduce social isolation. A unit of service is one mile of transportation or one one-way trip. Transportation may not be reimbursed ~~simultaneously with~~ when HCBS intellectual disability waiver daily supported community living service when the transportation costs are included within the supported community living reimbursement rate is authorized in a member's service plan.

ITEM 3. Amend subrule 78.41(12) as follows:

78.41(12) Adult day care services. Adult day care services provide an organized program of supportive care in a group environment to persons who need a degree of supervision and assistance on a regular or intermittent basis in a day care center. A unit of service is 15 minutes (up to four units per day), a half day (1.25 to 4 hours per day), or a full day (4.25 to 8 1/2 hours per day), or an extended day

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(8.25 to 12 hours per day). Components of the service include health-related care, social services, and other related support services.

ITEM 4. Amend paragraph 79.1(1)“c” as follows:

c. Fee schedules. Fees for the various procedures involved are determined by the department with advice and consultation from the appropriate professional group. The fees are intended to reflect the amount of resources (time, training, experience) involved in each procedure. Individual adjustments will be made periodically to correct any inequity or to add new procedures or eliminate or modify others. If product cost is involved in addition to service, reimbursement is based either on a fixed fee, wholesale cost, or on actual acquisition cost of the product to the provider, or product cost is included as part of the fee schedule. Providers on fee schedules are reimbursed the lower of:

- (1) The actual charge made by the provider of service.
- (2) The maximum allowance under the fee schedule for the item of service in question.

Payment levels for fee schedule providers of service will be increased on an annual basis by an economic index reflecting overall inflation as well as inflation in office practice expenses of the particular provider category involved to the extent data is available. Annual increases will be made beginning July 1, 1988.

There are some variations in this methodology which are applicable to certain providers. These are set forth below in subrules 79.1(3) to 79.1(9) and 79.1(15).

Fee schedules in effect for the providers covered by fee schedules can be obtained from the department’s Web site at: http://www.ime.state.ia.us/Reports_Publications/FeeSchedules.html dhs.iowa.gov/ime/providers/csrp/fee-schedule.

ITEM 5. Amend subrule 79.1(2), provider category “HCBS waiver service providers,” paragraphs “1,” “18,” “25” and “26,” as follows:

79.1(2) Basis of reimbursement of specific provider categories.

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
1. Adult day care	<p><u>For AIDS/HIV, brain injury, elderly, and ill and handicapped waivers:</u> Fee schedule</p> <p><u>For intellectual disability waiver: Fee schedule for the member’s acuity tier, determined pursuant to 79.1(30)</u></p>	<p>Effective 7/1/16, for AIDS/HIV, brain injury, elderly, and ill and handicapped waivers: Provider’s rate in effect 6/30/16 plus 1%, converted to a 15-minute, half-day, full-day, or extended-day rate. If no 6/30/16 rate: Veterans Administration contract rate or \$1.47 per 15-minute unit, \$23.47 per half day, \$46.72 per full day, or \$70.06 per extended day if no Veterans Administration contract.</p> <p>Effective 7/1/17, for intellectual disability waiver: County contract rate or, in the absence of a contract rate, The provider’s rate in effect 6/30/16 plus 1%, converted to a 15-minute, or half-day, full-day, or extended-day rate. If no 6/30/16 rate, \$1.96 per 15-minute unit, or \$31.27 per half day, \$62.42 per full day, or \$79.59 per extended day.</p>

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		<u>For daily services, the fee schedule rate published on the department's website, pursuant to 79.1(1) "c," for the member's acuity tier, determined pursuant to 79.1(30).</u>
18. Supported community living	<u>For brain injury waiver: Retrospectively limited prospective rates. See 79.1(15)</u>	<u>For intellectual disability and brain injury waiver effective 7/1/16: \$9.28 per 15-minute unit, not to exceed the maximum daily ICF/ID rate per day plus 3.927%.</u>
	<u>For intellectual disability waiver: Fee schedule for the member's acuity tier, determined pursuant to 79.1(30). Retrospectively limited prospective rate for SCL 15-minute unit. See 79.1(15)</u>	<u>For intellectual disability waiver effective 7/1/17: \$9.28 per 15-minute unit. For daily service, the fee schedule rate published on the department's website, pursuant to 79.1(1) "c," for the member's acuity tier, determined pursuant to 79.1(30).</u>
25. Residential-based supported community living	<u>Retrospectively limited prospective rates. See 79.1(15) Fee schedule for the member's acuity tier, determined pursuant to 79.1(30)</u>	<u>Effective 7/1/16 7/1/17: Not to exceed the maximum ICF/ID rate per day plus 3.927%. The fee schedule rate published on the department's website, pursuant to 79.1(1) "c," for the member's acuity tier, determined pursuant to 79.1(30).</u>
26. Day habilitation	<u>Fee schedule for the member's acuity tier, determined pursuant to 79.1(30)</u>	<u>Effective 7/1/16 7/1/17: Provider's rate in effect 6/30/16 plus 1%, converted to a 15-minute or daily rate. If no 6/30/16 rate: \$3.51 per 15-minute unit or \$68.23 per day. For daily service, the fee schedule rate published on the department's website, pursuant to 79.1(1) "c," for the member's acuity tier, determined pursuant to 79.1(30).</u>

ITEM 6. Amend subrule 79.1(15) as follows:

79.1(15) *HCBS retrospectively limited prospective rates.* This methodology applies to reimbursement for HCBS brain injury waiver supported community living; HCBS intellectual disability waiver supported community living for 15-minute services; HCBS family and community support services; and HCBS interim medical monitoring and treatment when provided by an HCBS-certified supported community agency.

a. No change.

b. *Home- and community-based general rate criteria.*

(1) to (4) No change.

(5) Consumer transportation, consumer consulting, consumer instruction, consumer environmental modification and repairs and consumer environmental furnishings shall not exceed \$1,570 per consumer per year for supported community living services in the brain injury waiver.

(6) to (9) No change.

c. to g. No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 7. Adopt the following **new** subrule 79.1(30):

79.1(30) Tiered rates. For supported community living services, residential-based supported community living services, day habilitation services, and adult day care services provided under the intellectual disability waiver, the fee schedule published by the department pursuant to paragraph 79.1(1) "c" provides rates based on the acuity tier of the member, as determined pursuant to this subrule.

a. Acuity tiers are based on the results of the Supports Intensity Scale® (SIS) core standardized assessment. The SIS assessment tool and scoring criteria are available on request from the Iowa Medicaid enterprise, bureau of long-term care.

b. The assignment of members to acuity tiers is based on a mathematically valid process that identifies meaningful differences in the support needs of the members based on the SIS scores.

c. For supported community living daily services paid through a per diem, there are two reimbursement sublevels within each tier based on the number of hours of day services a member receives monthly. Day services include enhanced job search services, supported employment, prevocational services, adult day care, day habilitation and employment outside of Medicaid reimbursable services. The two reimbursement sublevels reflect reimbursement for:

- (1) Members who receive an average of 40 hours or more of day services per month.
- (2) Members who receive an average of less than 40 hours of day services per month.

d. For this purpose, the "SIS activities score" is the sum total of the subscale raw SIS scores converted to standard scores on the following subsections:

- (1) Subsection 2A: Home Living Activities;
- (2) Subsection 2B: Community Living Activities;
- (3) Subsection 2E: Health and Safety Activities; and
- (4) Subsection 2F: Social Activities.

e. Also used in determining a member's acuity tier, as provided in paragraphs 79.1(30) "f" and "g," are the subtotal scores on the following subsections:

- (1) Subsection 1A: Exceptional Medical Support Needs, excluding questions 16 through 19; and
- (2) Subsection 1B: Exceptional Behavioral Support Needs, excluding question 13.

f. Subject to adjustment pursuant to paragraph 79.1(30) "g," acuity tiers are the highest applicable tier pursuant to the following:

- (1) Tier 1: SIS activities score of 0 – 25.
- (2) Tier 2: SIS activities score of 26 – 40.
- (3) Tier 3: SIS activities score of 41 – 44 or SIS activities score of 0 – 40 and a SIS subsection 1B subtotal score of 6 or higher.
- (4) Tier 4: SIS activities score of 45 or higher.
- (5) Tier 5: SIS activities score of 41 or higher and a subsection 1B subtotal score of 7 or higher.
- (6) Tier 6: SIS subsection 1A or 1B subtotal score of 14 or higher.
- (7) RCF tier: Members residing in a residential care facility (RCF) licensed for six or more beds.
- (8) RBSCCL tier: Members residing in a residential-based supported community living (RBSCCL) facility.

(9) Enhanced tier: An individual member rate negotiated between the department and the provider.

g. The tier determined pursuant to paragraph 79.1(30) "f" shall be adjusted as follows:

(1) For members with a subsection 1A subtotal score of 2 or 3, as provided in subparagraph 79.1(30) "e"(1), but with a response of "extensive support needed" (score = 2) in response to any prompt in subsection 1A, as provided in subparagraph 79.1(30) "e"(1) and an otherwise applicable tier of 1 to 4 pursuant to paragraph 79.1(30) "f," the tier is increased by one tier.

(2) For members with a subsection 1A subtotal score of 4 – 9, and an otherwise applicable tier of 1 to 4 pursuant to paragraph 79.1(30) "f," the tier is increased by one tier.

(3) For members with a subsection 1A subtotal score of 10 – 13, and an otherwise applicable tier of 1 to 3 pursuant to paragraph 79.1(30) "f," the tier is increased by two tiers.

(4) For members with a subsection 1A subtotal score of 10 – 13, and an otherwise applicable tier of 4 pursuant to paragraph 79.1(30) "f," the tier is increased by one tier.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(5) Any member may receive an enhanced tier rate when approved by the department for fee-for-service members.

h. Tier redetermination. A member's acuity tier may be changed in the following circumstances:

(1) There is a change in the member's SIS activity scores as determined in the annual level of care redetermination process pursuant to rule 441—83.64(249A).

(2) A completed DHS Form 470-5486, Emergency Needs Assessment, indicates a change in the member's support needs. A member's case manager may request an emergency needs assessment when a significant change in the member's needs is identified. When a completed emergency needs assessment indicates significant changes that are likely to continue in three of the five domains assessed, a full SIS core standardized assessment shall be conducted and any change in the SIS scores will be used to determine the member's acuity tier.

i. New providers, provider acquisitions, mergers and change in ownership. Any change in provider enrollment status including, but not limited to, new providers, enrolled providers merging into one or more consolidated provider entities, acquisition or takeover of existing HCBS providers, or change in the majority ownership of a provider on or after December 1, 2017, shall require the new provider entity to use the tiered rate fee schedule in accordance with paragraph 79.1(1) "c."

ITEM 8. Adopt the following **new** paragraph **83.67(4)“i”**:

i. For members receiving daily supported community living, day habilitation or adult day care: the following standard scores from the most recently completed SIS assessment:

- (1) Score on subsection 1A: Exceptional Medical Support Needs.
- (2) Score on subsection 1B: Exceptional Behavioral Support Needs.
- (3) Sum total of standard scores on the following subsections:
 1. Subsection 2A: Home Living Activities;
 2. Subsection 2B: Community Living Activities;
 3. Subsection 2E: Health and Safety Activities; and
 4. Subsection 2F: Social Activities.

[Filed 4/11/18, effective 6/13/18]

[Published 5/9/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.

ARC 3791C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to child care assistance

The Human Services Department hereby amends Chapter 170, "Child Care Services," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 234.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 234.6 and the federal Child Care and Development Block Grant.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Purpose and Summary

These amendments revise the Child Care Assistance (CCA) fee chart based on the new federal poverty levels (FPL) in accordance with the Child Care and Development Block Grant. These amendments also update rules regarding temporary-lapse policy and add a wait list exemption for homeless families.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 28, 2018, as **ARC 3651C**. The Department received no comments during the public comment period. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on April 11, 2018.

Fiscal Impact

This rule making has a fiscal impact of \$100,000 annually or \$500,000 over five years to the State of Iowa. Detailed assumptions and descriptions about how the estimates were derived may be obtained from the Department upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

This rule making does not provide a specific waiver authority because families may request a waiver of these provisions in a specified situation under the Department's general rule on exceptions at rule 441—1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on July 1, 2018.

The following rule-making actions are adopted:

ITEM 1. Rescind subparagraph **170.2(2)“b”(9)** and adopt the following **new** subparagraph in lieu thereof:

(9) Family eligibility shall continue during an approved certification period when a temporary lapse in need for service for a parent established under this subparagraph occurs. A temporary lapse is defined as:

1. Any time-limited absence from work or a training or education program for a parent due to:
 - Need to care for a family member.
 - An illness.
 - Maternity leave.
 - Family Medical Leave Act (FMLA) situations for household members.
 - Participation in a treatment/rehabilitation program.

HUMAN SERVICES DEPARTMENT[441](cont'd)

2. Any reduction in employment or education/training hours that fall below the minimum number required at 170.2(2)“b”(1), (2) or (8) as long as the parent continues to work or attend training or education.

3. Any student holiday or break for a parent participating in training or education.

4. Any interruption in work for a seasonal worker who is not working between regular industry work seasons.

5. Any other cessation of work or attendance at a training or education program that does not exceed three months.

ITEM 2. Amend paragraph **170.2(3)“b”** as follows:

b. Exceptions to priority groups. The following are eligible for child care assistance notwithstanding waiting lists for child care services:

(1) Families with protective child care needs.

(2) Recipients of the family investment program or those whose earned income was taken into account in determining the needs of family investment program recipients.

(3) Families that receive a state adoption subsidy for a child.

(4) Families that are experiencing homelessness.

ITEM 3. Amend subparagraph **170.4(2)“a”(1)** as follows:

(1) The fee schedule shown in the following table is effective for eligibility determinations made on or after July 1, ~~2017~~ 2018:

Level	Monthly Income According to Family Size													Unit Fee Based on Number of Children in Care		
	1	2	3	4	5	6	7	8	9	10	11	12	13+	1	2	3 or more
A	\$955	\$1,286	\$1,617	\$1,948	\$2,279	\$2,610	\$2,940	\$3,272	\$3,602	\$3,933	\$4,265	\$4,595	\$4,926	\$0.00	\$0.00	\$0.00
	\$961	\$1,303	\$1,645	\$1,987	\$2,329	\$2,671	\$3,013	\$3,355	\$3,697	\$4,039	\$4,381	\$4,723	\$5,065			
B	\$1,005	\$1,354	\$1,702	\$2,050	\$2,399	\$2,747	\$3,095	\$3,444	\$3,792	\$4,140	\$4,489	\$4,837	\$5,185	\$0.20	\$0.45	\$0.70
	\$1,012	\$1,372	\$1,732	\$2,092	\$2,452	\$2,812	\$3,172	\$3,532	\$3,892	\$4,252	\$4,612	\$4,972	\$5,332			
C	\$1,033	\$1,392	\$1,750	\$2,107	\$2,466	\$2,824	\$3,182	\$3,540	\$3,898	\$4,256	\$4,615	\$4,972	\$5,330	\$0.45	\$0.70	\$0.95
	\$1,040	\$1,410	\$1,780	\$2,151	\$2,521	\$2,891	\$3,261	\$3,631	\$4,001	\$4,371	\$4,741	\$5,111	\$5,481			
D	\$1,061	\$1,430	\$1,797	\$2,165	\$2,533	\$2,901	\$3,268	\$3,637	\$4,004	\$4,372	\$4,740	\$5,108	\$5,475	\$0.70	\$0.95	\$1.20
	\$1,069	\$1,449	\$1,829	\$2,209	\$2,589	\$2,969	\$3,350	\$3,730	\$4,110	\$4,490	\$4,870	\$5,250	\$5,631			
E	\$1,091	\$1,470	\$1,848	\$2,225	\$2,604	\$2,982	\$3,360	\$3,739	\$4,116	\$4,494	\$4,873	\$5,251	\$5,629	\$0.95	\$1.20	\$1.45
	\$1,099	\$1,489	\$1,880	\$2,271	\$2,662	\$3,053	\$3,443	\$3,834	\$4,225	\$4,616	\$5,007	\$5,397	\$5,788			
F	\$1,121	\$1,510	\$1,898	\$2,286	\$2,675	\$3,063	\$3,451	\$3,841	\$4,229	\$4,617	\$5,006	\$5,394	\$5,782	\$1.20	\$1.45	\$1.70
	\$1,129	\$1,530	\$1,931	\$2,333	\$2,734	\$3,136	\$3,537	\$3,939	\$4,340	\$4,742	\$5,143	\$5,544	\$5,946			
G	\$1,152	\$1,552	\$1,951	\$2,350	\$2,750	\$3,149	\$3,548	\$3,948	\$4,347	\$4,746	\$5,146	\$5,545	\$5,944	\$1.45	\$1.70	\$1.95
	\$1,160	\$1,573	\$1,985	\$2,398	\$2,811	\$3,224	\$3,636	\$4,049	\$4,462	\$4,874	\$5,287	\$5,700	\$6,112			
H	\$1,183	\$1,594	\$2,004	\$2,414	\$2,825	\$3,235	\$3,645	\$4,056	\$4,465	\$4,875	\$5,286	\$5,696	\$6,106	\$1.70	\$1.95	\$2.20
	\$1,192	\$1,616	\$2,040	\$2,464	\$2,887	\$3,311	\$3,735	\$4,159	\$4,583	\$5,007	\$5,431	\$5,855	\$6,279			
I	\$1,217	\$1,639	\$2,060	\$2,482	\$2,904	\$3,325	\$3,747	\$4,169	\$4,590	\$5,012	\$5,434	\$5,855	\$6,277	\$1.95	\$2.20	\$2.45
	\$1,225	\$1,661	\$2,097	\$2,532	\$2,968	\$3,404	\$3,840	\$4,276	\$4,711	\$5,147	\$5,583	\$6,019	\$6,455			
J	\$1,250	\$1,684	\$2,116	\$2,549	\$2,983	\$3,416	\$3,849	\$4,283	\$4,715	\$5,148	\$5,582	\$6,015	\$6,448	\$2.20	\$2.45	\$2.70
	\$1,258	\$1,706	\$2,154	\$2,601	\$3,049	\$3,497	\$3,944	\$4,392	\$4,840	\$5,287	\$5,735	\$6,183	\$6,630			
K	\$1,285	\$1,731	\$2,176	\$2,621	\$3,067	\$3,512	\$3,956	\$4,403	\$4,847	\$5,292	\$5,739	\$6,183	\$6,628	\$2.45	\$2.70	\$2.95
	\$1,294	\$1,754	\$2,214	\$2,674	\$3,135	\$3,595	\$4,055	\$4,515	\$4,975	\$5,436	\$5,896	\$6,356	\$6,816			
L	\$1,320	\$1,778	\$2,235	\$2,692	\$3,150	\$3,607	\$4,064	\$4,523	\$4,980	\$5,437	\$5,895	\$6,352	\$6,809	\$2.70	\$2.95	\$3.20
	\$1,329	\$1,802	\$2,274	\$2,747	\$3,220	\$3,693	\$4,165	\$4,638	\$5,111	\$5,584	\$6,056	\$6,529	\$7,002			
M	\$1,357	\$1,828	\$2,298	\$2,767	\$3,238	\$3,708	\$4,178	\$4,649	\$5,119	\$5,589	\$6,060	\$6,530	\$6,999	\$2.95	\$3.20	\$3.45
	\$1,366	\$1,852	\$2,338	\$2,824	\$3,310	\$3,796	\$4,282	\$4,768	\$5,254	\$5,740	\$6,226	\$6,712	\$7,198			
N	\$1,394	\$1,878	\$2,360	\$2,843	\$3,327	\$3,809	\$4,292	\$4,776	\$5,258	\$5,741	\$6,225	\$6,707	\$7,190	\$3.20	\$3.45	\$3.70
	\$1,403	\$1,903	\$2,402	\$2,901	\$3,400	\$3,899	\$4,399	\$4,898	\$5,397	\$5,896	\$6,395	\$6,895	\$7,394			
O	\$1,433	\$1,930	\$2,426	\$2,922	\$3,420	\$3,916	\$4,412	\$4,910	\$5,406	\$5,902	\$6,399	\$6,895	\$7,391	\$3.45	\$3.70	\$3.95
	\$1,443	\$1,956	\$2,469	\$2,982	\$3,495	\$4,009	\$4,522	\$5,035	\$5,548	\$6,061	\$6,575	\$7,088	\$7,601			
P	\$1,472	\$1,983	\$2,492	\$3,002	\$3,513	\$4,023	\$4,532	\$5,043	\$5,553	\$6,062	\$6,574	\$7,083	\$7,593	\$3.70	\$3.95	\$4.20
	\$1,482	\$2,009	\$2,536	\$3,063	\$3,591	\$4,118	\$4,645	\$5,172	\$5,699	\$6,226	\$6,754	\$7,281	\$7,808			

Level	Monthly Income According to Family Size													Unit Fee Based on Number of Children in Care		
	1	2	3	4	5	6	7	8	9	10	11	12	13+	1	2	3 or more
Q	<u>\$1,513</u>	<u>\$2,038</u>	<u>\$2,562</u>	<u>\$3,086</u>	<u>\$3,611</u>	<u>\$4,135</u>	<u>\$4,659</u>	<u>\$5,184</u>	<u>\$5,708</u>	<u>\$6,232</u>	<u>\$6,758</u>	<u>\$7,281</u>	<u>\$7,805</u>	\$3.95	\$4.20	\$4.45
	<u>\$1,523</u>	<u>\$2,065</u>	<u>\$2,607</u>	<u>\$3,149</u>	<u>\$3,691</u>	<u>\$4,233</u>	<u>\$4,775</u>	<u>\$5,317</u>	<u>\$5,859</u>	<u>\$6,401</u>	<u>\$6,943</u>	<u>\$7,485</u>	<u>\$8,027</u>			
R	<u>\$1,554</u>	<u>\$2,094</u>	<u>\$2,632</u>	<u>\$3,170</u>	<u>\$3,710</u>	<u>\$4,248</u>	<u>\$4,786</u>	<u>\$5,326</u>	<u>\$5,864</u>	<u>\$6,402</u>	<u>\$6,942</u>	<u>\$7,480</u>	<u>\$8,018</u>	\$4.20	\$4.45	\$4.70
	<u>\$1,565</u>	<u>\$2,122</u>	<u>\$2,678</u>	<u>\$3,235</u>	<u>\$3,792</u>	<u>\$4,348</u>	<u>\$4,905</u>	<u>\$5,462</u>	<u>\$6,018</u>	<u>\$6,575</u>	<u>\$7,132</u>	<u>\$7,689</u>	<u>\$8,245</u>			
S	<u>\$1,598</u>	<u>\$2,152</u>	<u>\$2,706</u>	<u>\$3,259</u>	<u>\$3,814</u>	<u>\$4,367</u>	<u>\$4,920</u>	<u>\$5,475</u>	<u>\$6,028</u>	<u>\$6,581</u>	<u>\$7,136</u>	<u>\$7,689</u>	<u>\$8,242</u>	\$4.45	\$4.70	\$4.95
	<u>\$1,609</u>	<u>\$2,181</u>	<u>\$2,753</u>	<u>\$3,326</u>	<u>\$3,898</u>	<u>\$4,470</u>	<u>\$5,042</u>	<u>\$5,615</u>	<u>\$6,187</u>	<u>\$6,759</u>	<u>\$7,332</u>	<u>\$7,904</u>	<u>\$8,476</u>			
T	<u>\$1,641</u>	<u>\$2,211</u>	<u>\$2,779</u>	<u>\$3,348</u>	<u>\$3,917</u>	<u>\$4,486</u>	<u>\$5,054</u>	<u>\$5,624</u>	<u>\$6,192</u>	<u>\$6,760</u>	<u>\$7,330</u>	<u>\$7,899</u>	<u>\$8,467</u>	\$4.70	\$4.95	\$5.20
	<u>\$1,653</u>	<u>\$2,240</u>	<u>\$2,828</u>	<u>\$3,416</u>	<u>\$4,004</u>	<u>\$4,592</u>	<u>\$5,180</u>	<u>\$5,768</u>	<u>\$6,355</u>	<u>\$6,943</u>	<u>\$7,531</u>	<u>\$8,119</u>	<u>\$8,707</u>			
U	<u>\$1,687</u>	<u>\$2,273</u>	<u>\$2,857</u>	<u>\$3,441</u>	<u>\$4,027</u>	<u>\$4,611</u>	<u>\$5,196</u>	<u>\$5,781</u>	<u>\$6,366</u>	<u>\$6,950</u>	<u>\$7,536</u>	<u>\$8,120</u>	<u>\$8,704</u>	\$4.95	\$5.20	\$5.45
	<u>\$1,699</u>	<u>\$2,303</u>	<u>\$2,907</u>	<u>\$3,512</u>	<u>\$4,116</u>	<u>\$4,720</u>	<u>\$5,325</u>	<u>\$5,929</u>	<u>\$6,533</u>	<u>\$7,138</u>	<u>\$7,742</u>	<u>\$8,346</u>	<u>\$8,951</u>			
V	<u>\$1,733</u>	<u>\$2,335</u>	<u>\$2,935</u>	<u>\$3,535</u>	<u>\$4,137</u>	<u>\$4,737</u>	<u>\$5,337</u>	<u>\$5,939</u>	<u>\$6,539</u>	<u>\$7,139</u>	<u>\$7,741</u>	<u>\$8,341</u>	<u>\$8,941</u>	\$5.20	\$5.45	\$5.70
	<u>\$1,745</u>	<u>\$2,366</u>	<u>\$2,987</u>	<u>\$3,607</u>	<u>\$4,228</u>	<u>\$4,849</u>	<u>\$5,470</u>	<u>\$6,091</u>	<u>\$6,711</u>	<u>\$7,332</u>	<u>\$7,953</u>	<u>\$8,574</u>	<u>\$9,195</u>			
W	<u>\$1,782</u>	<u>\$2,400</u>	<u>\$3,017</u>	<u>\$3,634</u>	<u>\$4,253</u>	<u>\$4,870</u>	<u>\$5,486</u>	<u>\$6,105</u>	<u>\$6,722</u>	<u>\$7,339</u>	<u>\$7,958</u>	<u>\$8,574</u>	<u>\$9,191</u>	\$5.45	\$5.70	\$5.95
	<u>\$1,794</u>	<u>\$2,432</u>	<u>\$3,070</u>	<u>\$3,708</u>	<u>\$4,347</u>	<u>\$4,985</u>	<u>\$5,623</u>	<u>\$6,261</u>	<u>\$6,899</u>	<u>\$7,537</u>	<u>\$8,176</u>	<u>\$8,814</u>	<u>\$9,452</u>			
X	<u>\$1,830</u>	<u>\$2,466</u>	<u>\$3,099</u>	<u>\$3,733</u>	<u>\$4,369</u>	<u>\$5,002</u>	<u>\$5,636</u>	<u>\$6,271</u>	<u>\$6,905</u>	<u>\$7,539</u>	<u>\$8,174</u>	<u>\$8,808</u>	<u>\$9,442</u>	\$5.70	\$5.95	\$6.20
	<u>\$1,843</u>	<u>\$2,498</u>	<u>\$3,154</u>	<u>\$3,809</u>	<u>\$4,465</u>	<u>\$5,121</u>	<u>\$5,776</u>	<u>\$6,432</u>	<u>\$7,087</u>	<u>\$7,743</u>	<u>\$8,398</u>	<u>\$9,054</u>	<u>\$9,709</u>			
Y	<u>\$1,881</u>	<u>\$2,535</u>	<u>\$3,186</u>	<u>\$3,838</u>	<u>\$4,491</u>	<u>\$5,142</u>	<u>\$5,794</u>	<u>\$6,447</u>	<u>\$7,098</u>	<u>\$7,750</u>	<u>\$8,403</u>	<u>\$9,055</u>	<u>\$9,706</u>	\$5.95	\$6.20	\$6.45
	<u>\$1,894</u>	<u>\$2,568</u>	<u>\$3,242</u>	<u>\$3,916</u>	<u>\$4,590</u>	<u>\$5,264</u>	<u>\$5,938</u>	<u>\$6,612</u>	<u>\$7,286</u>	<u>\$7,960</u>	<u>\$8,633</u>	<u>\$9,307</u>	<u>\$9,981</u>			
Z	<u>\$1,933</u>	<u>\$2,604</u>	<u>\$3,273</u>	<u>\$3,942</u>	<u>\$4,613</u>	<u>\$5,282</u>	<u>\$5,952</u>	<u>\$6,623</u>	<u>\$7,292</u>	<u>\$7,961</u>	<u>\$8,632</u>	<u>\$9,301</u>	<u>\$9,970</u>	\$6.20	\$6.45	\$6.70
	<u>\$1,946</u>	<u>\$2,638</u>	<u>\$3,331</u>	<u>\$4,023</u>	<u>\$4,715</u>	<u>\$5,407</u>	<u>\$6,100</u>	<u>\$6,792</u>	<u>\$7,484</u>	<u>\$8,176</u>	<u>\$8,869</u>	<u>\$9,561</u>	<u>\$10,253</u>			
AA	<u>\$1,987</u>	<u>\$2,677</u>	<u>\$3,364</u>	<u>\$4,052</u>	<u>\$4,742</u>	<u>\$5,430</u>	<u>\$6,118</u>	<u>\$6,808</u>	<u>\$7,496</u>	<u>\$8,184</u>	<u>\$8,874</u>	<u>\$9,562</u>	<u>\$10,250</u>	\$6.45	\$6.70	\$6.95
	<u>\$2,001</u>	<u>\$2,712</u>	<u>\$3,424</u>	<u>\$4,135</u>	<u>\$4,847</u>	<u>\$5,559</u>	<u>\$6,270</u>	<u>\$6,982</u>	<u>\$7,694</u>	<u>\$8,405</u>	<u>\$9,117</u>	<u>\$9,829</u>	<u>\$10,540</u>			
BB	\$4,000	\$5,000	\$6,000	\$7,000	\$8,000	\$9,000	\$9,000	\$9,000	\$9,000	\$9,500	\$10,000	\$10,500	\$11,500	\$6.70	\$6.95	\$7.20

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[Published 5/9/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.

ARC 3792C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Rule making related to economic fraud control bureau

The Inspections and Appeals Department hereby rescinds Chapter 72, "Public Assistance Front End Investigations," and adopts a new Chapter 72, "Economic Fraud Control Bureau," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 10A.104 and 10A.401 to 10A.403.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 10A.105 and 10A.401 to 10A.403.

Purpose and Summary

The adopted rule making is the result of a comprehensive review of the Department's Investigations Division rules. The rule making conforms the Department's rules with current practices, laws, regulations and rules affecting the Economic Fraud Control Bureau.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 14, 2018, as **ARC 3669C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on April 18, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on June 13, 2018.

The following rule-making action is adopted:

Rescind 481—Chapter 72 and adopt the following **new** chapter in lieu thereof:

CHAPTER 72
ECONOMIC FRAUD CONTROL BUREAU

481—72.1(10A) Definitions.

“Client” means any person who has made an application for or is receiving state or federal public assistance from DHS or any other state or federal agency.

“Collateral contact” means a reliable source other than the client who is knowledgeable about information relative to pertinent public assistance case factors.

“Department” means the department of inspections and appeals.

“DHS” means the department of human services.

“Division” means the investigations division of the department.

“EBT” or *“electronic benefit transfer”* means the electronic process that allows a client to authorize transfer of the client's benefits from a financial account to a retailer to pay for eligible items received. Clients are issued an EBT card similar to a bank ATM or debit card to receive and use their food assistance.

“EBT trafficking or misuse” means the use of food assistance benefits for something other than their intended use.

“EFCB” or *“bureau”* means the economic fraud control bureau.

“Intentional program violation” or *“IPV”* means having intentionally made a false or misleading statement; or misrepresented, concealed, or withheld facts; or committed an act that is a violation of the Food Stamp Act, Supplemental Nutrition Assistance Program regulations, or any state rule relating to the use, presentation, transfer, acquisition, receipt or possession of a benefit transfer instrument.

“Pertinent public assistance case factors” means information considered necessary to verify household composition, income, resources or any other potential program violation.

“Program violation” means action that is contrary to the rules of eligibility for any state or federal public assistance program.

“Public assistance” means child care assistance, family investment program, food assistance, medical assistance, state supplementary assistance, refugee cash assistance, or any other state or federal assistance program.

“Referral” means a request to investigate pertinent public assistance case factors for potential program violations and eligibility issues.

“Referring agency” means DHS or any other state or federal agency.

481—72.2(10A) Economic fraud control bureau (EFCB). The EFCB is comprised of two units, the program integrity/EBT unit and the divestiture unit. The functions of each unit are described in 481—paragraph 1.4(1)“c.” Generally, the EFCB conducts investigations of public assistance fraud in order to maintain integrity and accountability in the administration of public assistance benefits. Divestiture unit rules are found in 481—Chapter 75.

481—72.3(10A) Types of investigations. The EFCB conducts three types of investigations.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

72.3(1) *Front-end investigations.* The EFCB conducts front-end investigations to determine whether a client has accurately reported the information necessary to become eligible for or to retain public assistance benefits.

72.3(2) *Fraud investigations.* The EFCB conducts a fraud investigation when the referring agency suspects that a client received public assistance benefits the client was not entitled to receive.

72.3(3) *EBT trafficking or misuse.* The EFCB conducts an investigation to determine whether a client is responsible for EBT trafficking or misuse.

481—72.4(10A) Referrals. DHS shall initiate public assistance eligibility referrals and EBT trafficking or misuse referrals to the division. EBT trafficking or misuse investigations also may be initiated by the division without a referral. Referrals from other referring agencies may be made directly to the division.

481—72.5(10A) Investigation procedures.

72.5(1) *Client contact.* The bureau may, but is not required to, contact the client during the course of an investigation. If the bureau contacts the client and the client does not respond, the client's nonresponse will be included in the bureau's investigation findings.

72.5(2) *Evidence gathered.* The bureau may conduct record reviews and gather evidence to verify a client's employment, wages, residence, household composition, income versus expenses, or property ownership or other relevant facts.

72.5(3) *Subpoenas.* The director of the department or the director's designee may issue subpoenas pursuant to Iowa Code section 10A.104 and 481—subrules 1.1(6) to 1.1(9) to obtain information necessary to an investigation. Subpoenas may be personally served by division personnel upon the respondent of the subpoena or the respondent's registered agent, mailed directly to the respondent or the respondent's registered agent via USPS mail, or electronically transmitted directly to the respondent or the respondent's registered agent via facsimile or email. Division personnel shall have the authority to determine the appropriate method by which the respondent is requested to deliver information in response to a subpoena duces tecum.

72.5(4) *Collateral contacts.* The division may use collateral contacts to collect information pertinent to an investigation or verify information provided by the client.

72.5(5) *Cooperation.* The division may cooperate with local, state or federal law enforcement agencies in conducting an investigation.

481—72.6(10A) EBT trafficking or misuse investigations. In addition to the procedures outlined in rule 481—72.5(10A), the following apply to EBT trafficking or misuse investigations.

72.6(1) *Probable cause.* Probable cause must be established before an EBT trafficking or misuse investigation may be conducted.

72.6(2) *Referrals.* Referrals to the division may come from DHS, retailers, law enforcement agencies or the general public. A referral may be initiated following the identification of questionable EBT card transactions through federal or state databases. The bureau may open an investigation without an outside referral.

481—72.7(10A) Findings. At the completion of an investigation, the bureau will transmit its findings in writing to the appropriate state or federal agency and make recommendations based on the evidence obtained or provided during the investigation.

72.7(1) *Decisions about public assistance eligibility.* The appropriate state or federal agency makes all decisions about public assistance eligibility. DHS will report the case action taken and any determination of overpayment, cost avoidance, or intentional program violation to the division.

72.7(2) *Testimony and hearings.* Staff of the division may be called to testify in administrative and legal proceedings related to an investigation, in addition to conducting EBT intentional program violation hearings.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

481—72.8(10A) Confidentiality. The EFCB shall maintain confidentiality of investigative case information in accordance with Iowa Code sections 10A.105 and 22.7(5) and any other applicable state or federal law.

These rules are intended to implement Iowa Code sections 10A.105 and 10A.401 to 10A.403.

[Filed 4/18/18, effective 6/13/18]

[Published 5/9/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.

ARC 3793C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Rule making related to Medicaid fraud control unit

The Inspections and Appeals Department hereby rescinds Chapter 73, "Medicaid Fraud Control Bureau," and adopts a new Chapter 73, "Medicaid Fraud Control Unit," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 10A.104(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 10A.104(6), 10A.105, 10A.402(5) and 10A.403.

Purpose and Summary

The adopted rule making is the result of a comprehensive review of the Department's Investigations Division rules. The rule making conforms the Department's rules with current practices, laws, regulations and rules affecting the Medicaid Fraud Control Unit.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 14, 2018, as **ARC 3668C**. Comments were received from Bill Nutty on behalf of the Iowa Health Care Association. The Association believed the proposed rescission and replacement of 481—Chapter 73 would allow significant overreach of the Medicaid Fraud Control Unit's (MFCU) investigative and punitive powers beyond Medicaid providers and into areas unrelated to the Medicaid system. In addition, the Association noted that the Department's Health Facilities Division already investigates abuse and neglect, as does the Department of Human Services outside of facilities; further expansion of this responsibility to MFCU is redundant and unnecessary.

In a written response to Mr. Nutty, the Department pointed out that the MFCU's authority comes from federal law, which permits precisely the types of activities outlined in the Notice of Intended Action. The Iowa MFCU must comply with federal requirements in order to continue receiving federal grant money. In addition, while the Department's Health Facilities Division conducts administrative abuse and neglect investigations, the MFCU is tasked with conducting criminal abuse and neglect investigations in health care facilities and board and care facilities. As such, there is no overreach in the MFCU's investigative powers, nor are the responsibilities of the MFCU redundant and unnecessary. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on April 18, 2018.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on June 13, 2018.

The following rule-making action is adopted:

Rescind 481—Chapter 73 and adopt the following **new** chapter in lieu thereof:

CHAPTER 73
MEDICAID FRAUD CONTROL UNIT

481—73.1(10A) Definitions.

“Abuse” or *“neglect”* means any act that constitutes abuse or neglect of a patient or resident under applicable state law and includes, but is not limited to, incidents involving physical harm inflicted as a result of an intentional act or negligence, consensual or nonconsensual sexual contact, misappropriation of money or property, theft of medications, or degradation of personal dignity. The victim is a patient or resident receiving health care services in a health care facility that receives Medicaid funds or in a board and care facility at the time of the abuse or neglect.

“Board and care facility” means a residential setting where two or more unrelated adults reside and receive one or both of the following:

1. Nursing care services provided by, or under the supervision of, a registered nurse, licensed practical nurse, or licensed nursing assistant.
2. A substantial amount of personal care services that assist residents with activities of daily living, including personal hygiene, dressing, bathing, eating, personal sanitation, ambulation, transfer, positioning, self-medication, body care, travel to medical services, essential shopping, meal preparation, laundry, and housework.

“Department” means the department of inspections and appeals.

“Director” means the director of the department of inspections and appeals.

“Fraud” means an intentional deception or misrepresentation made by an individual or entity with the knowledge that the deception or misrepresentation could result in an unauthorized benefit to the individual or entity, or another individual or entity, and includes any act that constitutes fraud under applicable federal or state law, including but not limited to Iowa Code chapters 249A and 685.

“Medicaid provider” means:

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

1. Any individual, agency, institution, or organization enrolled with the department of human services, Iowa Medicaid enterprise, or contracted managed care organizations (MCOs), and approved to provide goods or services to Iowa Medicaid beneficiaries and be paid by Iowa Medicaid enterprise, or contracted MCOs, for the provided goods or services; or

2. Any third party acting on behalf of or under the authority or direction of a Medicaid provider as defined in “1” to prepare or submit necessary documentation to Iowa Medicaid enterprise, or contracted MCOs, in order for the Medicaid provider to receive payment for goods or services.

“*MFCU director*” means the director of the Iowa MFCU.

“*Overpayment*” means any payment greater than that to which a Medicaid provider is entitled.

“*Prosecutorial agency*” includes, but is not limited to, county attorney offices, United States Attorney offices or the Iowa attorney general’s office.

“*Referral*” means any information submitted to the Iowa Medicaid fraud control unit in written or verbal form indicating potential criminal or fraudulent activity which the Iowa MFCU maintains jurisdiction to investigate.

“*Regulatory agency*” includes, but is not limited to, state licensing boards, other divisions or bureaus of the department of inspections and appeals, or other divisions or bureaus of the U.S. Department of Health and Human Services.

“*Respondent*” means the recipient of a subpoena and may be an individual or an organization.

“*State medical assistance program*” or “*Medicaid*” means medical assistance programs per the Code of Federal Regulations, Title 42, Chapter IV, Subchapter C, Parts 430 through 489. Iowa Code chapter 249A authorizes Iowa’s participation in the program. The policies specific to the Medicaid program are in 441—Chapters 73 to 88.

“*Unit*” or “*Iowa MFCU*” or “*MFCU*” means the Iowa Medicaid fraud control unit.

“*Unit personnel*” includes investigators, auditors, and attorneys assigned to the Iowa Medicaid fraud control unit, along with the MFCU director.

481—73.2(10A) Investigative authority.

73.2(1) Pursuant to Iowa Code section 10A.402(5), the unit is responsible for conducting investigations involving the state medical assistance program. These investigations include, but are not limited to, allegations involving:

- a. Fraud within the administration of the Iowa Medicaid program.
- b. Fraud in the provision of medical assistance or activities of Medicaid providers.
- c. Incidents of abuse or neglect.
- d. Any aspect of the provision of health care services and activities of Medicaid providers upon the approval of the U.S. Department of Health and Human Services, Office of the Inspector General.

73.2(2) Pursuant to Iowa Code section 10A.403, investigators assigned to the unit shall have the powers and authority of peace officers when acting within the scope of their responsibilities to conduct investigations as specified in Iowa Code section 10A.402(5).

481—73.3(10A) Referrals.

73.3(1) The MFCU director reviews referrals in order to confirm that the unit has jurisdiction to investigate the allegation(s).

73.3(2) Upon confirming MFCU jurisdiction and taking into consideration numerous factors and referral-specific information, the MFCU director shall determine the disposition of the referral, which may include, but is not limited to, the following:

- a. Opening a case and assigning the case to unit personnel.
- b. Referring the allegations to appropriate outside agencies for further review.
- c. Declining the referral and taking no further action in the matter.

481—73.4(10A) Investigations. Unit personnel investigate referrals opened and assigned as MFCU cases by utilizing all legally authorized means to identify any of the following:

1. Criminal activity resulting in violations of state or federal criminal code.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

2. Fraudulent activity resulting in violations of state or federal civil statutes.
3. Financial damages sustained by the Iowa Medicaid program.
4. Victims involved in incidents of abuse or neglect.
5. Perpetrators involved in Medicaid provider fraud schemes or incidents of abuse or neglect.
6. Overpayments received by Medicaid providers as a result of fraudulent or criminal activity.

481—73.5(10A) Access to records. In addition to the authority maintained by investigators with the unit pursuant to Iowa Code section 10A.403, the unit is established as a health oversight agency, as defined by 45 CFR 164.501, exempt from the privacy regulations of the federal Health Insurance Portability and Accountability Act (HIPAA) and authorized to engage in health oversight activities in accordance with 45 CFR 164.512.

73.5(1) Unit personnel shall have the authority to request, review, and retain any medical, clinical, financial, or personnel records maintained by a Medicaid provider in order for unit personnel to investigate allegations of incidents that fall within MFCU's investigative authority as established in rule 481—73.2(10A).

73.5(2) For Medicaid provider fraud investigations, unit personnel shall have access to any records pertaining to Medicaid and non-Medicaid recipients of health care goods and services to verify that:

- a. Medicaid claims for goods and services have been accurately paid.
- b. Medicaid recipients actually received the goods and services claimed by the Medicaid provider.
- c. Medicaid providers have retained supporting documentation to substantiate claims.

73.5(3) For abuse or neglect investigations, unit personnel shall have access to any records pertaining to any Medicaid patients or residents identified during the course of an investigation who are receiving health care services in a health care facility that receives Medicaid funds or in a board and care facility. Unit personnel may obtain access via subpoena or other legal methods to any records pertaining to any non-Medicaid patients or residents identified during the course of an investigation.

481—73.6(10A) Subpoenas. The director or the director's designee may issue subpoenas in connection with MFCU investigations. In addition to the provisions of 481—subrules 1.1(6) to 1.1(9), the following apply.

73.6(1) Unit personnel may serve subpoenas during the course of an open MFCU case investigation. The subpoena must be approved and signed by the director or the director's designee.

73.6(2) Subpoenas may be personally served by unit personnel upon the respondent of the subpoena or the respondent's registered agent, mailed directly to the respondent or the respondent's registered agent via USPS mail, or electronically transmitted directly to the respondent or the respondent's registered agent via facsimile or email.

73.6(3) Unit personnel shall have the authority to determine the appropriate method by which the respondent is requested to deliver information in response to a subpoena duces tecum.

481—73.7(10A) Investigation results.

73.7(1) Investigations resulting in sufficient evidence to support criminal or civil prosecution will be referred to the appropriate prosecutorial agency to be reviewed for a charging decision by the prosecutorial agency.

73.7(2) For investigations that result in identification of potential overpayment made to a Medicaid provider, unit personnel will either attempt to collect such overpayment or refer the matter to an appropriate state agency for collection.

73.7(3) Investigations that result in the identification of potential regulatory violations committed by a Medicaid provider may be referred to the appropriate regulatory agency for administrative review.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

481—73.8(10A) Confidentiality. The unit shall maintain confidentiality of all investigative case information in accordance with Iowa Code sections 22.7(5) and 685.6, 42 CFR 1007.11(f), and any other applicable state or federal law.

These rules are intended to implement Iowa Code sections 10A.104(6), 10A.105, 10A.402(5), and 10A.403.

[Filed 4/18/18, effective 6/13/18]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.

ARC 3794C

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

Adopted and Filed

Rule making related to continuing education requirements

The Landscape Architectural Examining Board hereby amends Chapter 3, "Continuing Education," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 544B.5 and 546.10.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 17A.7, 272C.2 and 544B.5.

Purpose and Summary

These amendments are a result of the five-year rolling review of administrative rules as outlined in Iowa Code section 17A.7(2). A committee of the Board, including Board members and staff, with the assistance of legal counsel, reviewed Chapter 3 to identify outdated or redundant references, inconsistencies with statutes, and methods of enhancing efficiencies. The amendments update citations and make general updates.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 28, 2018, as **ARC 3653C**. A public hearing was held on March 20, 2018, at 9 a.m. at the Board Office, Suite 350, 200 E. Grand Avenue, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on April 4, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 193—Chapter 5.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on June 13, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 193D—3.1(544B,17A) as follows:

193D—3.1(544B,17A) Definitions. As used in these rules, the following definitions shall apply:

“Distance learning” means any education process based on the geographical separation of student and instructor. “Distance learning” includes computer-generated programs, webinars, and home-study/correspondence programs.

“Health, safety, and welfare subjects” means technical and professional subjects that the board deems appropriate to safeguard directly the public’s health, safety, and welfare. Such subjects include design, environmental systems, site design, land use analyses, landscape architecture programming, grading and drainage, storm water management, erosion control, site and soil analyses, accessibility, building codes, review of state registration laws including the rules of professional conduct, evaluation and selection of products and materials, cost analysis, construction methods, contract documentation, construction contract administration, construction administration, construction-phase office procedures, project management, and the like.

“Hours of continuing education” of continuing education means a contact hour spent in either structured educational activities or individually planned activities intended to increase the professional landscape architect’s knowledge and competence in public protection subjects and related practice subjects. “Contact hour” is defined as the typical 50-minute classroom instructional session or its equivalent. One continuing education unit (CEU) offered by an accredited sponsor shall be considered equivalent to ten contact hours of continuing education.

“Individually planned education” means educational activities in which the professional landscape architect personally addresses public protection subjects or related practice subjects which are not systematically presented by others, including reading or writing articles on such subjects; studying or researching landscape architecture, designs or building types; rendering services to the public; advancing the profession’s and public’s understanding of the practice of landscape architecture; and the like.

“Structured educational activities” means educational activities in which the teaching methodology consists primarily of systematic presentation of public protection subjects or related practice subjects by qualified individuals or organizations including monographs, courses of study taught in person or by correspondence, organized lectures, presentations or workshops, and other means through which identifiable technical and professional subjects are presented in a planned manner.

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D](cont'd)

ITEM 2. Amend rule 193D—3.2(544B,17A) as follows:

193D—3.2(544B,17A) Continuing education requirements. In order for professional landscape architects to provide competent, professional services to the public, continuing education shall consist of learning experiences that enhance, expand and keep current the skills, knowledge, and abilities of practicing professionals. Professional landscape architects may pursue learning experiences in technical, nontechnical, regulatory, ethics and business practice areas, provided that the continuing education directly benefits the health, safety, ~~or~~ and welfare of the public.

3.2(1) Hours required. Each registrant shall complete during each two-year licensing term a minimum of 24 hours of continuing education approved by the board. Compliance with the continuing education requirements is a prerequisite for license renewal.

3.2(2) Within any biennial renewal period, ~~24 contact~~ 24 hours of continuing education must be acquired and shall be in health, safety, and welfare subjects acquired in ~~structural~~ structured educational activities. ~~The hours earned in self-study activities shall be limited to 6 hours during any renewal period.~~ Hours acquired in any 24-month renewal period may not be carried over to a subsequent 24-month renewal period. Continuing education hours may be acquired in any location.

3.2(3) A professional landscape architect who holds a license in Iowa for less than 12 months from the date of initial licensure shall not be required to report continuing education at the first license renewal. A professional landscape architect who holds a license in Iowa for more than 12 months, but less than 24 months from the date of initial licensure, shall be required to report ~~12 contact~~ 12 hours of continuing education in health, safety, and welfare subjects earned in the preceding 12 months at the first license renewal.

3.2(4) Sources of continuing education. The following suggested list may be used by all licensees to determine the types of activities which may fulfill the continuing education requirements. All hours of continuing education must also comply with the directive in subrule 3.2(2).

~~a. Contact hours~~ Hours of continuing education in attendance at short courses or seminars dealing with landscape architectural subjects and sponsored by colleges, universities or professional organizations.

~~b. Contact hours~~ Hours of continuing education in attendance at presentations on landscape architectural subjects, which are held in conjunction with conventions or at seminars related to materials use and function. Presentations such as those presented by ~~the Council of Landscape Architecture Registration Boards (CLARB)~~ CLARB, American Society of Landscape Architects, Construction Specification Institute, Construction Products Manufacturers Council or similar organizations devoted to landscape architecture education may qualify.

~~c. Contact hours~~ Hours of continuing education in attendance at short courses or seminars relating to business practice or new technology and offered by colleges, universities, professional organizations or system suppliers.

~~d. Presenting~~ Hours of continuing education spent presenting or teaching courses or seminars in landscape architecture. Three preparation hours may be claimed for each class hour spent teaching landscape architectural courses or seminars. College or university faculty members may not claim credit for teaching regular curriculum courses.

~~e. Contact hours~~ Hours of continuing education spent in learning through professional service to the public which draws upon the licensee's professional expertise on boards and commissions, such as serving on planning commissions, building code advisory boards, urban renewal boards, ~~or~~ code study commissions or community boards. Hours of continuing education under this paragraph shall be limited to 6 hours earned in any biennial renewal period.

~~f. Contact hours~~ Hours of continuing education spent in landscape architectural research which is published or formally presented to the profession or public. Credit may be claimed only following proof of publication or presentation. Hours of continuing education under this paragraph shall be limited to 12 hours earned in any biennial renewal period.

~~g. Contact hours~~ Hours of continuing education spent in ~~landscape architectural self-study courses presented in written format or via the Internet, television, video, or audio, such as those sponsored~~

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D](cont'd)

by the American Society of Landscape Architects, CLARB, or similar organizations. Courses must ~~conclude~~ distance learning that concludes with an examination or other verification of course completion. Self-study hours shall be limited to 6 hours earned in any biennial renewal period, effective for renewals that are due on June 30, 2008.

h. College or university courses dealing with landscape architectural subjects or business practice. Each semester hour shall equal 15 ~~contact~~ hours of continuing education. A quarter hour shall equal 10 ~~contact~~ hours of continuing education.

i. ~~Contact hours~~ Hours of continuing education spent in educational tours or tours in areas significant ~~in~~ to landscape architecture when the tour is sponsored by college, university or professional organizations and verification of participation is provided by the tour sponsor. Self-guided tours do not qualify. Hours of continuing education under this paragraph shall be limited to 6 hours earned in any biennial renewal period.

j. ~~Contact hours~~ Hours of continuing education spent attending in-house educational programs, including dinner, luncheon, and breakfast meetings.

3.2(5) Financing. It is the responsibility of each licensee to finance the costs for continuing education.

ITEM 3. Amend rule 193D—3.3(544B,17A) as follows:

193D—3.3(544B,17A) Reporting and evidence Compliance.

3.3(1) Each professional landscape architect shall file with the board a signed report, under penalty of perjury, on forms provided by the board or by ~~on-line~~ online renewal, setting forth the continuing education activities in which the professional landscape architect has participated. The report shall be filed with the renewal application for each two-year renewal period in which the claimed hours of continuing education ~~hours~~ were completed. The information in the report shall include:

- a.* School, firm or organization conducting the course.
- b.* Location of the course.
- c.* Title of the course and description of the content.
- d.* Principal instructor(s).
- e.* Dates attended.
- f.* Hours claimed.
- g.* In instances of service on a professional or community board, or other undocumented hours of continuing education, the licensee shall provide a narrative description of the materials the licensee reviewed, the nature of the licensee's service, and a description as to how the licensee's claimed hours of continuing education have contributed to the health, safety and welfare of the public.

This information shall be kept by the licensee for reported hours of continuing education for two years.

3.3(2) A professional landscape architect's continuing education report forms or ~~on-line~~ online renewal may be selected for review by the board for verification of compliance with these requirements. Evidence of compliance shall be maintained by the professional landscape architect for two years after the period for which the form was submitted and shall include written verification of attendance by someone other than the licensee. Examples of evidence may include, but are not limited to, a certificate of completion presented by the program sponsor, a letter from an employer verifying attendance at an in-firm training session, or copies of minutes from public service meetings. Canceled checks or receipts for payments of fees to attend a program are not evidence of actual attendance and are not acceptable.

3.3(3) If the board disallows or finds incomplete/unsatisfactory any hours of continuing education ~~hours~~, unless the board finds, following notice and hearing, that the professional landscape architect willfully disregarded continuing education requirements, then the professional landscape architect shall have ~~six months~~ 60 days from notice of such disallowance to make up the deficiency by acquiring the

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D](cont'd)

required number of ~~contact~~ hours of continuing education. Such hours shall not again be used for the next renewal.

[Filed 4/10/18, effective 6/13/18]

[Published 5/9/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.

ARC 3795C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rule making related to storage of stand-up paddleboards

The Natural Resource Commission hereby amends Chapter 16, "Docks and Other Structures on Public Waters," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 461A.4(1)"b."

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 461A.4.

Purpose and Summary

These amendments change the definition of "boat hoist" or "lift" to exclude certain storage of stand-up paddleboards (SUPs). Currently, storage of any object meeting the rule's broad definition of "watercraft" counts as a boat hoist or lift. This definition includes SUPs, which are often stored on docks in a manner not traditionally considered to be a boat hoist or lift, yet storage of SUPs must be counted as a boat hoist or lift under the existing definition. Dock permit holders are limited in the number of hoists or lifts they may have on their docks; excluding storage of SUPs from the definition of "boat hoist" or "lift" will allow for more flexibility to store SUPs near the water where they are used and will reduce the need for storage space elsewhere.

Another amendment to rule 571—16.1(461A,462A) clarifies the definition of "boat" by updating a reference to the Iowa Code regarding the definition of "watercraft." The amendment to subrule 16.4(3) removes an outdated date reference.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 14, 2018, as **ARC 3626C**. A public hearing was held on March 7, 2018, at 1 p.m. in Conference Room 4E, Wallace State Office Building, Des Moines, Iowa. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Commission on April 12, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

NATURAL RESOURCE COMMISSION[571](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department of Natural Resources for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on June 13, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule **571—16.1(461A,462A)**, definitions of “Boat” and “Boat hoist,” as follows:

“Boat” means “watercraft” as defined in Iowa Code section ~~462A.2(41)~~ 462A.2.

“Boat hoist” or “lift” means a structure placed in the water or below the ordinary high-water mark for boat storage, including platforms for storage of personal watercraft. For the purposes of this chapter, a boat hoist that is designed to store multiple small vessels such as personal watercraft or one-person sailboats shall be treated as a single hoist. For the purposes of this chapter, storage of stand-up paddleboards on racks above the platform of a dock shall not be counted as a boat hoist or lift.

ITEM 2. Amend subrule 16.4(3) as follows:

16.4(3) Procedures for issuance of Class I dock permits. The owner of a standard dock eligible for a Class I permit under the criteria in 16.4(1) or a dock in an area specified in 16.4(2) shall ~~have until July 1, 2008, to~~ apply for a Class I dock permit on an application form supplied by the department. The applicant shall certify that the dock meets the criteria for a Class I permit. The department shall approve the application based on the applicant's certification and shall assign a permit number which may be a series of numbers or letters, or a combination of numbers and letters. The applicant shall be responsible for obtaining stickers with the permit numbers and letters, for attaching them to the end of the dock facing opposite from the shoreline, and for displaying the 911 address as provided in 16.3(5). Class I dock permits authorized by this rule may be issued for terms up to five years and shall be issued without administrative fee. A Class I dock permit shall be valid only while dock and hoists comply with the criteria for a Class I permit.

[Filed 4/20/18, effective 6/13/18]

[Published 5/9/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.

ARC 3796C

NATURAL RESOURCE COMMISSION[571]**Adopted and Filed****Rule making related to artificial and natural marshes**

The Natural Resource Commission hereby amends Chapter 45, “Boat Motor Regulations,” Chapter 51, “Game Management Areas,” and Chapter 52, “Wildlife Refuges,” Iowa Administrative Code.

NATURAL RESOURCE COMMISSION[571](cont'd)

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 455A.5(6)“a,” 462A.26(2)“b,” 481A.38, 481A.39 and 481A.48.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 462A.26(2)“b,” 481A.5, 481A.6 and 481A.38(1)“a.”

Purpose and Summary

Chapter 45 regulates the type, size, and horsepower of water vessels accessing natural and artificial lakes and marshes under the jurisdiction of the Commission. When the Shimon family donated portions of land now known as the Shimon Marsh Wetlands Complex to the State of Iowa, the family did so with a deed requirement that no motorized vessels be allowed on site. This restriction was never codified in Chapter 45, which is necessary to accurately enforce the property’s use requirements. The amendments add this restriction to Chapter 45.

Chapter 51 regulates the use of hunting blinds and decoys on game management areas, among other activities. The amendments clarify that the decoy regulations in subrule 51.6(3) apply to all decoys, not just to waterfowl decoys.

Chapter 52 establishes Iowa’s state game refuges. The Commission amends the chapter to correct an error that misclassifies two state game refuges as waterfowl refuges. The Commission and the Department of Natural Resources (Department) have considered—and regulated—portions of Ventura Marsh in Cerro Gordo County and portions of Crystal Hills in Hancock County as state game refuges for years, but they are misclassified in the chapter as waterfowl refuges. This is a nonsubstantive correction to prevent confusion for anyone reviewing Chapter 52.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 14, 2018, as **ARC 3627C**. A public hearing was held on March 6, 2018, at 12 noon in Conference Room 3 E&W, Wallace State Office Building, Des Moines, Iowa. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Commission on April 12, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s

NATURAL RESOURCE COMMISSION[571](cont'd)

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on June 13, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 571—45.5(462A) as follows:

571—45.5(462A) Artificial marshes. A motorboat equipped with any power unit mounted or carried aboard the vessel may be operated on the following listed artificial marshes under the jurisdiction of the department of natural resources at a speed not greater than 5 miles per hour between January 1 and August 31 and with no speed restrictions between September 1 and December 31.

Bays Branch, Guthrie County
Big Marsh, Butler County
Brown's Slough, Lucas County
Cardinal Marsh, Winneshiek County
Dudgeon Lake, Benton County
Elk Creek Marsh, Worth County
Green Island, Jackson County
Hendrickson Marsh, Story County
Hooper Pond, Warren County
North Colyn, Lucas County
Otter Creek Marsh, Tama County
Princeton Area, Scott County
Riverton, Fremont County
Round Pond, Johnson County
South Colyn, Lucas County
Sweet Marsh, Bremer County
Walnut Creek Marsh, Ringgold County
Willow Slough, Mills County
Woodpecker Marsh, Wayne County

~~Nothing in this rule is to be construed as limiting motorboat horsepower on natural marshes under the jurisdiction of the department of natural resources.~~

ITEM 2. Adopt the following **new** rule 571—45.6(462A):

571—45.6(462A) Natural marshes.

45.6(1) General use. There shall be no horsepower limitations on vessels operated on natural marshes unless otherwise specified by subrule 45.6(2).

45.6(2) Limitations. The following vessel type, size, or horsepower restrictions shall apply as designated:

Shimon Marsh Wetlands Complex, Pocahontas County—nonmotorized vessels only.

ITEM 3. Amend subrule 51.6(3) as follows:

51.6(3) Use of ~~waterfowl~~ decoys. The use of ~~waterfowl~~ decoys on any game management area, except on Pool 14 downstream of the Upper Mississippi River National Wildlife and Fish Refuge (River Mile 502) near Princeton, Iowa, and on Pools 15, 16, 17, and 18 of the Mississippi River, is restricted as follows:

Decoys are prohibited from one hour after sunset until midnight each day, and decoys cannot be left unattended for over 30 minutes between midnight and one hour after sunset. Decoys shall be considered as removed from an area when they are picked up and placed in a boat, vehicle or other container at an approved access site.

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ITEM 4. Amend subrules 52.1(2) and 52.1(3) as follows:

52.1(2) Wildlife refuges. The following areas under the jurisdiction of the department of natural resources are established as wildlife refuges where posted. It shall be unlawful to hunt, pursue, kill, trap, or take any wild animal, bird, or game on these areas at any time, and no one shall carry firearms thereon, except where and when specifically authorized by the department of natural resources. It shall also be unlawful to trespass in any manner on the following areas, where posted, during the dates posted, both dates inclusive, except that department personnel, law enforcement officials, and other persons specifically authorized by the department of natural resources may enter the area at any time in performance of their duties, and hunters, under the supervision of department staff, may enter the area when specifically authorized by the department of natural resources.

<u>Area</u>	<u>County</u>
South Twin Lake	Calhoun
Ventura Marsh	Cerro Gordo
Allen Green Refuge	Des Moines
Henderson	Dickinson
Ingham Lake	Emmet
Crystal Hills	Hancock
Hawkeye Wildlife Area	Johnson
Colyn Area	Lucas
Gladys Black Eagle Refuge	Marion
Five Island Lake	Palo Alto
Polk City Refuge	Polk
Smith Area	Pottawattamie
Green Valley Lake	Union

52.1(3) Waterfowl refuges. The following areas under the jurisdiction of the department of natural resources are established as waterfowl refuges where posted. It shall be unlawful to hunt ducks and geese on the following areas, where posted, at any time during the year. It shall be unlawful to trespass in any manner on the following areas, where posted, during the dates posted, both dates inclusive, except that department personnel, law enforcement officials, and other persons specifically authorized by the department of natural resources may enter the area at any time in performance of their duties, and hunters, under the supervision of department staff, may enter the area when specifically authorized by the department of natural resources.

<u>Area</u>	<u>County</u>
Lake Icaria	Adams
Pool Slough Wildlife Area	Allamakee
Rathbun Area	Appanoose, Lucas, Wayne
Sedan Bottoms	Appanoose
Sweet Marsh	Bremer
Big Marsh	Butler
Union Hills	Cerro Gordo
Ventura Marsh	Cerro Gordo
Round Lake	Clay
Jemmerson Slough Complex	Dickinson
Forney Lake	Fremont
Riverton Area	Fremont
Dunbar Slough	Greene
Bays Branch	Guthrie
Crystal Hills	Hancock
Eagle Flats	Hancock
Eagle Lake	Hancock
Green Island Area	Jackson
Muskrat Slough	Jones

NATURAL RESOURCE COMMISSION[571](cont'd)

Red Rock Area	Marion, Polk, Warren
Badger Lake	Monona
Chichaqua Area	Polk
McCausland	Scott
Princeton Area	Scott
Otter Creek Marsh	Tama
Rice Lake Area	Winnebago
Snyder Bend Lake	Woodbury
Elk Creek Marsh	Worth

[Filed 4/20/18, effective 6/13/18]

[Published 5/9/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.

ARC 3797C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rule making related to water fowl and coot hunting

The Natural Resource Commission hereby amends Chapter 91, “Waterfowl and Coot Hunting Seasons,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 455A.5(6), 481A.38, 481A.39 and 481A.48.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 481A.48(2).

Purpose and Summary

Chapter 91 contains the regulations for hunting waterfowl and coot, and includes season dates, bag limits, possession limits, shooting hours, and areas open to hunting. These amendments adjust the season dates to comply with what the Commission anticipates the 2018-2019 federal regulations will be after meeting with the U.S. Fish and Wildlife Service (USFWS) this year at the Mississippi Flyway Council and reviewing the proposed regulations contained in the Federal Register (proposed in 83 Fed. Reg. 23, 4964-4996 (Feb. 2, 2018)). The amendments also ensure that the regular seasons open on different weekends and implement a September teal season (all species).

Notably, the Commission has chosen to restructure the season dates for ducks and geese from specific calendar dates that require an annual update to a narrative time frame (e.g., going from “September 1 through September 17” to “opening on the first Saturday of September and running for 16 consecutive days”). This approach will prevent the need for mandatory annual rule making to tweak specific dates, and may allow the rules to stand for several years at a time, so long as the selected narrative time frame is still acceptable under the changing regulations of the USFWS and consistent with the harvest goals of the Commission and the Iowa Department of Natural Resources (Department). This narrative time frame is used in many other hunting seasons, so Iowa’s sportsmen and sportswomen are used to such an approach. It should be noted that while there are dates for the special teal season in the amendments, the Commission anticipates that these specific dates will remain in place for the foreseeable future. Similarly, daily bag limits for ducks will be those adopted by the USFWS and published in the Federal Register.

NATURAL RESOURCE COMMISSION[571](cont'd)

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 14, 2018, as **ARC 3623C**. A public hearing was held on March 6, 2018, at 12 noon in Conference Room 3 E&W, Wallace State Office Building, Des Moines, Iowa. No comments were received at the public hearing.

Ninety-five individuals submitted comments during the public comment period. The most common comment was a request for later Canada goose hunting seasons. In addition to the rule-making public comment period, the Department held its annual wildlife listening session (WLS) at 19 locations across the state on February 21, 2018. The WLS is an opportunity for all types of hunters and trappers to provide general input on any wildlife-related topic. Although all comments are considered, the comments from the WLS and the rule-making process are tracked separately because many of those who commented at the WLS also submitted a comment during this multiple species rule-making process. At the WLS, 315 comments relating to waterfowl seasons in Iowa were received. Approximately one-third of the comments focused on Canada geese, and the majority asked for a later end date for the season. Approximately one-third were not specific to a species but asked for later seasons and the creation of a new "River Zone." The remaining comments were related to the early teal season or the general duck season.

Changes from the Notice of Intended Action have been made. In review of the scientific data and public input, the Commission revised subrules 91.3(2) to 91.3(4) to increase the previously proposed final split in the 107-day Canada goose season to 10 days (formerly 3 days) for all zones. This change will bring the final day of the Canada goose season to January 12, 2019, in the North Zone; January 19, 2019, in the South Zone; and January 26, 2019, in the Missouri River Zone. Also, subrule 91.1(5) has been revised to reference the daily bag limits adopted by the USFWS as published in the Federal Register.

Adoption of Rule Making

This rule making was adopted by the Commission on April 12, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on June 13, 2018.

The following rule-making actions are adopted:

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 1. Amend subrules 91.1(2) to 91.1(5) as follows:

91.1(2) *Season dates - north zone.* Special September teal season: September 21 through September 16. For all ducks: ~~September 23 through October 1 and October 14 through December 3.~~ The first segment of the season will begin on the last Saturday in September and run for 7 days. The second segment of the season will open on the second Saturday in October and continue for 53 consecutive days.

91.1(3) *Season dates - south zone.* Special September teal season: September 21 through September 16. For all ducks: ~~September 30 through October 4 and October 21 through December 14.~~ The first segment of the season will begin the first Saturday in October and run for 7 days. The second segment of the season will open on the third Saturday in October and continue for 53 consecutive days.

91.1(4) *Season dates - Missouri River zone.* Special September teal season: September 21 through September 17. For all ducks: ~~October 7 and October 8 and October 21 through December 17.~~ The first segment of the season will begin the second Saturday in October and run for 7 days. The second segment of the season will open the fourth Saturday in October and continue for 53 consecutive days.

91.1(5) *Bag limit.* Special September teal season: The daily bag limit is 6 teal of any species. For all ducks: The daily bag limit of ducks is 6, and may include no more than 4 mallards (no more than 2 of which may be females), 2 black ducks, 3 wood ducks, 1 pintail, 1 mottled duck, 2 canvasback, 2 redheads, and 3 scaup. The daily bag limit of mergansers is 5, only 2 of which may be hooded mergansers. Bag limits are as adopted by the U.S. Fish and Wildlife Service and published in the Federal Register.

ITEM 2. Amend subrules 91.3(2) to 91.3(5) as follows:

91.3(2) *Season dates - north zone.* ~~Dark geese (Canada geese, white-fronted geese, brant and any other geese that are not light geese): September 23 through October 8 and October 14 through January 1, 2018. Light geese (white and blue phase snow geese and Ross' geese): September 23 through October 8 and October 14 through January 10, 2018.~~ For all geese: The first segment of the regular goose season will begin the second-to-last Saturday of September and run for a 16-day period. The second segment of the goose season will open the second Saturday in October and continue for 53 consecutive days. The goose season will then close for a 10-day period and shall then reopen on the following Saturday and remain continuously open until the total number of days used for goose hunting reaches 107.

91.3(3) *Season dates - south zone.* ~~Dark geese (Canada geese, white-fronted geese, brant and any other geese that are not light geese): September 30 through October 8 and October 21 through January 15, 2018. Light geese (white and blue phase snow geese and Ross' geese): September 30 through October 8 and October 21 through January 24, 2018.~~ For all geese: The first segment of the regular goose season will begin the last Saturday of September and run for a 16-day period. The second segment of the goose season will open the third Saturday in October and continue for 53 consecutive days. The goose season will then close for a 10-day period and shall then reopen on the following Saturday and remain continuously open until the total number of days used for goose hunting reaches 107.

91.3(4) *Season dates - Missouri River zone.* ~~Dark geese (Canada geese, white-fronted geese, brant and any other geese that are not light geese): October 7 through October 15 and October 21 through January 15, 2018. Light geese (white and blue phase snow geese and Ross' geese): October 7 through October 15 and October 21 through January 24, 2018.~~ For all geese: The first segment of the regular goose season will begin the first Saturday of October and run for a 16-day period. The second segment of the goose season will open the fourth Saturday in October and continue for 53 consecutive days. The goose season will then close for a 10-day period and shall then reopen on the following Saturday and remain continuously open until the total number of days used for goose hunting reaches 107.

91.3(5) *Bag limit.* The daily bag limit for dark geese (Canada geese, white-fronted geese, brant and any other geese that are not light geese) is 5 and may include no more than 2 Canada geese from September 23 16 through October 31 and no more than 3 Canada geese from November 1 through the end of the season. The daily bag limit for light geese (white and blue-phase snow geese and Ross' geese) is 20.

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 3. Amend subrules 91.3(8) to 91.3(11) as follows:

91.3(8) Light goose conservation order season. Only light geese (white and blue-phase snow geese and Ross' geese) may be taken under a conservation order from the U.S. Fish and Wildlife Service ~~from January 25, 2018, through~~ beginning the day after the regular goose season closes and continuing until April 15, 2018.

a. to e. No change.

91.3(9) Cedar Rapids/Iowa City goose hunting zone.

a. ~~Season dates. September 2 through September 10~~ The first Saturday in September for nine consecutive days.

b. to d. No change.

91.3(10) Des Moines goose hunting zone.

a. ~~Season dates. September 2 through September 10~~ The first Saturday in September for nine consecutive days.

b. to d. No change.

91.3(11) Cedar Falls/Waterloo goose hunting zone.

a. ~~Season dates. September 2 through September 10~~ The first Saturday in September for nine consecutive days.

b. to d. No change.

ITEM 4. Amend rule 571—91.6(481A) as follows:

571—91.6(481A) Youth waterfowl hunt. A special youth waterfowl hunt will be held ~~on September 16 and 17 in the north duck hunting zone, September 23 and 24 in the south duck hunting zone, and September 30 and October 1 in the Missouri River~~ the weekend before the first segment of the regular duck season in each duck hunting zone. Youth hunters must be residents of Iowa as defined in Iowa Code section 483A.1A and less than 16 years old. Each youth hunter must be accompanied by an adult 18 years old or older. The youth hunter does not need to have a hunting license or stamps. The adult must have a valid hunting license and habitat stamp if normally required to have them to hunt and a state waterfowl stamp. Only the youth hunter may shoot ducks, ~~geese~~ and coots. The adult may hunt for any ~~other~~ game birds for which the season is open. The daily bag and possession limits are the same as for the regular waterfowl season, as defined in rule 571—91.1(481A). All other hunting regulations in effect for the regular waterfowl season apply to the youth hunt.

[Filed 4/20/18, effective 6/13/18]

[Published 5/9/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.

ARC 3798C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rule making related to falconry

The Natural Resource Commission hereby amends Chapter 101, "Falconry Regulations," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 455A.5(6) and 481A.48(3).

NATURAL RESOURCE COMMISSION[571](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 481A.48(3).

Purpose and Summary

Chapter 101 regulates the capture and use while hunting (as a method of take) of federally protected raptors in Iowa. Raptors are migratory and therefore subject to the international Migratory Bird Treaty Act (MBTA), which is overseen by the U.S. Fish and Wildlife Service (USFWS). These amendments add five new Peregrine falconry permits for eligible falconers to obtain via a lottery and also establish special releasing and reporting requirements for any banded (e.g., tagged) raptors of any kind.

These Peregrine falconry permits provide a new recreational opportunity for Iowans. Peregrine falcons were listed as endangered on the federal endangered species list in 1970 when the species' population plummeted due to DDT use in the 1940s, 1950s, and 1960s. The species recovered in subsequent decades and was removed from the list in 1999. The USFWS has determined that the species, particularly the northern management population, is now sufficiently stable to support a limited take and has authorized the nation's four flyway zones to issue permits to their member states. Iowa is part of the Mississippi Flyway, whose oversight council has decided to allocate its 48 total available permits roughly equally to all ten of its member states (hence Iowa's 5 permits). If the Commission does not amend Chapter 101 to include these permits, these 5 permits will be distributed to other states.

The amendments limit eligibility for the Peregrine permit lottery to either Iowa master falconers or Iowa general falconers with at least five consecutive years of field experience. This qualification is based on the anticipated (large) interest in these permits and the Peregrine's fairly recent removal from the endangered species list. All other requirements will mimic those for other allowable raptors in Iowa.

The permit will authorize the take of wild, unbanded "passage" (i.e., migratory) Peregrines under one year of age between September 20 and October 20, as authorized by the governing federal regulations (see 82 Fed. Reg. 42700-42701 (Sept. 11, 2017)). Passage Peregrines are those birds that originate from a nesting range north of Iowa extending all the way to the Arctic; USFWS, in consultation with the Canadian Wildlife Service, has determined that this population has the largest and most stable numbers.

In addition, the amendments require the immediate release and reporting to the Department of Natural Resources (Department) within 48 hours of any captured raptor that is banded, whether a Peregrine or some other eligible species open to take. Banded raptors have been tagged for monitoring and should not be removed from the wild so that they can continue to serve as an important part in ongoing research.

Lastly, the species names of a small number of permitted wild raptors for falconry are updated in order to reflect current nomenclature for these birds.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 14, 2018, as **ARC 3621C**. A public hearing was held on March 6, 2018, at 12 noon in Conference Room 3 E&W, Wallace State Office Building, Des Moines, Iowa. No comments were received at the public hearing.

Twenty-two individuals provided the following comments: 17 preferred no lottery (allowing all qualified falconers the opportunity to capture a bird until the five permits are filled), 2 were supportive of adding Peregrine falcon permits if adequate monitoring of the population ensures no additional harm from falconry or other environmental stressors, 2 would like any general falconer to be able to apply for a permit regardless of experience, 1 would move the lottery from August to April to allow additional planning time, 1 would like additional species to be included in falconry, and 1 would like fewer permits to be issued in Iowa with the remainder of Iowa's permits going to other states.

In addition to the rule-making public comment period, the Department held its annual wildlife listening session (WLS) at 19 locations across the state on February 21, 2018. The WLS is an opportunity for all types of hunters and trappers to provide general input on any wildlife-related topic. There were no comments received regarding this rule making during the WLS.

NATURAL RESOURCE COMMISSION[571](cont'd)

Although a significant number of individuals requested that the Commission allow all qualified falconers to attempt to trap Peregrine falcons until the quota of five has been taken instead of managing the permits through a lottery, the Commission believes that a lottery is the proper way to initially implement Peregrine falcon permitting in Iowa. A quota is in place because, while the species has increased to the point of allowing for a limited level of take, Peregrine falcon populations are still far lower than common species like the Red-tailed hawk. Capturing and handling wild birds is demonstrated to increase stress hormone levels in the birds, which translates to an increased risk of death. The Commission wants to ensure that no more than the five permitted birds are caught and handled during the take period. The lottery system provides a cautious balance of opportunity to capture birds by falconers while limiting the risks and associated stress involved with unnecessary captures. Assuming that Peregrine falcon populations continue to increase, this issue may be revisited at a future date.

Changes from the Notice of Intended Action have been made. As mentioned in the rule-making summary, species names have been updated to reflect current nomenclature. Also, subrule 101.4(1) has been revised to more clearly reflect the intent that only currently active, experienced falconers are eligible for the lottery.

Adoption of Rule Making

This rule making was adopted by the Commission on April 12, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on June 13, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 571—101.1(481A), introductory paragraph, as follows:

571—101.1(481A) Falconry regulations. No person may take, transport, or possess any raptor without having first obtained a valid state/federal falconer's permit. Falconry permit holders shall comply with the department's rules and with the current Code of Federal Regulations pertaining to falconry. Only the following raptors may be taken from the wild: American kestrel, Cooper's hawk, Ferruginous hawk, ~~Goshawk~~ Northern goshawk, Great horned owl, Gyrfalcon, ~~Harris'~~ Harris's hawk, Merlin, Peregrine falcon, Prairie falcon, Red-tailed hawk, Rough-legged hawk, and Sharp-shinned hawk. Raptors taken

NATURAL RESOURCE COMMISSION[571](cont'd)

from the wild shall not be sold, bartered or traded. All wild raptors legally trapped or taken by a resident or nonresident falconer must be marked with an Iowa marker band provided by the department.

ITEM 2. Amend rule 571—101.3(481A), introductory paragraph, as follows:

571—101.3(481A) Taking and possession provision. The taking of raptors American kestrel, Cooper's hawk, Ferruginous hawk, Northern goshawk, Great horned owl, Gyrfalcon, Harris's hawk, Merlin, Prairie falcon, Red-tailed hawk, Rough-legged hawk, and Sharp-shinned hawk from the wild by resident falconers shall be limited to the following conditions:

ITEM 3. Renumber subrule **101.3(8)** as **101.3(9)**.

ITEM 4. Adopt the following **new** subrule 101.3(8):

101.3(8) Previously banded birds. Any raptor captured with a federal leg band or any research band already attached shall be immediately released at the site of capture, and the band number and location of trapping site shall be reported to the department within 48 hours.

ITEM 5. Renumber rules **571—101.4(481A)** to **571—101.6(481A)** as **571—101.5(481A)** to **571—101.7(481A)**.

ITEM 6. Adopt the following **new** rule 571—101.4(481A):

571—101.4(481A) Wild Peregrine falcons. A wild Peregrine falcon permit allows for the capture, possession and use of a wild Peregrine falcon in hunting, subject to 571—Chapter 102. In addition to the following provisions, the holder of a wild Peregrine falcon permit shall comply with 571—101.1(481A), 571—101.2(481A), and 571—101.5(481A) through 571—101.7(481A) as well as other applicable law.

101.4(1) The taking of Peregrine falcons from the wild shall be conducted only by resident master falconers or resident general falconers with at least five consecutive years of field experience in the years immediately preceding the filing of an application as described in 101.4(4) and subject to the following conditions:

a. Nestling birds shall not be taken. Young birds not yet capable of flight shall not be taken. Removal of eggs from nests is prohibited.

b. Only wild Peregrine falcons less than one year old shall be taken, and only between September 20 and October 20.

c. No permittee shall employ any method of take that is injurious to the bird.

d. No more than one wild Peregrine falcon per person may be possessed at any given time.

101.4(2) Recapture. Banded Peregrine falcons that are lost to the wild through accident may be retrapped at any time provided that the department has been advised of the loss and is notified of the attempt to recapture. If the banded raptor is recaptured, the department shall be notified of the recovery within 48 hours.

101.4(3) Previously banded Peregrines. Any wild Peregrine falcon captured with a federal leg band or any research band already attached shall be immediately released at the site of capture, and the band number and location of trapping site shall be reported to the department within 48 hours.

101.4(4) Lottery. Applications for wild Peregrine falcon permits shall be received by the department no later than July 31 of each year. Permit drawing from the names of qualifying applicants will be held at the August commission meeting.

[Filed 4/20/18, effective 6/13/18]

[Published 5/9/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.

ARC 3799C**NATURAL RESOURCE COMMISSION[571]****Adopted and Filed****Rule making related to bobcat harvest zone**

The Natural Resource Commission hereby amends Chapter 108, “Mink, Muskrat, Raccoon, Badger, Opossum, Weasel, Striped Skunk, Fox (Red and Gray), Beaver, Coyote, River Otter, Bobcat, Gray (Timber) Wolf and Spotted Skunk Seasons,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 455A.5(6), 481A.38, 481A.39 and 481A.87.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 481A.38, 481A.39 and 481A.87.

Purpose and Summary

The Commission adds 12 counties to the bobcat harvest zone starting in 2018. These 12 counties are Cedar, Cherokee, Clinton, Jackson, Jasper, Johnson, Lyon, Plymouth, Polk, Scott, Shelby, and Sioux counties. Population data from the past ten years reveals that Iowa’s bobcat population continues to grow and expand its distribution into more counties with suitable habitat. This data is compiled from a variety of sources, such as hunter surveys, harvest information, field reports, and sightings.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 14, 2018, as **ARC 3624C**. A public hearing was held on March 6, 2018, at 12 noon in Conference Room 3 E&W, Wallace State Office Building, Des Moines, Iowa. No comments were received at the public hearing. However, six comments were received during the public comment period: one in opposition to expanding the bobcat harvest zone, three supporting the addition of specific counties in the bobcat harvest zone (Jackson, Jones), one asking to increase the bobcat bag limit in southeast Iowa, and one asking to allow night vision lighting for hunting coyotes.

The majority of comments received were in favor of expanded bobcat harvest opportunities consistent with this rule making, with several comments requesting a more aggressive expansion of the harvest zone or bag limit than was proposed. The Commission continues to monitor the growth and spread of the bobcat population across the state. The number of bobcats that can be taken and the counties covered by the harvest zone are set to provide maximum opportunity to hunters and trappers while ensuring the long-term viability of the population based on available biological data.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Commission on April 12, 2018.

Fiscal Impact

The rule making does not require any financial expenditure to implement. No anticipated staff time, training, or resource expenses are associated with the change in the bobcat harvest zone. The Department anticipates a modest increase in the fur harvester license sales from the rule making. Resident fur harvester licenses, with the wildlife habitat fee, are \$31.50 per year pursuant to Iowa Code section

NATURAL RESOURCE COMMISSION[571](cont'd)

483A.1(1)“p.” If the Department sold five additional fur harvester licenses per newly opened county (5 x 12 = 60), these license sales would generate approximately \$1,890 in new revenue (\$31.50 x 60) for the State Fish and Game Protection Fund.

Jobs Impact

This amendment may have a minor positive impact on jobs by increasing overall trapping and hunting activity in the added counties. This amendment will enable trappers and hunters to harvest bobcats over a larger area of the state each season, which may result in more business for the private sector in the following areas: hunting and trapping gear and other related equipment and taxidermy work. This amendment could also lead to increased business for restaurants, hotels, and gas stations as people move around the state participating in the sport.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on June 13, 2018.

The following rule-making action is adopted:

Amend subrule 108.7(2) as follows:

108.7(2) *Open area.* River otters may be taken statewide. Bobcats may be taken in the following counties: Adair, Adams, Appanoose, Audubon, Cass, Cedar, Cherokee, Clarke, Clinton, Crawford, Dallas, Davis, Decatur, Des Moines, Fremont, Guthrie, Harrison, Henry, Iowa, Jackson, Jasper, Jefferson, Johnson, Keokuk, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Mills, Monona, Monroe, Montgomery, Muscatine, Page, Plymouth, Polk, Pottawattamie, Poweshiek, Ringgold, Scott, Shelby, Sioux, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, and Woodbury.

[Filed 4/20/18, effective 6/13/18]

[Published 5/9/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.

ARC 3800C

NATURAL RESOURCES DEPARTMENT[561]

Adopted and Filed

Rule making related to description of organization

The Department of Natural Resources hereby rescinds Chapter 1, “Description of Organization,” Iowa Administrative Code, and adopts a new Chapter 1 with the same title.

NATURAL RESOURCES DEPARTMENT[561](cont'd)

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 17A.3(1)“a” and 455A.4(1)“i.”

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 17A.3(1)“a” and 455A.4(1)“i.”

Purpose and Summary

Iowa Code section 17A.3(1)“a” requires that each agency shall, in addition to other requirements imposed by Constitution or statute, “[a]dopt as a rule a description of the organization of the agency which states the general course and method of its operations, the administrative subdivisions of the agency and the programs implemented by each of them, a statement of the mission of the agency, and the methods by which and location where the public may obtain information or make submissions or requests.”

The amendment revises and makes current the Department’s organization description, as required by Iowa Code section 17A.3(1)“a,” as the agency’s management structure has changed since Chapter 1 was last updated.

The amendment rescinds the current Chapter 1 and replaces it in its entirety.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 22, 2017, as **ARC 3458C**. A public hearing was held on December 12, 2017, at 11 a.m. in Conference Room 4E, Wallace State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received.

One change from the Notice of Intended Action was made. 2018 Iowa Acts, House File 2303, which was adopted by the General Assembly and signed by the Governor on March 21, 2018, amends Iowa Code section 456.2, effective July 1, 2018, to move the State Geologist position from the Department to the Board of Regents. Therefore, the reference to the State Geologist has been removed from Chapter 1.

Adoption of Rule Making

This rule making was adopted by the Department on April 19, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

NATURAL RESOURCES DEPARTMENT[561](cont'd)

Effective Date

This rule making will become effective on June 13, 2018.

The following rule-making action is adopted:

Rescind 561—Chapter 1 and adopt the following new chapter in lieu thereof:

CHAPTER 1
DESCRIPTION OF ORGANIZATION

561—1.1(17A,455A) Authority and purpose. The department was created by Iowa Code section 455A.2. The department has the primary responsibility for state parks and forests, protecting the environment, and managing fish, wildlife, and land and water resources in this state.

561—1.2(17A,455A) Mission. The mission of the department is to conserve and enhance Iowa's natural resources in cooperation with individuals and organizations to improve the quality of life in Iowa and ensure a legacy for future generations.

561—1.3(17A,455A) Organization.

1.3(1) Director and deputy director. The director is the chief administrative officer of the department. The director shall appoint a deputy director, who shall be in charge of the department in the absence of the director. The deputy director also may carry out other duties as assigned by the director. The director has rule-making authority for the general operation of the department, and the rules relating to this subject are found under agency number 561 of the Iowa Administrative Code.

1.3(2) Natural resource commission. The natural resource commission, created by Iowa Code section 455A.5, consists of seven members appointed by the governor. The natural resource commission is responsible to establish policy and adopt rules for the programs specified in Iowa Code section 455A.5(6) "a"; hear appeals in contested cases for the programs specified in Iowa Code section 455A.5(6) "b"; approve or disapprove proposals submitted by the director for the acquisition or disposal of state lands and waters relating to state parks, recreational facilities, and wildlife programs; approve the budget request prepared by the director for the programs specified in Iowa Code section 455A.5(6) "d"; adopt, by rule, a schedule of fees for permits and for the administration of permits; and approve or disapprove proposals involving lake dredging or renovation, and the acquisition, development, and maintenance of boating facilities and recreational facilities associated with recreational boating. The substantive rules of the natural resource commission are found under agency number 571 of the Iowa Administrative Code.

1.3(3) Environmental protection commission. The environmental protection commission, created by Iowa Code section 455A.6, consists of nine members appointed by the governor. The environmental protection commission is responsible to establish policy and adopt rules for the programs specified in Iowa Code section 455A.6(6) "a"; hear appeals in contested cases for the programs specified in Iowa Code section 455A.6(6) "b"; approve or disapprove the issuance of hazardous waste disposal site licenses under Iowa Code chapter 455B; and approve the budget request prepared by the director for the programs specified in Iowa Code section 455A.6(6) "d." The substantive rules of the environmental protection commission are found under agency number 567 of the Iowa Administrative Code.

1.3(4) State advisory board for preserves. The state advisory board for preserves, created by Iowa Code section 465C.2, consists of seven members, six of whom are appointed by the governor. The director shall serve as a member of the board. The state advisory board for preserves approves land or water areas for dedication as preserves, makes rules, and performs advisory functions related to the establishment and maintenance of preserves. The substantive rules of the state advisory board for preserves are found under agency number 575 of the Iowa Administrative Code.

NATURAL RESOURCES DEPARTMENT[561](cont'd)

1.3(5) Divisions and bureaus. Pursuant to Iowa Code section 455A.7, the director may establish administrative divisions, bureaus, or other administrative entities to most effectively and efficiently carry out the department's responsibilities.

a. Conservation and recreation division. The director has established the conservation and recreation division, which includes the state forester, implements the resource enhancement and protection program and consists of the following bureaus:

(1) Fisheries bureau. The fisheries bureau is responsible for managing fish, turtle, and aquatic organism populations in public waters; providing technical advice and assistance regarding diseases and aquatic invasive species avoidance and mitigation in both public and private waters; collecting creel statistics; fish hatching and stocking; conducting research studies for the purpose of setting fishing seasons and for scientific knowledge; providing fishing information to the general public and conducting other outreach education programs; and developing fishing areas and angler accesses.

(2) Land and waters bureau. The land and waters bureau is responsible for engineering and realty services for the department's facility and public lands and waters projects. Services include professional engineering and architectural design, surveying, construction contract administration, consultant contract management, property appraisal, land acquisition negotiation and closing, conservation easement administration, land management leases and agreements, environmental review, sovereign land construction permits, and threatened and endangered species oversight. The bureau also oversees the department's river programs, which include water trail development and low-head dam mitigation projects.

(3) Law enforcement bureau. The law enforcement bureau is responsible for enforcing Iowa's natural resource conservation and outdoor recreation laws. Other activities include assisting in wildlife and fisheries scientific surveys; providing hunter, boating, and all-terrain vehicle/snowmobile safety training and other outreach education programs; and supervising Iowa's private shooting preserves.

(4) Parks bureau. The parks bureau manages Iowa's state parks, recreation areas, and state forests. The bureau operates and maintains park, recreation area, and state forest infrastructure and facilities, such as multiuse trails, beaches, campgrounds, picnic areas, lodges, shelters, and cabins; protects and manages the natural resources inside such areas, including wildlife, wildlife habitat, and woodlands and timber stands; monitors concession operators; provides naturalist activities and other outreach education programs; and enforces Iowa's natural resource conservation and outdoor recreation laws.

(5) Wildlife bureau. The wildlife bureau is responsible for managing Iowa's wildlife held in trust for the public; maintaining and enhancing wildlife habitat on public lands and waters; advising the public on wildlife habitat development and improvement on private lands, including the development and protection of woodlands and timber stands on private lands; and conducting research for the purpose of setting hunting and trapping seasons and to ensure biological balance of all of Iowa's wildlife.

b. Environmental services division. The director has established the environmental services division, which consists of the following bureaus:

(1) Air quality bureau. The air quality bureau is responsible for air pollution control, including air quality new source review permitting, operating permitting, emissions inventory, air quality monitoring and assessment, and air quality improvement.

(2) Land quality bureau. The land quality bureau is responsible for providing technical assistance and oversight for management of solid waste, remediation of contaminated sites, cleanup of underground storage tanks, flood plain management, dam safety, coordination of geographic information systems, and development of sustainable environmental practices through financial and professional assistance.

(3) Water quality bureau. The water quality bureau is responsible for national pollutant discharge elimination system permitting, wastewater engineering, water supply engineering and operations, water quality monitoring and assessment, and watershed improvement.

(4) Field services bureau. The field services bureau conducts investigations of facilities or activities regulated by the environmental services division, including air quality, land quality, water quality, and animal feeding operations, on its own initiative or in response to citizen complaints; monitors compliance with the statutes and rules administered by the division; and provides technical and compliance assistance.

NATURAL RESOURCES DEPARTMENT[561](cont'd)

561—1.4(17A,455A) Location of offices.

1.4(1) Director's office and central offices. The director's office and the central offices are located in the Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319-0034. The reception area is located on the fourth floor of the Wallace State Office Building. The main customer service telephone number is (515)725-8200.

1.4(2) Conservation and recreation division offices.

a. Fisheries bureau offices. The fisheries bureau offices are located in the central offices and in district offices located throughout the state. The locations of the district offices may be found on the department's website.

b. Land and waters bureau offices. The land and waters bureau offices are located in the central offices.

c. Law enforcement bureau offices. The law enforcement bureau offices are located in the central offices and in district offices located throughout the state. The locations of the district offices may be found on the department's website.

d. Parks bureau offices. The parks bureau offices are located in the central offices and in parks and state forests throughout the state. The locations of the state parks, state recreation areas, and state forests may be found on the department's website.

e. Wildlife bureau offices. The wildlife bureau offices are located in the central offices and in district offices located throughout the state. The locations of the district offices may be found on the department's website.

1.4(3) Environmental services division offices. The air quality, land quality and water quality bureaus are located in the central offices. The addresses and telephone numbers of the field services bureau may be found on the department's website.

561—1.5(17A,455A) Business hours. The normal business hours of the department are 8 a.m. to 4:30 p.m., Monday to Friday, except holidays.

561—1.6(17A,455A) Department Internet website. The department's Internet home page is located at www.iowadnr.gov.

These rules are intended to implement Iowa Code section 17A.3(1)“a” and chapter 455A.

[Filed 4/19/18, effective 6/13/18]

[Published 5/9/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.

ARC 3801C

NURSING BOARD[655]

Adopted and Filed

Rule making related to supervision by licensed practical nurses

The Board of Nursing hereby amends Chapter 6, “Nursing Practice for Registered Nurses/Licensed Practical Nurses,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 17A.3 and 147.76.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 152.

NURSING BOARD[655](cont'd)

Purpose and Summary

The following list is a summary of the changes to subrule 6.5(1). The amendments, which pertain to the role and responsibility of the licensed practical nurse (LPN) in a supervisory capacity:

- Clarify the supervisory role of the LPN in an acute care setting.
- Streamline the requirements for and process of completing the National Healthcare Institute's supervisory course for LPNs within 90 days of employment in a supervisory role.
- Clarify the process for LPNs who are currently enrolled as full-time students in a registered nurse program.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 28, 2018, as **ARC 3660C**. Public comments (written and verbal) were received. Public comments included discussion of the time frame to complete the LPN supervisory course. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on April 4, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on June 13, 2018.

The following rule-making action is adopted:

Amend subrule 6.5(1) as follows:

6.5(1) A licensed practical nurse shall be permitted to supervise unlicensed assistive personnel under the provisions of Iowa Code section ~~152.1(4) "b."~~ 152.1(5) "b."

a. No change.

b. Supervision shall be in accordance with the following:

(1) A licensed practical nurse working under the supervision of a registered nurse shall be permitted to supervise in an intermediate care facility for ~~the mentally retarded~~ persons with an intellectual disability or in a residential health care setting.

NURSING BOARD[655](cont'd)

(2) A licensed practical nurse working under the supervision of a registered nurse may direct the activities of other licensed practical nurses and unlicensed assistive personnel in an acute care setting in giving care to individuals assigned to the licensed practical nurse. The registered nurse must be in the proximate area.

~~(2) (3)~~ A licensed practical nurse working under the supervision of a registered nurse ~~shall be permitted to~~ may supervise in a nursing facility if the licensed practical nurse completes the National Healthcare Institute's Supervisory Course for Iowa's Licensed Practical Nurses within 90 days of employment in a supervisory role. Documentation of the completion of the course shall be maintained by the licensed practical nurse. A licensed practical nurse shall be entitled to supervise without completing the course if the licensed practical nurse was performing in a supervisory role on or before October 6, 1982. A licensed practical nurse who is currently enrolled as a full-time student in a registered nurse program and is scheduled to graduate within one year is not required to complete the course. If the licensed practical nurse does not obtain a registered nurse license within one year, the licensed practical nurse must take the course to continue supervisory duties.

~~The licensed practical nurse shall be required to complete a curriculum which has been approved by the board and designed specifically for the supervision role of the licensed practical nurse in a nursing facility. The course must be presented by a board approved nursing program or an approved provider of continuing education. Documentation of the completion of the curriculum as outlined in this subparagraph shall be maintained by the licensed practical nurse.~~

~~(3) A licensed practical nurse shall be entitled to supervise without the educational requirement outlined in subparagraph 6.5(1) "b"(2) if the licensed practical nurse was performing in a supervisory role on or before October 6, 1982. The licensed practical nurse being employed in a supervisory role after the enactment of these rules shall complete the curriculum outlined in subparagraph 6.5(1) "b"(2) within six months of employment.~~

~~(4) A licensed practical nurse working under the supervision of a registered nurse may direct the activities of other licensed practical nurses and unlicensed assistive personnel in an acute care setting in giving care to individuals assigned to the licensed practical nurse. The registered nurse must be in the proximate area.~~

[Filed 4/9/18, effective 6/13/18]

[Published 5/9/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.

ARC 3802C

NURSING BOARD[655]

Adopted and Filed

Rule making related to the nurse licensure compact

The Board of Nursing hereby rescinds Chapter 16, "Nurse Licensure Compact," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 17A.3 and 147.73.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 152E.

NURSING BOARD[655](cont'd)

Purpose and Summary

This rule making rescinds Chapter 16 because an enhanced nurse licensure compact will be implemented in Iowa.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 14, 2018, as **ARC 3618C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on April 4, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on June 13, 2018.

The following rule-making action is adopted:

Rescind and reserve **655—Chapter 16**.

[Filed 4/9/18, effective 6/13/18]

[Published 5/9/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.

ARC 3803C

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Adopted and Filed

Rule making related to collective bargaining

The Public Employment Relations Board hereby amends Chapter 2, "General Practice and Hearing Procedures," Chapter 4, "Bargaining Unit and Bargaining Representative Determination," Chapter 5,

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

“Elections,” Chapter 6, “Negotiations and Negotiability Disputes,” Chapter 7, “Impasse Procedures,” and Chapter 13, “Mediators,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 20.6(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 20.

Purpose and Summary

The agency adopted emergency rules effective August 10, 2017, to implement provisions of 2017 Iowa Acts, House File 291. These adopted amendments clarify those rules, add rules where required by House File 291 and make changes based on elections conducted in the fall of 2017.

Items 1 and 2 are conforming amendments based on renumbering in Chapters 5 and 4, respectively. The amendments in Items 3 through 13 and 15 restructure the chapter with additions for explanation and clarification of petitions and procedures. Item 14 is based on constituent feedback and allows employee organizations to wait for Board approval before filing final agency reports for dissolved organizations in amendment of certification proceedings.

A number of amendments to Chapter 5 are adopted. The amendments in Item 16 change the time period for the payment of election fees; eliminate election fee refunds when the employee organization has paid the fee but the election does not occur; and align the chapter to the voter eligibility changes contained in Item 17. The amendments in Item 17 change voter eligibility for retention and recertification elections to a date certain prior to the start of the election period, clarify the responsibilities of the employer and the employee organization in providing the voter list and updating the list, summarize the challenges for all the types of elections and change the deadline for telephonic/web-based election challenges. Due to the cutoff date for voter eligibility and the change to challenge deadlines, additional amendments in Item 17 allow postelection challenges for retention and recertification elections. The amendments in Item 18 allow the agency to utilize voting machines for in-person elections, allow the Board to extend an election period for telephonic/web-based elections when the systems are inoperable for an extended period, and further clarify existing election practices. The amendments in Item 19 clarify the objection procedure to reflect current practice, specify the parties that may object pursuant to changes required by House File 291, and clarify what constitutes objectionable conduct regarding speeches. The amendments in Items 20 and 22 align the rules to voter eligibility changes in Item 17 and restructure the rules regarding certification and decertification elections for clarification to constituents. The amendments in Item 21 fulfill the same purpose for retention and recertification elections and align postelection challenges for these types of elections. The amendments also set the date upon which an extension of an agreement must be executed, require the parties to notify the agency of the extension, and allow the agency the option of conducting elections for education-related entities in October. The amendments in Items 23 and 24 restructure rules which cover professional/nonprofessional and amendment of unit elections. The amendment in Item 25 reflects the accurate name of the order issued by the agency.

The amendments in Items 26 and 27 reflect current word usage. The amendments in Item 28 change the dates by which public safety status stipulations are due to the agency. The amendment in Item 29 revises the rule.

The amendments in Item 30 renumber subrules due to the addition of a new subrule contained in Item 31 and due to rule restructuring. In Item 31, a new subrule sets forth the requirements for state contract negotiations when a new governor takes office as set forth in House File 291.

An amendment in Item 32 adds arbitration as a type of proceeding in which a mediator shall not testify, as set forth in House File 291.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 14, 2018, as **ARC 3671C**. A public hearing was held on April 4, 2018, at 2 p.m. in the Vocational Rehabilitation Services' Starkweather Conference Room, 510 East 12th Street, Des Moines, Iowa.

The agency received questions and concerns at the hearing. There were questions about situations in which the agency will not refund election fees. As a result, in Item 16, the language in subparagraph 5.1(2)"d"(2) was clarified. There were questions about the employer-provided lists, and as a result, language in paragraph 5.2(2)"b"(2)"1" in Item 17 was clarified. Significant concern was raised about the addition of a registration requirement for elections, and as a result, in Item 18, paragraph 5.3(3)"b" was not adopted, which eliminated registration as an option from the adopted rules. Because of this change, subsequent paragraphs were relettered accordingly.

The agency has received comments from both public employers and employee organizations regarding the eligibility lists, with both parties contending that their respective duties are too onerous. The employee organizations contend House File 291 and related rules are unconstitutional.

Adoption of Rule Making

This rule making was adopted by the Board on April 18, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

These rules do not provide for a waiver of their terms but are instead subject to the agency's general waiver provisions found at rule 621—1.9(17A,20).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on June 13, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 621—2.4(20) as follows:

621—2.4(20) Intervention and additional parties. Any interested person may request intervention in any proceeding before the public employment relations board. An application for intervention shall be in writing, except that applications made during a hearing may be made orally to the hearing officer, and shall contain a statement of the reasons for such intervention. When an application for intervention is filed regarding a petition for bargaining representative determination, 621—subrules 4.3(2), 4.4(4), 5.1(2), 5.5(2), and ~~5.5(3)~~ 5.5(4) shall apply.

Where necessary to achieve a more proper decision, the board or administrative law judge may, on its own motion or the motion of any party, order the bringing in of additional parties. When so ordered, the

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

board shall serve upon such additional parties all relevant pleadings and allow such parties a reasonable time to respond thereto where appropriate.

ITEM 2. Amend rule 621—2.23(20) as follows:

621—2.23(20) Informal disposition. The board may assign an administrative law judge to assist the parties in reaching a settlement of any dispute which is the subject of an adjudicatory proceeding. However, no party shall be required to participate in mediation or settle the dispute pursuant to this rule. An administrative law judge assisting the parties under this rule shall not serve as a presiding officer in any proceeding related to the dispute. Adjudicatory proceedings may be voluntarily dismissed without consent of the board except as provided in rule 621—3.6(20) and 621—subrule 4.1(3) 4.1(5).

ITEM 3. Renumber subrules **4.1(1)** to **4.1(3)** as **4.1(3)** to **4.1(5)**.

ITEM 4. Adopt the following **new** subrule 4.1(1):

4.1(1) General.

a. The agency shall determine an appropriate bargaining unit when requested by petition. Once a unit is initially determined, parties may request by petition: reconsideration of the unit, amendment of the unit, or clarification of the unit.

b. The agency may certify an employee organization to be the exclusive bargaining representative for a unit when requested by a petition or an application for intervention. Once certified, the employee organization will be subject to retention and recertification elections and may be subject to decertification if a petition is filed by an employee of the bargaining unit. The employee organization's certification may be amended when requested by petition by the employee organization or by the public employer, or when the agency files notice.

c. The employee organization shall have its certification revoked for failure to pay its election fees, or its certification may be revoked for failure to comply with the requirements of Iowa Code section 20.25.

ITEM 5. Adopt the following **new** subrule 4.1(2):

4.1(2) Representation elections.

a. Initial certification, retention and recertification, and decertification elections. The initial certification, retention and recertification, and decertification of an employee organization require elections in accordance with 621—Chapter 5. The three types of elections affecting the bargaining representative determination or an employee organization's certification status are as follows:

(1) A certification election, which is initiated by the filing of a petition by the employee organization or the public employer, for the initial certification of an employee organization to be the exclusive bargaining representative for a bargaining unit of public employees;

(2) A retention and recertification election, which is initiated by the filing of notice by the agency, for the retention and recertification of a certified employee organization; and

(3) A decertification election, which is initiated by a public employee of a bargaining unit, for the decertification of an existing certified employee organization that represents the unit.

b. Other elections—professional/nonprofessional unit and amendment of unit. When a bargaining unit is determined or amended, an election may be required as provided in 621—Chapter 5. The two types of other elections are as follows:

(1) A professional and nonprofessional election occurs when the agency files an order directing the election after determining that professional and nonprofessional employees are appropriately included in the same bargaining unit.

(2) An amendment of unit election occurs when the agency files an order directing the election after determining that a job classification or classifications are appropriately amended into a bargaining unit, but a question of representation exists. A question of representation exists when the amended

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

classifications existed at the time the bargaining unit was originally determined and those classifications would separately constitute an appropriate unit.

ITEM 6. Amend renumbered subrule 4.1(3) as follows:

4.1(3) *Separate or combined petitions.* ~~Request~~ Requests for the initial bargaining unit determination and the bargaining representative determination certification shall be by petitions which may be filed separately or on a combined petition form pursuant to rule 621—4.4(20). ~~Where~~ When a request has been made to a public employer to bargain collectively with a designated group of public employees and the ~~board~~ agency has not previously determined the bargaining unit, the petitions shall be filed jointly or on a combined form ~~provided by the board~~ prescribed by the agency.

ITEM 7. Adopt the following **new** subrule 4.1(6):

4.1(6) *Method of filing of all petitions.* All petitions and subsequent documents submitted pursuant to this chapter shall be electronically filed pursuant to 621—Chapter 16, unless otherwise stated in these rules.

ITEM 8. Amend rule 621—4.2(20) as follows:

621—4.2(20) Unit determination.

4.2(1) *Content of petition.* A petition for bargaining unit determination shall be on an agency-prescribed form and filed with the agency. The petition shall ~~contain an identification and description of~~ identify and describe the proposed unit and indicate the unit's status as a public safety or non-public safety unit.

4.2(2) *Notice to parties.* Upon the filing of a proper petition, the agency shall serve copies thereof upon other interested parties by certified mail, return receipt requested. The agency shall file a notice to employees, giving notice that the petition has been filed and setting forth the rights of employees under ~~the Aet~~ Iowa Code chapter 20. The employer shall promptly post the petition and notice to employees in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by ~~e-mail~~ email or hard copy, the public employer shall also promptly distribute the petition and notice to employees by those means.

4.2(3) *Notice of hearing.* The board or administrative law judge shall file a notice of hearing setting forth the time, date and place of the hearing and any other relevant information. The public employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by ~~e-mail~~ email or hard copy, the employer shall also promptly distribute the notice to employees by those means.

4.2(4) *Intervention.* See rule 621—2.4(20).

4.2(5) *Professional and nonprofessional unit elections.* Should the agency determine, in any case, that professional and nonprofessional employees are appropriately included in the same bargaining unit, the agency shall file an order directing that an election be conducted to determine whether the professional and nonprofessional employees wish to be represented in a single bargaining unit. The election shall be conducted in accordance with rule 621—5.8(20).

4.2(6) *Informal settlement of bargaining unit determination.* Cases on bargaining unit determination may be informally settled in the following manner:

a. The parties may stipulate to the composition of the unit.

(1) The petitioning party shall prepare a stipulation setting forth in detail the composition of the bargaining unit as agreed upon by all parties. The stipulation shall be signed by the authorized representatives of the parties involved and shall be filed with the agency for informal review and tentative approval. In the event the parties agree to a combined unit of professional and nonprofessional employees, the stipulation shall set forth both those job classifications included within the professional category and those job classifications included within the nonprofessional category.

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(2) If the agency fails to tentatively approve the stipulation, the agency shall notify the parties and, unless the parties amend the stipulation in a manner to gain tentative approval of the agency, the matter shall proceed to hearing.

(3) If the agency tentatively approves the stipulation, the agency shall file a public notice of proposed decision. The public employer shall promptly post copies of the notice of the proposed decision, for a period of not less than one calendar week, in a prominent place in the main office of the public employer accessible to the general public and in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by ~~e-mail~~ email or hard copy, the employer shall also promptly distribute such notice to employees by those means. The public employer shall also have copies of the notice available for distribution to the public upon request.

b. Notice of the proposed decision shall identify the parties; specify the terms of the proposed decision; list the names, addresses, ~~and~~ telephone numbers, ~~and~~ email addresses of the parties or their authorized representatives to whom inquiries by the public should be directed; and, further, state the date ~~and method~~ by which written objection to the proposed decision must be filed with the agency ~~and the address to which such objections should be sent~~.

c. Objections to the proposed decision must be filed with the agency, electronically, by ordinary mail or by personal delivery, by the date posted in the notice of proposed decision. Objections shall be in writing and shall set out the specific grounds of objection. The objecting party must identify itself and provide a mailing address, ~~and~~ telephone number, ~~and~~ email address, if available. The agency shall promptly advise the parties of the objections and make any investigation deemed appropriate. If the agency deems the objections to be of substance, the parties may, with agency approval, amend their proposed decision to conform therewith, and the objecting party shall be notified by the agency of the amendment. If the objections cannot be informally resolved, they may be dismissed or resolved at hearing.

d. Final board decision on the ~~informed~~ informal settlement shall be reserved until expiration of the time for filing of objections. If no objections have been filed; or if filed objections have been resolved through amendment of the proposed decision; or if filed objections, after inquiry by the board, were found to be frivolous, the board shall endorse the proposed decision as final.

e. If interested parties are unable to informally settle a case on bargaining unit determination within 15 days of service of a petition, the board or administrative law judge may order any interested party to file ~~with the board~~ its proposed unit description.

ITEM 9. Amend rule 621—4.3(20) as follows:

621—4.3(20) Bargaining representative determination (election petitions).

4.3(1) Form of petition. Petitions for bargaining representative determination (election petition) shall be on an agency-prescribed form and filed with the agency. These petitions shall be of three types:

a. A certification petition, filed by an employee organization requesting that through an election it be certified as the exclusive bargaining representative of an appropriate unit of public employees. The name of the employee organization which appears on the petition, or the petition as amended, shall be the name which appears on the election ballot.

b. A decertification petition, filed by ~~an~~ a bargaining unit employee requesting an election to determine whether a majority of the employees in the bargaining unit wish to continue to be represented by a certified employee organization.

c. A representation petition, filed by a public employer requesting an election to determine the bargaining representative, if any, of the employees in the bargaining unit.

4.3(2) Showing of interest—certification—decertification—intervention. Whenever a petition for certification or decertification is filed, or whenever intervention is requested for the purpose of being placed on an election ballot, the petitioner or intervenor shall submit, by ordinary mail or personal delivery, evidence that the petition or application for intervention is supported by 30 percent of the employees in the bargaining unit. In petitions for certification or applications for intervention, such ~~interest~~ showing of interest shall be dated and signed not more than one year prior to its submission;

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shall contain the job classification of the signatory; and shall contain a statement that the signatory is a member of the employee organization or has authorized it to bargain collectively on the signatory's behalf. In petitions for decertification, evidence of interest shall be as provided above, except the evidence of interest shall instead contain a statement that the signatory no longer wishes to be represented by the certified employee organization. When a representation petition is filed by an employer, no ~~show~~ showing of interest will be required.

4.3(3) *Determination of showing of interest.* The public employer shall, within seven days of receipt of notice of a certification or decertification petition, ~~submit to~~ file with the agency a list of the names and job classifications of the employees in the unit which is the subject of the petition or, in the case of a combined petition, the employees in the unit requested by the petitioner. The agency shall administratively determine the sufficiency of the showing of interest upon receipt of the list. This determination, including the identification and number of signers of the showing of interest, shall be confidential and not subject to review, and parties other than the party submitting the ~~interest~~ showing of interest shall not be entitled to a copy or examination of the showing of interest. If the employer fails to furnish the list of employees, the agency shall determine the sufficiency of the showing of interest by whatever means it deems appropriate.

4.3(4) *Notice.* Upon the filing of a petition for certification, decertification or representation, the agency shall file a notice to employees, giving notice that an election petition has been filed and setting forth the rights of employees under ~~the Act~~ Iowa Code chapter 20. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by ~~e-mail~~ email or hard copy, the employer shall also promptly distribute the notice to employees by those means.

4.3(5) *Direction of election.* Whenever an election petition is filed which conforms to these rules and ~~the Act~~ Iowa Code chapter 20 and the appropriate bargaining unit has been previously determined, an election shall be directed and conducted under the provisions of 621—Chapter 5.

4.3(6) *Intervention.* See ~~4.1(2)~~ rule 621—2.4(20).

ITEM 10. Amend rule 621—4.4(20) as follows:

621—4.4(20) Concurrent (combined) petitions.

4.4(1) *When to file.* A combined petition for both bargaining unit determination and bargaining representative ~~determination~~ certification shall be filed whenever ~~a question of representation exists~~ and the bargaining unit has not been previously determined and a representative has not been certified by the board agency.

4.4(2) *Content of petition.* A combined petition for unit determination and representative ~~determination (election)~~ certification shall be on a an agency-prescribed form ~~provided by the board~~ and shall be filed by delivery to the board.

4.4(3) *Notice of petition, hearing, and notice to employees.* Upon ~~receipt~~ the filing of a combined petition, notice shall be as provided in subrules 4.2(2), 4.2(3) and 4.3(4).

4.4(4) *Showing of interest.* Showing of interest shall be as provided in subrules 4.3(2) and 4.3(3). Should the board determine an appropriate unit different than that requested, any employee organization affected may request a reasonable period of time to submit additional evidence of interest sufficient to satisfy the requirements of ~~the Act~~ Iowa Code chapter 20.

4.4(5) *Scope of hearing.* Hearings on combined petitions shall resolve all issues with regard to both bargaining unit determination and bargaining representative ~~determination~~ certification.

4.4(6) *Intervention.* See ~~4.1(2)~~ rule 621—2.4(20).

4.4(7) *Professional and nonprofessional elections.* See subrule 4.2(5) and rule 621—5.8(20).

ITEM 11. Amend rule 621—4.5(20) as follows:

621—4.5(20) Unit reconsideration. A petition for reconsideration of an agency-established bargaining unit may be filed by an employee organization, public employer, or an employee of the public employer.

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This petition may be filed only in combination with a certification petition. Rules 621—4.1(20), 621—4.2(20), 621—4.3(20) and 621—4.4(20) shall apply. A petition for reconsideration of an agency-established bargaining unit covering state employees may not be filed for at least one year after the initial unit determination. The agency may dismiss the petition for unit reconsideration if the petitioner fails to establish that the previously determined bargaining unit is inappropriate.

ITEM 12. Amend rule 621—4.6(20) as follows:

621—4.6(20) Amendment of unit.

4.6(1) *Petition.* A petition for amendment of an agency-determined bargaining unit may be filed by the public employer or the certified employee organization. The petition shall contain:

- a. The names, addresses, telephone numbers and ~~e-mail~~ email addresses of the public employer, and the employee organization, ~~and~~ or their respective representatives.
- b. An identification and description of the proposed amended unit.
- c. The names and addresses of any other employee organizations which claim to represent any employees affected by the proposed amendment or a statement that the petitioner has no knowledge of any other such organization.
- d. Job classifications of the employees as to whom the issue is raised, the number of employees, if any, in each classification, and whether each job classification qualifies as a public safety employee.
- e. A statement identifying the current status of the unit as either a public safety or a non-public safety unit and the change, if any, to the status of the unit which would result from the requested amendment.
- f. A specific statement of the petitioner's reasons for seeking amendment of the unit and any other relevant facts.

4.6(2) *Procedure—decision.* Insofar as applicable, rule 621—4.2(20) shall apply.

4.6(3) *Elections; when required.* When a question of representation exists, the agency will conduct an amendment of unit election pursuant to rule 621—5.9(20). A question of representation exists when the job classification(s) sought to be amended into a bargaining unit was in existence at the time the employee organization was certified to represent the bargaining unit and the job classification(s) separately constitutes an appropriate bargaining unit.

ITEM 13. Amend rule 621—4.7(20) as follows:

621—4.7(20) Unit clarification. A petition to clarify the inclusion or exclusion of job classifications or employees in an agency-determined bargaining unit may be filed by the public employer, an affected public employee, or the certified employee organization. Such petition ~~must~~ may be ~~in the absence of a question of representation~~ filed only if the bargaining unit is represented by a certified bargaining representative. Insofar as applicable, the procedures for such filing shall be as provided in subrule 4.6(1).

ITEM 14. Amend subrule 4.8(2) as follows:

4.8(2) *Employee organization.* The employee organization must file its petition with the following:

- a. An affidavit(s) that establishes:
 - (1) The act or occurrence, which the requested amendment would reflect, was authorized by and accomplished in accordance with the certified employee organization's constitution and bylaws, which provided members with adequate due process; and
 - (2) Substantial continuity of representation has been maintained.
- b. Updated agency reports if there is a change in the employee organization's name or if there is a change to the employee organization's governing body. The reports shall include the following:
 - (1) An updated PERB annual report that covers the time period from the last annual report to the time of the filing of the petition.
 - (2) An updated PERB registration report.
 - (3) An updated constitution and bylaws.
- c. Final agency reports for dissolved organizations resulting from a merger. The final agency report shall include a PERB annual report that covers the time period from the last annual report to

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the time of the merger and shall reflect the closing of the books and accounts of the dissolved employee organization. The certified employee organization may wait and submit its final agency reports following the board's tentative approval of the amendment of certification.

ITEM 15. Amend subrule 4.8(5) as follows:

4.8(5) Public employer posting, decisions and objection period. When a petition for amendment of certification is filed which the agency deems sufficient to fulfill the requirements of this rule, the agency shall file a public notice of its proposed decision to amend the employee organization's certification upon the non-petitioning interested parties. Upon receipt, the public employer shall promptly post the notice of proposed decision, for a period of not less than one calendar week, in a prominent place in the main office of the public employer accessible to the general public and in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by ~~e-mail~~ email or hard copy, the employer shall also promptly distribute such notice to employees by those means. The public employer shall also have copies of the proposed decision available for distribution to the public upon request.

a. The notice of the proposed decision shall identify the parties; specify the terms of the proposed decision; list the names, addresses, ~~and~~ telephone numbers, ~~and~~ email addresses of the parties or their authorized representatives to whom inquiries by the public should be directed; and state the date and method by which written objection to the proposed decision must be filed.

b. Objections to the proposed decision must be filed with the agency, electronically, by ordinary mail or by personal delivery, by the date specified in the notice. Objections shall be in writing and shall set out the specific grounds of objection. The objecting party must identify itself and provide a mailing address, telephone number and ~~e-mail~~ email address. The agency shall promptly advise the parties of the objections and make any investigation deemed appropriate. When an objection is raised, the agency may investigate and dismiss the objection or conduct a hearing pursuant to 621—Chapter 2.

c. A final agency decision shall be reserved until the expiration of the time for filing objections. If no objections have been filed, the agency may endorse the proposed decision as final.

ITEM 16. Amend subrules 5.1(2) and 5.1(3) as follows:

5.1(2) Election fees.

a. For certification, retention and recertification, and decertification elections, the employee organization is responsible for and shall prepay the election fees in accordance with this chapter and rules relevant to the specific election. Employee organizations intervening in a certification election shall pay a proportionate share of the election fees.

b. A certified employee organization may ~~make file a~~ make file a written request ~~to with~~ the agency for an extension of time in which to pay its election fees. The employee organization may ~~make file~~ the request after the filing of a certification or decertification petition, but no later than 7 days after the agency's filing of an order ~~of directing an~~ election. For a retention and recertification election, a certified employee organization may ~~make file~~ a request after the agency's filing of its intent to conduct an election, but shall file the request no later than ~~30 days prior to the commencement of the election period~~ the date the election fee is due as provided in the notice of intent to conduct an election. In no event will the agency conduct an election prior to an employee organization's payment of election fees.

c. A certified employee organization may file notice of nonpayment to indicate that it will not pay the election fees for a decertification or retention and recertification election. The notice of nonpayment may be filed at any time, but must be filed no later than 7 days after the agency's filing of an order for a decertification election or no later than 30 days prior to the commencement of a retention and recertification election period. The notice shall be signed by an authorized representative of the organization, state that the organization will not pay the election fees, and acknowledge that the agency will not conduct the applicable election and the employee organization's certification will be revoked.

d. ~~The~~ For retention and recertification elections, the applicable election fee is based upon the number of employees on the voter eligibility list submitted to the agency pursuant to ~~paragraph 5.2(2) "a."~~ subrule 5.2(2). For certification and decertification elections, the applicable election fee is based upon the list provided pursuant to 621—subrule 4.3(3) to verify the showing of interest.

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(1) When the list contains 10 or fewer eligible voters, the election fee is ~~\$10.00~~ \$10. When the list contains more than 10 eligible voters, the election fee is ~~\$1.00~~ \$1 per eligible voter. When the list contains more than 50 eligible voters and subsequent increases or decreases as contemplated by ~~paragraph 5.2(2)“b”~~ subparagraph 5.2(2)“a”(2) or 5.2(2)“b”(2) or successful challenges pursuant to subrule 5.2(3) alter the number of eligible voters by 5 percent or more, the employee organization shall make an additional payment to reflect the increased number of eligible voters or, in the case of a decrease, the agency shall reimburse the employee organization for its overpayment.

(2) The agency will not request additional payment and will not reimburse the employee organization for an amount less than \$10. The agency will not refund the election fee in the event the election fee is paid and the agency has performed duties to conduct the election but the election does not occur.

5.1(3) ~~Date of elections~~ election. For purposes of this chapter, the date of an election shall be the date on which the ballots were ~~counted~~ tallied.

ITEM 17. Amend rule 621—5.2(20) as follows:

621—5.2(20) Eligibility—voter eligibility list lists.

5.2(1) Eligible voters. Eligible voters are those employees who:

a. ~~Certification, decertification, professional/nonprofessional, amendment of unit elections.~~ For certification, decertification, professional/nonprofessional, or amendment of unit elections, eligible voters are those employees who:

(1) Were employed and included in the bargaining unit ~~during the payroll period immediately preceding the direction of~~ on the date of the order directing an election unless another date is agreed upon by the parties and the agency, and

~~b. (2) Are employed in the bargaining unit on the date of the election.~~

b. ~~Retention and recertification elections.~~

(1) For retention and recertification elections, eligible voters are those employees who were employed and included in the bargaining unit on the date of the order directing the election, or were employed on another date or dates agreed upon by the parties and the agency.

(2) In addition to voter eligibility challenges made pursuant to subrule 5.2(3), employee organizations may make postelection challenges to the total number of bargaining unit employees for their respective retention and recertification elections.

1. The certified employee organization may file a postelection challenge to the number of bargaining unit employees if an eligible voter has left employment and is no longer in the bargaining unit prior to the close of the election or election period. The employee organization shall file this postelection challenge within ten days of the filing of the tally of ballots. The agency shall attempt to resolve the dispute. Whenever postelection challenges are unresolved and determinative of the outcome of an election, a hearing to determine whether an eligible voter left employment and was no longer in the bargaining unit prior to the close of the election or election period shall be scheduled and conducted. The board may make appropriate adjustments to the tally or order a new election based on the board's findings and conclusions.

2. The employer is responsible for ensuring the accuracy of the list after its submission and throughout the election period. The employer shall promptly notify the certified employee organization whenever an eligible voter leaves employment and is no longer in the bargaining unit prior to the close of the election or election period.

5.2(2) Eligible voter list.

a. ~~Certification, decertification, professional/nonprofessional, and unit amendment elections—eligible voter list.~~

(1) List for determining fees. The agency will determine the election fee based on the initial employer-provided list of employees used to verify the showing of interest pursuant to 621—subrule 4.3(3).

(2) Voter eligibility list.

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1. When the agency files ~~a notice of intent to conduct a retention and recertification election or an order that an election, other than a retention and recertification election,~~ be conducted, the employer shall, within seven days of the notice or order, ~~e-mail~~ email to the agency an alphabetical list of the names_; addresses_; ~~e-mail~~ email addresses, if known; telephone numbers; and job classifications of the employees eligible to vote, ~~except as provided in subrule 5.6(8).~~ ~~Where~~ When a telephonic/web-based election is ordered, the list of eligible voters shall also include the employee's date of birth, the last four digits of the employee's social security number and any other information required by the agency.

~~b. 2.~~ The agency shall file the list of eligible voters' names and job classifications. This list shall become the official voting list for the election to be conducted. The agency shall provide to the employee organization the voter list with the employees' contact information. The employer or employee organization shall e-mail email proposed additions or deletions of employees' names, changes in job classifications, or addresses, contact information, or other eligible voter changes to the agency to reflect the current status of eligible voters and to the other party. The parties may further amend the list by agreement.

b. Retention and recertification elections—eligible voter list.

(1) List for determining fees.

1. The agency will determine the election fee based on the following initial employer-provided list of employees. When the agency files a notice of intent to conduct a retention and recertification election, the employer shall, within seven days of the notice, email to the agency an alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees in the bargaining unit. When a telephonic/web-based election is ordered, the list of eligible voters shall also include the employee's date of birth, the last four digits of the employee's social security number and any other information required by the agency. The employer shall separately email the certified employee organization to confirm that the employer provided the agency with the voter list and will provide the date the list was emailed to the agency and the number of employees on the list.

2. The agency shall file the list of eligible voters' names and job classifications. The agency shall provide to the employee organization the voter list with the employees' contact information.

(2) Voter eligibility list.

1. When the agency files an order that the retention and recertification election be conducted, the employer shall, within seven days of the order, email to the agency a second alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees eligible to vote. If the original list the employer provided for determining fees is unchanged, the employer does not need to email this second list. The original list, if unchanged, or this second list will become the final list. The agency shall file the list of eligible voters' names and job classifications. This list shall become the official eligible voter list for the election to be conducted. The agency shall provide to the employee organization the voter list with the employees' contact information.

2. The employer shall not add to or delete from the list any employee name after the submission of the above-described voter eligibility list. By contacting the employer, the certified employee organization may propose additions to or deletions from the list of employees' names prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections. The parties may amend the list by agreement prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections.

5.2(3) Challenges.

a. Types of challenges.

(1) A party may challenge, for good cause, the eligibility of any voter in accordance with subrule 5.3(2), 5.3(3) or 5.3(4), whichever is applicable to the election being conducted. The agency shall attempt to resolve the challenge. Whenever challenged ballots are unresolved and determinative of the outcome of an election, a hearing to determine the eligibility of the challenged voter(s) shall be scheduled and

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conducted. After the conclusion of the hearing, the board may, if necessary, order a new election, and the cost may be taxed to the nonprevailing party.

(2) In addition to voter eligibility challenges made pursuant to this subrule, employee organizations may make postelection challenges to the total number of bargaining unit employees for the employee organizations' respective retention and recertification elections in accordance with paragraph 5.2(1) "b."

b. Methods of voter eligibility challenges. A party may challenge the eligibility of a voter as follows:

(1) In-person elections. A party shall challenge a voter's eligibility prior to the time the voter deposits the voter's ballot in the ballot box. In the event of a challenge, the challenged voter may mark the ballot in secret, and the election agent shall segregate the ballot by causing it to be placed in a challenged-ballot envelope with appropriate markings and depositing it in the ballot box.

(2) Mail-ballot elections. A party shall challenge a voter's eligibility prior to the time the outer envelope containing the voter's secret envelope and ballot is opened. In the event of a challenge, both the secret envelope and the outer envelope shall remain sealed until the challenge is resolved.

(3) Telephonic/web-based elections. A party shall challenge a voter's eligibility in writing to the agency with a copy to the other interested party. For retention and recertification elections, a party shall challenge that voter's eligibility at least seven days prior to the commencement of the election period for telephonic/web-based elections. For all other elections utilizing this method, a party shall challenge that voter's eligibility prior to the end of the election period.

ITEM 18. Amend rule 621—5.3(20) as follows:

621—5.3(20) Method Methods of voting — general procedures.

~~5.3(1) Types of elections.~~ The agency may conduct an election, in whole or in part, in person, by mail ~~balloting~~ ballot, or through a ~~telephonic/Web-based~~ telephonic/web-based system.

~~5.3(2) 5.3(1) In-person election.~~ An eligible voter shall cast the voter's ballot by marking the voter's choice on the ballot and depositing it in the ballot box or inserting it in a voting machine, whichever is applicable. If a voter inadvertently spoils a ballot, the ballot may be returned to the agent who shall void and retain it and provide another ballot to the voter. Eligible voters may be asked to cast their votes via a nondocument ballot when there is a voting machine present that accommodates this technology.

a. Absentee ballot. An absentee ballot shall be delivered to an eligible voter upon the voter's written notice to the agency of the voter's inability to be present at the election ~~for good cause.~~ The ~~voted~~ marked absentee ballot must shall be in the possession of the election agent prior to the close of the in-person election in order to be counted ~~and.~~ The marked absentee ballot shall be contained in the ~~official envelopes~~ secret envelope provided for this purpose to the voter, and the postage-paid, return-addressed outer envelope provided for the return of the ballot to the agency shall be signed by the voter in order for the ballot to be counted.

~~a. b.~~ Observers. Each party to an election may designate an equal number of representatives, ~~not to exceed one per voting site,~~ to act as the party's observers during the election and tally of ballots. Unless agreed to by the parties, observers shall not be supervisory employees of the public employer.

~~b. c.~~ Ballot box. Upon examination by the observers and prior to the opening of the polls, the election agent shall seal the ballot box so that entry thereto is limited to one slot. In the event that the election is continued for more than one polling period or at more than one polling place, the ballot box shall be sealed in its entirety and shall remain in the custody of the election agent until immediately prior to the next polling period or the counting of the ballots.

d. Voting machines. The agency may utilize voting machines to assist with the casting or tabulation of votes.

~~e. e.~~ Challenges and tally Tally. A challenge to a voter's eligibility shall be made with good cause prior to the time the voter deposits the voter's ballot in the ballot box. ~~In the event of a challenge, the challenged voter may mark the ballot in secret and the election agent shall segregate the ballot by causing it to be placed in a challenged ballot envelope with appropriate markings and depositing it in the ballot box.~~ The agency shall tally the ballots by manual count or electronic count and file the tally of ballots after the close of the election. Void ballots are those which do not indicate a preference or the clear intent

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of the voter or which appear to identify the voter. The employer shall promptly post copies of the tally of ballots in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.

~~5.3(3)~~ **5.3(2)** *Mail-ballot* ~~Mail-ballot election.~~ When conducting a ~~mail-ballot~~ mail-ballot election, the agency shall send an official voting package to each eligible voter by ordinary mail and direct a date by which voted ballots must be received by the agency in order to be counted.

a. Contents of official voting packages. Voting packages sent to eligible voters shall consist of voting instructions, a ballot, a secret envelope in which ~~said~~ the marked ballot is to be inserted, and a postage-paid, return-addressed outer envelope which identifies the voter for purposes of proposing challenges to the voter's eligibility. In the event of a challenge, both envelopes shall remain sealed until such time as the challenge is resolved.

b. Tally of ballots—observers—challenges. The agency shall set a time and place for the tally of ballots, at which time ~~representatives of~~ observers designated by the parties to the election shall be entitled to be present and ~~challenge for good cause the eligibility of any voter. Challenges must be made prior to the time the outer envelope containing the voter's secret envelope and ballot is opened. In the event of a challenge, both the secret envelope and the outer envelope shall remain sealed until the challenge is resolved. In the absence of a challenge, the~~ The voter's outer envelope shall be opened, and the secret envelope containing the voter's ballot shall be ~~deposited in the ballot box commingled with the other secret envelopes.~~ deposited in the ballot box commingled with the other secret envelopes. The agency shall tally the ballots and file the tally ~~of ballots~~ after the close of the election. Void ballots are those which do not indicate a preference or the clear intent of the voter, which appear to identify the voter, which are not enclosed in the secret envelope provided to the voter, or which are returned in an outer envelope which does not bear the voter's signature. The employer shall promptly post copies of the tally of ballots in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.

~~5.3(4)~~ **5.3(3)** *Telephonic/Web-based* ~~Telephonic/web-based election.~~ The agency may utilize an election services vendor for the receipt of telephonic and ~~Web-based~~ web-based ballots and for the ~~tallying~~ tabulation of those ballots.

a. Notice of election. When conducting a ~~telephonic/Web-based~~ telephonic/web-based election, whether in whole or in part, the agency shall include in the notice of election the telephone number the voter is to call to cast a ballot, and the ~~Web-site~~ website address for ~~Web-based~~ web-based voting, as well as ~~the script of the ballot and a sample ballot or script.~~

b. Tally and challenges. ~~The agency shall file the tally of ballots after the close of the election period. A party wishing to challenge for good cause the eligibility of any voter shall do so at least two hours prior to the close of the election period. In the event of a challenge, the tally of ballots will not include such vote until the challenge is resolved. Following the close of the election period and the agency's receipt of the ballot tabulation from the election services vendor, the agency shall tally the ballots and file the tally. Void or blank ballots are those which do not indicate a preference or clear choice by the voter in favor of one of the voting options presented by the ballot. The employer shall promptly post copies of the tally of ballots in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.~~

c. Inoperable voting system. The board may extend the period of the election due to inoperable voting systems.

~~5.3(5)~~ **5.3(4)** *Alternate voting method.* When a voter promptly informs the agency of the voter's inability to cast a ballot using the designated ~~method~~ methods of voting, the agency shall assist the voter in using an alternate method to cast a secret ballot.

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ITEM 19. Amend rule 621—5.4(20) as follows:

621—5.4(20) Objections to an election.

~~5.4(1) *Objections.* Whenever a party, or the board on its motion, files a timely objection, a hearing shall be scheduled. Objections~~ Written objections to an election may be filed by any public employee, public employer, or employee organization involved in the election or by the board on its own motion. Objections must be filed with the agency within ten days of the filing of the tally of ballots, even when challenged ballots are challenges to eligible voters may be determinative of the outcome of the election, and. The objection must identify the objecting party; provide the objecting party's mailing address, telephone number, and email address, if available; and contain a statement of facts upon which the objections are based. The objections shall be electronically filed with the agency. The agency shall promptly advise the parties of the objections and make any investigation deemed appropriate. If the objections cannot be informally resolved, they may be dismissed or resolved at hearing. Hearings on objections shall be conducted pursuant to 621—Chapter 2. The objecting party shall present its evidence first.

5.4(2) *Objectionable conduct during election campaigns.* The following types of activity, if conducted during the period beginning with the filing of an election petition with the agency or the agency's filing of a notice of intent to conduct a retention and recertification election and ending at the conclusion of the election, if determined by the agency that such activity could have affected the results of the election, shall be considered to be objectionable conduct sufficient to invalidate the results of an election:

- a.* Electioneering within 300 feet or within sound of the polling place established by the agency during the conduct of an in-person election;
- b.* Misstatements of material facts by any party to the election or its representative without sufficient time for the adversely affected party to adequately respond;
- c.* Any misuse of agency documents, including an indication that the agency endorses any particular choice appearing on the ballot;
- d.* Campaign speeches by an employer to assembled groups of employees during working hours within the 24-hour period beginning 24 hours before the opening of the polls in an in-person election, the mailing of ballots in a mail-ballot election, or the commencement of the telephonic/Web-based telephonic/web-based election period and extending until the close of the in-person polls, the deadline for the agency's receipt of mail ballots, or the close of the election period in a telephonic/web-based election;
- e.* Any polling of employees by a public employer which relates to the employees' preference for or against a bargaining representative;
- f.* Commission of a prohibited practice;
- g.* Any other misconduct or other circumstance which prevents employees from freely expressing their preferences in the election.

ITEM 20. Amend rule 621—5.5(20) as follows:

621—5.5(20) Certification elections.

5.5(1) *General procedures—notice of election.*

~~a.~~ Upon the agency's determination that a certification petition is supported by an adequate showing of interest in accordance with rule 621—4.3(20), the agency shall file an order directing that an election be conducted in a specified manner and that the employer ~~submit~~ email a list of eligible voters to the agency pursuant to rule 621—5.2(20).

~~b.~~ Following the employer's submission of the list of eligible voters, the agency shall file a notice of election containing a sample ballot and setting forth the date, time, place, method, and purpose of the election, and such additional information as the agency may deem appropriate. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional

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~~means, such as by e-mail or hard copy, the public employer shall also promptly distribute such notice to employees by those means.~~

5.5(2) *Payment of election fee.*

~~a.~~ The election fee shall be based on the initial employee list provided by the employer to verify the showing of interest pursuant to 621—subrule 4.3(3). Upon the filing of a certification petition, but no later than seven days after the agency's filing of an order directing an election, an employee organization shall pay the applicable election fee to the agency, unless an extension of time, upon written request, is granted by the agency. The agency will not conduct an election prior to receiving the applicable election fee from the petitioner. An employee organization's failure to pay the applicable election fee in a timely manner will result in the agency's dismissal of the certification petition. The election fee shall be paid by check payable to the agency and is deemed paid upon receipt by the agency or, if submitted by mail, on the date of the U.S. Postal Service postmark affixed to the envelope in which the payment was mailed.

~~b.~~ ~~An intervening employee organization shall pay the applicable election fee to the agency within seven days after the agency's grant of its application to intervene. Failure to pay the applicable election fee in a timely manner will result in the intervenor's exclusion from the ballot.~~

5.5(3) *Notice of election.* Following the employer's submission of the list of eligible voters, the employee organization's payment of the applicable election fee and the expiration of the time for intervention as provided in subrule 5.5(4), the agency shall file a notice of election containing a sample ballot or script and setting forth the date, time, place, method, and purpose of the election and such additional information as the agency may deem appropriate. The employer shall promptly post copies of the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.

~~5.5(3)~~ **5.5(4) *Time for intervention Intervention.***

a. No employee organization other than the petitioner shall be placed on the ballot unless application for intervention, as provided in rule 621—2.4(20), is filed with the agency within seven days after the filing of the agency's order directing the election in which intervention is sought. An employee organization seeking intervention shall submit to the agency, by ordinary mail or personal delivery, an adequate showing of interest as provided in 621—subrule 4.3(2) within seven days after the agency's direction of an election.

~~b.~~ An intervening employee organization shall pay the applicable election fee to the agency within seven days after the agency's grant of its application to intervene. The election fee shall be paid by check payable to the agency and is deemed paid upon receipt by the agency or, if submitted by mail, on the date of the U.S. Postal Service postmark affixed to the envelope in which the payment was mailed. Failure to pay the applicable election fee in a timely manner will result in the intervenor's exclusion from the ballot.

~~5.5(4) c.~~ ***Withdrawal from ballot.*** An intervening employee organization may, upon its filing of a written request, be removed from the ballot with the approval of the agency.

~~5.5(5) Ballots.~~ Ballots shall contain the question required by Iowa Code section 20.15 as amended by 2017 Iowa Acts, House File 291, section 9. The question in an election where only one employee organization appears on the ballot shall ask, "Do you wish to be represented for purposes of collective bargaining by [name of employee organization]?" followed by the choices "Yes, I wish to be represented by [name of employee organization]" or "No, I do not wish to be represented"; the. The question in an election where more than one employee organization appears on the ballot shall ask: "Do you wish to be represented for purposes of collective bargaining by:" and shall then list horizontally or vertically thereafter the choices available, including the name of each employee organization and the choice of "Neither" or "No Representative," as is applicable.

5.5(6) *Certification of results and compliance with Iowa Code section 20.25.*

a. Upon completion of a valid certification election in which an employee organization received the votes of a majority of the employees in the bargaining unit and the employee organization complies

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with the provisions of Iowa Code section 20.25, the agency shall file an order certifying that employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

b. Upon completion of a valid certification election in which none of the employee organizations on the ballot received the votes of a majority of the employees in the bargaining unit, the agency shall file an order of noncertification.

c. If an employee organization which received the votes of a majority of the employees in the bargaining unit fails to comply with the provisions of Iowa Code section 20.25 within 90 days of the completion of a valid certification election, the agency shall file an order of noncertification; provided, however, that extensions of time to comply may be granted by the board upon good cause shown.

5.5(7) Bars to certification elections.

a. The agency shall not consider a petition for certification of an employee organization as the exclusive representative of a bargaining unit unless a period of two years has elapsed from the date of any of the following:

(1) The last certification election in which an employee organization was not certified as the exclusive representative of that bargaining unit.

(2) The last retention and recertification election in which an employee organization was not retained and recertified as the exclusive representative of that bargaining unit.

(3) The last decertification election in which an employee organization was decertified as the exclusive representative of that bargaining unit.

b. The agency shall not consider a petition for certification of an employee organization as the exclusive bargaining representative of a bargaining unit if the bargaining unit is already represented by a certified bargaining representative.

ITEM 21. Amend rule 621—5.6(20) as follows:

621—5.6(20) Retention and recertification elections.

5.6(1) Timing of election periods.

a. The agency shall conduct an election, prior to the expiration of a collective bargaining agreement between an employer and a certified employee organization, to determine if the employees in a represented bargaining unit wish to retain and recertify the unit's certified representative. Elections will be conducted not less than once every five years.

b. For a certified employee organization that is a party to a collective bargaining agreement with a June 30 expiration date, the organization's retention and recertification election shall occur not earlier than June 1 nor later than November 1 in the year prior to the expiration of the agreement.

c. For a certified employee organization that is a party to a collective bargaining agreement with an expiration date other than June 30, the organization's retention and recertification election shall occur not earlier than 365 days nor later than 270 days prior to the expiration of the agreement, except as provided in subrule 5.6(10).

d. If the certified employee organization has paid the applicable election fee in a timely manner as provided in subrule ~~5.6(4)~~ 5.6(5), the organization's status shall not be adversely affected if the election is not concluded ~~or the results of the election are not certified~~ in compliance with this rule.

e. When scheduling a retention and recertification election, the agency will presume the collective bargaining agreement is for a term of one year commencing July 1 and ending June 30 unless the agreement clearly states an alternate term and effective dates.

f. Should an employer fail to file a collective bargaining agreement with the agency as required by Iowa Code section 20.29 ~~as amended by 2017 Iowa Acts, House File 291, section 15,~~ or if the parties have no agreement, the agency will, for purposes of scheduling the election, presume a maximum expiration date of five years pursuant to Iowa Code section 20.9 ~~as amended by 2017 Iowa Acts, House File 291, section 6,~~ or two years pursuant to Iowa Code section 20.15 ~~as amended by 2017 Iowa Acts, House File 291, section 9,~~ whichever is applicable, unless the employer subsequently submits a collective bargaining agreement that allows the agency to conduct an earlier election in accordance with subrule 5.6(1).

g. An extension of a collective bargaining agreement will alter the timing of the retention and recertification election only if the parties have reached agreement on the extension and have notified

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the agency in writing prior to the date the fee is due as set forth in the notice of intent to conduct the election. Should the parties' collective bargaining agreement inclusive of any extensions exceed five years, the agency will, for purposes of scheduling the election, presume a maximum duration of five years pursuant to Iowa Code section 20.9 as amended by 2017 Iowa Acts, House File 291, section 6, or two years pursuant to Iowa Code section 20.15 as amended by 2017 Iowa Acts, House File 291, section 9, whichever is applicable.

h. A At least 30 days prior to the commencement of the retention and recertification election period, a public employer shall notify the agency if the certified employee organization has not been correctly identified as one which requires an upcoming election. The public employer shall submit to the agency all relevant information requested. The agency shall conduct an investigation to determine whether the election is required by statute and rule.

5.6(2) General procedure.

a. Upon determining that a retention and recertification election is required, the agency shall file a notice of intent to conduct an election which shall contain the dates of the election period; the place, method, and purpose of the election; the date the voter list for determining fees is due; and the date upon which the employee organization shall pay the applicable election fee. The agency shall order the public employer's submission of the voter eligibility list in accordance with rule 621—5.2(20) and subrule 5.6(4).

b. Following the public employer's submission of the list of eligible voters as provided in subrule 5.6(4) and the agency's receipt of the applicable election fee from the certified employee organization, the agency will file an order directing a retention and recertification election: and

e. The agency will file a notice of election, copies of which shall be promptly posted by the employer in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by e-mail email or hard copy, the public employer shall also promptly distribute such notice to employees by those means. Such notices shall contain a sample ballot or script and shall set forth the dates of the election period; time, place, method, and purpose of the election; and such additional information as the board agency may deem appropriate.

5.6(3) Objection to notice of intent to conduct an election.

a. The certified employee organization or public employer may file an objection asserting that the election should not be conducted for reasons set forth in the objection. The objection shall be in writing and electronically filed no later than seven days following the date of the notice of intent to conduct an election.

b. The agency may conduct a preliminary investigation of the objection and determine if the objection has merit. The agency will dismiss objections without merit and schedule hearings for all other objections. Hearings on objections shall be conducted pursuant to 621—Chapter 2. The objecting party shall present its evidence first.

5.6(4) Eligible voter list for determining election fee.

a. The public employer shall submit email to the agency by e-mail a list of the employees in the bargaining unit in question within seven days of the filing of the notice of intent to conduct an election; except as provided in subrule 5.6(8). This list shall be organized alphabetically and contain the names;₂ addresses; e-mail; email addresses, if known;₂ job classifications;₂ dates of birth;₂ the last four digits of the employees' social security numbers;₂ and any other information required by the agency. The employer shall separately email the certified employee organization to confirm that the employer provided the agency with the voter list and will provide the date the list was emailed to the agency and the number of employees on the list. The agency shall file the list following its redaction of employee dates of birth and partial social security numbers. This list shall become the official voting list for the election to be conducted. The employer shall e-mail additions or deletions of employees' names or any other changes in the list to the agency. The parties may further amend the list by agreement of eligible voters' names and job classifications. The agency shall provide to the certified employee organization the list with the employees' contact information. The certified employee organization shall use this list to determine the election fee as provided in subrule 5.6(5).

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b. If the public employer fails to submit the list of eligible voters to the agency ~~in a timely fashion by the deadline set in the notice~~, the agency will ~~refrain from conducting~~ not conduct the election, and will file an order recertifying the employee organization, ~~and may require the employer to reimburse the agency or the employee organization for the cost of the election.~~

5.6(5) *Payment of election fee.* A certified employee organization shall pay the applicable election fee ~~at least 30 days prior to the commencement of the election period~~ as set forth in the notice of intent to conduct the election, except as otherwise authorized by this subrule ~~or provided in subrule 5.6(8)~~. The election fee shall be paid by check payable to the agency and is deemed paid upon receipt by the agency or, if submitted by mail, on the date of the U.S. Postal Service postmark affixed to the envelope ~~in which the payment was mailed~~. The agency may grant a certified employee organization's written request for an extension of time to pay the fee ~~for good cause if the request is filed at least 30 days prior to the commencement of the election period~~ as set forth in the notice of intent to conduct the election. The agency will not conduct an election prior to receiving the applicable election fee. The certified employee organization's failure to pay the applicable election fee ~~in a timely manner by the deadline set in the notice~~ shall result in revocation of the organization's certification.

5.6(6) *Voter eligibility list.*

a. When the agency files an order directing that the retention and recertification election be conducted, the employer shall, within seven days of the order, email to the agency a second alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees eligible to vote. ~~If the list the employer previously provided pursuant to subrule 5.6(4) is unchanged, the employer does not need to email a subsequent list. The agency shall file the list of eligible voters' names and job classifications. This list shall become the official eligible voting list for the election to be conducted. The agency shall provide to the certified employee organization the voter list with the employees' contact information.~~

b. ~~The employer shall not add to or delete from the list any employee name after the submission of the above-described voter eligibility list. By contacting the employer, the certified employee organization may propose additions to or deletions from the list of employees' names prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections. The parties may amend the list by agreement prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections.~~

~~**5.6(6) 5.6(7) *Ballots.*** Ballots shall contain the question required by Iowa Code section 20.15 as amended by 2017 Iowa Acts, House File 291, section 9, asking "Do you want [name of certified employee organization] to be retained and recertified and continue to be your exclusive bargaining representative?" followed by the choices "Yes, I want [name of certified employee organization] to continue to represent me" or "No, I do not want [name of certified employee organization] to continue to represent me."~~

5.6(8) *Postelection challenges.*

a. ~~In addition to voter eligibility challenges made pursuant to subrule 5.2(3), a certified employee organization may make postelection challenges to the total number of bargaining unit employees for their respective retention and recertification elections. The certified employee organization may file a postelection challenge to the number of bargaining unit employees if an eligible voter has left employment and is no longer in the bargaining unit prior to the close of the election or election period. The employee organization shall file this postelection challenge within ten days of the filing of the tally of ballots. The agency shall attempt to resolve the dispute. Whenever postelection challenges are unresolved and determinative of the outcome of an election, a hearing to determine whether an eligible voter left employment and was no longer in the bargaining unit prior to the close of the election or election period shall be scheduled and conducted. The board may make appropriate adjustments to the tally or order a new election based on the board's findings and conclusions.~~

b. ~~The employer is responsible for ensuring the accuracy of the list after its submission and throughout the election period. The employer shall promptly notify the certified employee organization~~

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whenever an eligible voter leaves a position of employment in the bargaining unit prior to the close of the election or election period.

~~5.6(7)~~ **5.6(9)** *Certification of results.*

a. Upon completion of a valid retention and recertification election in which an employee organization received the votes of a majority of employees in the bargaining unit, the agency shall file an order recertifying the employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

b. Upon completion of a valid retention and recertification election in which an employee organization did not receive the votes of a majority of employees in the bargaining unit, the agency shall file an order decertifying the employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

~~5.6(8)~~ **5.6(10)** *Elections for employee organizations that represent employees of school districts, area education agencies and community colleges.*

a. ~~If a certified employee organization representing employees of a school district, area education agency, or community college is scheduled for a retention and recertification election to be held in September of any given year, the following timeline applies:~~

~~The employer shall submit to the agency an employee list as described in subrule 5.6(4) at least 15 days prior to the commencement date of the election period. The certified employee organization shall pay the applicable election fee at least 10 days prior to the commencement of the election period.~~

b. ~~If certified employee organizations representing employees of a school district, area education agency, or community college would otherwise be scheduled for a retention and recertification election to be held between May 1 and August 31~~ September 30, the agency will postpone those elections until October of that calendar year and the timelines of subrules 5.6(2), 5.6(4), and 5.6(5) will apply.

ITEM 22. Amend rule 621—5.7(20) as follows:

621—5.7(20) Decertification election elections.

~~5.7(1) General procedure—eligibility list—notice of election~~ Eligible voter list.

a. Upon the agency's determination that a decertification petition is supported by an adequate showing of interest in accordance with rule 621—4.3(20), the agency shall file an order directing that an election be conducted in a specified manner not less than 150 days before the expiration date of the bargaining unit's collective bargaining agreement and that the employer submit a list of eligible voters pursuant to rule 621—5.2(20), unless the election is barred by subrule ~~5.7(5)~~ 5.7(6).

b. ~~Following the employer's submission of the list of eligible voters, the agency shall file a notice of election containing a sample ballot and setting forth the date, time, place, method, and purpose of the election, and such additional information as the board may deem appropriate. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by e-mail or hard copy, the public employer shall also promptly distribute such notice to employees by those means.~~

5.7(2) Payment of election fee. The election fee shall be based on the initial employee list provided by the employer to verify the showing of interest pursuant to 621—subrule 4.3(3). After the filing of a decertification petition, but no later than seven days after the agency's filing of an order directing an election, a the certified employee organization shall pay the applicable election fee to the agency, unless the organization's written request for an extension of time, upon written request, to pay the fee for good cause is granted by the agency. The election fee shall be paid by check payable to the agency and is deemed paid upon receipt by the agency or, if submitted by mail, on the date of the U.S. Postal Service postmark affixed to the envelope in which the payment was mailed. The agency will not conduct an election prior to receiving the applicable election fee. A certified employee organization's failure to pay the applicable election fee in a timely manner shall result in the revocation of the employee organization's certification.

5.7(3) Notice of election. Following the employer's submission of the list of eligible voters and the employee organization's payment of the applicable election fee, the agency shall file a notice of election

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containing a sample ballot or script and setting forth the date, time, place, method, and purpose of the election, and such additional information as the agency may deem appropriate. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.

~~5.7(3)~~ **5.7(4)** *Ballots.* Ballots shall contain the question required by Iowa Code section 20.15 as amended by 2017 Iowa Acts, House File 291, section 9, asking “Do you want [name of certified employee organization] to be decertified by the Public Employment Relations Board and cease to be your exclusive bargaining representative?” followed by the choices “Yes, I no longer wish to be represented by [name of certified employee organization]” or “No, I want to continue to be represented by [name of certified employee organization].”

~~5.7(4)~~ **5.7(5)** *Certification of results.*

a. Upon completion of a valid decertification election in which a majority of the employees in the bargaining unit voted to decertify the employee organization, the agency shall file an order decertifying the employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

b. Upon completion of a valid decertification election in which a majority of the employees in the bargaining unit did not vote to decertify the employee organization, the agency shall file an order continuing the certification of the employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

~~5.7(5)~~ **5.7(6)** *Bars to decertification election.*

a. The agency shall not consider a petition for decertification of an employee organization unless the collective bargaining agreement exceeds two years in duration. ~~The agency shall not consider a decertification petition during the pendency of a retention and recertification proceeding.~~

b. The agency shall not consider a decertification petition during pendency of a retention and recertification proceeding.

~~b. c.~~ The agency shall not schedule a decertification election within one year of a prior certification, retention and recertification, or decertification election involving the bargaining unit.

ITEM 23. Amend rule 621—5.8(20) as follows:

621—5.8(20) Professional and nonprofessional election elections.

~~5.8(1)~~ **5.8(1)** *General procedure—eligibility list—notice of election.*

~~a.~~ Should the agency determine, in any case, that professional and nonprofessional employees are appropriately included in the same bargaining unit, the agency shall file an order directing that an election be conducted to determine whether those professional and nonprofessional employees agree to be represented in a single bargaining unit and that the employer ~~submit by e-mail~~ email separate lists of eligible professional and nonprofessional voters pursuant to rule 621—5.2(20).

~~b.~~ The public employer shall e-mail the lists of employees in the professional and nonprofessional categories to the agency within seven days of the agency’s order. The lists shall be organized alphabetically and contain the names, addresses, e-mail addresses, and job classifications of the employees eligible to vote, and any other information required by the agency. The lists submitted by the employer shall be filed by the agency and shall become the official voting lists for the election to be conducted. The employer shall e-mail additions or deletions of employees’ names or any other changes in the list to the agency. The lists may be further amended by agreement of the parties.

~~c.~~ Following the employer’s submission of the lists of eligible voters, the agency shall file a notice of election containing a sample ballot for each category of employee and setting forth the date, time, place, method, and purpose of the election, and such additional information as the agency may deem appropriate. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by e-mail or hard copy, the public employer shall also promptly distribute such notice to employees by those means.

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~~d. No election fee is assessed for an election held pursuant to this rule.~~

5.8(2) Voter eligibility list.

~~a. The public employer shall email the lists of employees in the professional and nonprofessional categories to the agency within seven days of the agency's order. The lists shall be organized alphabetically and contain the names; addresses; email addresses, if known; and job classifications of the employees eligible to vote; and any other information required by the agency. The agency shall file the lists of eligible voters' names and job classifications. These lists shall become the official voting lists for the election to be conducted. The agency shall provide to the employee organization the voter lists with the employees' contact information.~~

~~b. The employer or employee organization shall email proposed additions or deletions of employees' names, changes in job classifications, addresses, contact information, or other eligible voter changes to the agency and other party. The parties may amend the lists by agreement.~~

5.8(3) Notice of election. Following the employer's submission of the lists of eligible voters, the agency shall file a notice of election containing a sample ballot or script for each category of employee and setting forth the date, time, place, method, and purpose of the election, and such additional information as the agency may deem appropriate. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.

5.8(4) Election fee. No election fee is assessed for an election held pursuant to this rule.

5.8(2) 5.8(5) Ballots. Ballots shall contain the following question, "Do you agree to the inclusion of professional and nonprofessional employees in the same bargaining unit?" followed by the choices "Yes" or "No."

5.8(3) 5.8(6) Certification of results.

~~a. Upon completion of a valid professional/nonprofessional election in which separate majorities of the eligible voters in both the professional and nonprofessional employees in the proposed unit categories voted in favor of their inclusion in the same bargaining unit, the agency shall define a bargaining unit which includes both professional and nonprofessional employees.~~

~~b. Upon completion of a valid professional/nonprofessional election in which separate majorities of the eligible voters in one or both of the professional and nonprofessional employees in the proposed unit categories did not vote in favor of their employees' inclusion in the same bargaining unit, the agency shall not define a bargaining unit which includes both professional and nonprofessional employees.~~

ITEM 24. Amend rule 621—5.9(20) as follows:

621—5.9(20) Amendment of unit elections.

5.9(1) General procedure—eligibility list—notice of election. Should the agency determine that a job classification or classifications are appropriately amended into a bargaining unit, but that those classifications existed at the time the employee organization was certified and would separately constitute an appropriate unit, the agency shall file an order directing that an election be conducted. The election will determine whether a majority of the employees in those classifications wish to be represented by the existing certified employee organization. The order shall further require the employer shall submit by e-mail to email a list of the employees in those classifications pursuant to rule 621—5.2(20).

~~a. The public employer shall e-mail the list of employees to the agency within seven days of the agency's order. The list shall be organized alphabetically and contain the names, addresses, e-mail addresses, and job classifications of the employees eligible to vote. The agency shall file the list, which shall become the official voting list for the election to be conducted. The employer shall e-mail additions or deletions of employees' names or any other changes in the list to the agency. The parties may further amend the list by agreement.~~

~~b. Following the employer's submission of the list of eligible voters, the agency shall file a notice of election containing a sample ballot and setting forth the date, time, place, method, and purpose of the election, and such additional information as the board may deem appropriate. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information~~

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

~~to employees. If a public employer customarily distributes information to employees by additional means, such as by e-mail or hard copy, the public employer shall also promptly distribute such notice to employees by those means.~~

~~e. No election fee is assessed for an election held pursuant to this rule.~~

5.9(2) Voter eligibility list. The public employer shall email the list of employees to the agency within seven days of the agency's order. The list shall be organized alphabetically and contain the names; addresses; email addresses, if known; and job classifications of the employees eligible to vote; and any other information required by the agency. The agency shall file the list of eligible voters' names and job classifications, which shall become the official voting list for the election to be conducted. The employer or employee organization shall email proposed additions or deletions of employees' names, changes in job classifications, addresses, contact information or other eligible voter changes to the agency and other party. The parties may further amend the list by agreement.

5.9(3) Notice of election. Following the employer's submission of the list of eligible voters, the agency shall file a notice of election containing a sample ballot or script and setting forth the date, time, place, method, and purpose of the election, and such additional information as the board may deem appropriate. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.

5.9(4) Election fee. No election fee is assessed for an election held pursuant to this rule.

~~5.9(2) 5.9(5) Ballots.~~ Ballots shall contain the following question, "Do you wish to be represented for purposes of collective bargaining by [name of employee organization]?" followed by the choices "Yes, I wish to be represented by [name of employee organization]" or "No, I do not wish to be represented."

~~5.9(3) 5.9(6) Certification of results.~~

a. Upon completion of a valid amendment of unit election in which a majority of the eligible voters cast ballots in favor of representation by the certified employee organization, the agency shall file an order amending the unit as previously determined to be appropriate by the agency.

b. Upon completion of a valid amendment of unit election in which a majority of the eligible voters did not cast ballots in favor of representation by the certified employee organization, the agency shall file an order dismissing the amendment of unit petition.

ITEM 25. Amend rule 621—5.10(20) as follows:

621—5.10(20) Destruction of ballots. In the absence of litigation over the validity or outcome of an election and after a period of 60 days has elapsed from the date of the filing of an order of certification, noncertification, ~~retention and~~ recertification, decertification or continued certification of an employee organization pursuant to the election, the agency will cause the ballots cast in the election to be destroyed.

ITEM 26. Amend subrule 6.3(2) as follows:

6.3(2) Petitions for expedited resolution.

a. In the event that a negotiability dispute arises between the employer and the certified employee organization, either party may petition the agency for expedited resolution of the dispute. The petition shall be filed and set forth the following:

(1) The name and address of the petitioner and the name, address, telephone number, and ~~e-mail~~ email address of the petitioner's representative;

(2) The name and address of the respondent and the name, address, telephone number, and ~~e-mail~~ email address of the respondent's representative;

(3) The material facts of the dispute; and

(4) The verbatim text of the proposal at issue.

b. The petitioner shall promptly serve the other party with a copy of the petition and file proof thereof with the agency in accordance with 621—subrules 2.15(3) and 16.10(1).

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

ITEM 27. Amend subrule 6.4(5) as follows:

6.4(5) Agreement and stipulation. If the parties are in agreement, the parties shall complete a stipulation form prescribed by the agency. The stipulation shall be signed by the authorized representatives of the parties, and the certified employee organization shall submit it to the agency by ~~e-mail~~ email, ordinary mail, or personal delivery.

ITEM 28. Amend subrule 6.4(7) as follows:

6.4(7) Deadlines. The stipulation shall be submitted or a petition filed on or before the dates indicated:

- a. ~~July 1~~ August 1 for contracts that expire January 1 to March 31 of the subsequent year.
- b. ~~October 1~~ November 1 for contracts that expire April 1 to June 30 of the subsequent year.
- c. ~~January 1~~ February 1 for contracts that expire July 1 to September 30 of the same year.
- d. ~~April 1~~ May 1 for contracts that expire October 1 to December 31 of the same year.

ITEM 29. Amend rule 621—6.6(20) as follows:

621—6.6(20) Filing of agreement. A public employer shall file a copy of the collective bargaining agreement entered into between a the public employer and a certified employee organization and made final under Iowa Code chapter 20 shall be filed with the agency by the public employer. The public employer shall file the copy within ten days of the date on which the agreement is entered into.

ITEM 30. Renumber subrules **7.7(2)** to **7.7(5)** as **7.7(3)** to **7.7(6)**.

ITEM 31. Adopt the following **new** subrule 7.7(2):

7.7(2) Procedures for state agreements effective in a year following an Iowa Code section 39.9 gubernatorial election.

a. A ratification election referred to in Iowa Code section 20.17(4) shall not be held and the parties shall not request arbitration pursuant to Iowa Code section 20.22(1) until at least two weeks after the beginning date of the governor's term of office.

b. Within five days from the beginning date of the governor's term of office, the governor shall accept or reject a proposed statewide collective bargaining agreement if one exists. If the proposed agreement is rejected, the parties shall commence bargaining anew in accordance with Iowa Code section 20.17 and exchange initial proposals within the same five-day period.

c. Negotiations shall be complete not later than March 15 of that year unless the parties mutually agree to a different deadline.

d. The parties shall mutually agree to alternative deadlines for the completion of bargaining procedures set forth in Iowa Code sections 20.19, 20.20, and 20.22 to ensure the completion of negotiations not later than March 15 or other mutually agreeable deadline.

ITEM 32. Amend subrule 13.7(2) as follows:

13.7(2) Mediator privilege. In accordance with Iowa Code section 20.31(2), a mediator shall not testify in judicial, administrative, arbitration, or grievance proceedings regarding any matters occurring in the course of a mediation, including any verbal or written communication or behavior, other than facts relating exclusively to the timing or scheduling of mediation. A mediator shall not produce or disclose any documents, including notes, memoranda, or other work product, relating to mediation, other than documents relating exclusively to the timing or scheduling of mediation.

[Filed 4/18/18, effective 6/13/18]

[Published 5/9/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.

ARC 3804C**REVENUE DEPARTMENT[701]****Adopted and Filed****Rule making related to industrial property tax exemption**

The Revenue Department hereby amends Chapter 80, “Property Tax Credits and Exemptions,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 427B.1 to 427B.7.

Purpose and Summary

This rule making changes an incorrect cross reference from subrule 71.1(6) to 71.1(7).

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 28, 2018, as **ARC 3654C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on April 9, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on June 13, 2018.

The following rule-making action is adopted:

REVENUE DEPARTMENT[701](cont'd)

Amend subrule 80.6(1) as follows:

80.6(1) Authority of city council and board of supervisors. A partial exemption ordinance enacted pursuant to Iowa Code section 427B.1 shall be available to all qualifying property. A city council or county board of supervisors does not have the authority to enact an ordinance granting a partial exemption to only certain qualifying properties (1980 O.A.G. 639). As used in this rule, the term “qualifying property” means property classified and assessed as real estate pursuant to 701—subrule ~~71.1(6)~~ 71.1(7), warehouses and distribution centers, research service facilities, and owner-operated cattle facilities. “Warehouse” means a building or structure used as a public warehouse for the storage of goods pursuant to Iowa Code sections 554.7101 to 554.7603, except that it does not mean a building or structure used primarily to store raw agricultural products or from which goods are sold at retail. “Distribution center” means a building or structure used primarily for the storage of goods which are intended for subsequent shipment to retail outlets. Distribution center does not mean a building or structure used primarily to store raw agricultural products, used primarily by a manufacturer to store goods to be used in the manufacturing process, used primarily for the storage of petroleum products, or used for the retail sale of goods. A “research service facility” is one or more buildings devoted primarily to research and development activities or corporate research services. Research and development activities include, but are not limited to, the design and production or manufacture of prototype products for experimental use. A research service facility does not have as its primary purpose the providing of on-site services to the public. “Owner-operated cattle facility” means a building or structure used primarily in the raising of cattle and which is operated by the person owning the facility.

[Filed 4/9/18, effective 6/13/18]

[Published 5/9/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.

ARC 3805C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to deadline for notifications to property owners

The Revenue Department hereby amends Chapter 80, “Property Tax Credits and Exemptions,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 427C and sections 441.22 and 441.28.

Purpose and Summary

The purpose of this rule making is to adjust the deadline, from April 15 to April 1, for assessors to notify property owners, in compliance with Iowa Code section 441.28.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 28, 2018, as **ARC 3655C**. No public comments were received. No changes from the Notice have been made.

REVENUE DEPARTMENT[701](cont'd)

Adoption of Rule Making

This rule making was adopted by the Department on April 9, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on June 13, 2018.

The following rule-making action is adopted:

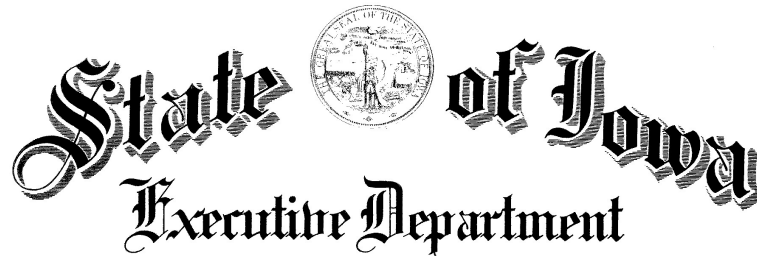
Amend subrule 80.9(3) as follows:

80.9(3) Notification to property owner. If the property is to be inspected by the county conservation board, the board shall make every effort to submit its recommendation to the assessor in sufficient time for the assessor to notify the claimant by April ~~15~~ 1. The assessor shall notify the claimant by April ~~15~~ 1 of the disposition of the application for exemption. If because of the date on which an application is filed a determination of eligibility for the exemption cannot be made in sufficient time for notification to be made by April ~~15~~ 1, the assessor shall assess the property and notify the property owner of the inability to act on the application. The notification shall contain the actual value and classification of the property and a statement of the claimant's right of appeal to the local board of review.

[Filed 4/9/18, effective 6/13/18]

[Published 5/9/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER ONE

- WHEREAS**, educating Iowa children for the knowledge economy requires expanding high-quality, in-depth work-based learning opportunities; and
- WHEREAS**, high-quality, in-depth work-based learning means outcome-focused professional experiences, such as projects designed by industry experts and educators, internships, Quality Pre-Apprenticeships and Registered Apprenticeships, which engage students in building academic, technical and soft skills; and
- WHEREAS**, such authentic, hands-on professional experiences uniquely connect students in the classroom with postsecondary education, training and future careers; and
- WHEREAS**, Iowa's economic vitality depends on employers being able to hire enough skilled workers to meet the needs of Iowa's economy today and tomorrow; and
- WHEREAS**, expanding rigorous work-based learning opportunities is in keeping with the Future Ready Iowa goal of 70 percent of Iowa's workforce attaining education or training beyond high school by the year 2025.

NOW, THEREFORE, I, KIM REYNOLDS, GOVERNOR OF THE STATE OF IOWA, do hereby declare the State of Iowa will be well-served by establishing the virtual Iowa Clearinghouse for Work-Based Learning to ensure access to high-quality, in-depth work-based learning in rural and urban communities for students, especially traditionally underrepresented students, with a focus on high-demand STEM fields and careers.

SECTION ONE: Purpose.

- I. The Iowa Clearinghouse for Work-Based Learning will build on existing school-business partnerships, such as those launched through the Governor's Science, Technology, Engineering and Math Advisory Council and the Statewide Work-Based Intermediary Network, by creating a virtual space to connect employers and educators. Recognizing that local, face-to-face partnerships offer advantages but are not always available the Clearinghouse will focus on facilitating distance partnerships across the State of Iowa. This is especially important in rural areas with fewer employers and for schools with significant challenges related to poverty. This will occur in a number ways, if state funding is available, including:
 - A. Iowa Workforce Development will conduct an initial survey to determine employers' interest in participating in work-based learning and whether they are willing to be contacted by schools to explore and develop ideas.
 - B. The Iowa Department of Education and AEA Learning Online will jointly launch the Iowa Clearinghouse for Work-Based Learning website no later than July 1, 2019. It will provide an open invitation to employers to express interest in being a partner in work-based learning at any time in a variety of ways with just a few clicks. It will present a range of options, including existing resources where employers can offer job shadow days and internships, but will focus primarily on a newly created projects board where employers can post in-depth projects. Such projects will have to meet certain standards, such as making learning more relevant for students, modernizing the curriculum, and meeting employer needs. Educators may select and lock in those projects. Mini-grants may help support the

partnerships, if state funding is available, with employer matches. The goal is to launch at least 100 new in-depth, work-based learning projects by July 1, 2020, and to continue to grow the number of projects thereafter.

- II. The Iowa Clearinghouse for Work-Based Learning will compile and update an inventory of established and newly created Iowa work-based learning opportunities for K-12 and postsecondary students. This will provide one location where employers, educators, students, parents and other Iowans can find out what is available and gather information that may help when developing new work-based learning options, often by linking to existing resources. Such options will be along a continuum of career awareness, exploration, preparation and training. This inventory shall include, but not be limited to, information about guest speakers, career fairs, job shadow days, in-depth projects, Quality Pre-Apprenticeships, Registered Apprenticeships, internships and teacher externships.

SECTION TWO: *Organization and Operation.*

- I. The Iowa Clearinghouse for Work-Based Learning shall be a joint venture of the Iowa Department of Education and AEA Learning Online. The Education Department shall create the Clearinghouse by July 1, 2019, and oversee its direction in collaboration with Iowa Workforce Development, AEA Learning Online, the Iowa Economic Development Authority and the Iowa Clearinghouse for Work-Based Learning Advisory Board. The Iowa Department of Education Clearinghouse Director shall report to the Education Director, facilitate school-business partnerships, help develop and update the work-based learning inventory and prepare an annual report to the Governor and Iowa General Assembly beginning July 1, 2020, among other duties. AEA Learning Online shall facilitate school-business partnerships, provide the electronic infrastructure to organize, maintain and improve the clearinghouse and help develop and update the work-based learning inventory, among other duties.
- II. The Governor hereby establishes the Iowa Clearinghouse for Work-Based Learning Advisory Board (the "Board"). The Board shall be chaired by the Iowa Department of Education Director or designee. The Board shall be vice-chaired by the Iowa Workforce Development Director or designee.
- III. The Board Chair and Vice Chair may appoint any individuals they deem appropriate for service on the Board. Appointees may include, but are not limited to, the following representatives committed to better aligning academic and career readiness, which will strengthen Iowa's workforce:
 - A. Individuals representing business and industry, who shall make up half the members of the Board, including the Iowa Business Council, Iowa Association of Business and Industry, Technology Association of Iowa, America's SBDC Iowa, Iowa Center for Economic Success, Iowa Economic Development Authority and State Workforce Development Board;
 - B. Individuals representing labor organizations;
 - C. Individuals representing K-12 and higher education, including the State Board of Education, Governor's Science, Technology, Engineering and Mathematics Advisory Council, AEA Learning Online, Iowa Jobs for America's Graduates, Iowa Board of Regents, Iowa Association of Community College Trustees and Iowa Association of Independent Colleges and Universities;
 - D. Individuals representing Iowa teacher, school administrator, school board, school counselor and non-public school associations;
 - E. Individuals representing non-profit organizations, including community advocacy organizations; and
 - F. Individuals representing parents, students and legislators.
- IV. Each member of the Iowa Clearinghouse for Work-Based Learning Advisory Board shall serve without compensation in an advisory capacity. The Chair and Vice Chair may expand or contract the number of members of the Board as they deem necessary or appropriate.

- V. The Iowa Clearinghouse for Work-Based Learning Advisory Board shall meet to collaborate and advise on policies to carry out the Governor's vision for the Iowa Clearinghouse for Work-Based Learning. The Board shall make recommendations at least annually to the Governor for how to improve the effectiveness of the clearinghouse.
- VI. The Chair and Vice Chair of the Board may jointly direct the Iowa Clearinghouse for Work-Based Learning Advisory Board and its membership to form committees or subcommittees to address particular issues facing the mission of the Board, as well as any other issues related to work-based learning in the State of Iowa.

SECTION THREE: Miscellaneous.

- I. All departments, agencies, boards or other political subdivisions of state and local governments shall cooperate fully with the Board. The Board may seek the expertise and services of individuals and entities outside of its membership for research, advice and other needs, as needed to accomplish its mission.
- II. All work of the Board shall be done in a manner consistent with the laws and regulations of the State of Iowa and of the laws and regulations of the United States of America.
- III. This Executive Order shall be interpreted in accordance with all applicable laws and regulations. If any provision of this Executive Order is found to be invalid, unenforceable or otherwise contrary to applicable law, then the remaining provisions of this Executive Order, as applied to any person or circumstance, shall continue in full force and effect and shall not be affected by such finding of invalidity or unenforceability. This Executive Order is not intended to supersede any laws, regulations, or collective bargaining agreements in place as of its effective date.
- IV. This Executive Order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the State of Iowa, its Departments, Agencies, or Political Subdivisions, or its officers, employees, agents or any other persons.
- V. The directive in this Executive Order shall apply prospectively only of its effective date.



IN TESTIMONY WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME AND CAUSED THE GREAT SEAL OF IOWA TO BE AFFIXED TO THIS EXECUTIVE ORDER. DONE IN DES MOINES, IOWA THIS 29TH DAY OF JANUARY IN THE YEAR OF OUR LORD TWO THOUSAND AND EIGHTEEN.

Kimberly K Reynolds

 KIM REYNOLDS
 GOVERNOR OF IOWA

ATTEST:

Paul D. Pate

 PAUL D. PATE
 SECRETARY OF STATE



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER TWO

- WHEREAS**, the health, safety, and welfare of Iowa's children are of utmost importance; and
- WHEREAS**, ensuring the health, safety, and welfare of Iowa's children relies upon access to necessary and appropriate mental health care services; and
- WHEREAS**, one in five adults experiences a mental health condition each year, with half of all mental health conditions beginning by age fourteen (14), and seventy five (75) percent of such conditions beginning by age twenty-four (24); and
- WHEREAS**, current systems are inadequate to address the mental health needs of Iowa's children; and
- WHEREAS**, a children's mental health system, dedicated to improving the well-being of Iowa's children, designed to build healthy and resilient children and families, meant to provide for educational growth, and committed to coordinating medical and mental health care will require a coordinated cross-systems effort.

NOW, THEREFORE, I, KIM REYNOLDS, GOVERNOR OF THE STATE OF IOWA, do hereby declare that the interests of Iowa's youth are best served by the establishment of a statewide mental health system that is committed to improving children's well-being, building healthy and resilient children, providing for educational growth, and coordinating medical and mental health care for those in need. I hereby order the establishment of a Children's System State Board (hereinafter the "Children's Board") to serve as the single point of responsibility in the development and implementation of a Children's Mental Health System (hereinafter the "Children's System"), as recommended by the Children's Mental Health and Well-Being Advisory Committee.

SECTION ONE: Purpose and Charge.

- I. The Children's Board is tasked with finding concrete solutions to the unique challenges that exist relating to children's mental health in the State of Iowa. The Children's Board shall study and consider, to the extent necessary or appropriate, existing information and data from previous working group materials and reports, as well as collect and utilize new information and data to develop and implement the Children's System.
- II. The Children's Board shall develop a strategic plan with specific recommendations to create and implement the Children's System. This strategic plan shall do all of the following:
 - A. Analyze and identify target populations to be served by the Children's System;
 - B. Analyze and identify services to be delivered locally to target populations to be served by the Children's System;
 - C. Analyze and design a long-term sustainable funding structure for the Children's System;
 - D. Establish, as necessary or appropriate, any local area boards, commissions, or entities, and such local area boards, commissions, or entities' membership components and governance expectations, in order to further the purposes and goals of the Children's System, taking into consideration geographical factors,

- existing structures, services, or organizations, the Mental Health and Disability Commission, and judicial district lines;
 - E. Analyze and identify any legislative, regulatory, and policy ideas that are designed to improve children's mental health in the State of Iowa; and
 - F. Reach other goals and objectives as may be from time to time directed by the Office of the Governor.
- III. The strategic plan to be produced by the Children's Board pursuant to this Executive Order shall be submitted to the Office of the Governor no later than November 15, 2018.

SECTION TWO: Organization and Operation.

- I. The Children's Board shall be comprised of members appointed by the Governor. Each member will serve at the pleasure of the Governor without compensation and in an advisory capacity only.
- II. The Governor may appoint any of the following individuals to the Children's Board:
 - A. The Director of the Iowa Department of Human Services, or a designee;
 - B. The Director of the Iowa Department of Education, or a designee;
 - C. The Director of the Iowa Department of Public Health, or a designee;
 - D. The Director of the Iowa Department of Human Rights, or a designee;
 - E. The Director of the Iowa Department of Workforce Development, or a designee;
 - F. The Iowa State Court Administrator, or a designee;
 - G. A representative of an Iowa juvenile court detention center, or a designee;
 - H. A representative from Early Childhood Iowa, or a designee;
 - I. A representative from the Iowa Mental Health and Disability Services Commission, or a designee;
 - J. A children's mental health provider, or a designee;
 - K. A child welfare provider, or a designee;
 - L. A local K-12 educator or education, counselor, administrator, or a designee;
 - M. A representative of an established advocacy organization whose mission or purpose it is, in part, to further goals related to children's health, or a designee;
 - N. A parent or guardian of a child with a serious emotional disturbance, or a designee;
 - O. A representative from the Iowa Hospital Association, or a designee;
 - P. A representative of law enforcement, or a designee;
 - Q. A Chief Operating Officer of a Mental Health Disability Region, or a designee;
 - R. A representative from an Iowa Area Education Agency, or a designee;
 - S. Two members of the Iowa Senate, to serve as non-voting, ex officio members, one member being from the majority political party and the other being from the minority political party;
 - T. Two members of the Iowa House of Representatives, to serve as non-voting, ex officio members, one member being from the majority political party and the other being from the minority political party; and
 - U. Any other persons or representatives of organizations whomsoever deemed appropriate by the Governor, as named from time to time.
- III. The Director of the Iowa Department of Human Services, or his or her designee, and the Director of the Iowa Department of Education, or his or her designee, shall serve as Co-Chairs of the Children's Board.
- IV. The Children's Board shall hold regular meetings to be scheduled by the Co-Chairs of the Children's Board. The Children's Board shall also have the power and authority to hold special meetings as deemed necessary or appropriate from time to time by the Co-Chairs or the Office of the Governor. Regular and special meetings of the Children's Board shall continue as necessary or appropriate after the submission of the Children's Board's strategic plan to the Office of the Governor in order to oversee, implement, and maintain the Children's System, and to provide technical advice or assistance to the

Children's System or other governmental or non-governmental entities involved with the Children's System.

- V. Staffing and administrative assistance for the Children's Board shall be provided by the Iowa Department of Human Services, and by other persons or organizations from time to time as deemed necessary or appropriate by the Office of the Governor. The Children's Board may seek sponsors, donors, or hosts on an as-needed basis to assist in covering any costs of meetings or events, including, but not limited to, costs associated with providing facilities, food, refreshments, printing, promotional materials, and the like.

SECTION THREE: *Miscellaneous.*

- I. All departments, agencies, boards, or other political subdivisions of any state and local governments shall cooperate fully with the Children's Board. The Children's Board may seek the expertise and services of individuals and entities outside of its membership for research, advice, and other needs, as necessary or appropriate, to accomplish its mission.
- II. All work of the Children's Board shall be done in a manner consistent with the laws and regulations of the State of Iowa, and of the laws and regulations of the United States of America.
- III. This Executive Order shall be interpreted in accordance with all applicable laws and regulations. If any provision of this Executive Order is found to be invalid, unenforceable, or otherwise contrary to applicable law, then the remaining provisions of this Executive Order, as applied to any person or circumstance, shall continue in full force and effect and shall not be affected by such finding of invalidity or unenforceability. This Executive Order is not intended to supersede any laws, regulations, or collective bargaining agreements in place as of its effective date.
- IV. This Executive Order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the State of Iowa, its Departments, Agencies, or Political Subdivisions, or its officers, employees, agents, or any other persons.
- V. The directive in this Executive Order shall apply prospectively only as of its effective date.

IN TESTIMONY WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME AND CAUSED THE GREAT SEAL OF IOWA TO BE AFFIXED TO THIS EXECUTIVE ORDER. DONE IN DES MOINES, IOWA THIS 23RD DAY OF APRIL IN THE YEAR OF OUR LORD TWO THOUSAND AND EIGHTEEN.



Kim Reynolds

KIM REYNOLDS
GOVERNOR OF IOWA

ATTEST:

Paul D. Pate

PAUL D. PATE
SECRETARY OF STATE