IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published in pamphlet form biweekly pursuant to Iowa Code Chapter 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies [continue to refer to General Information for drafting style and form].

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other "materials deemed fitting and proper by the Administrative Rules Review Committee" include summaries of Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [453.6]; Workers' Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)"a"]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking--Notice of Application and Hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

GUIDE FOR RULE MAKING, see FIRST VOLUME IOWA ADMINISTRATIVE CODE (Gray, Yellow, Red, Blue and Green Tabs)

The ARC number which appears before each agency heading is assigned by the Administrative Rules Coordinator for identification purposes and should always be used when referring to this item in correspondence and other communications.

The Iowa Administrative Code Supplement is also published every other week in loose-leaf form, pursuant to Iowa Code section 17A.6. It contains replacement pages for the Iowa Administrative Code. These replacement pages incorporate amendments to existing rules, new rules or emergency or temporary rules which have been filed with the administrative rules coordinator and published in the Bulletin.

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SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

The Iowa Administrative Bulletin is sold as a separate publication and may be purchased by subscription or single copy. All subscriptions will expire on June 30 of each year. Subscriptions must be paid in advance and are prorated quarterly as follows:

First quarter	July 1, 1991, to June 30, 1992	$210.00 plus $8.40 sales tax
Second quarter	October 1, 1991, to June 30, 1992	$157.50 plus $6.30 sales tax
Third quarter	January 1, 1992, to June 30, 1992	$105.00 plus $4.20 sales tax
Fourth quarter	April 1, 1992, to June 30, 1992	$ 52.50 plus $2.10 sales tax

Single copies may be purchased for $10.00 plus $0.40 tax. Back issues may be purchased if the issues are available.

Iowa Administrative Code

The Iowa Administrative Code and Supplements are sold in complete sets and subscription basis only. All subscriptions for the Supplement (replacement pages) must be for the complete year and will expire on June 30 of each year.

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All checks should be made payable to the Iowa State Printing Division. Send all inquiries and subscription orders to:

Iowa State Printing Division
Grimes State Office Building
Des Moines, IA 50319
Phone: (515)281-8796

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the chairperson at any place in the state and at any time.

EDITOR'S NOTE: **Terms ending April 30, 1995.**

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"*A GUIDE TO RULE MAKING*" pamphlet available upon request from:
Administrative Code Division
Lucas State Office Building, 4th Floor
or
Administrative Rules Coordinator
Capitol, Ground Floor, Room 11

Schedule for Rule Making

1992

FILING DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 6 '91	Dec. 25 '91	Jan. 14	Jan. 29	Feb. 19	Mar. 25	June 22
Dec. 20 '91	Jan. 8	Jan. 28	Feb. 12	Mar. 4	Apr. 8	July 6
Jan. 3	Jan. 22	Feb. 11	Feb. 26	Mar. 18	Apr. 22	July 20
Jan. 17	Feb. 5	Feb. 25	Mar. 11	Apr. 1	May 6	Aug. 3
Jan. 31	Feb. 19	Mar. 10	Mar. 25	Apr. 15	May 20	Aug. 17
Feb. 14	Mar. 4	Mar. 24	Apr. 8	Apr. 29	June 3	Aug. 31
Feb. 28	Mar. 18	Apr. 7	Apr. 22	May 13	June 17	Sep. 14
Mar. 13	Apr. 1	Apr. 21	May 6	May 27	July 1	Sep. 28
Mar. 27	Apr. 15	May 5	May 20	June 10	July 15	Oct. 12
Apr. 10	Apr. 29	May 19	June 3	June 24	July 29	Oct. 26
Apr. 24	May 13	June 2	June 17	July 8	Aug. 12	Nov. 9
May 8	May 27	June 16	July 1	July 22	Aug. 26	Nov. 23
May 22	June 10	June 30	July 15	Aug. 5	Sept. 9	Dec. 7
June 5	June 24	July 14	July 29	Aug. 19	Sep. 23	Dec. 21
June 19	July 8	July 28	Aug. 12	Sep. 2	Oct. 7	Jan. 4 '93
July 3	July 22	Aug. 11	Aug. 26	Sep. 16	Oct. 21	Jan. 18 '93
July 17	Aug. 5	Aug. 25	Sep. 9	Sept. 30	Nov. 4	Feb. 1 '93
July 31	Aug. 19	Sep. 8	Sep. 23	Oct. 14	Nov. 18	Feb. 15 '93
Aug. 14	Sep. 2	Sep. 22	Oct. 7	Oct. 28	Dec. 2	Mar. 1 '93
Aug. 28	Sep. 16	Oct. 6	Oct. 21	Nov. 11	Dec. 16	Mar. 15 '93
Sep. 11	Sept. 30	Oct. 20	Nov. 4	Nov. 25	Dec. 30	Mar. 29 '93
Sep. 25	Oct. 14	Nov. 3	Nov. 18	Dec. 9	Jan. 13 '93	Apr. 12 '93
Oct. 9	Oct. 28	Nov. 17	Dec. 2	Dec. 23	Jan. 27 '93	Apr. 26 '93
Oct. 23	Nov. 11	Dec. 1	Dec. 16	Jan. 6 '93	Feb. 10 '93	May 10 '93
Nov. 6	Nov. 25	Dec. 15	Dec. 30	Jan. 20 '93	Feb. 24 '93	May 24 '93
Nov. 20	Dec. 9	Dec. 29	Jan. 13 '93	Feb. 3 '93	Mar. 10 '93	June 7 '93
Dec. 4	Dec. 23	Jan. 12 '93	Jan. 27 '93	Feb. 17 '93	Mar. 24 '93	June 21 '93
Dec. 18	Jan. 6 '93	Jan. 26 '93	Feb. 10 '93	Mar. 3 '93	Apr. 7 '93	July 5 '93

20 days from the publication date is the **minimum** date for a public hearing or cutting off public comment.

35 days from the publication date is the **earliest** possible date for the agency to consider a noticed rule for adoption. It is the regular effective date for an adopted rule.

180 days See 17A.4(1)"b." If the agency does not adopt rules within this time frame, the Notice should be terminated.

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
24	**Friday, May 8, 1992**	**May 27, 1992**
25	**Friday, May 22, 1992**	**June 10, 1992**
26	**Friday, June 5, 1992**	**June 24, 1992**

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days 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.

The Administrative Rules Review Committee will hold a special meeting Wednesday, May 13, 1992, 10 a.m. and Thursday, May 14, 1992, 8:30 a.m. in Senate Committee Room 22. This meeting will be in lieu of the regular, statutory date. The following rules will be reviewed:

Bulletin

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
Pseudorabies disease, 64.153(1), 64.154, 64.155(2) to 64.155(4), Filed **ARC 2958A** 4/15/92

COLLEGE STUDENT AID COMMISSION[283]
EDUCATION DEPARTMENT[281]"umbrella"
Stafford loan program — early disbursement, 10.17(3), Notice **ARC 2959A** 4/15/92

COMMUNITY ACTION AGENCIES DIVISION[427]
HUMAN RIGHTS DEPARTMENT[421]"umbrella"
Community services block grant — antipoverty services to communities, 22.3(3), Notice **ARC 2937A** 4/15/92

EDUCATION DEPARTMENT[281]
Competent private instruction and dual enrollment, ch 31, Filed **ARC 2977A** 4/29/92

ELDER AFFAIRS DEPARTMENT[321]
Department defined, 1.7, Filed **ARC 2962A** 4/29/92
Department fiscal policy, 5.16(1), Filed **ARC 2963A** 4/29/92

EMPLOYMENT SERVICES DEPARTMENT[341]
Administration, amendments to ch 1, Filed **ARC 2964A** 4/29/92

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Revolving fund loans for wastewater treatment, 92.11(2)"c," Notice **ARC 2953A**, also
Filed Emergency **ARC 2952A** 4/15/92
Financial responsibility for underground storage tanks — compliance date extension, 136.2(4), Notice **ARC 2954A** .. 4/15/92

HUMAN SERVICES DEPARTMENT[441]
Locations for filing Medicaid and ADC applications, 40.3, 40.4(2), 76.1(1), 76.1(3), Notice **ARC 2942A** 4/15/92
Federal surplus food program guidelines, 73.4(3)"d"(2), Notice **ARC 2974A** 4/29/92
Mothers and Children (MAC) — exemption from establishing paternity for children covered by Medicaid,
75.14(1)"c," 75.14(4), 75.14(6), Notice **ARC 2975A** 4/29/92
Review form for children in foster care and subsidized adoption, 76.7, Notice **ARC 2935A** 4/15/92
Chiropractors — removal of requirement for repeat X ray, 78.8, Notice **ARC 2973A** 4/29/92
Intermediate care facilities for mentally retarded, 82.1, 82.2, 82.3, 82.10(1), 82.15(1)"b,"
82.16, Notice **ARC 2961A** 4/29/92

INSURANCE DIVISION[191]
COMMERCE DEPARTMENT[181]"umbrella"
Utilization review, ch 70, Filed **ARC 2976A** 4/29/92

JOB SERVICE DIVISION[345]
EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"
Administration, amendments to ch 1, Filed **ARC 2971A** 4/29/92
Unemployment compensation, contested case proceedings, petitions, 4.6(6), 4.46(5)"c"(5), chs 6, 9,
Notice **ARC 2949A** 4/15/92

NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Agency consent for the sale of goods and services, 1.11, Notice **ARC 2968A** 4/29/92
Hunting, trapping, and fishing license violations — habitual offenders, 15.6(1), 15.6(3), 15.6(4),
Notice **ARC 2966A** 4/29/92
REAP — county and private grants, 33.30(5), 33.30(6), 33.50(4), Notice **ARC 2967A** 4/29/92
Trapping limitations, 110.5, 110.6 Notice **ARC 2965A** 4/29/92

PERSONNEL DEPARTMENT[581]

Bumping — separations, disciplinary actions and reduction in force; benefits, 7.3(1), 7.12, 11.3(1)"a," 11.3(2)"d" and "e," 11.3(4), 11.3(5), 11.3(6)"c," 11.3(6)"l," 15.8, Filed **ARC 2948A** 4/15/92

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Barber examiners — investigation of complaints or malpractice claims, alternative procedures and settlement, and informal settlement; discipline, 20.203, 20.204, 20.212, Notice **ARC 2951A** 4/15/92

Behavioral science examiners — licensure of marital and family therapists and mental health counselors, ch 30, Notice **ARC 2941A** 4/15/92

Chiropractic examiners, amendments to ch 40, Notice **ARC 2978A** 4/29/92

Speech pathology and audiology examiners — investigative and informal settlement procedures, 301.103, 301.110, Notice **ARC 2936A** 4/15/92

PUBLIC HEALTH DEPARTMENT[641]

Emergency information system on pesticides for use by health care providers during medical emergencies, 71.3(1)"a" and "b," 71.3(1)"g"(5), Notice **ARC 2950A** 4/15/92

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Greyhound racing — occupational license fees; exotic wagering; simulcasting; manufacturer's, distributor's, vendor's and occupational licenses; riverboat minimum standards; minimum age for wagering, 7.3(5), 7.3(10)"a," 7.3(18)"d" and "k," 7.3(19)"g," 7.3(20)"d," 7.3(21)"d," 8.1, 8.2(4)"h," 8.2(4)"l" to "n," 8.12(2), 12.9, 22.10(3), 22.14(1), 22.14(3)"a" to "i," 22.18, 25.12, 26.10(6)"c," Notice **ARC 2955A** 4/15/92

Exotic wagering at racetracks, 8.1, 8.2(4)"h," 8.2(4)"l" to "n," 8.12(2), Filed Emergency **ARC 2956A** 4/15/92

REGENTS BOARD[681]

Suspension of parietal rule at the University of Iowa, 2.2(5), Filed **ARC 2938A** 4/15/92

Prohibited interest in public contracts, 8.9, Filed **ARC 2939A** 4/15/92

REVENUE AND FINANCE DEPARTMENT[701]

Computation of tax, determination of a sale and a sale price, taxable sales, exempt sales, receipts exempt from use tax, local option sales and service tax, 14.3, 15.1, 15.9, 16.14, 16.47, 17.8, 32.1, 107.3(2) to 107.3(4), 107.9, Filed **ARC 2945A** 4/15/92

Sales tax on computer consulting, flying service, storage of household goods, solid waste collection and disposal service, sewage service for nonresidential commercial operations, consultant services, aircraft rental, sign construction and installation, swimming pool cleaning and maintenance, taxidermy, mini-storage, dating services and limousine service, 18.34(3)"d," 26.21, 26.42, 26.71 to 26.80, Notice **ARC 2943A**, also Filed Emergency **ARC 2944A** 4/15/92

State income tax withholding from pensions, annuities and nonwage payments; lump sum distributions from retirement plans, 46.1(2), 46.1(2)"a," "b," "d," and "e," Filed **ARC 2970A** 4/29/92

SECRETARY OF STATE[721]

Satellite absentee voting stations, 21.12, Filed **ARC 2947A** 4/15/92

TRANSPORTATION DEPARTMENT[761]

Motor vehicle division change of address, 1.8(5), 400.6(2), 400.17(1)"a," 405.12(1)"a"(1), 405.15(1)"a"(1), 410.2(1), 500.3(4)"a," 500.3(6), 500.12, 505.3(2)"b," 505.3(4)"a," 505.3(5)"c," 505.3(7)"c," 505.4(12)"b," 505.6(2)"b," 510.5, 510.6(1)"a," 511.4(1)"a," 513.3, 523.2(1), 523.7, 523.8(4), 525.5(1), 525.7, 525.14(4), 528.4(1), 528.7, 528.11(4), 529.2, Filed Emergency **ARC 2946A** 4/15/92

Farm trailer inspection and registration exemption, 400.1(3), Notice **ARC 2960A** 4/29/92

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Deregulation, reregulation, and service regulation of communications services and facilities, 5.1, 5.2, 5.6, 5.7, Filed **ARC 2957A** 4/15/92

Gas and electric service — payment agreements, 19.2(4)"c"(21), 19.4(10), 19.4(16)"h," 20.2(4)"z," 20.4(11), 20.4(16)"h," Filed **ARC 2940A** 4/15/92

Energy adjustment clause, 20.9(2)"b"(5), 20.9(2)"e," 20.9(3)"a" to "e," Notice **ARC 2972A** 4/29/92

To All Agencies:
The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)"b" by allowing the opportunity for oral presentation (hearing) to be held at least twenty days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Revolving fund loans for wastewater treatment, 92.11(2)"c" IAB 4/15/92 **ARC 2953A** (See also ARC 2952A)	Conference Room Fifth Floor East Wallace State Office Bldg. Des Moines, Iowa	May 7, 1992 1 p.m.
Financial responsibility for underground storage tanks, 136.2(4) IAB 4/15/92 **ARC 2954A**	Conference Room Fifth Floor, East Half Wallace State Office Bldg. Des Moines, Iowa	May 5, 1992 10 a.m.
JOB SERVICE DIVISION[345]		
Claims and benefits; appeals procedure, 4.6(6), 4.46(5), chs 6, 9 IAB 4/15/92 **ARC 2949A**	Job Service Division 1000 E. Grand Ave. Des Moines, Iowa	May 6, 1992 9:30 a.m.
NATURAL RESOURCE COMMISSION[571]		
Consent for the sale of goods and services, 1.11 IAB 4/29/92 **ARC 2968A**	Conference Room Fourth Floor East Wallace State Office Bldg. Des Moines, Iowa	May 22, 1992 10 a.m.
Hunting, trapping, and fishing violations — habitual offenders, 15.6(1), 15.6(3), 15.6(4) IAB 4/29/92 **ARC 2966A**	Conference Room Fourth Floor West Wallace State Office Bldg. Des Moines, Iowa	May 20, 1992 2:30 p.m.
County and private open spaces grant programs, 33.30(5), 33.30(6), 33.50(4) IAB 4/29/92 **ARC 2967A**	Conference Room Fourth Floor East Wallace State Office Bldg. Des Moines, Iowa	May 21, 1992 10 a.m.
Trapping limitations, 110.5, 110.6 IAB 4/29/92 **ARC 2965A**	Conference Room Fourth Floor East Wallace State Office Bldg. Des Moines, Iowa	May 20, 1992 1 p.m.
PROFESSIONAL LICENSURE DIVISION[645]		
Licensure of marital and family therapists and mental health counselors, ch 30 IAB 4/15/92 **ARC 2941A**	Conference Room Third Floor, Side 1 Lucas State Office Bldg. Des Moines, Iowa	May 5, 1992 10 a.m.
PUBLIC HEALTH DEPARTMENT[641]		
Emergency information system on pesticides for use by health care providers during medical emergencies, 71.3(1) IAB 4/15/92 **ARC 2950A**	Conference Room – 4th Floor Lucas State Office Bldg. Des Moines, Iowa	May 5, 1992 9 a.m.

RACING AND GAMING COMMISSION[491]		
Greyhound racing; mutuel department; simulcasting; manufacturer's, distributor's, vendor's and occupational licenses; riverboat operation; rules of the games, amendments to chs 7, 8, 12, 22, 25, 26 IAB 4/15/92 **ARC 2955A** (See also ARC 2956A)	Conference Room – 6th Floor Lucas State Office Bldg. Des Moines, Iowa	May 5, 1992 9 a.m.
REVENUE AND FINANCE DEPARTMENT[701]		
Expansion of state sales tax on services, 18.34(3), 26.21, 26.42, 26.71 to 26.80 IAB 4/29/92 **ARC 2969A**	Conference Room – 4th Floor Hoover State Office Bldg. Des Moines, Iowa	May 21, 1992 10 a.m.
TRANSPORTATION DEPARTMENT[761]		
Consent for the sale of goods and services, ch 26 IAB 4/1/92 **ARC 2889A**	Commission Room 800 Lincoln Way Ames, Iowa	April 30, 1992 10 a.m. (If requested)
Farm trailer registration and inspection exemption, 400.1(3) IAB 4/29/92 **ARC 2960A**	Conference Room Park Fair Mall 100 Euclid Avenue Des Moines, Iowa	May 28, 1992 10 a.m. (If requested)
UTILITIES DIVISION[199]		
Deregulation of voice messaging service IAB 2/19/92 **ARC 2789A**	Hearing Room – 1st Floor Lucas State Office Bldg. Des Moines, Iowa	April 29, 1992 10 a.m.

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(249A)	(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

AGENCY IDENTIFICATION NUMBERS

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

"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 which were not included in the original reorganization legislation as "umbrella" agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA [101].

Implementation of reorganization is continuing and the following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
- Agricultural Development Authority[25]
- Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

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Agencies listed below are identified in the Iowa Administrative Code with white tabs. These agencies have not yet implemented government reorganization.

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Iowa Advance Funding Authority[515]

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Records Commission[710]

NOTICE—AGRICULTURAL CREDIT CORPORATION MAXIMUM LOAN RATE

In accordance with the provisions of Iowa Code section 535.12, the Superintendent of Banking has determined that the maximum rate of interest that may be charged on loans by Agricultural Credit Corporations as defined in Iowa Code section 535.12, subsection 4, shall be:

July 1, 1989 – July 31, 1989	10.75%
August 1, 1989 – August 31, 1989	10.25%
September 1, 1989 – September 30, 1989	9.75%
October 1, 1989 – October 31, 1989	10.00%
November 1, 1989 – November 30, 1989	10.00%
December 1, 1989 – December 31, 1989	9.75%
January 1, 1990 – January 31, 1990	9.65%
February 1, 1990 – February 28, 1990	9.75%
March 1, 1990 – March 31, 1990	9.85%
April 1, 1990 – April 30, 1990	9.85%
May 1, 1990 – May 31, 1990	9.85%
June 1, 1990 – June 30, 1990	10.00%
July 1, 1990 – July 31, 1990	9.75%
August 1, 1990 – August 31, 1990	9.80%
September 1, 1990 – September 30, 1990	9.55%
October 1, 1990 – October 31, 1990	9.55%
November 1, 1990 – November 30, 1990	9.50%
December 1, 1990 – December 31, 1990	9.05%
January 1, 1991 – January 31, 1991	9.15%
February 1, 1991 – February 28, 1991	8.70%
March 1, 1991 – March 31, 1991	8.20%
April 1, 1991 – April 30, 1991	8.25%
May 1, 1991 – May 31, 1991	8.00%
June 1, 1991 – June 30, 1991	7.75%
July 1, 1991 – July 31, 1991	7.75%
August 1, 1991 – August 31, 1991	7.60%
September 1, 1991 – September 30, 1991	7.70%
October 1, 1991 – October 31, 1991	7.55%
November 1, 1991 – November 30, 1991	7.25%
December 1, 1991 – December 31, 1991	6.95%
January 1, 1992 – January 31, 1992	6.65%
February 1, 1992 – February 29, 1992	6.05%
March 1, 1992 – March 31, 1992	6.00%
April 1, 1992 – April 30, 1992	6.10%

ARC 2974A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 73, "Commodity Distribution Programs," appearing in the Iowa Administrative Code.

This amendment increases the income eligibility guidelines for the Federal Surplus Food Program.

Income eligibility guidelines for the Federal Surplus Food Program in Iowa are based on the income guidelines for the reduced price meals in the National School Lunch Program. These guidelines are set at 185 percent of the federal poverty guidelines and are revised effective July 1 of each year. Revised federal poverty guidelines have been received.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before May 20, 1992.

This amendment is intended to implement Iowa Code section 234.12.

The following amendment is proposed.

Amend subrule **73.4(3)**, paragraph **"d,"** subparagraph (2), as follows:

(2) Income eligible status. The gross income according to family size is no more than the following amounts:

Household Size	Yearly Income		Monthly Income		Weekly Income	
1	~~$12,247~~	*$12,599*	~~$1,021~~	*$1,050*	~~$236~~	*$242*
2	~~16,428~~	*17,002*	~~1,369~~	*1,417*	~~316~~	*327*
3	~~20,609~~	*21,405*	~~1,718~~	*1,784*	~~397~~	*412*
4	~~24,790~~	*25,808*	~~2,066~~	*2,151*	~~477~~	*496*
5	~~28,971~~	*30,211*	~~2,415~~	*2,518*	~~558~~	*581*
6	~~33,152~~	*34,614*	~~2,763~~	*2,885*	~~638~~	*666*
7	~~37,333~~	*39,017*	~~3,112~~	*3,251*	~~718~~	*750*
8	~~41,514~~	*43,420*	~~3,460~~	*3,618*	~~798~~	*835*
For each additional household member add:	~~$4,181~~	*$4,403*	~~$ 349~~	*$ 367*	~~$ 81~~	*$ 85*

ARC 2975A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code.

The amendment to 75.14(6) provides an exemption to pregnant women eligible for Medicaid under the Mothers

and Children (MAC) coverage group from cooperating in establishing paternity and obtaining support for children for whom they receive Medicaid.

This change is required by the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, section 1912(a)(1)(B). Under current policy all pregnant women with no born children are not required to cooperate to maintain coverage for themselves and their unborn children but if they have born children for whom they receive Medicaid they are required to cooperate to maintain coverage for themselves. Under these amendments pregnant women under MAC with born children for whom they receive Medicaid will be encouraged to cooperate, but their failure to cooperate will not result in cancellation.

Pregnant women who are Medicaid-eligible under any coverage group other than MAC will still be required to cooperate for their born children for whom they receive Medicaid. However, when a pregnant woman eligible under groups other than MAC fails to cooperate, she will lose Medicaid eligibility under her current group but she shall be automatically redetermined eligible under MAC and, therefore, now exempt from cooperation.

This cooperation exemption shall be in effect throughout the pregnancy and the 60-day postpartum period.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before May 20, 1992.

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Amend subrule **75.14(1)**, paragraph **"c,"** as follows:

c. The applicant or recipient shall cooperate with the ~~local~~ *county* office in supplying information with respect to the absent parent, the receipt of support, and the establishment of paternity, to the extent necessary to establish eligibility for assistance and permit an appropriate referral to the child support recovery unit.

ITEM 2. Amend subrule 75.14(4) as follows:

75.14(4) Each applicant for or recipient of Medicaid shall assign to the department any rights to medical support from any other person for which the person can legally make assignment. This shall include rights to support in the applicant's or recipient's own behalf or in behalf of any other family member for whom the applicant or recipient is applying. An assignment is effective the same date the ~~local~~ *county* office enters the eligibility information into the automated benefit calculation system and is effective for the entire period for which assistance is paid. Support payments not intended for medical support shall not be assigned to the department.

ITEM 3. Further amend rule 441—75.14(249A) by adding the following new subrule 75.14(6):

75.14(6) Pregnant women establishing eligibility under subrule 75.1(28) shall be exempt from the provisions in this rule for any child for whom the pregnant woman applies for or receives Medicaid. Additionally, any previously pregnant woman eligible under the provision of subrule 75.1(24) shall not be subject to the provision in this rule until after the end of the month in which the 60-day postpartum period expires. Pregnant women establishing eligibility under any coverage groups except that set forth in subrule 75.1(28) shall be subject to the provisions in this rule when establishing eligibility for children. However, when a pregnant woman who is subject to these provisions fails to cooperate, the woman shall lose eligibility under her current coverage group and shall be automatically redetermined eligible under subrule 75.1(28).

ARC 2973A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," appearing in the Iowa Administrative Code.

This amendment removes the Medicaid requirement for chiropractors to do a repeat X ray when an acute exacerbation occurs. The Department follows Medicare policy for the payment of chiropractors and Medicare no longer requires a repeat X ray for acute exacerbations.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before May 20, 1992.

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

The following amendment is proposed.

Amend rule 441—78.8(249A) as follows:

441—78.8(249A) Chiropractors. Payment will be made for the same chiropractic procedures payable under Title XVIII of the Social Security Act (Medicare). Each chiropractor participating in the program is furnished a list of these chiropractic services for which payment will be approved. The chiropractor shall have on file in the office an X ray documenting the existence of a subluxation of the spine for which treatment is being given and a charge made to the program in all cases except for pregnant women and children under age five. The date of the documenting X ray must be no more than 12 months prior to or 3 months following the initiation of a course of treatment. X rays need not be repeated unless there is a new condition ~~or acute exacerbation~~.

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

ARC 2961A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 82, "Intermediate Care Facilities for the Mentally Retarded," appearing in the Iowa Administrative Code.

These amendments conform departmental rules regarding conditions of participation for intermediate care facilities for the mentally retarded with federal regulations which were effective October 3, 1988, and which are currently in use by the Department of Inspections and Appeals. These amendments also make minor corrections in terminology, correct a form name and number, and update implementation clauses.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before May 20, 1992.

These amendments are intended to implement Iowa Code section 249A.12.

The following amendments are proposed.

ITEM 1. Amend rule **441—82.1(249A)** by rescinding the definition of "Qualified mental retardation professional."

ITEM 2. Rescind rule 441—82.2(249A) and insert the following in lieu thereof:

441—82.2(249A) Licensing and certification. In order to participate in the program, a facility shall be licensed as a hospital, nursing facility, or an intermediate care facility for the mentally retarded by the department of inspections and appeals under the department of inspections and appeals rules 481—Chapter 64. The facility shall meet the following conditions of participation:

82.2(1) Governing body and management.

a. Governing body. The facility shall identify an individual or individuals to constitute the governing body of the facility. The governing body shall:

(1) Exercise general policy, budget, and operating direction over the facility.

(2) Set the qualifications (in addition to those already set by state law) for the administrator of the facility.

(3) Appoint the administrator of the facility.

b. Compliance with federal, state, and local laws. The facility shall be in compliance with all applicable provisions of federal, state and local laws, regulations and codes pertaining to health, safety, and sanitation.

c. Client records.

(1) The facility shall develop and maintain a record-keeping system that includes a separate record for each client and that documents the client's health care, active treatment, social information, and protection of the client's rights.

(2) The facility shall keep confidential all information contained in the clients' records, regardless of the form or storage method of the records.

(3) The facility shall develop and implement policies and procedures governing the release of any client information, including consents necessary from the client or parents (if the client is a minor) or legal guardian.

(4) Any individual who makes an entry in a client's record shall make it legibly, date it, and sign it.

(5) The facility shall provide a legend to explain any symbol or abbreviation used in a client's record.

(6) The facility shall provide each identified residential living unit with appropriate aspects of each client's record.

d. Services provided under agreements with outside sources.

(1) If a service required under this rule is not provided directly, the facility shall have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.

(2) The agreement shall:

1. Contain the responsibilities, functions, objectives, and other terms agreed to by both parties.

2. Provide that the facility is responsible for ensuring that the outside services meet the standards for quality of services contained in this rule.

(3) The facility shall ensure that outside services meet the needs of each client.

(4) If living quarters are not provided in a facility owned by the ICF/MR, the ICF/MR remains directly responsible for the standards relating to physical environment that are specified in subrule 82.2(7), paragraphs "a" to "g," "j," and "k."

e. Disclosure of ownership. The facility shall supply to the licensing agency full and complete information, and promptly report any changes which would affect the current accuracy of the information, as to identify:

(1) Each person having a direct or indirect ownership interest of 5 percent or more in the facility and the owner in whole or in part of any property or assets (stock, mortgage, deed of trust, note or other obligation) secured in whole or in part by the facility.

(2) Each officer and director of the corporation, if the facility is organized as a corporation.

(3) Each partner, if the facility is organized as a partnership.

82.2(2) Client protections.

a. Protection of clients' rights. The facility shall ensure the rights of all clients. Therefore, the facility shall:

(1) Inform each client, parent (if the client is a minor), or legal guardian of the client's rights and the rules of the facility.

(2) Inform each client, parent (if the child is a minor), or legal guardian of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment.

(3) Allow and encourage individual clients to exercise their rights as clients of the facility, and as citizens of the United States, including the right to file complaints and the right to due process.

(4) Allow individual clients to manage their financial affairs and teach them to do so to the extent of their capabilities.

(5) Ensure that clients are not subjected to physical, verbal, sexual, or psychological abuse or punishment.

(6) Ensure that clients are free from unnecessary drugs and physical restraints and are provided active treatment to reduce dependency on drugs and physical restraints.

(7) Provide each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs.

(8) Ensure that clients are not compelled to perform services for the facility and ensure that clients who do work for the facility are compensated for their efforts at prevailing wages and commensurate with their abilities.

(9) Ensure clients the opportunity to communicate, associate and meet privately with individuals of their choice, and to send and receive unopened mail.

(10) Ensure that clients have access to telephones with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their individual program plans.

(11) Ensure clients the opportunity to participate in social, religious, and community group activities.

(12) Ensure that clients have the right to retain and use appropriate personal possessions and clothing, and ensure that each client is dressed in the client's own clothing each day.

(13) Permit a husband and wife who both reside in the facility to share a room.

b. Client finances.

(1) The facility shall establish and maintain a system that ensures a full and complete accounting of clients' personal funds entrusted to the facility on behalf of clients and precludes any commingling of client funds with facility funds or with the funds of any person other than another client.

(2) The client's financial record shall be available on request to the client, parents (if the client is a minor), or legal guardian.

c. Communication with clients, parents, and guardians. The facility shall:

(1) Promote participation of parents (if the client is a minor) and legal guardians in the process of providing active treatment to a client unless their participation is unobtainable or inappropriate.

(2) Answer communications from clients' families and friends promptly and appropriately.

(3) Promote visits by individuals with a relationship to the client (such as family, close friends, legal guardians and advocates) at any reasonable hour, without prior notice, consistent with the right of that client's and other clients' privacy, unless the interdisciplinary team determines that the visit would not be appropriate.

(4) Promote visits by parents or guardians to any area of the facility that provides direct client care services to the client, consistent with the right of that client's and other clients' privacy.

(5) Promote frequent and informal leaves from the facility for visits, trips, or vacations.

(6) Notify promptly the client's parents or guardian of any significant incidents or changes in the client's condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence.

d. Staff treatment of clients.

(1) The facility shall develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of the client.

1. Staff of the facility shall not use physical, verbal, sexual or psychological abuse or punishment.

2. Staff shall not punish a client by withholding food or hydration that contributes to a nutritionally adequate diet.

3. The facility shall prohibit the employment of individuals with a conviction or prior employment history of child or client abuse, neglect or mistreatment.

(2) The facility shall ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are reported immediately to the administrator or to other officials in accordance with state law through established procedures.

(3) The facility shall have evidence that all alleged violations are thoroughly investigated and shall prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations shall be reported to the administrator or designated representative or to other officials in accordance with state law within five working days of the incident, and, if the alleged violation is verified, appropriate corrective action shall be taken.

82.2(3) Facility staffing.

a. Qualified mental retardation professional. Each client's active treatment program shall be integrated, coordinated and monitored by a qualified mental retardation professional who has at least one year of experience working directly with persons with mental retardation or other developmental disabilities and is one of the following:

(1) A doctor of medicine or osteopathy.

(2) A registered nurse.

(3) An individual who holds at least a bachelor's degree in a professional category specified in 82.2(3)"b"(5).

b. Professional program services.

(1) Each client shall receive the professional program services needed to implement the active treatment program defined by each client's individual program plan. Professional program staff shall work directly with clients and with paraprofessional, nonprofessional and other professional program staff who work with clients.

(2) The facility shall have available enough qualified professional staff to carry out and monitor the various professional interventions in accordance with the stated goals and objectives of every individual program plan.

(3) Professional program staff shall participate as members of the interdisciplinary team in relevant aspects of the active treatment process.

(4) Professional program staff shall participate in ongoing staff development and training in both formal and informal settings with other professional, paraprofessional, and nonprofessional staff members.

(5) Professional program staff shall be licensed, certified, or registered, as applicable, to provide professional services by the state in which the staff practices. Those professional program staff who do not fall under the jurisdiction of state licensure, certification, or registration requirements shall meet the following qualifications:

1. To be designated as an occupational therapist, an individual shall be eligible for certification as an occupational therapist by the American Occupational Therapy Association or another comparable body.

2. To be designated as an occupational therapy assistant, an individual shall be eligible for certification as an occupational therapy assistant by the American Occupational Therapy Association or another comparable body.

3. To be designated as a physical therapist, an individual shall be eligible for certification as a physical therapist by the American Physical Therapy Association or another comparable body.

4. To be designated as a physical therapy assistant, an individual shall be eligible for registration as a physical therapy assistant by the American Physical Therapy Association or be a graduate of a two-year college-level program approved by the American Physical Therapy Association or another comparable body.

5. To be designated as a psychologist, an individual shall have at least a master's degree in psychology from an accredited school.

6. To be designated as a social worker, an individual shall hold a graduate degree from a school of social work accredited or approved by the Council on Social Work Education or another comparable body or hold a bachelor of social work degree from a college or university accredited or approved by the Council on Social Work Education or another comparable body.

7. To be designated as a speech-language pathologist or audiologist, an individual shall be eligible for a Certificate of Clinical Competence in Speech-Language Pathology or Audiology granted by the American Speech-Language Hearing Association or another comparable body or meet the educational requirements for certification and be in the process of accumulating the supervised experience required for certification.

8. To be designated as a professional recreation staff member, an individual shall have a bachelor's degree in recreation or in a specialty area such as art, dance, music or physical education.

9. To be designated as a professional dietitian, an individual shall be eligible for registration by the American Dietetics Association.

10. To be designated as a human services professional, an individual shall have at least a bachelor's degree in a human services field (including, but not limited to, sociology, special education, rehabilitation counseling and psychology).

(6) If the client's individual program plan is being successfully implemented by facility staff, professional program staff meeting the qualifications of 82.2(3)"b"(5) are not required except for qualified mental retardation professionals who must meet the requirements set forth in 82.2(3)"a."

c. Facility staffing.

(1) The facility shall not depend upon clients or volunteers to perform direct care services for the facility.

(2) There shall be responsible direct care staff on duty and awake on a 24-hour basis, when clients are present, to take prompt, appropriate action in case of injury, illness, fire or other emergency, in each defined residential living unit housing: clients for whom a physician has ordered a medical care plan; clients who are aggressive, assaultive or security risks; more than 16 clients; or fewer than 16 clients within a multiunit building.

(3) There shall be a responsible direct care staff person on duty on a 24-hour basis, when clients are present, to respond to injuries and symptoms of illness, and to handle emergencies, in each defined residential living unit housing: clients for whom a physician has not ordered a medical care plan; clients who are not aggressive, assaultive or security risks; and 16 or fewer clients.

(4) The facility shall provide sufficient support staff so that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties.

d. Direct care (residential living unit) staff.

(1) The facility shall provide sufficient direct care staff to manage and supervise clients in accordance with their individual program plans.

(2) Direct care staff are defined as the present on-duty staff calculated over all shifts in a 24-hour period for each defined residential living unit.

(3) Direct care staff shall be provided by the facility in the following minimum ratios of direct care staff to clients:

1. For each defined residential living unit serving children under the age of 12, severely and profoundly retarded clients, clients with severe physical disabilities, or clients who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the staff-to-client ratio is 1 to 3.2.

2. For each defined residential living unit serving moderately retarded clients, the staff-to-client ratio is 1 to 4.

3. For each defined residential living unit serving clients who function within the range of mild retardation, the staff-to-client ratio is 1 to 6.4.

4. When there are no clients present in the living unit, a responsible staff member must be available by telephone.

e. Staff training program.

(1) The facility shall provide each employee with initial and continuing training that enables the employee to perform the employee's duties effectively, efficiently, and competently.

(2) For employees who work with clients, training shall focus on skills and competencies directed toward clients' developmental, behavioral, and health needs.

(3) Staff shall be able to demonstrate the skills and techniques necessary to administer interventions to manage the inappropriate behavior of clients.

(4) Staff shall be able to demonstrate the skills and techniques necessary to implement the individual program plans for each client for whom they are responsible.

82.2(4) Active treatment services.

a. Active treatment.

(1) Each client shall receive a continuous active treatment program, which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services described in this paragraph, that is directed toward: the acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible; and the prevention or deceleration of regression or loss of current optimal functional status.

(2) Active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program.

b. Admissions, transfers, and discharge.

(1) Clients who are admitted by the facility shall be in need of and receiving active treatment services.

(2) Admission decisions shall be based on a preliminary evaluation of the client that is conducted or updated by the facility or by outside sources.

(3) A preliminary evaluation shall contain background information as well as currently valid assessments of functional developmental, behavioral, social, health and nutritional status to determine if the facility can provide

for the client's needs and if the client is likely to benefit from placement in the facility.

(4) If a client is to be either transferred or discharged, the facility shall have documentation in the client's record that the client was transferred or discharged for good cause, and shall provide a reasonable time to prepare the client and the client's parents or guardian for the transfer or discharge (except in emergencies).

(5) At the time of the discharge, the facility shall develop a final summary of the client's developmental, behavioral, social, health and nutritional status and, with the consent of the client, parents (if the client is a minor) or legal guardian, provide a copy to authorized persons and agencies, and shall provide a postdischarge plan of care that will assist the client to adjust to the new living environment.

c. Individual program plan.

(1) Each client shall have an individual program plan developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to identifying the client's needs, as described by the comprehensive functional assessments required in 82.2(4)"c"(3), and designing programs that meet the client's needs.

(2) Appropriate facility staff shall participate in interdisciplinary team meetings. Participation by other agencies serving the client is encouraged. Participation by the client, the client's parents (if the client is a minor), or the client's legal guardian is required unless that participation is unobtainable or inappropriate.

(3) Within 30 days after admission, the interdisciplinary team shall perform accurate assessments or reassessments as needed to supplement the preliminary evaluation conducted prior to admission. The comprehensive functional assessment shall take into consideration the client's age (for example, child, young adult, elderly person) and the implications for active treatment at each stage, as applicable, and shall:

1. Identify the presenting problems and disabilities and, where possible, their causes.
2. Identify the client's specific developmental strengths.
3. Identify the client's specific developmental and behavioral management needs.
4. Identify the client's need for services without regard to the actual availability of the services needed.
5. Include physical development and health, nutritional status, sensorimotor development, affective development, speech and language development and auditory functioning, cognitive development, social development, adaptive behaviors or independent living skills necessary for the client to be able to function in the community, and, as applicable, vocational skills.

(4) Within 30 days after admission, the interdisciplinary team shall prepare for each client an individual program plan that states the specific objectives necessary to meet the client's needs, as identified by the comprehensive assessment required by 82.2(4)"c"(3), and the planned sequence for dealing with those objectives. These objectives shall:

1. Be stated separately, in terms of a single behavioral outcome.
2. Be assigned projected completion dates.
3. Be expressed in behavioral terms that provide measurable indices of performance.
4. Be organized to reflect a developmental progression appropriate to the individual.
5. Be assigned priorities.

(5) Each written training program designed to implement the objectives in the individual program plan shall specify:

1. The methods to be used.
2. The schedule for use of the method.
3. The person responsible for the program.
4. The type of data and frequency of data collection necessary to be able to assess progress toward the desired objectives.
5. The inappropriate client behaviors, if applicable.
6. Provision for the appropriate expression of behavior and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.

(6) The individual program plan shall also:

1. Describe relevant interventions to support the individual toward independence.
2. Identify the location where program strategy information (which shall be accessible to any person responsible for implementation) can be found.
3. Include, for those clients who lack them, training in personal skills essential for privacy and independence (including, but not limited to, toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication of basic needs), until it has been demonstrated that the client is developmentally incapable of acquiring them.
4. Identify mechanical supports, if needed, to achieve proper body position, balance, or alignment. The plan shall specify the reason for each support, the situations in which each is to be applied, and a schedule for the use of each support.
5. Provide that clients who have multiple disabling conditions spend a major portion of each waking day out of bed and outside the bedroom area, moving about by various methods and devices whenever possible.
6. Include opportunities for client choice and self-management.

(7) A copy of each client's individual program plan shall be made available to all relevant staff, including staff of other agencies who work with the client, and to the client, parents (if the client is a minor) or legal guardian.

d. Program implementation.

(1) As soon as the interdisciplinary team has formulated a client's individual program plan, each client shall receive a continuous active treatment program consisting of needed interventions and services in sufficient number and frequency to support the achievement of the objectives identified in the individual program plan.

(2) The facility shall develop an active treatment schedule that outlines the current active treatment program and that is readily available for review by relevant staff.

(3) Except for those facets of the individual program plan that must be implemented only by licensed personnel, each client's individual program plan shall be implemented by all staff who work with the client, including professional, paraprofessional and nonprofessional staff.

e. Program documentation.

(1) Data relative to accomplishment of the criteria specified in client individual program plan objectives shall be documented in measurable terms.

(2) The facility shall document significant events that are related to the client's individual program plan and assessments and that contribute to an overall understanding of the client's ongoing level and quality of functioning.

f. Program monitoring and change.

(1) The individual program plan shall be reviewed at least by the qualified mental retardation professional and revised as necessary, including, but not limited to, situations in which the client:

1. Has successfully completed an objective or objectives identified in the individual program plan.

2. Is regressing or losing skills already gained.

3. Is failing to progress toward identified objectives after reasonable efforts have been made.

4. Is being considered for training toward new objectives.

(2) At least annually, the comprehensive functional assessment of each client shall be reviewed by the interdisciplinary team for relevancy and updated as needed, and the individual program plan shall be revised, as appropriate, repeating the process set forth in 82.2(4)"c."

(3) The facility shall designate and use a specially constituted committee or committees consisting of members of facility staff, parents, legal guardians, clients (as appropriate), qualified persons who have either experience or training in contemporary practices to change inappropriate client behavior, and persons with no ownership or controlling interest in the facility to:

1. Review, approve, and monitor individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to client protection and rights.

2. Ensure that these programs are conducted only with the written informed consent of the client, parent (if the client is a minor), or legal guardian.

3. Review, monitor and make suggestions to the facility about its practices and programs as they relate to drug usage, physical restraints, time-out rooms, application of painful or noxious stimuli, control of inappropriate behavior, protection of client rights and funds, and any other area that the committee believes needs to be addressed.

(4) The provisions of 82.2(4)"f"(3) may be modified only if, in the judgment of the department of inspections and appeals, court decrees, state law or regulations provide for equivalent client protection and consultation.

82.2(5) Client behavior and facility practices.

a. Facility practices—conduct toward clients.

(1) The facility shall develop and implement written policies and procedures for the management of conduct between staff and clients. These policies and procedures shall:

1. Promote the growth, development and independence of the client.

2. Address the extent to which client choice will be accommodated in daily decision-making, emphasizing self-determination and self-management, to the extent possible.

3. Specify client conduct to be allowed or not allowed.

4. Be available to all staff, clients, parents of minor children, and legal guardians.

(2) To the extent possible, clients shall participate in the formulation of these policies and procedures.

(3) Clients shall not discipline other clients, except as part of an organized system of self-government, as set forth in facility policy.

b. Management of inappropriate client behavior.

(1) The facility shall develop and implement written policies and procedures that govern the management of inappropriate client behavior. These policies and procedures shall be consistent with the provisions of 82.2(5)"a." These procedures shall:

1. Specify all facility-approved interventions to manage inappropriate client behavior.

2. Designate these interventions on a hierarchy to be implemented ranging from most positive or least intrusive to least positive or most intrusive.

3. Ensure, prior to the use of more restrictive techniques, that the client's record documents that programs incorporating the use of less intrusive or more positive techniques have been tried systematically and have been demonstrated to be ineffective.

4. Address the use of time-out rooms, the use of physical restraints, the use of drugs to manage inappropriate behavior, the application of painful or noxious stimuli, the staff members who may authorize the use of specified interventions, and a mechanism for monitoring and controlling the use of these interventions.

(2) Interventions to manage inappropriate client behavior shall be employed with sufficient safeguards and supervision to ensure that the safety, welfare and civil and human rights of clients are adequately protected.

(3) Techniques to manage inappropriate client behavior shall never be used for disciplinary purposes, for the convenience of staff or as a substitute for an active treatment program.

(4) The use of systematic interventions to manage inappropriate client behavior shall be incorporated into the client's individual program plan, in accordance with 82.2(4)"c"(4) and (5).

(5) Standing or as-needed programs to control inappropriate behavior are not permitted.

c. Time-out rooms.

(1) A client may be placed in a room from which egress is prevented only if the following conditions are met:

1. The placement is a part of an approved systematic time-out program as required by 82.2(5)"b."

2. The client is under the direct constant visual supervision of designated staff.

3. The door to the room is held shut by staff or by a mechanism requiring constant physical pressure from a staff member to keep the mechanism engaged.

(2) Placement of a client in a time-out room shall not exceed one hour.

(3) Clients placed in time-out rooms shall be protected from hazardous conditions including, but not limited to, presence of sharp corners and objects, uncovered light fixtures, unprotected electrical outlets.

(4) A record of time-out activities shall be kept.

d. Physical restraints.

(1) The facility may employ physical restraint only:

1. As an integral part of an individual program plan that is intended to lead to less restrictive means of managing and eliminating the behavior for which the restraint is applied.

2. As an emergency measure, but only if absolutely necessary to protect the client or others from injury.

3. As a health-related protection prescribed by a physician, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if ab-

solutely necessary for client protection during the time that a medical condition exists.

(2) Authorizations to use or extend restraints as an emergency shall be in effect no longer than 12 consecutive hours and shall be obtained as soon as the client is restrained or stable.

(3) The facility shall not issue orders for restraint on a standing or as-needed basis.

(4) A client placed in restraint shall be checked at least every 30 minutes by staff trained in the use of restraints, shall be released from the restraint as quickly as possible, and a record of these checks and usage shall be kept.

(5) Restraints shall be designated and used so as not to cause physical injury to the client and so as to cause the least possible discomfort.

(6) Opportunity for motion and exercise shall be provided for a period of not less than ten minutes during each two-hour period in which restraint is employed, and a record of the activity shall be kept.

(7) Barred enclosures shall not be more than three feet in height and shall not have tops.

e. Drug usage.

(1) The facility shall not use drugs in doses that interfere with the individual client's daily living activities.

(2) Drugs used for control of inappropriate behavior shall be approved by the interdisciplinary team and be used only as an integral part of the client's individual program plan that is directed specifically toward the reduction and eventual elimination of the behaviors for which the drugs are employed.

(3) Drugs used for control of inappropriate behavior shall not be used until it can be justified that the harmful effects of the behavior clearly outweigh the potentially harmful effects of the drugs.

(4) Drugs used for control of inappropriate behavior shall be monitored closely, in conjunction with the physician and the drug regimen review requirement at 82.2(6)"j," for desired responses and adverse consequences by facility staff, and shall be gradually withdrawn at least annually in a carefully monitored program conducted in conjunction with the interdisciplinary team, unless clinical evidence justifies that this is contraindicated.

82.2(6) Health care services.

a. Physician services.

(1) The facility shall ensure the availability of physician services 24 hours a day.

(2) The physician shall develop, in coordination with licensed nursing personnel, a medical care plan of treatment for a client if the physician determines that an individual client requires 24-hour licensed nursing care. This plan shall be integrated in the individual program plan.

(3) The facility shall provide or obtain preventive and general medical care as well as annual physical examinations of each client that at a minimum include the following:

1. Evaluation of vision and hearing.

2. Immunizations, using as a guide the recommendations of the Public Health Service Advisory Committee on Immunization Practices or of the Committee on the Control of Infectious Diseases of the American Academy of Pediatrics.

3. Routine screening laboratory examinations as determined necessary by the physician, and special studies when needed.

4. Tuberculosis control, appropriate to the facility's population, and in accordance with the recommendations of the American College of Chest Physicians or the section of diseases of the chest of the American Academy of Pediatrics, or both.

(4) To the extent permitted by state law, the facility may utilize physician assistants and nurse practitioners to provide physician services as described in this subrule.

b. Physician participation in the individual program plan. A physician shall participate in:

(1) The establishment of each newly admitted client's initial individual program plan.

(2) If appropriate, physicians shall participate in the review and update of an individual program plan as part of the interdisciplinary team process either in person or through written report to the interdisciplinary team.

c. Nursing services. The facility shall provide clients with nursing services in accordance with their needs. These services shall include:

(1) Participation as appropriate in the development, review, and update of an individual program plan as part of the interdisciplinary team process.

(2) The development, with a physician, of a medical care plan of treatment for a client when the physician has determined that an individual client requires such a plan.

(3) For those clients certified as not needing a medical care plan, a review of their health status which shall:

1. Be by a direct physical examination.

2. Be by a licensed nurse.

3. Be on a quarterly or more frequent basis depending on client need.

4. Be recorded in the client's record.

5. Result in any necessary action including referral to a physician to address client health problems.

(4) Other nursing care as prescribed by the physician or as identified by client needs.

(5) Implementing, with other members of the interdisciplinary team, appropriate protective and preventive health measures that include, but are not limited to:

1. Training clients and staff as needed in appropriate health and hygiene methods.

2. Control of communicable diseases and infections, including the instruction of other personnel in methods of infection control.

3. Training direct care staff in detecting signs and symptoms of illness or dysfunction, first aid for accidents or illness, and basic skills required to meet the health needs of the clients.

d. Nursing staff.

(1) Nurses providing services in the facility shall have a current license to practice in the state.

(2) The facility shall employ or arrange for licensed nursing services sufficient to care for clients' health needs including those clients with medical care plans.

(3) The facility shall utilize registered nurses as appropriate and required by state law to perform the health services specified in this subrule.

(4) If the facility utilizes only licensed practical or vocational nurses to provide health services, it shall have a formal arrangement with a registered nurse to be available for verbal or on-site consultation with the licensed practical or vocational nurse.

(5) Nonlicensed nursing personnel who work with clients under a medical care plan shall do so under the supervision of licensed persons.

e. Dental services.

(1) The facility shall provide or make arrangements for comprehensive diagnostic and treatment services for each

client from qualified personnel, including licensed dentists and dental hygienists, either through organized dental services in-house or through arrangement.

(2) If appropriate, dental professionals shall participate in the development, review and update of an individual program plan as part of the interdisciplinary process either in person or through written report to the interdisciplinary team.

(3) The facility shall provide education and training in the maintenance of oral health.

f. Comprehensive dental diagnostic services. Comprehensive dental diagnostic services include:

(1) A complete extraoral and intraoral examination, using all diagnostic aids necessary to properly evaluate the client's oral condition, not later than one month after admission to the facility unless the examination was completed within 12 months before admission.

(2) Periodic examination and diagnosis performed at least annually, including radiographs when indicated and detection of manifestations of systemic disease.

(3) A review of the results of examination and entry of the results in the client's dental record.

g. Comprehensive dental treatment. The facility shall ensure comprehensive dental treatment services that include:

(1) The availability for emergency dental treatment on a 24-hour-a-day basis by a licensed dentist.

(2) Dental care needed for relief of pain and infections, restoration of teeth and maintenance of dental health.

h. Documentation of dental services.

(1) If the facility maintains an in-house dental service, the facility shall keep a permanent dental record for each client, with a dental summary maintained in the client's living unit.

(2) If the facility does not maintain an in-house dental service, the facility shall obtain a dental summary of the results of dental visits and maintain the summary in the client's living unit.

i. Pharmacy services. The facility shall provide or make arrangements for the provision of routine and emergency drugs and biologicals to its clients. Drugs and biologicals may be obtained from community or contract pharmacists or the facility may maintain a licensed pharmacy.

j. Drug regimen review.

(1) A pharmacist with input from the interdisciplinary team shall review the drug regimen of each client at least quarterly.

(2) The pharmacist shall report any irregularities in clients' drug regimens to the prescribing physician and interdisciplinary team.

(3) The pharmacist shall prepare a record of each client's drug regimen reviews and the facility shall maintain that record.

(4) An individual medication administration record shall be maintained for each client.

(5) As appropriate, the pharmacist shall participate in the development, implementation, and review of each client's individual program plan either in person or through written report to the interdisciplinary team.

k. Drug administration. The facility shall have an organized system for drug administration that identifies each drug up to the point of administration. The system shall ensure that:

(1) All drugs are administered in compliance with the physician's orders.

(2) All drugs, including those that are self-administered, are administered without error.

(3) Unlicensed personnel are allowed to administer drugs only if state law permits.

(4) Clients are taught how to administer their own medications if the interdisciplinary team determines that self-administration of medications is an appropriate objective, and if the physician does not specify otherwise.

(5) The client's physician is informed of the interdisciplinary team's decision that self-administration of medications is an objective for the client.

(6) No client self-administers medications until the client demonstrates the competency to do so.

(7) Drugs used by clients while not under the direct care of the facility are packaged and labeled in accordance with state law.

(8) Drug administration errors and adverse drug reactions are recorded and reported immediately to a physician.

l. Drug storage and record keeping.

(1) The facility shall store drugs under proper conditions of sanitation, temperature, light, humidity, and security.

(2) The facility shall keep all drugs and biologicals locked except when being prepared for administration. Only authorized persons may have access to the keys to the drug storage area. Clients who have been trained to self-administer drugs in accordance with 82.2(6)"k"(4) may have access to keys to their individual drug supply.

(3) The facility shall maintain records of the receipt and disposition of all controlled drugs.

(4) The facility shall, on a sample basis, periodically reconcile the receipt and disposition of all controlled drugs in schedules II through IV (drugs subject to the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801 et seq.).

(5) If the facility maintains a licensed pharmacy, the facility shall comply with the regulations for controlled drugs.

m. Drug labeling.

(1) Labeling of drugs and biologicals shall be based on currently accepted professional principles and practices, and shall include the appropriate accessory and cautionary instructions, as well as the expiration date, if applicable.

(2) The facility shall remove from use outdated drugs and drug containers with worn, illegible, or missing labels.

(3) Drugs and biologicals packaged in containers designated for a particular client shall be immediately removed from the client's current medication supply if discontinued by the physician.

n. Laboratory services.

(1) For purposes of this subrule, "laboratory" means an entity for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological or other examination of materials derived from the human body, for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(2) If a facility chooses to provide laboratory services, the laboratory shall meet the management requirements specified in 42 CFR 493.1407 and provide personnel to direct and conduct the laboratory services.

The laboratory director shall be technically qualified to supervise the laboratory personnel and test performance and shall meet licensing or other qualification standards

established by the state with respect to directors of clinical laboratories.

The laboratory director shall provide adequate technical supervision of the laboratory services and ensure that tests, examinations and procedures are properly performed, recorded and reported.

The laboratory director shall ensure that the staff has appropriate education, experience, and training to perform and report laboratory tests promptly and proficiently; is sufficient in number for the scope and complexity of the services provided; and receives in-service training appropriate to the type of complexity of the laboratory services offered.

The laboratory technologists shall be technically competent to perform test procedures and report test results promptly and proficiently.

(3) The laboratory shall meet the proficiency testing requirements specified in 42 CFR 493.801.

(4) The laboratory shall meet the quality control requirements specified in 42 CFR 493.1501.

(5) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory shall be an approved Medicare laboratory.

82.2(7) Physical environment.

a. Client living environment.

(1) The facility shall not house clients of grossly different ages, developmental levels, and social needs in close physical or social proximity unless the housing is planned to promote the growth and development of all those housed together.

(2) The facility shall not segregate clients solely on the basis of their physical disabilities. It shall integrate clients who have ambulation deficits or who are deaf, blind, or have seizure disorders with others of comparable social and intellectual development.

b. Client bedrooms.

(1) Bedrooms shall:

1. Be rooms that have at least one outside wall.

2. Be equipped with or located near toilet and bathing facilities.

3. Accommodate no more than four clients unless granted a variance under 82.2(7)"b"(3).

4. Measure at least 60 square feet per client in multiple-client bedrooms and at least 80 square feet in single-client bedrooms.

5. In all facilities initially certified or in buildings constructed or with major renovations or conversions, have walls that extend from floor to ceiling.

(2) If a bedroom is below grade level, it shall have a window that is usable as a second means of escape by the client occupying the rooms and shall be no more than 44 inches measured to the window sill above the floor unless the facility is surveyed under the Health Care Occupancy Chapter of the Life Safety Code, in which case the window must be no more than 36 inches measured to the window sill above the floor.

(3) The department of inspections and appeals may grant a variance from the limit of four clients per room only if a physician who is a member of the interdisciplinary team and who is a qualified mental retardation professional certifies that each client to be placed in a bedroom housing more than four persons is so severely medically impaired as to require direct and continuous monitoring during sleeping hours and documents the reasons why housing in a room of only four or fewer persons would not be medically feasible.

(4) The facility shall provide each client with:

1. A separate bed of proper size and height for the convenience of the client.

2. A clean, comfortable mattress.

3. Bedding appropriate to the weather and climate.

4. Functional furniture appropriate to the client's needs, and individual closet space in the client's bedroom with clothes racks and shelves accessible to the client.

c. Storage space in bedroom. The facility shall provide:

(1) Space and equipment for daily out-of-bed activity for all clients who are not yet mobile, except those who have a short-term illness or those few clients for whom out-of-bed activity is a threat to health and safety.

(2) Suitable storage space, accessible to clients, for personal possessions such as televisions, radios, prosthetic equipment and clothing.

d. Client bathrooms. The facility shall:

(1) Provide toilet and bathing facilities appropriate in number, size, and design to meet the needs of the clients.

(2) Provide for individual privacy in toilets, bathtubs, and showers.

(3) In areas of the facility where clients who have not been trained to regulate water temperature are exposed to hot water, ensure that the temperature of the water does not exceed 110 degrees Fahrenheit.

e. Heating and ventilation.

(1) Each client bedroom in the facility shall have at least one window to the outside and direct outside ventilation by means of windows, air conditioning, or mechanical ventilation.

(2) The facility shall maintain the temperature and humidity within a normal comfort range by heating, air-conditioning or other means and ensure that the heating apparatus does not constitute a burn or smoke hazard to clients.

f. Floors. The facility shall have:

(1) Floors that have a resilient, nonabrasive, and slip-resistant surface.

(2) Nonabrasive carpeting, if the area used by clients is carpeted and serves clients who lie on the floor or ambulate with parts of their bodies, other than feet, touching the floor.

(3) Exposed floor surfaces and floor coverings that promote mobility in areas used by clients, and promote maintenance of sanitary conditions.

g. Space and equipment. The facility shall:

(1) Provide sufficient space and equipment in dining, living, health services, recreation, and program areas (including adequately equipped and sound treated areas for hearing and other evaluations if they are conducted in the facility) to enable staff to provide clients with needed services as required by this rule and as identified in each client's individual program plan.

(2) Furnish, maintain in good repair, and teach clients to use and to make informed choices about the use of dentures, eyeglasses, hearing and other communications aids, braces, and other devices identified by the interdisciplinary team as needed by the client.

(3) Provide adequate clean linen and dirty linen storage areas.

h. Emergency plan and procedures.

(1) The facility shall develop and implement detailed written plans and procedures to meet all potential emergencies and disasters such as fire, severe weather, and missing clients.

(2) The facility shall communicate, periodically review, make the plan available, and provide training to the staff.

i. Evacuation drills.

(1) The facility shall hold evacuation drills at least quarterly for each shift of personnel and under varied conditions to ensure that all personnel on all shifts are trained to perform assigned tasks; ensure that all personnel on all shifts are familiar with the use of the facility's fire protection features; and evaluate the effectiveness of emergency and disaster plans and procedures.

(2) The facility shall actually evacuate clients during at least one drill each year on each shift; make special provisions for the evacuation of clients with physical disabilities; file a report and evaluation on each evacuation drill; and investigate all problems with evacuation drills, including accidents, and take corrective action. During fire drills, clients may be evacuated to a safe area in facilities certified under the Health Care Occupancies Chapter of the Life Safety Code.

(3) Facilities shall meet the requirements of 82.2(7)"i"(1) and (2), for any live-in and relief staff they utilize.

j. Fire protection.

(1) General.

1. Except as specified in 82.2(7)"i"(2), the facility shall meet the applicable provisions of either the Health Care Occupancies Chapters or the Residential Board and Care Occupancies Chapter of the Life Safety Code (LSC) of the National Fire Protection Association, 1985 edition, which is incorporated by reference.

2. The department of inspections and appeals may apply a single chapter of the LSC to the entire facility or may apply different chapters to different buildings or parts of buildings as permitted by the LSC.

3. A facility that meets the LSC definition of a residential board and care occupancy and that has 16 or fewer beds shall have its evacuation capability evaluated in accordance with the Evacuation Difficulty Index of the LSC (Appendix F).

(2) Exceptions.

1. For facilities that meet the LSC definition of a health care occupancy, the Health Care Financing Administration may waive, for a period it considers appropriate, specific provisions of the LSC if the waiver would not adversely affect the health and safety of the clients and rigid application of specific provisions would result in an unreasonable hardship for the facility.

The department of inspections and appeals may apply the state's fire and safety code instead of the LSC if the Secretary of the Department of Health and Human Services finds that the state has a code imposed by state law that adequately protects a facility's clients.

Compliance on November 28, 1982, with the 1967 edition of the LSC or compliance on April 18, 1986, with the 1981 edition of the LSC, with or without waivers, is considered to be compliance with this standard as long as the facility continues to remain in compliance with that edition of the code.

2. For facilities that meet the LSC definition of a residential board and care occupancy and that have more than 16 beds, the department of inspections and appeals may apply the state's fire and safety code as specified above.

k. Paint. The facility shall:

(1) Use lead-free paint inside the facility.

(2) Remove or cover interior paint or plaster containing lead so that it is not accessible to clients.

l. Infection control.

(1) The facility shall provide a sanitary environment to avoid sources and transmission of infections. There shall be an active program for the prevention, control, and investigation of infection and communicable diseases.

(2) The facility shall implement successful corrective action in affected problem areas.

(3) The facility shall maintain a record of incidents and corrective actions related to infections.

(4) The facility shall prohibit employees with symptoms or signs of a communicable disease from direct contact with clients and their food.

82.2(8) Dietetic services.

a. Food and nutrition services.

(1) Each client shall receive a nourishing, well-balanced diet including modified and specially prescribed diets.

(2) A qualified dietitian shall be employed either full-time, part-time or on a consultant basis at the facility's discretion.

(3) If a qualified dietitian is not employed full-time, the facility shall designate a person to serve as the director of food services.

(4) The client's interdisciplinary team, including a qualified dietitian and physician, shall prescribe all modified and special diets including those used as a part of a program to manage inappropriate client behavior.

(5) Foods proposed for use as a primary reinforcement of adaptive behavior are evaluated in light of the client's nutritional status and needs.

(6) Unless otherwise specified by medical needs, the diet shall be prepared at least in accordance with the latest edition of the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences, adjusted for age, sex, disability and activity.

b. Meal services.

(1) Each client shall receive at least three meals daily, at regular times comparable to normal mealtimes in the community with:

1. Not more than 14 hours between a substantial evening meal and breakfast of the following day, except on weekends and holidays when a nourishing snack is provided at bedtime, 16 hours may elapse between a substantial evening meal and breakfast.

2. Not less than 10 hours between breakfast and the evening meal of the same day, except as provided under 82.2(8)"b"(1)"1."

(2) Food shall be served:

1. In appropriate quantity.

2. At appropriate temperature.

3. In a form consistent with the developmental level of the client.

4. With appropriate utensils.

(3) Food served to clients individually and uneaten shall be discarded.

c. Menus.

(1) Menus shall:

1. Be prepared in advance.

2. Provide a variety of foods at each meal.

3. Be different for the same days of each week and adjusted for seasonal change.

4. Include the average portion sizes for menu items.

(2) Menus for food actually served shall be kept on file for 30 days.

d. Dining areas and service. The facility shall:

(1) Serve meals for all clients, including persons with ambulation deficits, in dining areas, unless otherwise specified by the interdisciplinary team or a physician.

(2) Provide table service for all clients who can and will eat at a table, including clients in wheelchairs.

(3) Equip areas with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each client.

(4) Supervise and staff dining rooms adequately to direct self-help dining procedure, to ensure that each client receives enough food and to ensure that each client eats in a manner consistent with the client's developmental level.

(5) Ensure that each client eats in an upright position, unless otherwise specified by the interdisciplinary team or physician.

This rule is intended to implement Iowa Code section 249A.12.

ITEM 3. Amend the implementation clause following rule **441—82.3(249A)** as follows:

This rule is intended to implement Iowa Code ~~sections 249A.2(6) and 249A.3(2)"a."~~ *section 249A.12.*

ITEM 4. Amend subrule 82.10(1) as follows:

82.10(1) Notice. When a public assistance recipient requests transfer or discharge, or another person requests this for the recipient, the administrator shall promptly notify the ~~local~~ *county* office of the department. This shall be done in sufficient time to permit a social service worker to assist in the decision and planning for the transfer or discharge.

ITEM 5. Amend subrule **82.15(1)**, paragraph **"b,"** as follows:

b. When there has been a new admission, a correction, or a claim for a reserved bed, the facility shall also submit Form ~~AA-4164-0, Residential Care Changes Notice~~ *470-0040, Change Notice*, with the claim.

ITEM 6. Amend rule 441—82.16(249A) as follows:

441—82.16(249A) Closing of facility. When a facility is planning on closing, the department shall be notified at least 60 days in advance of the closing. Plans for the transfer of residents receiving ~~medical assistance~~ *Medicaid* shall be approved by the ~~local~~ *county* office of the department.

This rule is intended to implement Iowa Code section 249A.12.

ARC 2968A

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code Supplement section 68B.4 and Iowa Code subsection 17A.3(1), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 1, "Operation of Natural Resource Commission," Iowa Administrative Code.

The proposed amendment is for the purpose of complying with Iowa Code Supplement subsection 68B.4, which requires each regulatory agency to adopt rules specifying the method by which officials may obtain agency consent for the sale of goods and services.

Any interested person may make written suggestions or comments on the proposed amendment prior to May 22, 1992. Such written materials should be directed to the Director, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034, FAX (515)281-8895. Persons who wish to convey their views orally should contact the Director's office at (515) 281-5384.

There will be a public hearing on May 22, 1992, at 10 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

This rule is intended to implement the provisions of Iowa Code Supplement section 68B.4.

The following amendment is proposed.

Amend 571—Chapter 1 by adding the following new rule:

571—1.11(68B) Sales of goods and services.

1.11(1) Prohibition. An official shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations subject to the regulatory authority of the department unless the department consents as provided in these rules.

1.11(2) Definitions.

"Association" means any profit or nonprofit entity that is not a "corporation" or an "individual" as defined in this rule, but does not include any "unit of government" as defined in this rule.

"Corporation" means "corporation" and "foreign corporation" as defined in Iowa Code sections 490.140 and 504A.2, but does not include any "unit of government" as defined in this rule.

"Department" means the department of natural resources.

"Goods" means personal property, tangible and intangible, and real property.

"Individual" means a human being and includes any individual doing business as a sole proprietorship.

"Official" means a member of the natural resource commission and includes that person's spouse and minor children, any firm of which that person is a partner and any corporation in which that person holds 10 percent or more of the stock either directly or indirectly.

"POPC" means the principles of performance and conduct accepted by each official and filed annually with the director of the department and includes a disclosure of sales which is available for public inspection during normal business hours.

"Sell" means the process in which goods or services are provided in exchange for money or other valuable consideration, but it does not include purchases of goods or services.

"Services" means action, conduct or performance which furthers some end or purpose or which assists or benefits someone or something.

"Unit of government" means "United States," "state" and "governmental subdivision" as defined in Iowa Code section 490.140.

1.11(3) Application for consent. An application for consent must be signed by the official requesting consent and submitted as specified in subrule 1.11(4). The application must provide a clear statement of all relevant facts concerning the sale, specify the amount of compensation and how compensation is to be determined, and indicate the time period or number of transactions for which consent is requested. The application must also explain why the sale would not create a conflict of interest or provide financial gain by virtue of the applicant's position within the department.

1.11(4) Consent procedure. Applications for consent must be submitted to the director who will schedule the matter as an informational item at a meeting of the commission. When the informational item is considered, the applicant may explain the application and entertain questions. The director shall schedule the matter to be decided at the second meeting following its consideration as an informational item, at which time the commission shall consider written comments which have been filed with the director and entertain any oral comments. The commission shall approve or deny the application by voting in the same manner as it determines other matters, except that the applicant shall not vote.

1.11(5) General conditions of consent. Consent shall not be given to an official unless all of the following conditions are met:

a. This condition is satisfied if either of the following paragraphs is met:

(1) The duties or functions performed by the official are not related to the regulatory authority of the department over the individual, association or corporation; or

(2) The duties or functions performed by the official are not affected by the selling of goods or services to the individual, association or corporation.

b. The selling of the goods or services by the official does not include acting as an advocate to the department on behalf of the individual, association or corporation receiving the goods or services.

c. The selling of goods or services does not result in the official selling a good or service to the department on behalf of the individual, association or corporation.

1.11(6) Class prohibitions and consent.

a. The department concludes that the sales of goods and services prohibited by the POPC, as a class, constitute the sale of a good or service which affects an official's functions. The department will not consent to sales which are prohibited by the POPC unless there are unique facts surrounding a particular sale which clearly satisfy the conditions listed in subrule 1.11(5).

b. The department concludes that sales of goods or services disclosed in and not prohibited by the POPC do not, as a class, constitute the sale of a good or service which affects an official's functions. Application and department approval are not required for the sale of goods or services disclosed in and not prohibited by the POPC unless there are unique facts surrounding a particular sale which would cause that sale to affect the official's duties or functions, would give the buyer an advantage in its dealings with the department, or otherwise present a conflict of interest. Any official or other person, after examining a POPC, may request the commission to determine whether a specific sale should be approved or denied pursuant to 1.11(4). In that event the commission will decide the question by voting in the same manner as it determines other matters, except that the filer of the POPC shall not vote.

1.11(7) Effect of consent. The consent must be in writing. The consent is valid only for the activities and period described in it and only to the extent that material facts have been disclosed and the actual facts are consistent with those described in the application. Consent can be revoked at any time by written notice to the official.

1.11(8) Public information. The application and consent are public records, open for public examination, except to the extent that disclosure of details would constitute a clearly unwarranted invasion of personal privacy or trade secrets and the record is exempt from disclosure under Iowa law.

1.11(9) Effect of other laws. Neither these rules nor any consent provided under them constitutes consent for any activity which would constitute a conflict of interest at common law or which violates any applicable statute or rule. Despite agency consent under these rules, a sale of goods or services to someone subject to the jurisdiction of the agency may violate the gift law, bribery and corruption laws, etc. It is the responsibility of the official to ensure compliance with all applicable laws and to avoid both impropriety and the appearance of impropriety.

ARC 2966A

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 15, "General License Regulations," Iowa Administrative Code.

These amendments provide for the suspension of license reciprocity, modification and additions to the three-point and two-point violation categories, and provide a clear definition of departmental action to be taken against individuals convicted of 109, 109A, 109B, 110, 110A, and 110B violations while under license suspension.

Any interested person may make written suggestions or comments on the proposed amendments prior to May 20, 1992. Such written materials should be directed to the Law Enforcement Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; FAX (515)281-8895. Persons who wish to convey their views orally should contact the Law Enforcement Bureau at (515)281-4515 or at the enforcement offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on May 20, 1992, at 2:30 p.m. in the Fourth Floor West Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

These amendments are intended to implement the provisions of Iowa Code section 109.134.

The following amendments are proposed.

ITEM 1. Amend subrule 15.6(1) as follows:

15.6(1) Definitions. For the purpose of this rule.

"Department" means the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034.

"Habitual offender" means any person who has equaled or exceeded five points for convictions in Iowa Code chapters 109, 109A, 109B, 110, 110A, or 110B during a consecutive three-year period as provided in 15.6(3).

"License" means a license, permit, or certificate to hunt, fish, or trap listed in Iowa Code chapters 109, 109A, 109B, 110, 110A, or 110B*; including any reciprocity agreements with neighboring states.*

"Licensee" means the holder of any license.

"Revocation" means the taking or cancellation of an existing license.

"Suspension" means bar or exclude one from applying for or acquiring license for future seasons.

ITEM 2. Amend subrule 15.6(3) as follows:

15.6(3) Point values assigned to convictions. For the purposes of defining a habitual offender the person shall be classified as a habitual offender when the person equals or exceeds a total of five points during a consecutive three-year period using the values attached to the following offenses. ~~and multiple~~ *Multiple citations and* convictions of the same offense will be added as separate convictions:

a. Convictions of the following offenses shall have a point value of three attached to them:

(1) Illegal sale of birds, game, fish, or bait.

(2) More than ~~double~~ the possession or bag limit for any species of game or fish.

(3) Hunting, trapping, or fishing during the closed season.

(4) Hunting by artificial light.

(5) Hunting from aircraft, snowmobile, ~~or~~ all-terrain vehicles *or motor vehicle*.

(6) Any violation involving threatened or endangered species.

(7) Any license violations of Iowa Code chapter 109B except section 109B.6.

(8) Any violation of nonresident license requirements.

(9) No fur dealer license (resident or nonresident).

(10) Illegal taking or possession of protected nongame species.

(11) The taking of any fish, game, or furbearing animal by illegal methods.

(12) Illegal taking, possession, or transporting of a raptor.

(13) Hunting, fishing, or trapping while under license suspension or revocation.

(14) Illegal removal of fish, minnows, frogs, or other aquatic wildlife from a state fish hatchery.

(15) Any fur dealer ~~license~~ violations *except failure to submit a timely annual report.*

(16) Any resident or nonresident making false claims to obtain a license.

(17) Illegal take or possession of hen pheasant.

b. Convictions of the following offenses shall have a point value of two attached to them:

(1) Hunting, fishing, or trapping on a refuge.

(2) Illegal possession of fur, fish, or game.

(3) Chasing wildlife from or disturbing dens.

(4) ~~Having more than the legal possession or bag limit but less than double the possession or bag limit for any species of fish or game.~~ *Trapping within 100 yards of an occupied building.*

(5) Possession of undersized or oversized fish.

(6) Snagging of game fish.

(7) ~~Hunting~~ *Shooting* within 200 yards of occupied building or feedlot.

(8) No *valid* resident *license relating to* deer or turkey. ~~license.~~

(9) Illegal importation of fur, fish, or game.

(10) Failure to exhibit catch to an officer.

(11) Trapping or poisoning game birds, or poisoning game animals.

(12) Violations of Iowa Code section 109.64 pertaining to private fish hatcheries.

(13) Violations of the fur dealers reporting requirements.

(14) Violation of Iowa Code section 109.126 pertaining to taxidermy.

(15) Loaded gun in a vehicle.

(16) Attempting to take any fish, game, or furbearing animals by illegal methods.

(17) Attempting to take game before or after legal shooting hours.

(18) Wanton waste of fish, game or furbearing animals.

(19) Illegal discharge of a firearm—Iowa Code section 109.54.

c. All other convictions of provisions in Iowa Code chapters 109, 109A, 109B, 110, 110A, ~~or~~ *and* 110B shall have a point value of one attached to them.

ITEM 3. Amend subrule 15.6(4) as follows:

15.6(4) Length of suspension or revocation.

a. The term of license suspension or revocation shall be determined by the total points accumulated during any consecutive three-year period, according to the following: five points through eight points is one year, nine points through twelve points is two years, and thirteen points or over is three years.

b. Any person convicted *of a violation of any provision of Iowa Code chapters 109, 109A, 109B, 110, 110A or 110B* ~~pursuant to~~ *under the circumstances described in*

Iowa Code subsection 109.135(2) shall have an additional suspension of one year. Any person convicted *of a violation of any provision of Iowa Code chapters 109, 109A, 109B, 110, 110A or 110B* ~~pursuant to~~ *under the circumstances described in* Iowa Code subsection 109.135(3) shall have an additional suspension of two years. Any person convicted *of a violation of any provision of Iowa Code chapters 109, 109A, 109B, 110, 110A or 110B* ~~pursuant to~~ *under the circumstances described in* Iowa Code subsection 109.135(4) shall have an additional suspension of three years. *The foregoing provisions apply whether or not a person has been found guilty of a simple misdemeanor, serious misdemeanor or aggravated misdemeanor pursuant to Iowa Code subsections 109.135(2), 109.135(3) and 109.135(4).* If a magistrate suspends the privilege of a defendant to procure another license and the conviction contributes to the accumulation of a point total that requires the department to initiate a suspension, the term of suspension shall run consecutively up to a maximum of five years. After a five-year suspension, remaining time will be calculated at a concurrent rate.

ARC 2967A

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 33, "Resource Enhancement and Protection Program: County, City and Private Open Spaces Grant Programs," Iowa Administrative Code.

Only minor changes are proposed to update the program rules by:

1. Changing the authority to certify the 22 cents per $1000 requirement under the county conservation account from county treasurer to county auditor. This change will make the rule consistent with Iowa Code Supplement subsection 455A.19(5).

2. Making the county conservation 22 cents per $1000 certification effective on a fiscal year basis rather than the current October 1 to September 30 period.

3. Replacing the Chief of the Planning Bureau of the Department of Natural Resources on the private/public project review and selection committee with the Administrator of the Forests and Forestry Division of the Department. This proposed change also includes the project review and selection committee electing its own chairperson from its members. This rule change is necessary to reflect the dissolving of the Department's planning bureau.

Any interested person may make written suggestions or comments on these proposed amendments prior to May 21, 1992. Such written materials should be directed to Kevin Szcodronski, REAP Coordinator, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034, or FAX (515)281-8895.

Persons who wish to convey their views orally should contact Kevin Szcodronski at (515)281-8674; or at the Department offices on the fourth floor of the Wallace State Office Building, Des Moines, Iowa.

Also, there will be a public hearing on May 21, 1992, at 10 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building, Des Moines, Iowa. Interested persons who wish to present their views orally or in writing at this hearing should contact Kevin Szcodronski at least one day prior to the public hearing.

These amendments are intended to implement Iowa Code Supplement subsection 455A.19(1).

The following amendments are proposed.

ITEM 1. Amend subrules **571—33.30(5)** and **33.30(6)** by deleting "county treasurer" wherever it appears, once and three times, respectively, and substituting "county auditor" in its place.

ITEM 2. Amend subrule **33.30(6)**, fourth unnumbered paragraph, as follows:

Submission of the certification by October 1 of any year will qualify the county for any per capita funds held in reserve for that county for the past two fiscal years and establish eligibility for participation in the competitive grant program. The certification will remain in effect through ~~September~~ *June* 30 of the following year.

ITEM 3. Amend subrule 33.50(4) as follows:

33.50(4) Project review and selection committee. The director shall appoint a committee to review and score projects. The committee shall include the following: Three persons representing the private sector selected from a pool of potential names as submitted by the various private eligible groups; ~~the chief of the planning bureau from the department (chairperson)~~ *administrator of the forests and forestry division of the department*; administrator of the parks, recreation and preserves division of the department; and the administrator of the fish and wildlife division of the department. *The committee shall elect its own chairperson from its members.* The director shall request a list of candidates for the private sector members from groups eligible to participate in this program.

The committee will report to the director the order in which proposed projects were ranked using criteria as specified in 33.50(5).

ARC 2965A

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby

gives Notice of Intended Action to amend Chapter 110, "Trapping Limitations," Iowa Administrative Code.

This amendment maintains consistency between wording in Iowa Code section 109.92 and Iowa Administrative Code 571—110.5(109) and 571—110.6(109).

Any interested person may make written suggestions or comments on the proposed amendment prior to May 20, 1992. Such written materials should be directed to the Law Enforcement Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; FAX (515)281-8895. Persons who wish to convey their views orally should contact the Law Enforcement Bureau at (515)281-4515 or at the enforcement offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on May 20, 1992, at 1 p.m. in the Fourth Floor East Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

This rule is intended to implement the provisions of Iowa Code section 109.38.

The following amendment is proposed.

Amend rules 110.5(109) and 110.6(109) as follows:

571—110.5(109) Removal of animals from traps and snares. All animals or animal carcasses caught in any type of trap or snare, except those which are placed entirely under water and designed to drown the animal immediately, must be removed from the trap or snare by the trap or snare ~~owner~~ *user* immediately upon discovery and within 24 hours of the time the animal is caught.

571—110.6(109) Trap tag requirements. All traps and snares, whether set or not, possessed by a person who can reasonably be presumed to be trapping shall have a metal tag attached plainly labeled with the ~~owner's~~ *user's* name and address.

ARC 2978A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF CHIROPRACTIC EXAMINERS

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76 and 147.36, the Board of Chiropractic Examiners hereby gives Notice of Intended Action to amend Chapter 40, "Chiropractic Examiners," Iowa Administrative Code.

Item 1 changes the passing grade for the practical examination given by the Board.

Items 2 and 4 reflect amendments made in Iowa Code sections 147.7 and 147.29.

Item 3 clarifies the language of subrule 40.13(1), paragraph "e," to more accurately reflect how references are to be submitted.

Item 6 changes the passing grade for the practical examination given by the Board.

Items 7 and 8 eliminate subrules 40.14(7) and 40.14(8), which require that a candidate for endorsement pass a practical examination in another state in one sitting to be eligible for endorsement.

Item 9 increases the examination fee to $225 and establishes an application fee of $50.

Items 10 and 11 add the failure to notify the board of a change of name or address and practicing without a current license to the grounds for discipline.

Item 12 rescinds subrule 40.36(2) which is inconsistent with Iowa Code sections 151.1 and 151.8.

Item 13 rescinds subrule 40.38(3) which requires chiropractic insurance consultants to register with the Board.

Item 14 clarifies that treatment procedures taught at Iowa accredited colleges are part of the scope of practice.

Item 15 clarifies what renewal fees are to be paid when reinstating a lapsed license.

Any interested persons may make written comment on the proposed amendments on or before May 19, 1992. Comments should be addressed to Kathy Williams, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319.

These amendments are intended to implement Iowa Code sections 147.3, 147.7, 147.9, 147.11, 147.29, 147.32, 147.50, 147.52, 147.55, 147.80, 151.1 and 151.8.

The following amendments are proposed.

ITEM 1. Amend **40.11(1)**, **40.11(2)** and **40.11(3)"a"** by changing February 1, 1989, to February 1, 1991, in each instance.

ITEM 2. Amend subrule 40.12(7) as follows:

40.12(7) Persons licensed to practice chiropractic shall keep their license publicly displayed in the *primary* place of practice.~~, and when~~ *When* a person licensed to practice chiropractic changes one's residence *or place of practice*, notification shall be sent to the Iowa Board of Chiropractic Examiners, Lucas State Office Building, Des Moines, Iowa 50319-0075.

ITEM 3. Amend subrule **40.13(1)**, paragraph **"e,"** as follows:

e. Each application shall ~~attach~~ *submit* three written character references ~~to~~ *on* the application. ~~Said~~ *The* references shall not be from members of the chiropractic profession.

ITEM 4. Amend subrule **40.13(1)** by adding the following new paragraph **"h"**:

h. Two copies of a passport-size photograph of the applicant taken within the previous six months.

ITEM 5. Amend subrule 40.13(6) as follows:

40.13(6) All applicants matriculating after October 1, 1975, will be graduated from a college having status with C.C.E. (Council on Chiropractic Education) as of ~~February 1, 1989~~ *the date of the applicant's graduation*. (See 40.11(151).

ITEM 6. Amend subrule 40.13(8) as follows:

40.13(8) The passing grade for each subject of the practical examination given by the board shall be ~~70 per-~~

~~cent and an overall average of 75 percent shall be attained~~ *determined by prevailing and standardized psychometric methodology.*

ITEM 7. Rescind and reserve subrule **40.14(7)**.

ITEM 8. Rescind and reserve subrule **40.14(8)**.

ITEM 9. Amend subrule 40.16(1) as follows:

40.16(1) *For the basic application fee required of all applicants, $50.* For a license to practice chiropractic, issued upon the basis of examination given by the chiropractic examiners, ~~$100~~ *$225*.

ITEM 10. Add the following new subrule:

40.24(31) Practicing without a current license or practicing when a license is lapsed.

ITEM 11. Add the following new subrule:

40.24(32) Failure to notify the board of a change of name or address within 30 days of its occurrence.

ITEM 12. Rescind and reserve subrule **40.36(2)**.

ITEM 13. Rescind and reserve subrule **40.38(3)**.

ITEM 14. Add the following new rule:

645—40.42(151) Practice of chiropractic. Those treatment procedures which are taught in Iowa accredited colleges of chiropractic are considered a part of the practice of chiropractic in the state of Iowa.

This rule is intended to implement Iowa Code sections 151.1 and 151.8.

ITEM 15. Amend subrule **40.73(1)**, paragraph **"b,"** as follows:

b. Pay the renewal fee(s) *as required by subrules 40.12(2) and 40.12(3).*

ARC 2969A

REVENUE AND FINANCE DEPARTMENT[701]

Amended Notice of Intended Action

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance published Notice of Intended Action in the April 15, 1992, Iowa Administrative Bulletin as **ARC 2943A** to amend Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage," and Chapter 26, "Sales and Use Tax on Services," Iowa Administrative Code.

1992 Iowa Acts, Senate File 2116, expanded the state sales tax to the following enumerated services: computer consulting, flying service, storage of household goods, solid waste collection and disposal service, sewer service for nonresidential commercial operations, consultant services, aircraft rental, sign construction and installation, swimming pool cleaning and maintenance, taxidermy, mini-storage, dating service, and limousine service. Amendments are proposed to Chapter 18 and Chapter 26 of the Department's rules to reflect the statutory changes.

A public hearing on the proposed amendments will be held May 21, 1992, at 10 a.m. in the Fourth Floor Conference Rooms, Hoover State Office Building, Des Moines, Iowa. Any interested person may submit written comments on these amendments on or before May 21, 1992. Persons wanting to make oral comments at the hearing should contact Carl A. Castelda, Deputy Director, Department of Revenue and Finance, Hoover State Office Building, P. O. Box 10460, Des Moines, Iowa 50306, telephone (515)281-3346, at least one day prior to the date of the public hearing.

ARC 2960A

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 400, "Vehicle Registration and Certificate of Title," Iowa Administrative Code.

The definition of "farm trailer" is being amended and will allow farmers to delete the registration of semitrailers towed by a pickup ("gooseneck" type trailers) if the gross combination weight rating does not exceed 26,000 pounds. Unregistered farm trailers will be exempt from the federal annual inspection requirement when used intrastate.

This amendment is intended to implement Iowa Code chapter 321.

Any person or agency may submit written comments concerning the proposed amendment or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed amendment, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Bureau of Policy and Information, 800 Lincoln Way, Ames, Iowa 50010.
5. Be received by the bureau no later than May 26, 1992.

A meeting to hear requested oral presentations is scheduled for Thursday, May 28, 1992, at 10 a.m. in the conference room of the Motor Vehicle Division, which is located on the main floor of Park Fair Mall, 100 Euclid Avenue, Des Moines.

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

TRANSPORTATION DEPARTMENT[761](*cont'd*)

The proposed amendment may have an impact on small business. The Department has considered the factors listed in Iowa Code subsection 17A.31(4), paragraphs "a" to "l." The following may request the issuance of a regulatory flexibility analysis: the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who sign the request provided that each represents a different small business, or an organization representing at least 25 small businesses which is registered with the Department under Iowa Code section 17A.31. The request must:

1. Include the name, address, and telephone number of the person(s) authoring the request.
2. Be submitted in writing to the Bureau of Policy and Information at the address listed in this Notice.
3. Be delivered to the bureau or postmarked no later than 20 days after publication of this Notice in the Iowa Administrative Bulletin.

Proposed rule-making action:

Amend subrule 400.1(3) as follows:

400.1(3) Farm trailer means a trailer used exclusively by a farmer in the conduct of the farmer's agricultural operation. ~~The term shall not include a "semitrailer."~~ *Semitrailers may be included when towed by a pickup and the gross combination weight rating does not exceed 26,000 pounds.*

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 453.6, the Committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Banking Richard Buenneke, and Auditor of State Richard D. Johnson have established today the following rates of interest for public obligations and special assessments. The usury rate for April is 9.25%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants ..... Maximum 6.0%
74A.4 Special Assessments ..... Maximum 9.0%

RECOMMENDED for 74A.3 and 74A.7: A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective April 8, 1992, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7 - 31 days ..... Minimum 3.40%
32 - 89 days ..... Minimum 3.60%
90 - 179 days ..... Minimum 3.70%
180 - 364 days ..... Minimum 4.00%
One year ..... Minimum 4.30%
Two years or more ..... Minimum 5.30%

These are minimum rates only. The one year and less are six-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

October 1, 1989 – October 31, 1989	10.00%
November 1, 1989 – November 30, 1989	10.25%
December 1, 1989 – December 31, 1989	10.00%
January 1, 1990 – January 31, 1990	9.75%
February 1, 1990 – February 28, 1990	9.75%
March 1, 1990 – March 31, 1990	10.25%
April 1, 1990 – April 30, 1990	10.50%
May 1, 1990 – May 31, 1990	10.50%
June 1, 1990 – June 30, 1990	10.75%
July 1, 1990 – July 31, 1990	10.75%
August 1, 1990 – August 31, 1990	10.50%
September 1, 1990 – September 30, 1990	10.50%
October 1, 1990 – October 31, 1990	10.75%
November 1, 1990 – November 30, 1990	11.00%
December 1, 1990 – December 31, 1990	10.75%
January 1, 1991 – January 31, 1991	10.50%
February 1, 1991 – February 28, 1991	10.00%
March 1, 1991 – March 31, 1991	10.00%
April 1, 1991 – April 30, 1991	9.75%
May 1, 1991 – May 31, 1991	10.00%
June 1, 1991 – June 30, 1991	10.00%
July 1, 1991 – July 31, 1991	10.00%
August 1, 1991 – August 31, 1991	10.25%
September 1, 1991 – September 30, 1991	10.25%
October 1, 1991 – October 31, 1991	10.00%
November 1, 1991 – November 30, 1991	9.75%
December 1, 1991 – December 31, 1991	9.50%
January 1, 1992 – January 31, 1992	9.50%
February 1, 1992 – February 29, 1992	9.00%
March 1, 1992 – March 31, 1992	9.00%
April 1, 1992 – April 30, 1992	9.25%
May 1, 1991 – May 31, 1992	9.50%

ARC 2972A

UTILITIES DIVISION[199]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to Iowa Code sections 476.2 and 476.6(11), the Utilities Board (Board) gives notice that on April 7, 1992, the Board issued an order in Docket No. RMU-92-2, In Re: Energy Adjustment Clause, "Order Commencing Rule Making," to consider the amendments to 199 IAC 20.9(476).

The Board is proposing to amend rule 20.9(476) in response to a clarification of the Uniform System of Accounts issued by the Federal Energy Regulatory Commission (FERC). This proposed rule making also deletes obsolete references in rule 20.9(476) and corrects several references. On November 25, 1991, the FERC's Chief Accountant, acting pursuant to authority delegated by the FERC, issued Accounting Release No. 14 (Release AR-14). Release AR-14 provides clarification on the correct accounting classification under the Uniform System of Accounts of coordination transactions that constitute distinct sales of electricity. Specifically, Release AR-14 clarifies that distinct sales of electricity, including transactions within power pools, must be recorded gross in the appropriate operating revenue account and not netted with purchased power expenses properly recorded in Account 555. This clarification on the correct accounting classification necessitates a change in the Board's energy adjustment clause which defines energy expenses for recovery as those entered in Account 555 of the Uniform System of Accounts. The accounting release requires short-term energy sales to be recorded in Account 447 rather than Account 555. Account 447 revenues are not a component of the energy adjustment clause and the accounting change will require most, if not all, sales previously recorded in Account 555 to be recorded in Account 447. The proposed amendments include Account 447 revenues. The effective date of Release AR-14 is January 1, 1992, and electric utilities utilizing the energy adjustment clause have obtained waivers of the rules in order to be in compliance with the accounting clarification.

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before May 19, 1992, by filing an original and ten copies in a form substantially complying with subrule 2.2(2). All communication shall clearly indicate the author's name and address and should make specific reference to this docket. All communications shall be directed to the Executive Secretary, Iowa Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319.

These amendments are intended to implement Iowa Code sections 476.2 and 476.6(11).

The following amendments are proposed.

ITEM 1. Amend subparagraph **20.9(2)"b"(5)** as follows:

(5) The energy costs paid for energy purchased under arrangements or contracts for firm power, operational control energy, outage energy, participation power, peaking power, and economy energy, less the energy revenues to be recovered from corresponding sales, where energy costs less energy revenues are those entered in ~~account~~ *accounts 447 and* 555 of the Uniform System of Accounts.

ITEM 2. Amend paragraph **20.9(2)"e"** as follows:

e. A rate regulated utility which proposes a new sliding scale or automatic adjustment clause of electric utility energy rates shall conform such clause with the rules. ~~By January 1, 1980, all rate regulated electric utilities with tariffs that contain clauses providing sliding scale or automatic adjustment of electric energy rates shall conform such clauses with the rules. The change to conform with the rules may be accomplished as part of the next filing for a general change in rates or as a separate filing.~~

ITEM 3. Amend paragraph **20.9(3)"a,"** third unnumbered paragraph, as follows:

C2, C3 and C4 are the charges by the wholesale suppliers *less revenues* as recorded in ~~account~~ *accounts 447 and* 555 of the Uniform System of Accounts for the first three of the four months prior to the month in which E_0 will be used.

ITEM 4. Amend paragraph **20.9(3)"b,"** fourth unnumbered paragraph, as follows:

C2, C3 and C4 are the charges by the wholesale suppliers *less revenues* as recorded in ~~account~~ *accounts 447 and* 555 of the Uniform System of Accounts for the first three of the four months prior to the month in which E_0 will be used.

ITEM 5. Amend paragraph **20.9(3)"c,"** third unnumbered paragraph, as follows:

C2 is the prior month charges by the wholesale suppliers *less revenues* as recorded in ~~account~~ *accounts 447 and* 555 of the Uniform System of Accounts.

ITEM 6. Amend paragraph **20.9(3)"d"** as follows:

d. A utility with special conditions may petition the *board* ~~commission~~ for a waiver which would recognize its unique circumstances.

ITEM 7. Amend paragraph **20.9(3)"e"** as follows:

e. A utility which does not own generation and proposes a new sliding scale or automatic adjustment clause of electric utility rates shall conform such clause with the rules. ~~By January 1, 1980, all electric utilities not owning generation with tariffs that contain clauses providing sliding scale or automatic adjustment of electric energy rates, shall conform such clauses with the rules. The change to conform with the rules may be accomplished as part of the next filing for a general change in rates or as a separate filing.~~

ARC 2977A

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5) and Iowa Code Supplement section 299A.10, the Department of Education hereby rescinds Chapter 31, "Equivalent Instruction Standards," and adopts a new Chapter 31, "Competent Private Instruction and Dual Enrollment," Iowa Administrative Code.

This chapter is adopted pursuant to amendments implemented by Iowa Code Supplement chapters 299 and 299A, which went into effect July 1, 1991, as House File 455. These rules give guidance to parents, guardians, and custodians, school boards, and teachers providing or assisting and supervising competent private instruction to children of compulsory attendance age outside the traditional school setting. These rules also establish responsibilities related to dual enrollment.

Notice of Intended Action was published in the February 5, 1992, Iowa Administrative Bulletin as **ARC 2754A**.

Interested persons were allowed to comment on this proposed chapter. A public hearing was held on February 25, 1992, and comments were taken from 1:30 through approximately 5 p.m.

As a result of comments received, changes from the Notice are as follows:

Subrule 31.2(1) is amended to clarify that resident public schools may only use reporting forms created by the department of education and that the mandatory portion of the report is limited to the information listed in paragraph "a." The balance of the reporting information sought is permissive. In paragraph 31.2(1)"b"(2), the duty to report whether the child has ever been identified as a child in need of special education is modified; a parent will only need to indicate whether the child is currently identified as a child requiring special education. The mandatory calendar requirement is dropped.

In subrule 31.3(1), the licensing requirements for a person who provides instruction to or instructional supervision of a student receiving competent private instruction are amended so that specific subject matter endorsements are no longer required.

In subrule 31.3(2), the requirement that a certificated or licensed teacher meet with the student and the student's parent, guardian, or legal custodian is amended, and separate requirements are established for teachers employed in home school assistance programs operated by accredited schools from teachers independently supervising home school programs. The language "performing other duties as prescribed by law" is removed, and a specific duty is identified for licensed teachers to refer to the child's district of residence for evaluation a child who may be in need of special education.

Subrule 31.3(3) on limitations of licensed practitioners is amended by distinguishing between limitations imposed on the number of children an independent practitioner may supervise and limitations on the number of children a home school assistance program teacher can supervise, and by creating the opportunity for a licensed practitioner or accredited school to seek an exemption from the limitations.

Subrule 31.4(1) is clarified to indicate that a school district's responsibility to "ascertain compliance" is made by a paper audit. A provision for a parent or licensed teacher working with a child or evaluating the child's portfolio to make a referral for special education is also added.

Subrule 31.4(2) is amended by including a new paragraph "c" on test administration, providing that a test conducted by a nonaccredited school may fulfill the assessment requirements if given under certain conditions.

Subrule 31.4(3) is clarified to ensure that the parent must have either requested dual enrollment or enrolled the child in the school's home school assistance program in order for the school to count the child in its enrollment.

Subrule 31.4(4) is amended to require a district to provide available texts or supplementary instructional materials when a home school child is enrolled, and to make provision of available materials optional when a student is not enrolled.

Subrule 31.4(5) is amended to further clarify home school assistance programs. The amendment specifies what criteria must be met if an accredited school offers a home school assistance program and distinguishes between a home school assistance program and dual enrollment, providing that both are optional for a parent but only the former is optional for a public school district.

Subrule 31.7(1) is amended to provide further information on baseline testing. The 1992-93 school year is the first year baseline tests will be required for students who begin home schooling in either 1991-92 or 1992-93.

Subrule 31.7(3) is amended to allow a school district or AEA to administer standardized tests in the child's home and to accept tests taken at a nonaccredited nonpublic school if certain conditions have been met by the test administrator.

Subrule 31.7(4) is amended to clarify the licensure requirements for portfolio evaluators and by deleting the requirement for students' self-assessments to be included in portfolios.

Rule 31.8(299A) is amended to require test administrators (rather than parents, guardians, or legal custodians) to report assessment results to the school district of residence.

Rule 31.9(299A) is amended to apply only to children currently requiring special education. AEA directors of special education are given further guidance with respect to obtaining informed consent of home schooling parents and establishing the option for AEAs to require a waiver of entitlement to compensatory education if later requested by home schooling parents of identified special education students.

These rules are intended to implement Iowa Code Supplement chapters 299 and 299A.

These rules will become effective on June 3, 1992.

The following amendment is adopted.

Rescind 281—Chapter 31 and insert in lieu thereof the following new chapter:

CHAPTER 31

COMPETENT PRIVATE INSTRUCTION AND DUAL ENROLLMENT

281—31.1(299) Purpose. It is the purpose of this chapter to give guidance to parents, guardians, and custodians, school boards, and teachers providing or assisting and supervising competent private instruction to children of compulsory attendance age outside the traditional school

setting. This chapter also proposes to establish responsibilities related to dual enrollment.

281—31.2(299) Reports as to competent private instruction.

31.2(1) Reporting. The parent, guardian, or legal or actual custodian of a child of compulsory attendance age who does not enroll the child in a public school or Iowa accredited nonpublic school shall complete a report in duplicate on forms created by the department of education and provided by the resident public school district, indicating the parent, guardian, or custodian's intent to provide or arrange for competent private instruction for the child for each school year. The report shall be filed with the school board secretary by the first day of school in the resident district, except as otherwise provided by these rules.

a. The report shall include the following information:

(1) The name and address of the parent, guardian, or custodian reporting;

(2) The name and birth date of the child;

(3) An indication of the number of days of instruction, which must be a minimum of 148 days per academic year;

(4) The name and address of the person providing competent private instruction to the child and an indication of whether that person is the holder of a valid Iowa practitioner license or teaching certificate appropriate to the age and grade level of the child being taught;

(5) An outline of the courses of study, including subjects covered, lesson plans, and time spent on the areas of study;

(6) The titles and authors or publishers of the texts to be used;

(7) Evidence of immunization of the child, as required by law, if the child is being placed under competent private instruction for the first time.

b. The report shall also seek the following information, which may be supplied by the person filing the report:

(1) An indication of whether and to what extent dual enrollment of the child in the public school is desired;

(2) An indication of whether the child is currently identified as a child requiring special education pursuant to the rules of special education;

(3) An indication of which form of annual assessment, if applicable, is to be administered to the child and which test, if known, is desired.

31.2(2) Late reporting. If a parent, guardian, or legal or actual custodian decides, after enrolling a child of compulsory attendance age in a public or accredited nonpublic school and after the deadline for filing a report under subrule 31.2(1), that the parent wishes to provide competent private instruction to the child, the parent, guardian, legal or actual custodian shall file the report required no later than 14 calendar days after removing the child from the public or accredited nonpublic school. Days of the child's attendance in the public or nonpublic school up to the time of removal shall be applied to the 148-day minimum compulsory attendance requirement for the school year affected.

281—31.3(299) Duties of licensed practitioners.

31.3(1) Licensing requirements. A person who provides instruction to or instructional supervision of a student receiving competent private instruction shall be either the student's parent, guardian, or legal custodian or a person who possesses a valid Iowa teaching certificate or practitioner license as a classroom teacher which is appropriate to the age and grade level of the student under competent private instruction.

31.3(2) Duties. The duties of a certificated or licensed teacher practitioner who instructs or provides instructional supervision of a student shall include the following:

a. Contact with the student and the student's parent, guardian, legal custodian at least twice per 45 days of instruction, during which time the teacher practitioner fulfills the duties described below. One of every two contacts shall be face-to-face with the student under competent private instruction.

However, if the instruction or instructional supervision is provided by a public or accredited nonpublic school in the form of a home school assistance program, the teacher practitioner shall meet with the child and the child's parent, guardian, or legal custodian at least four times per quarter during the period of instruction.

b. Consulting with and advising the student's parent, guardian, or legal custodian with respect to:

(1) Lesson plans;

(2) Textbook and supplementary materials;

(3) Setting educational goals and objectives;

(4) Teaching and learning techniques;

(5) Forms of assessment and evaluation of student learning;

(6) Diagnosing student strengths and weaknesses;

(7) Interpretation of test results;

(8) Planning;

(9) Record keeping; and

(10) Other duties as requested or agreed upon.

c. Providing formal and informal assessments of the student's progress to the student and the student's parent, guardian, or legal custodian.

d. Annually maintaining a diary, record, or log of visitations and assistance provided.

e. Referring to the child's district of residence for evaluation a child who the practitioner has reason to believe may be in need of special education.

31.3(3) Limitations. A licensed Iowa practitioner who is employed or agrees to provide instruction or instructional supervision of programs of competent private instruction shall not serve in that capacity on behalf of more than 25 families, or more than 50 children of compulsory attendance age, in an academic year unless the service is provided pursuant to the teacher's employment with a nonaccredited nonpublic school.

A licensed Iowa practitioner who is employed by a public or accredited nonpublic school to provide instruction or instructional supervision through a home school assistance program, as defined in subrule 31.4(5), shall not serve in that capacity on behalf of more than 20 families, or more than 40 children of compulsory attendance age, in an academic year.

A licensed practitioner or authorities in charge of a public or accredited private school may seek exemption from the above limitation by submitting a written request to the director of education. Exemptions shall be granted when the director is satisfied that the limitation will pose a substantial hardship on the person or the school providing instruction or instructional supervision, and that the best interests of all children being served by the practitioner or school will continue to be met.

281—31.4(299A) School district duties related to competent private instruction.

31.4(1) Reports.

a. The secretary of a public school district shall make available reporting forms developed by the department of education and shall receive reports as to competent private instruction, maintaining one copy in the district and forwarding one copy to the area education agency as required by law.

b. The secretary of the district shall provide forms to any accredited nonpublic school located within the district for the purpose of reporting the nonpublic school's student enrollment data as required by law. The district secretary shall notify the appropriate school districts of nonresident students enrolled in accredited nonpublic schools within the district.

c. The district shall review the completed form to ascertain whether the person filing has complied with the reporting requirements of the law and these rules. Specifically, the district shall determine from the report that the person providing the instruction is either the child's parent, guardian, custodian or a person with a valid Iowa practitioner's license appropriate to the age and grade level of the child; that the designated period of instruction is at least 148 days per academic year; that immunization evidence is provided for children placed under competent private instruction for the first time; that the report is timely under these rules.

d. The district shall annually report to the department of education by April 1 the names of all resident children who are subject to an annual assessment and what form of assessment has been chosen by the child's parent, guardian, or legal custodian. The district shall cooperate with the department in gathering standardized test reports or portfolio evaluation reports for each child subject to annual assessment.

e. The district shall report noncompliance with the reporting, immunization, attendance, instructor qualifications, and assessment requirements of the compulsory attendance law and these rules to the county attorney for the county of residence of the child's parent, guardian, or legal custodian.

f. Upon the request of a parent, guardian, or legal custodian of a child of compulsory attendance age who is under competent private instruction, or upon the referral of a licensed practitioner who provides instruction or instructional supervision of a child of compulsory attendance age who is under competent private instruction, the district shall refer a child who may require special education to the area education agency division of special education for evaluation.

31.4(2) Testing assistance.

a. If a child is under dual enrollment, the district shall administer standardized tests, when the standardized test option has been selected by the child's parent, guardian, or legal custodian, to the child or may delegate the test administration to the appropriate area education agency. If the child is under dual enrollment, no fee is charged to the parent, guardian, or legal custodian.

b. If a child under competent private instruction, and not under dual enrollment, is to be administered a standardized test for purposes of assessment, the district shall charge and collect from the child's parent, guardian, or legal custodian a fee for the actual cost of the testing if administered by the public school or area education agency. The fee shall include the cost of the test materials, a prorated fee reflective of the personnel costs of administration based upon the number of students taking the test, and the cost of scoring, reporting, and interpreting the results.

c. If a student has been administered an approved standardized test by a nonaccredited school during the academic school year for which testing is required, and the administration of the test has met the terms or protocol of the test publisher, the results may be submitted to the resident district in original form by either the test administrator or the parent, guardian, or legal custodian of the child being tested, in satisfaction of the annual assessment option. The submitted test results shall be accompanied by a certification statement signed by the test administrator to the effect that the publisher's protocol or terms required for test administration have been met.

d. The district shall maintain as any other confidential education record the standardized testing results for each resident child for whom the district or area education agency administers the test.

31.4(3) Finance. A public school district may count a competent private instruction student for purposes of its certified enrollment only under the following circumstances:

a. A resident student or the student's parent, guardian, or legal custodian has requested dual enrollment, in which case the student is counted as authorized by law. However, if the student is receiving special education services or instruction, the student shall qualify for additional weighting pursuant to the provisions of Iowa Code section 257.6; or

b. The school district provides an Iowa licensed practitioner to instruct or to assist and supervise parents, guardians, or legal custodians providing competent private instruction and the child has been enrolled in the district's home school assistance program.

31.4(4) Provision of instructional materials.

a. A public school district may not make monetary payments directly or indirectly to the parent, guardian, or legal custodian or to a child receiving competent private instruction.

b. A district may provide to children receiving competent private instruction available texts or supplementary materials on the same basis as they are provided to enrolled students, and shall provide available texts or supplemental instructional materials when a child is under dual enrollment or in a home school assistance program.

c. The parent, guardian or legal custodian who provides competent private instruction to a child of compulsory attendance age may access the services and materials available from the area education agency by requesting assistance through the school district of residence. The AEA shall make services and materials available to the child on the same basis as they are available to regularly enrolled students of the district. The district of residence shall act as liaison between the parent, guardian, or legal custodian of a child who is receiving competent private instruction and the area education agency.

31.4(5) Home school assistance programs. A school district or accredited nonpublic school may offer an assistance program for parents, guardians, or legal custodians providing private instruction to a child of compulsory attendance age. A parent, guardian, or legal custodian of a child of compulsory attendance age may enroll the child in a home school or private instruction assistance program in a school district or accredited nonpublic school.

An assistance program offered by a school district or accredited nonpublic school shall, at a minimum, meet state licensure standards for accredited school personnel in designating a practitioner to provide instruction or instructional supervision of a competent private instruction

program, including special education instruction, and shall meet the applicable provisions of rule 31.3(299). The district may impose additional requirements upon children enrolled in its home school assistance program.

A home school assistance program is not dual enrollment, but the parent, guardian, or legal custodian of a child enrolled in a home school assistance program may request dual enrollment in addition to enrollment in a home school assistance program.

281—31.5(299A) Dual enrollment.

31.5(1) The parent, guardian, or legal custodian of a child of compulsory attendance age who is receiving competent private instruction may enroll the child in the public school district of residence of the child under dual enrollment. The parent, guardian, or legal custodian desiring dual enrollment shall notify the district of residence of the child not later than September 15 of the school year for which dual enrollment is sought.

31.5(2) A child under dual enrollment may participate in academic or instructional programs of the district on the same basis as any regularly enrolled student.

31.5(3) A child under dual enrollment may participate in any extracurricular activity offered by the district on the same basis as regularly enrolled students. The provisions of 281—subrule 36.15(2), paragraph "c," shall not apply to the child who is under dual enrollment. However, other rules and policies of the state and district related to eligibility for extracurricular activities shall apply to the child.

31.5(4) The district shall notify the child's parent, guardian, or legal custodian of the academic and extracurricular activities available to the child.

31.5(5) A child under dual enrollment is eligible to receive the services and assistance of the appropriate area education agency on the same basis as are children otherwise enrolled in the district. The district shall act as liaison between the parent, guardian, or legal custodian of a child who is receiving competent private instruction and the area education agency.

281—31.6(299) Open enrollment.

31.6(1) The parent, guardian, or legal custodian of a child receiving competent private instruction may request open enrollment to another public school district by following the procedures of the open enrollment law, Iowa Code section 282.18. However, before applying for open enrollment, the parent, guardian, or legal custodian of a child of compulsory attendance age who is receiving competent private instruction shall timely request dual enrollment from the district of residence of the child.

31.6(2) A district receiving a nonresident open enrollment student who is under competent private instruction may not bill the resident district for the costs of instructing the student unless the receiving district complies with the applicable provisions of rules 31.3(299) and 31.4(299A).

31.6(3) In the event that the parent, guardian, or legal custodian of a nonresident open enrollment student under private instruction fails to comply with state law and these rules related to competent private instruction, the receiving district shall notify the secretary of the school district of residence of the child's parent regarding the noncompliance.

281—31.7(299A) Baseline testing and annual assessment.

31.7(1) When required. When a parent, guardian, or legal custodian of a child of compulsory attendance age provides private instruction to a child without the assistance or supervision of a validly licensed Iowa practitioner as required by law and these rules, and the parent, guardian, or legal custodian does not hold a valid Iowa practitioner license appropriate to the ages and grade levels of the child under competent private instruction, the child is subject to initial baseline testing and an annual evaluation.

For the 1992-93 school year and thereafter, a child who is at least seven years old, who begins a program of competent private instruction and is subject to the annual assessment requirement shall be administered a baseline test for the purposes of obtaining educational data. The baseline test shall be taken by June 30, 1993, for programs of competent private instruction begun in school years 1991-92 and 1992-93, and shall be taken by May 1 in ensuing school years. Any test listed in subrule 31.7(2) may be used to fulfill the baseline test requirement.

The parent, guardian, or legal custodian may select either standardized testing or portfolio assessment for purposes of fulfilling the annual evaluation requirement of the law.

31.7(2) Standardized testing. A parent, guardian, or legal custodian of a child, who chooses standardized testing for the purpose of determining whether the child is making adequate educational progress, may select one of the following instruments for the child to take:

a. California Achievement Test (CAT); Forms E and F; copyright 1985, 1986, 1987, 1988, CTB McMillan/McGraw Hill.

Reading: K-12.9
Language: K-12.9
Mathematics Composite: K-12.9
Science: 1.6-12.9
Social Studies: 1.6-12.9

b. Comprehensive Test of Basic Skills (CTBS); 4th Ed.; only one form available; copyright 1989.

Reading: K-12.9
Language: 1.0-12.9
Mathematics Composite: K.1-12.9
Science: 1.0-12.9
Social Studies: 1.0-12.9

c. Iowa Tests of Basic Skills (ITBS); Forms G and H; copyright 1986, The Riverside Publishing Company.

Reading: K.8-9.9
Language Composite: K.1-9.9
Mathematics Composite: K.1-9.9
Science: 1.7-9.9
Social Studies: 1.7-9.9

d. Iowa Tests of Educational Development (ITED); Forms X-8, Y-8; copyright 1988, The Riverside Publishing Company.

Written Expression (Two Parts): 9.0-12.9
Quantitative Thinking: 9.0-12.9
Social Studies (Two Parts): 9.0-12.9
Natural Science (Two Parts): 9.0-12.9
Literary Materials: 9.0-12.9
Vocabulary: 9.0-12.9
Sources of Information: 9.0-12.9

e. Metropolitan Achievement Tests (MAT), 6th Ed.; only one form available; copyright 1985, The Psychological Corporation.

Reading: K.0-12.9
Language: K.0-12.9
Mathematics Composite: K.0-12.9
Science: 1.5-12.9
Social Studies: 1.5-12.9

f. Stanford Achievement Test, 8th Ed.; Forms J and K, copyright 1989, The Psychological Corporation.

Reading: K.0-12.9
Language: 1.5-12.9
Mathematics Composite: 1.5-9.9
Science: 3.5-12.9
Social Studies: 3.5-12.9

g. Stanford Achievement Test, Abbrev., 8th Ed.; only one form available; copyright 1990, The Psychological Corporation.

Reading: 1.5-12.9
Language: 1.5-12.9
Mathematics Composite: 1.5-9.9
Science: 3.5-12.9
Social Studies: 3.5-12.9

Braille or large print editions of the above tests are available for vision-impaired children. Testing norms are available for the vision- and hearing-impaired child.

In the event that the parent, guardian, or legal custodian of a child under competent private instruction and subject to the annual assessment requirement wishes to have the child take a standardized test not listed above, the parent shall request permission of the director of the department of education to use a different test. The decision of the director shall be final.

A child under competent private instruction and subject to an annual evaluation whose educational program and instructional materials are designed for students in grades 1 through 5 shall, at a minimum, be tested in the areas of reading, language, and mathematics. A child whose educational program and instructional materials are designed for students in grades 6 through 12 shall, at a minimum, be tested in the areas of reading or literary materials, language or written expression, mathematics or quantitative thinking, science, and social studies.

A child subject to the annual assessment requirement, who takes a standardized test from the above list, shall take a grade level form of the test that corresponds most closely to the child's chronological age unless permission is granted by the test administrator to take another grade level form of the test. When a parent, guardian, or legal custodian requests another form of the test, the test administrator shall make a decision based upon the following:

(1) A review of the instructional materials used by the child in the education program;

(2) Results of curriculum-based measurement techniques including the administering of probes; and

(3) A review of current samples of the child's work product.

The decision of the test administrator as to the appropriate grade level form of the standardized test to be taken shall be final.

If retesting is desired, a different form of the same test or a different test shall be administered to the child sufficiently in advance to allow for processing of the test results prior to the beginning of the school year.

31.7(3) Testing times and sites. Standardized test results are normed against a population taking the same test at approximately the same time of year. Norms for the above listed tests exist for fall, winter, and spring. Because the annual assessment is used, in part, to determine whether the child has made at least six months' progress from the previous test, annual standardized tests used for determining whether adequate progress has been achieved shall be taken at approximately the same time each year.

The school district of residence of the child shall annually, by October 1, provide the following notification to a parent, guardian, or legal custodian who has selected the standardized testing form of evaluation for a child under competent private instruction:

a. The times and dates when standardized tests will be administered by the public school district and the area education agency over the school year, including fall, winter, and spring testing times. A school district or area education agency may administer standardized tests at the child's home;

b. A data sheet showing the costs associated with each test listed in subrule 31.7(2); and

c. A reply form for the parent, guardian, or legal custodian to complete indicating the date, location, and test selected, including the grade level form of the test; an indication of whether the parent, guardian, or legal custodian wishes to be present for testing; and any special requests such as Braille or large print forms of the test.

School districts and area education agencies shall cooperate in the purchasing and processing of test materials to reduce the cost of testing insofar as possible.

The parent, guardian, or legal custodian of a child who has selected the standardized testing option of annual assessment shall timely reimburse the school district or area education agency, whichever is applicable, for the cost of testing the child unless the child is under dual enrollment.

31.7(4) Portfolio assessment or evaluation. In lieu of standardized testing for purposes of annual assessment, a parent, guardian, or legal custodian of a child under competent private instruction and subject to the annual assessment requirement may arrange to have a qualified, licensed, Iowa practitioner review a portfolio of evidence of the child's progress by May 1, 1993, and annually by May 1 thereafter, subject to the following requirements:

a. Portfolio evaluators. The evaluator shall receive training in portfolio assessment prior to assessing any child's portfolio for the purpose of fulfilling the law. Evidence of the training shall be attached to reports filed with the district of residence of the child and the department of education.

A single trained evaluator shall be designated by each parent, guardian, or custodian who has selected the portfolio evaluation option for annual assessment. The evaluator so identified shall hold a valid Iowa practitioner license or teacher certificate appropriate to the ages and grade levels of the children whose portfolios are being assessed. For purposes of assessing subject matter content areas, the evaluator shall either hold a license as specified below or obtain review of the content areas for which the portfolio evaluator does not hold an endorsement by a person who holds a valid Iowa practitioner license or teacher certificate with endorsements as required below. In each case where the designated portfolio evaluator obtains review of the student's portfolio by another licensed teacher, the teacher who performs the review shall sign the portfolio evaluator's narrative report and indicate the reviewer's folder number prior to the submission of the report to the district of residence and the department of education.

For children whose grade level of study is any of grades 1 through 5, the portfolio evaluator or reviewer selected by the evaluator shall hold a license as an elementary classroom teacher.

For children whose grade level of study is in any of grades 6 through 9, the portfolio evaluator or reviewer se-

lected by the evaluator shall hold a license as either an elementary classroom teacher or a secondary classroom teacher, subject to the limitation below. For children whose grade level of study is in any of grades 10 through 12, the portfolio evaluator or reviewer selected by the evaluator shall hold a license as a secondary teacher.

The holder of a secondary license shall only personally evaluate or review the portfolio content areas for which the evaluator holds a subject matter endorsement.

A trained portfolio evaluator may not evaluate the portfolios of more than 25 students per year without permission of the director of the department of education.

b. Contents of portfolio. The child's portfolio shall contain evidence of academic progress as required below in the minimum curriculum areas of reading, language arts, and mathematics if the child under private instruction is in grade levels 1 through 5. For children in grade levels 6 through 12, the portfolio shall contain evidence as required below in the minimum curriculum areas of reading, language arts, mathematics, science, and social studies.

For each curriculum area, the portfolio shall include a book of lesson plans, a diary, or other written record indicating the subject matter taught and activities in which the child has been engaged, supplied by the parent, guardian, or legal custodian providing the private instruction. The portfolio may also include a list of, a reference to, or material from the textbooks and resource materials used by the student in each subject area.

The portfolio shall also include copies of tests or other formal and informal assessment instruments used to measure student progress.

For each subject area to be evaluated, the portfolio shall include examples of the student's work, and may include self-assessments by the student as follows:

(1) Reading:

1. A record of books, articles, or other material read and attempted by the student over the assessment period;

2. A video or audiotape of the student reading aloud from a favorite book, story, or other literary material; in lieu of the audiotape, the student may read aloud to the evaluator;

3. A written, oral, or recorded statement by the student's instructor of the student's achievements in reading; and the instructor's goals for improvement, effort, and achievement in reading.

(2) Language arts:

1. Selected, dated samples of student writings, indicating the status of each as unedited drafts, revisions, and final copies such as selected and dated writing projects (e.g., surveys or reports; poems, letters, songs, or comments; scripts, stories, journals, plays, characterizations); writings that show attempts at different writing styles (e.g., informative, critical, persuasive, creative, poetic, narrative, dialog, etc.); writings that evidence development of style (organization, voice, sense of audience, clarity of expression, word choice, etc.); writings that show growth in spelling, punctuation, grammar, capitalization, appropriate form, and legibility; samples in which ideas are modified from first draft to final product;

2. Evaluations of student writing ability by the instructor.

(3) Mathematics:

1. Dated samples of student work over the assessment period that illustrate progression or sequence of learning in age- or ability-appropriate content areas (e.g., whole number computations, number relationships, operations including arithmetic concepts of addition, subtraction, multiplication and division, number theory, patterns, functions, statistics and probabilities, algebra, geometry, trigonometry, fractions, ratios, proportions, and percent); problem solving; applications (e.g., reading, interpreting and constructing tables, diagrams, charts, and graphs; measurement; logic, strategies, and generalizations); abstractions; use of calculators, computers, or other technologies;

2. Written or oral (including video or audiotape) explanations of mathematical experiences indicating that the student can communicate the mathematical processes employed and is familiar with terminology, notations and symbols.

(4) Science:

1. Dated samples of student work over the assessment period that illustrate progression of learning in age- or ability-appropriate content areas (e.g., biology, earth science including natural resources and ecology, physical science including chemistry and physics, etc.), scientific processes, and applications of skills and concepts;

2. Written or oral (including video or audiotape) explanations by the student of scientific processes and experiences, experiments, projects, or activities over the assessment period indicating that the student can communicate the scientific processes employed and is familiar with science terminology and applications of scientific principles studied.

(5) Social studies:

1. Dated samples of student work over the assessment period that illustrate progression of learning in age- or ability-appropriate content areas (e.g., history, geography, citizenship, government, economics and consumer studies, anthropology, psychology, sociology, democratic principles, voter education);

2. Written or oral (including video or audiotape) explanations by the student of social studies experiences, experiments, projects, or activities over the assessment period indicating that the student can communicate the knowledge and principles gained and is familiar with social studies terminology and applications.

281—31.8(299A) Reporting assessment results.

31.8(1) Baseline tests. The baseline test results of each child subject to the baseline test requirement of Iowa Code section 299B.4 and subrule 31.7(1) shall be reported by the test administrator to the school district of residence of the child and to the department of education by June 30 of the year in which the test was taken.

The baseline test shall serve only as data from which subsequent progress shall be measured; the baseline test alone is not an indication of educational progress or a lack of progress.

31.8(2) Standardized tests. The results of a standardized test taken by a child subject to the annual assessment requirement shall be reported by the test administrator to the district of residence of the child and to the department of education by June 30 of the year in which the test was taken. The results shall be submitted in original form as received from the agency responsible for scoring the test.

31.8(3) Portfolio assessments. The assessment results of a child's educational portfolio made by a qualified Iowa licensed practitioner or practitioners shall be submitted by the portfolio evaluator(s) to the child's parent, guardian or legal custodian, the district of residence of the child, and the department of education by June 30 of the year in which the assessment was done.

The report shall be in narrative form and shall include assessments of the child's achievement and progress in the curriculum areas including reading, language arts, and mathematics for children whose grade level of study is fifth grade and below, and those subjects plus the additional areas of science and social studies for students whose grade level of study is sixth grade and above. The report shall include a statement as to whether the child has demonstrated adequate progress in each of the areas of study for which the portfolio evaluator is qualified to provide an assessment. The report shall be signed by each evaluator.

Pursuant to subrule 31.7(4), paragraph "a," a trained portfolio evaluator may perform assessments only in areas for which the evaluator holds a valid endorsement.

281—31.9(299A) Special education students. When a child has been identified as currently requiring special education, the child is eligible to receive competent private instruction with the written approval of the director of special education of the area education agency of the child's district of residence.

The director of special education of each area education agency shall issue a written decision, approving, conditioning approval on modification of the proposed program, or denying approval, based upon the appropriateness of the proposed competent private instruction program for the child requiring special education, considering the child's individual disability.

If the special education director denies approval, that decision is subject to review by an impartial administrative law judge under provisions of 20 U.S.C. Section 1201 et seq., federal regulations adopted thereunder, and Iowa Code section 281.6 and rules adopted thereunder found at 281—41.32(17A,281,290) et seq.

If a parent, guardian, or legal custodian of a child requiring special education provides private instruction without the approval of the director of special education, the director may either request an impartial hearing before an administrative law judge under the rules of special education, 281—41.32(17A,281,290) or notify the secretary of the child's district of residence for referral of the matter to the county attorney pursuant to Iowa Code section 281.6, incorporating chapter 299.

A program of competent private instruction provided to a student requiring special education is not a program of special education for purposes of federal and state law.

The director of special education shall advise the parent, guardian, or legal custodian of a child requiring special education of the probable consequences of placing the child under private instruction and withdrawing the child from specialized instruction and services to which the child is entitled. The director of special education may require the parent, guardian, or legal custodian of a child requiring special education to accept full responsibility for the parent's, guardian's or legal custodian's decision to reject special education programs and services, foregoing a later request for compensatory education for the period of time when the child was under private instruction.

These rules are intended to implement Iowa Code Supplement chapters 299 and 299A.

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[Published 4/29/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/29/92.

ARC 2962A

ELDER AFFAIRS DEPARTMENT[321]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249D.14, the Department of Elder Affairs hereby amends Chapter 1, "Introduction," Iowa Administrative Code.

The amendment is intended to define the meaning of the Department of Elder Affairs and clarify references to the Department in the Administrative Rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 5, 1992, as ARC 2731A. This adopted amendment is identical to that published under Notice.

The Commission of the Department of Elder Affairs adopted this amendment at their regular meeting on March 19, 1992.

The amendment will become effective on June 3, 1992.

The amendment is intended to implement Iowa Code section 249D.14.

The following amendment is adopted.

Amend rule **321—1.7(249D)** by adding the following definition in alphabetical order:

"Department of elder affairs" or "department" means the sole state agency responsible for administration of the Older Americans Act and Iowa Code chapter 249D.

[Filed 4/3/92, effective 6/3/92]
[Published 4/29/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/29/92.

ARC 2963A

ELDER AFFAIRS DEPARTMENT[321]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249D.23, the Department of Elder Affairs hereby amends Chapter 5, "Department Fiscal Policy," Iowa Administrative Code.

The amendment is intended to correct a typographical error in subrule 5.16(1) inserting a two year or more useful life span criteria for property that is acquired for the erroneous one year or more as is currently stated.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 19, 1992, as ARC 2800A. This amendment is identical to that published under Notice.

The Commission of the Department of Elder Affairs adopted this amendment at their regular meeting on March 19, 1992.

This amendment will become effective on June 3, 1992.

This amendment is intended to implement Iowa Code section 249D.23.

The following amendment is adopted.

Amend subrule 5.16(1) as follows:

5.16(1) Responsibilities of grantees and contractors. All grantees or contractors who use funds received from the department or AAA to purchase property, to include real property or nonexpendable tangible personal property with a useful life of ~~one year~~ *two years* or more and a single unit acquisition cost of $500 or more, as within the provisions of the grant or contract, shall make and maintain appropriate records of all such property.

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ARC 2964A

EMPLOYMENT SERVICES DEPARTMENT[341]

Adopted and Filed

Pursuant to the authority of Iowa Code section 17A.3, the Director of the Department of Employment Services hereby adopts amendments to Chapter 1, "Administration," Iowa Administrative Code.

These amendments are identical to those published under Notice of Intended Action in the Iowa Administrative Bulletin, March 4, 1992, as **ARC 2838A**.

These amendments update the overall organization and method of operation of the Department of Employment Services.

These amendments were adopted by the Director of the Department of Employment Services on April 10, 1992, and will become effective June 3, 1992.

These amendments are intended to implement Iowa Code section 84A.1.

The following amendments are adopted.

Amend **341—Chapter 1** as follows:

341—1.1(84A) Overall organization.

1.1(1) Operation and administration. For ease of operation and administration of responsibilities assigned to it, the director has organized the department into four ~~(4)~~ divisions which are further divided into bureaus, sections and units.

1.1(2) Director's division.

a. The staff services functions of the department are performed by employee services, audit and analysis, and public relations under the overall direction of ~~a bureau chief~~ *the deputy director* reporting to the director.

b. The administrative services functions of the department are performed by business management, ~~financial~~ *premises* management, and data processing under the direction of a bureau chief reporting to the director.

c. The strategic planning and finance functions of the department are performed by planning and budgeting and accounting under the direction of a bureau chief reporting to the director.

e *d.* The legislative liaison functions of the department are performed by an executive assistant who reports to the director.

1.1(3) Division of job service. The division is the office of the job service commissioner with the function to administer, inform, regulate, and enforce the employment security laws as provided in Iowa Code chapter 96. The division consists of ~~three~~ *two* bureaus: job insurance~~,~~ *and* field operations~~, and appeals~~. A specific description of the division is contained in 345—Chapter 1.

1.1(4) Division of labor. The division of labor is the office of the labor commissioner with the function to administer, inform, regulate, and enforce the labor laws as provided in Iowa Code chapters 88, 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91B, *91C, 91D, 91E,* 92, 94, and 95, and Iowa Code ~~section~~ *sections 30.7 and* 327F.37. The division consists of four bureaus: occupational health and safety enforcement, occupational health and safety consultation and education, inspections and reporting, and employee protection. A specific description of the division is contained in 347—Chapter 1.

1.1(5) Division of industrial services. The division is the office of the industrial commissioner with the function to administer, inform, regulate, and enforce the workers' compensation, occupational disease and occupational hearing loss laws as provided in Iowa Code chapters 85, 85A, 85B, 86 and 87. The division consists of three bureaus: adjudication, compliance, and data processing. A specific description of the division is contained in 343—Chapter 1.

1.1(6) Location. Interested persons may contact the Iowa Department of Employment Services at 1000 East Grand Avenue, Des Moines, Iowa 50319, or by telephoning the department *toll-free* at ~~515-281-5387~~ *1-800-562-4692*.

341—1.2(84A) General course and method of operations.

1.2(1) Director. The director has general supervision over the administration and operation of the department. The director shall prepare, administer, and control the budget of the department and its divisions and shall approve the employment of all personnel of the department and its divisions.

1.2(2) Deputy director. The deputy director serves as the principal deputy to the director to assist in the development, implementation, or revision of the policies affecting overall operations and relationships in the agency. The deputy director confers with division and bureau heads regarding the progress and problems of specific programs and operations for which they are responsible. The deputy director reviews activities, reports and records and determines conformity with policies and procedures and the need for improvements or revisions. The deputy director determines and ensures that policy required by changes in the law or director action are executed, reports findings and submits recommendations to the director for approval or subsequent action. The deputy director supervises divisions requiring administrative coordination~~;~~ and supervises general administrative matters. The deputy director represents the director in various capacities as directed.

1.2(3) Staff services bureau. The staff services bureau is under the direction of ~~a bureau chief~~ *the deputy director* who assists the director by planning, directing and coordinating activities for the department. The ~~chief~~ *deputy director* directs the employee services, audit and analysis, and public relations functions of the department.

~~a. The equal employment opportunity (EEO) officer serves on the director's staff under the supervision of the~~

~~staff services bureau chief. Individuals may file complaints on EEO matters at the Department of Employment Services Administrative Office, 1000 East Grand Avenue, Des Moines, Iowa 50319, attention: EEO Officer. If the department is involved in charges or allegations in the EEO area, the EEO officer is responsible for pursuing conciliation of resolution. When necessary, the issues will be referred to the appropriate agencies, federal or state, for action. The EEO officer provides written and verbal guidance on EEO matters to the director, division commissioners, and bureau chiefs. This includes providing guidelines necessary to keep the department in compliance with federal and state law as well as United States department of labor rules. The EEO officer is the official liaison with civil rights agencies and human service organizations. The EEO office is also given special assignments by the director in sensitive matters. The EEO officer prepares the department affirmative action plan. A department employee filing a grievance through channels may elect, in matters involving EEO, to confer directly with the EEO officer who may make recommendations deemed appropriate. The EEO officer is responsible for developing and giving training with the staff development unit to department employees on civil rights and equal employment opportunity and in monitoring the same.~~

~~b~~ *a*. The employee services section is ~~divided into two units~~ under a section supervisor reporting to the ~~bureau chief~~ *deputy director*. The ~~units are personnel and staff development.~~ *section is responsible for:*

(1) ~~The personnel unit is responsible for:~~ *Providing an equal employment opportunity (EEO) program. The EEO officer is under the supervision of the section supervisor. Individuals may file complaints on EEO matters at the Department of Employment Services Administrative Office, 1000 East Grand Avenue, Des Moines, Iowa 50319, Attention: EEO Officer. If the department is involved in charges or allegations in the EEO area, the EEO officer is responsible for pursuing reconciliation or resolution. When necessary, the issues will be referred to the appropriate agencies, federal or state, for action. The EEO officer provides written and verbal guidance on EEO matters to the director, deputy director, division administrators, and bureau chiefs. This includes providing guidelines necessary to keep the department in compliance with federal and state law as well as United States Department of Labor rules. The EEO officer is the official liaison with civil rights agencies and human service organizations. The EEO office is also given special assignments by the section supervisor in sensitive matters. The EEO officer prepares the department affirmative action plan. A department employee filing a grievance through channels may elect, in matters involving EEO, to confer directly with the EEO officer who may make recommendations deemed appropriate. The EEO officer is responsible for developing and giving training with the other section employees on civil rights and EEO and in monitoring the same;*

~~1.~~ *(2)* ~~A~~ *Maintaining a* comprehensive department personnel program in accordance with rules and regulations of the Iowa department of personnel (IDOP), federal standards for a merit system, and department policy and regulations;

~~2.~~ *(3)* Maintaining employee records *including payroll*;

~~3.~~ *(4)* Interpreting and informing employees of personnel rules, regulations, procedures, and fringe benefits;

~~4.~~ *(5)* Carrying out an employee performance evaluation program;

~~5.~~ *(6)* Maintaining a day-to-day working relationship with IDOP and cooperating with IDOP in test development for examinations, validation of department position classifications, and development of new job classifications and job specifications; ~~and~~

~~6.~~ *(7)* Providing advice in collective bargaining contract administration and grievance handling~~.~~*;*

~~(2) The staff development unit is responsible for:~~

~~1.~~ *(8)* ~~Department~~ *Providing* in-service and out-service training and related training programs, developing training materials, giving training and cooperating in development and giving of training to department employees;

~~2.~~ *(9)* Providing out-service training including individual courses at local colleges and universities, especially developed short courses for specialists and management;

~~3.~~ *(10)* ~~A~~ *Maintaining a* department library, indexing library books and publications and loaning to department employees;

~~4.~~ *(11)* Keeping audio-visual equipment in repair; and

~~5.~~ *(12)* Loaning *audio-visual* equipment.

~~c~~ *b*. The audit and analysis section is divided into ~~five~~ *four* units under a section supervisor reporting to the ~~bureau chief~~ *deputy director*. They are the reporting unit, labor market information unit, ~~budget and resource planning unit, economic development~~ *labor availability survey* unit, and actuarial unit.

(1) The reporting unit is responsible for:

1. The collection, analysis, and reporting of data on Iowa's employment, job insurance business trends, and related areas;

2. The required reports to the bureau of labor statistics (BLS) and employment and training administration (ETA);

3. Special statistical studies for the director; and

4. A variety of section-initiated, or assigned, statistical and research studies.

(2) The labor market information unit is responsible for:

1. Collection, analysis, and distribution of general labor market information including unemployment, occupational and planning information;

2. Required reports to the BLS and ETA;

3. Special statistical studies for the director; and

4. A variety of section-initiated, or assigned, statistical and research studies.

~~(3) The budget and resource planning unit assists the section in budgeting of all resources including all grants and cooperative agreements for which they applied and received.~~

(~~4~~ *3*) The ~~economic development~~ *labor availability survey* unit is responsible for surveys which represent a broad picture of a particular county's available work force. Included in the surveys are the number of county residents who want work, an inventory of their primary and secondary skills, prevailing wage scales, and other data.

(~~5~~ *4*) The actuarial unit acts as advisor through the ~~bureau chief~~ *deputy director* to the governor, legislature, job service advisory council, and the department director on matters dealing with the unemployment compensation fund and related federal and state laws or regulations. *Its major functions include:*

~~Major functions include:~~

1. Developing of forecast and projections;

2. Preparing economic impact statements;

3. Developing computer models and other research tools for cost analysis;
4. ~~Actuarial~~ *Performing actuarial* studies;
5. Preparing annual statistics report;
6. Determining annual employer tax table, benefit amount payable and tax rates for contributing government employers;
7. ~~Special~~ *Performing special* studies for the director on the impact of proposed legislation; and
8. Providing information to the public through the media.

~~d~~ *c*. The public relations section:

(1) Plans, directs, coordinates and evaluates the development, preparation and release of statewide department information programs and materials including publications, posters, news releases, audio-visuals, radio-TV scripts and similar functions;

(2) Reviews present and proposed department policy activities to determine the most effective means of communicating information to the public;

(3) Develops and implements the annual plan of service for the department information activities;

(4) Cooperates with other department divisions to disseminate information to employers and other individuals;

(5) Provides consultative assistance on information prepared and released by department offices;

(6) Coordinates services with communications media to ensure broad coverage for the department;

~~(7) Oversees reception area of the department's administrative office at 1000 East Grand Avenue, Des Moines, Iowa 50319;~~

(~~8~~ *7*) Maintains liaison with various federal, state and local organizations (government and private) including coordination of joint or related information efforts: Conducts department and out-of-department public information research projects and writes director's speeches; and

(~~9~~ *8*) Maintains department forms control program, reduction of forms used, size, combination and reprinting.

1.2(4) Administrative services bureau. The administrative services bureau is under the direction of a bureau chief who assists the director by planning, directing and coordinating activities for the department. The chief directs business management, ~~financial~~ *premises* management, and data processing *functions of the department.*

a. The business management section is responsible for the micrographic, purchasing, ~~word processing, and premises~~ and office services function for the ~~section~~ *department.*

(1) The ~~microfilm~~ *micrographic* unit is responsible for filming, *maintaining, and retrieving* a variety of the department's ~~documents~~ *records on the on-line retrieval system.*

(2) The purchasing unit is responsible for purchasing supplies, equipment and services, *and maintaining an inventory of supplies.*

~~(3) The word processing unit is responsible for providing transcription and typing services for the department.~~

~~(4) The premise management unit reports directly to the section supervisor and is responsible for facility and communication management, printing and collating, supply and warehousing, mail services, and maintaining a property inventory on equipment.~~

~~1.~~ *(3)* The printing and collating unit is responsible for printing and collating services for the department.

~~2.~~ *(4)* The supply and warehousing unit is responsible for receiving, storing and issuing supplies and equipment, ~~maintaining supply inventory,~~ and ~~carrying out the~~ moving and ~~transfer~~ *transferring* of equipment.

~~3.~~ *(5)* The mail services unit is responsible for ~~mail~~ receiving and *internal* distribution ~~for the department~~ *of incoming mail as well as daily processing of outgoing mail to local offices including processing unemployment insurance benefit payments for mailing to individuals claiming benefits.*

~~b. The financial management section is responsible for financial management of the department in accordance with federal ETA fiscal standards and budget guidelines, and state and other fiscal standards and budget guidelines with the overall goal of utilizing to the fullest extent possible all moneys allocated to the department. In addition to its primary area of fiscal and budget management, this section is responsible for the formulation of administrative policies. This section coordinates preparation of the budget to be submitted to the ETA, and where applicable, to the appropriate state appropriations process, establishes administrative accounting controls including disbursement of recording and accounting transactions, performs preaudit functions of disbursements, and analyzes budget information to seek and institute ways of affecting greater economy and efficiency of operations; performs payroll; time distribution reporting, and payment of purchases, travel, rent, utilities, similar functions and other fiscal expenditures.~~

b. The premises management section reports directly to the bureau chief and is responsible for facility and communication management.

c. The data processing section provides system analysis, computer programming, data entry, and computer services for the department. The computer installed in the section provides on-line and batch-type operations. The on-line system ~~permits job service division local offices the~~ *provides* immediate access to *all data stored within* the computer ~~through video display units attached to telephone lines that are connected to the computer's central processing unit~~. Major computer applications include: job insurance, *workers' compensation*, payrolls, employer accounting, fraud detection, statewide job bank, applicant data systems, financial and business management systems, employee services, a large series of statistical reporting data and special projects. The data processing section is divided into five units:

(1) The administrative unit provides overall section management coordination.

(~~1~~ *2*) The data entry unit ~~enters data directly to magnetic tapes and disk through data entry terminals ready for processing by off line equipment or computer~~ *provides data conversion services for the department's work groups.*

(~~2~~ *3*) The systems and programming applications ~~staff services~~ unit *is divided into two subunits with one subunit providing assistance to the staff services, administrative services, strategic planning and finance and appeals functions of the department and the other subunit providing assistance to the field operations and job insurance functions of the department. This unit* determines the applicability of converting department operations from manual to data processing operations; develops new computer systems and programs, revises, modifies, and updates present systems and programs; adapts federally developed or manufacturer-developed standard programs to computer operations.

~~(3) The systems and programming applications unit and field operations unit determine the applicability of converting department operations from manual to data processing operations; develops new computer systems and programs; revises, modifies, and updates present systems and programs; adapts federally developed or manufacturer developed standard programs to computer operations.~~

(4) The computer ~~operation~~ *operations* unit is responsible for processing the data in all data entry formats (including magnetic tapes, disk, and on-line modes) through its central processing unit and allied electronic equipment.

(5) The planning and support unit provides support for all nonapplication-type programs, such as; the computer operating system, communication system, monitoring system, utility-type programs, computer usage reports and other specialized programs used to assist the programmers and computer operators to do their jobs more effectively and efficiently.

1.2(5) Strategic planning and finance bureau. The strategic planning and finance bureau is under the direction of a bureau chief who assists the director by planning, directing and coordinating the activities of the department. The chief directs planning, budgeting and accounting functions of the department.

a. The planning section is responsible for departmental planning as it relates to departmental goals and objectives, departmental automation management, and statewide business, labor and economic development liaison.

b. The budgeting and accounting section is responsible for financial management of the department in accordance with federal, state and other fiscal standards and budget guidelines with the overall goal of fully utilizing all moneys allocated to the department and is responsible for recommending administrative financial policies. This section coordinates preparation of the budget to be submitted to the United States Department of Labor, the governor, and the general assembly, establishes administrative accounting controls, performs preaudit functions of disbursements, analyzes budget information to seek and institute greater economy and efficiency of operations as well as performs time distribution reporting, payment for purchases, travel, rent, utilities, and other expenditures.

1.2(5 *6*) The legislative liaison unit serves as the department's liaison with the legislature and Congress and

1. Reviews legislation affecting the department;
2. Monitors floor debate;
3. Develops, presents and secures enactment of the department's legislative package;
4. Serves as liaison to the job service advisory council for the director; and
5. Drafts correspondence for the director in response to nonroutine program inquiries.

These rules are intended to implement Iowa Code ~~sections~~ *section* 84A.1 ~~and 96.17(1)~~.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/29/92.

ARC 2976A

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 505.8, the Iowa Division of Insurance hereby adopts a new Chapter 70, "Utilization Review," under a new segment entitled, "Managed Health Care," Iowa Administrative Code.

The adopted new chapter sets forth the minimum uniform standards and procedures to which an insurance carrier or other entity regulated by the Insurance Division must adhere. The standards are a condition of licensure and a condition of conducting utilization review for determination of coverage for medical services under contracts pursuant to the entity's license from the Insurance Division.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 5, 1992, as ARC 2747A.

A public hearing was held in Des Moines on March 2, 1992. Comments were received at the hearing as well as in writing. The Iowa Association of Health Maintenance Organizations, USAA, the Health Insurance Association of America, the Iowa Hospital Association, Principal Mutual, the Iowa Association of Quality Assurance Professionals, and the Iowa Foundation for Medical Care expressed their support, verbally or in writing, for the rules as published under Notice of Intended Action.

An individual responsible for utilization review in a hospital setting requested that the rules be changed to require that only licensed health care professionals conduct utilization review. The Iowa Association of Quality Assurance Professionals supports the rules in their current form, which provide for utilization review by an unlicensed health care professional under the circumstances of appropriate training and direct supervision of licensed health care personnel. Therefore, the Insurance Division does not see a need to impose the limitation suggested. The Sisters of Mercy Health Corporation (SMHC), Province of Detroit, suggested additional language for purposes of certification, a requirement that any third-party payor conducting utilization review maintain on the premises a copy of the URAC standards, and rewording the regulatory requirement's date certain statement to a statement of compliance with the most recent available standard. These suggestions were incorporated into the rule. A physician expressed a belief that only licensed physicians should be permitted to perform utilization review. Since the Iowa Medical Society supports the rules in their current form, which provides for physician review on request and in the instance of appeal, the Insurance Division does not feel it necessary to impose a general prohibition against nonphysician review.

A local health maintenance organization expressed the belief that HMOs should be exempted from compliance with the rules. However, given the fact the Iowa Association of Health Maintenance Organizations supports the regulations as noticed and filed, the Insurance Division does not feel an exemption warranted.

These rules are intended to implement Iowa Code chapter 507B and sections 505.8 and 514F.2.

These rules will become effective June 3, 1992.

The following new chapter is adopted.

MANAGED HEALTH CARE

CHAPTER 70
UTILIZATION REVIEW

191—70.1(505,514F) Purpose. The purpose of this chapter is to:

1. Promote the delivery of appropriate health care in a cost-effective manner.
2. Ensure that any utilization review system used by a third-party payor adheres to reasonable standards for conducting orderly and efficient utilization review processes.
3. Ensure that any utilization review system used by a third-party payor does not result in an unfair discrimination between enrollees of essentially the same class or risk in the benefits payable under a contract for health benefits.
4. Foster greater coordination and cooperation between health care providers and utilization reviewers.
5. Improve communications and knowledge of benefits among all parties concerned before expenses are incurred.

191—70.2(505,514F) Definitions. As used in this chapter, unless the context otherwise requires:

"Commissioner" means the commissioner of insurance.

"Enrollee" means an individual who has contracted for or who participates in health benefits coverage provided through any third-party payor.

"Third-party payor" means any of the following entities:

1. An insurer subject to Iowa Code chapter 509 or 514A.
2. A health service corporation subject to Iowa Code chapter 514.
3. A health maintenance organization subject to Iowa Code chapter 514B.
4. A preferred provider arrangement subject to 191—Chapter 27, Iowa Administrative Code.
5. A multiple employer welfare arrangement.
6. A third-party administrator.
7. A fraternal benefit society.
8. Any other benefit program providing payment, reimbursement, or indemnification for health care costs for an enrollee or an enrollee's eligible dependents.

"Utilization review" means a program or process by which an evaluation is made of the necessity, appropriateness and efficiency of the use of health care services, procedures, or facilities given or proposed to be given to an individual within this state. These standards do not apply to requests by any person or provider for a clarification, guarantee or statement of an individual's health insurance coverage or benefits provided under a health insurance policy, nor to claims adjudication. Unless it is specifically so stated, verification of benefits, preauthorization, and prospective or concurrent utilization review programs shall not be construed in any context as a guarantee or statement of insurance coverage or benefits for any individual under a health insurance policy.

191—70.3(505,514F) Application.

70.3(1) A third-party payor which provides health benefits to enrollees residing in the state of Iowa shall not conduct utilization review, either directly or indirectly, by contract with a third party that does not meet the requirements established for accreditation by the Utilization Review Accreditation Commission (URAC) or another national accreditation entity recognized and approved by the commissioner.

70.3(2) On or before March 1 of each year, a third-party payor conducting utilization review shall provide the commissioner with a certification that is in compliance with this chapter, and shall continuously meet all requirements of the relevant standards in addition to the following information:

a. Name, address, telephone number and normal business hours of the third-party payor and of the utilization review agent if not the same as the third-party payor.

b. Name, address, and telephone number of a person for the commissioner to contact in connection with utilization review compliance.

Any material changes in the information filed in accordance with this rule shall be filed with the commissioner within 30 days of the change.

70.3(3) This chapter does not apply to any utilization review performed solely under contract with the federal government for review of patients eligible for services under:

a. Title XVIII (Medicare) of the federal Social Security Act;

b. The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); or

c. Any other federal employee health benefit plan.

191—70.4(505,514F) Standards. For the purposes of certification and compliance under rule 70.3(505,514F), the most recently available utilization review standards adopted by URAC shall be used.

A copy of the standards and application for accreditation may be obtained from the Utilization Review Accreditation Commission, 1227 25th Street N.W., Suite 610, Washington, D.C. 20037. A copy of the standards shall be readily available and maintained on the premises of any third-party payor conducting utilization review.

191—70.5(505,514F) Retroactive application. A third-party payor shall not impose a retroactive change in procedure that creates an impossibility or impracticability of compliance that would result in a refusal of payment.

191—70.6(505,514F) Variances allowed. Upon application by a third-party payor, the commissioner may approve a variance from the URAC standards for good cause shown, provided such conditions are consistent with the purpose of this chapter. The commissioner shall require the third-party payor to provide reasonable written notice to providers of any approved variance.

70.6(1) Notification of allowed coverage and denials. Notification of the attending physician and treatment facility (as used and defined in the URAC standards) by telephone within one working day is not required provided a documented communication with the physician or the physician's staff and treatment facility is made within one working day of a determination not to certify an admission or extension of a hospital stay.

70.6(2) Individuals who are not licensed health care professionals, but who are otherwise qualified, may perform routine utilization review under the following conditions:

a. They have received full orientation by the utilization review organization relating to administrative practices and policies;

b. They have been fully trained in the application of the medical or benefit screening criteria established or endorsed by the utilization review organization;

c. They are trained to refer review requests to licensed health care professionals when the required review ex-

ceeds their own expertise, when not addressed in the criteria established or endorsed by the utilization review organization, or when requested by the provider; and

d. They are under the direct supervision of a licensed health care professional.

191—70.7(505,514F) Confidentiality. A third-party payor shall require a contract utilization review agent to adhere to the same standards of patient medical record confidentiality as are directly applicable to the third-party payor.

191—70.8(505,507B,514F) Enforcement. The remedy for noncompliance with this chapter shall be those remedies authorized by Iowa Code chapters 505 and 507B, including, upon order of the commissioner, payment of outstanding charges, as determined to be reasonable by the commissioner. Upon a finding of a pattern or practice of noncompliance with this chapter, the commissioner may also suspend a person's authority to conduct utilization review.

These rules are intended to implement Iowa Code chapter 507B and sections 505.8 and 514F.2.

[Filed 4/10/92, effective 6/3/92]
[Published 4/29/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/29/92.

ARC 2971A

JOB SERVICE DIVISION[345]

Adopted and Filed

Pursuant to the authority of Iowa Code section 96.11, the Commissioner of the Division of Job Service hereby adopts amendments to Chapter 1, "Administration," Iowa Administrative Code.

These amendments are identical to those published under Notice of Intended Action in the Iowa Administrative Bulletin, March 4, 1992, as **ARC 2839A**.

These amendments update the overall organization and method of operation of the Division of Job Service.

These amendments were adopted by the Director of the Department of Employment Services on April 10, 1992, and will become effective June 3, 1992.

These amendments are intended to implement Iowa Code sections 84A.1, 96.10, and 96.11 and Federal Rule of Civil Procedure 65(b).

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [1.1, 1.2, 1.3] is being omitted. These rules are identical to those published under Notice as **ARC 2839A**, IAB 3/4/92.

[Filed 4/10/92, effective 6/3/92]
[Published 4/29/92]

[For replacement pages for IAC, see IAC Supplement 4/29/92.

ARC 2970A

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 46, "Withholding," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin, volume XIV, number 18, on March 4, 1992, page 1560, as **ARC 2834A**.

As a result of Iowa Code Supplement subsection 422.16(1), subrule 46.1(2) was amended to authorize state income tax withholding from payments of pensions, annuities and other nonwage payments made to Iowa residents on or after January 1, 1992. Those amendments were adopted in the Iowa Administrative Bulletin on December 11, 1991, as **ARC 2601A**, which became effective on January 15, 1992.

A recent comparison of that rule with the statute that the rule implements (new unnumbered paragraph in Iowa Code Supplement subsection 422.16(1) has disclosed that the separate election for withholding of state income tax from pension and annuity payments in paragraph "a" of subrule 46.1(2) can be misinterpreted, thus causing a conflict with the statute that the rule is intended to implement. The statute provides that Iowa income tax is to be withheld from pension and annuity payments in those circumstances when federal income tax is being withheld from those payments.

These amendments delete the reference to a separate election for withholding of state income tax from pension and annuity payments which would have permitted payees of pensions and annuities to opt out of state income tax withholding when federal income tax is being withheld from the pension and annuity payments. The amendments replace this election with an election which may be used by payers of pensions and annuities which provides that payees of the benefits can request that state income tax be withheld in situations where federal income tax is not withheld.

These amendments also include a new paragraph "d" in subrule 46.1(2) which explains how state income tax is to be withheld from lump sum distributions paid to Iowa residents from qualified retirement plans.

These amendments include a new paragraph "e" in subrule 46.1(2) which specifies that nonwage payments, including payments of pension and annuity benefits, may withhold state income tax according to departmental tables or formulas for withholding of wage payments under certain circumstances.

These amendments are identical to those published under Notice of Intended Action. These amendments will become effective June 3, 1992, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code Supplement section 422.16.

The following amendments are adopted.

ITEM 1. Amend subrule **46.1(2)** by inserting after the third paragraph and before paragraph "a" the following new paragraphs:

In the case of a lump sum distribution from a qualified retirement plan received by an Iowa resident in the tax year, state income tax is required to be withheld if the taxable amount of the distribution is $2400 or more and federal income tax is being withheld from the distribution.

Payers of pension and annuity benefits and other nonwage payments may withhold state income tax from these payments on the basis of tables and formulas included in the Iowa Withholding Tax Guide of the Department of Revenue and Finance. State income tax is required to be withheld by payers using the withholding formulas and withholding tables in situations when federal income tax is being withheld from the nonwage payments.

ITEM 2. Rescind subrule **46.1(2)**, paragraph **"a,"** and adopt the following in lieu thereof:

a. Withholding from pension and annuity payments to residents. Withholding of state income tax is required from payments of pensions and annuities to Iowa residents to the extent the payments are made on or after January 1, 1992, and to the extent the recipients of the payments have not filed election forms with the payers of the benefits which specify that no federal income tax is to be withheld. Therefore, state income tax is to be withheld when federal income tax is being withheld from the pensions or annuities. At least 30 days prior to the first payment of pension or annuity benefits to an Iowa resident made on or after January 1, 1992, the payer of the benefits may send a letter to the recipient to notify the Iowa resident that Iowa income tax will be withheld if federal income tax is being withheld from the pension or annuity. The letter should mention that Iowa income tax will be withheld at a rate of 5 percent and will be withheld only from the taxable portion of the payment or from the total payment if the payer does not know the taxable amount.

However, although Iowa income tax is ordinarily required to be withheld from pension and annuity payments made to Iowa residents on or after January 1, 1992, if federal income tax is being withheld from the payments, no state income tax is required to be withheld if pension and annuity payments are not subject to Iowa income tax, as in the case of railroad retirement benefits which are exempt from Iowa income tax by a provision of federal law. In addition, no Iowa income tax is required from a pension or annuity payment made to an Iowa resident to the extent that the payment amounts are less than $200 or the taxable amounts of the payments are less than $200, in instances where the payers know the taxable amounts of the payments.

Payers of pension or annuity benefits to Iowa residents may provide an option for the withholding of state income tax from the benefits to those recipients of the pension or annuity benefits who have filed election forms with the payers that specify no federal income tax is to be withheld from the pension or annuity payments. The following is a sample notice that can be used to give Iowa residents a separate option for withholding of state income tax from pension or annuity benefits, although no federal income tax is being withheld from the benefits. The notice for withholding of state income tax should include the information shown below:

NOTICE OF WITHHOLDING OF STATE INCOME TAX FROM (PENSIONS OR ANNUITIES)

Beginning on (date) the (pension or annuity) payments you receive from the (insert name of plan or name of company) will be subject to state income tax. You have previously made an election so that no federal income tax is to be withheld from your (pension or annuity). No Iowa income tax will be withheld from your (pension or annuity) unless you complete, date, and sign the enclosed election form and return it to (name and address). If no state income tax is withheld from your (pension or annuity), you will still be subject to Iowa income tax on this income. You may be subject to penalties under rules for estimated tax if your payments of estimated tax and state withholding tax, if any, are not adequate.

If you make the election for withholding of state income tax, the amount to be withheld will be 5 percent of the taxable portion of the payment or 5 percent of the payment amount in situations where the payer does not know how much of the payment amount is taxable. However, no state income tax is to be withheld if the taxable portion of the (pension or annuity) is less than $2400 on an annual basis or less than $200 on a monthly basis. Your election will remain in effect until you revoke it by stating, in writing to your payer, your intention to cease the withholding of state income tax from your (pension or annuity). Any election or revocation will be effective no later than January 1, May 1, July 1, or October 1 after it is received, so long as it is received at least 30 days before that date.

ELECTION FOR WITHHOLDING STATE INCOME TAX FROM YOUR (PENSION OR ANNUITY)

Instructions: Check the box below to have state income tax withheld from your (pension or annuity). Sign and date the election form and return the form to (insert name and address).

☐ Please withhold state income tax from my (pension or annuity).

Signed:_____ _____
Name Date

Return the completed election form to: (insert name and address).

ITEM 3. Amend subrule **46.1(2)**, paragraph **"b,"** as follows:

b. Withholding from payments to residents from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts and from annuities, endowments and life insurance contracts issued by life insurance companies. Effective for payments made on or after January 1, 1992, payments to Iowa residents from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts and payments from life insurance companies for contracts for annuities, endowments or life insurance benefits are subject to withholding of state income tax if federal income tax is withheld from the benefits because the recipient of the benefits has not completed the election form to specify no federal income tax is to be withheld. However, no state income tax is to be withheld from the income payments described above to the extent those income tax payments are exempt from Iowa income tax. *In addition, no state income tax is to be withheld in circumstances where payment amounts are less than $200 or the taxable portions of the payments are less than $200 in cases when the payer knows the taxable amount of the payment. There is also no state income tax withholding in situations where the payment amount or the taxable amount is $200 or more but the payment amount or the taxable amount for the year is less than $2400.*

At least 30 days prior to the first payment of one or more of the above described income payments made to an Iowa resident on or after January 1, 1992, the payer of the income may send a letter to the recipient of the payment so the resident will be aware that Iowa income tax will be withheld at a 5 percent rate if federal income tax is being withheld. Although payers of the benefits listed at the beginning of this paragraph are required to withhold Iowa income tax from the benefit payments to Iowa residents starting on January 1, 1992, only if federal income tax is being withheld from the payments, the payers may give the Iowa residents a separate option for withholding *of Iowa income tax in situations where the taxpayers have filed election forms with the Internal Revenue Service to provide that no federal income tax is to be withheld from the benefit payments.* ~~which is not tied to the federal election for withholding on the benefits.~~ A sample notice for making the election ~~on whether~~ *for withholding* state income tax ~~is to be withheld~~ is found in paragraph "a" of this subrule. That sample notice can be modified for purposes of notifying recipients that an election for withholding form may be completed for withholding *of state income tax* from payments from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts and from payments from life insurance companies for life insurance contracts, annuities and endowments.

In cases where the recipients elect withholding of state income tax from the income payments, the payers are to withhold from the payments at a rate of 5 percent on the taxable portion of the payment, if that can be determined by the payer or on the entire income payment if the payer does not know how much of the payment is taxable. Once a recipient makes an election ~~as to whether~~ *for* state income tax *withholding* ~~is to be withheld~~, that election will remain in effect until a later election is made.

ITEM 4. Further amend subrule **46.1(2)** by adding the following new paragraphs **"d"** and **"e"**:

d. Withholding on lump sum distributions from qualified retirement plans. Effective for lump sum distribution payments from qualified retirement plans made on or after January 1, 1992, to Iowa residents, state income tax is required to be withheld under the conditions described in this paragraph. No state income tax is required to be withheld from a lump sum distribution payment to an Iowa resident in a situation where the payment is not subject to Iowa income tax. In addition, Iowa income tax is not required to be withheld on the distribution to the extent that the amount of the distribution or the taxable amount, if known by the payer, is less than $2400. Iowa income tax is to be withheld from a lump sum distribution made to an Iowa resident to the extent that federal income tax is being withheld from the distribution. The rate of withholding of state income tax from the lump sum distribution is 5 percent from the total distribution or 5 percent from the taxable amount, if that amount is known by the payer. Note that in the case of a lump sum distribution the Iowa income tax imposed on the taxable amount of the distribution is 25 percent of the federal income tax on the distribution.

e. Withholding of state income tax from nonwage payments to residents on the basis of tax tables and tax formulas. Effective for nonwage payments made on or after January 1, 1992, to Iowa residents, state income tax may be withheld from the nonwage payments on the basis of formulas and tables included in the Iowa withholding tax guide of the department of revenue and finance. When state income tax withholding is being done from the formulas or tables in the withholding guide, the amounts of the nonwage payments are treated as wage payments for purposes of the tables or the formulas.

The frequency of the nonwage payments determines which of the withholding tables to use or the number of pay periods in the calendar year to use in the formula. For example, if the nonwage payment is made on a monthly basis, the monthly wage bracket withholding table should be utilized for withholding or 12 should be utilized in the formula to indicate that there will be 12 nonwage payments in the year.

The payers of nonwage payments should withhold state income tax from the nonwage payments to Iowa residents when federal income tax is being withheld from the nonwage payments. The payers should withhold from the nonwage payments to Iowa residents from tables or the formulas in the Iowa withholding guide on the basis of the number of withholding exemptions claimed on forms IA W4 which have been completed by the payees of the payments. However, if a payee of a nonwage payment has not completed an IA W4 form (Iowa employee's withholding allowance certificate) by the time a nonwage payment is to be made by the payer of the nonwage payment, the payer is to withhold state income tax on the basis that the payee has claimed one withholding allowance or exemption.

In a situation when a payee of a nonwage payment completes form IA W4 and claims exemption from state income tax withholding when federal income tax is being withheld from the nonwage payment, the payer of the nonwage payment should withhold state income tax using one withholding allowance or exemption unless the payee has verified exemption from state income tax.

This paragraph "e" applies to all nonwage payments made to Iowa residents, including payments of pensions and annuities.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/29/92.

State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER 43

WHEREAS, Iowa's recovery from the national recession has not occurred as quickly as anticipated, and income from farm returns, fees, judicial revenue and interest is below expectations; and

WHEREAS, as a result of these factors the Revenue Estimating Conference in its report issued on April 6, 1992 revised downward by $27.5 million its estimate of state revenues for fiscal year 1992; and

WHEREAS, expenditures for human services entitlement programs are expected to exceed funds appropriated to the Department of Human Services in fiscal year 1992 by an estimated $6 million, despite the provision of an earlier supplemental of $40 million for such programs; and

WHEREAS, expenditures for indigent defense and certain standing unlimited appropriations are also expected to exceed the funds appropriated; and

WHEREAS, the director of the department of management has concluded that without revisions to the state budget in fiscal year 1992, the need for additional appropriations for human services entitlement programs, indigent defense and other standing appropriations, and the shortfall in state revenues will result in a general fund deficit on June 30, 1992 of $15.7 million; and

WHEREAS, Article VII of the Constitution of Iowa prohibits state budget deficits; and

WHEREAS, Iowa Code Section 8.31 provides a procedure for uniform and prorated reductions of state appropriations by the Governor to avoid overdrafts and deficits; and

WHEREAS, without implementing these uniform, prorated reductions in state appropriations, in addition to other selective spending reductions, the state will face a $15.7 million deficit in the general fund on June 30, 1992.

NOW THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by the power and authority vested in me by the Constitution and the laws of Iowa, do hereby make the following findings and orders:

1. I find that the estimated budget resources during fiscal year 1992 are insufficient to pay all appropriations in full as required by Iowa Code Section 8.30, to wit:

General fund balance, June 30, 1991	$ 11.1 million
Fiscal year 1992 receipts (net)	$3169.2 million
Fiscal year 1992 appropriations and standing estimated appropriations	$3196.0 million
TOTAL DEFICIT	$15.7 million

2. I further find that a .62 percent reduction in appropriations subject to Iowa Code Section 8.31 is necessary to prevent an overdraft or deficit in the general fund of the state at the end of this fiscal year.

3. I hereby direct the implementation of Iowa Code Section 8.31 requiring the uniform modification of allotments for the fourth quarter of the fiscal year to achieve an annual .62 percent fiscal year reduction in each respective appropriation unless subsequent projections provide good reason to alter these findings.

4. I further direct the director of the department of management to prepare such modified allotments for the fourth quarter of fiscal year 1992, which commences April 1, 1992, with the exception of appropriations excluded by Iowa Code Section 8.2 (5), pertaining to the courts and the legislature.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 8th day of April in the year of our Lord, one-thousand nine hundred and ninety-two.

Terry E. Branstad
GOVERNOR

Attest:

Elaine Baxter
SECRETARY OF STATE

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA

FILED APRIL 15, 1992

NOTE: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA, 50319, for a fee of 40 cents per page.

No. 90-1847. STATE v. WAGES.

Appeal from the Iowa District Court for Pottawattamie County, Gorden C. Abel, District Associate Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Schultz, Carter, Lavorato, and Andreasen, JJ. Opinion by McGiverin, C.J. (7 pages $2.80)

Defendants Dwight Wages and Stephen Edward Kauvar appeal from their convictions of multiple counts of selling pornography. See Iowa Code § 728.4 (1989), as amended, 1989 Iowa Acts ch. 263, § 2. On this appeal, defendants contend that Iowa Code section 728.4 is unconstitutionally vague and overly broad. Defendants also argue that the district court erred by refusing to admit into evidence certain "comparable" materials which defendants claim were available and accepted throughout the community. **OPINION HOLDS:** I. Because defendants did not raise their constitutional challenges to section 728.4 at any time before this appeal, no error has been preserved, and there is nothing for us to review as to this assignment. II. Before a trial court may admit "comparison evidence" as probative of community standards, a party must provide a foundation showing (1) that the proffered evidence is reasonably similar to the allegedly obscene materials at issue in the case, and (2) that the proffered evidence has a reasonable degree of community acceptance. On appeal, defendants contend the district court should have admitted their offered materials to demonstrate that materials similar to those which they had sold to the State's witnesses were available and accepted throughout the community. At trial, however, defendants' counsel specifically stated that defendants' materials were not being offered to show any similarity to the materials which defendants had allegedly sold. Thus, defendants did not establish the first prong of the foundational requirements for admission into evidence of "comparison" material. Accordingly, we conclude that the district court did not abuse its discretion in sustaining the State's objection and refusing to allow into evidence the defendants' offered materials.

No. 90-1859. WEST v. JAYNE.

Appeal from the Iowa District Court for Polk County, Ray Hanrahan, Judge. **AFFIRMED AS MODIFIED.** Considered by McGiverin, C.J., and Schultz, Carter, Lavorato, and Andreasen, JJ. Opinion by Schultz, J. (14 pages $5.60)

A suspended lawyer, George West, brought a breach of contract suit against a former associate lawyer, Steven C. Jayne, seeking damages for a percentage of fees collected by Jayne and for punitive damages. West and Jayne both accused the other of breach of contract and claimed damages. The trial court concluded that if West breached the contract, Jayne waived the breach. It found that Jayne had breached the contract by failing to pay West sums to which he was entitled. The trial court then awarded West a judgment for most of the fees he sought but refused to award him punitive damages. Jayne appeals and West cross-appeals. **OPINION HOLDS:** I. West's failure to pay Jayne's weekly salary did not permit Jayne to annul the contract and retain all of the benefits for performance already completed by West. At most, West's failure to pay is a partial breach. We reject Jayne's contention that West's failure to pay him a weekly salary deprives West of any rights under the contract. II. We do not believe that West's suspension from the practice of law annuls the contract with Jayne. We believe that West had performed his services under the contract at the time he turned the cases over to Jayne. We also reject Jayne's contention that the parties' contract was annulled prior to West's suspension. Thus, Jayne's contention that West can recover only on the reasonable value of his services performed, or on a quantum meruit basis, has no merit. We limit this ruling, however, to cases involving the division of contingent fees between lawyers who have worked together as associates. III. We agree with the trial court's findings and conclusions concerning entitlement to fees from a bankruptcy case. The trustee discharged West as attorney for the case and hired Jayne. We conclude that West's claim to fees in the case does not fall within the contract at issue in this case. IV. We find that the trial court erred in failing to award West additional damages based on money's advanced by West and later recovered by Jayne. West's failure to file a rule 179(b) motion concerning this issue does not waive the error on appeal. The trial court did not make a mistake or omission in its findings of fact; it simply failed to correctly compute the amount of the judgment. We must modify and increase the total judgment accordingly. V. The trial court was correct in dismissing West's claim for punitive damages. An award of punitive damages may be awarded in a breach of contract case if a defendant is guilty of malice, fraud, or other illegal acts. In this case, we do not find substantial evidence of this type of conduct. Even acts amounting to an intentional breach of contract do not form the basis for recovery of punitive damages.

No. 92-70. **AFSCME/IOWA COUNCIL 61 v. STATE.**
Appeal from the Iowa District Court for Polk County, Harry Perkins, Senior Judge. **AFFIRMED.** Considered en banc. Opinion by Harris, J. (15 pages $6.00)

The plaintiff unions represent a substantial number of Iowa's public employees for purposes of collective bargaining. In August 1990 negotiations between the unions and the State began for a two-year collective bargaining agreement to succeed an existing agreement set to expire June 30, 1991. Negotiations and mediation were unproductive and ended in impasse with each union. The public employees relations board then arranged for arbitration between the State and each union. Each arbitrator selected the union's final offer rather than the State's final offer. The legislature thereafter voted to appropriate money to fund the arbitrators' awards. The governor struck the appropriation by exercising an item veto. The legislature did not override the veto. The unions brought the present action to enforce the arbitration awards pursuant to Iowa Code section 20.17(5). Following trial, the court held that the awards constituted binding contractual agreements and that the covered employees were entitled to the increase in wages and interest. The State and governor then brought this appeal. **OPINION HOLDS:** I. We reject the unions' contention that the State lost jurisdiction to challenge the arbitration awards because the State did not file a petition for judicial review pursuant to Iowa Code chapter 17A. The State does not seek review of agency action. Rather the State attempts to rely upon section 20.17(6), which provides a defense to the enforcement action established in section 20.17(5). II. Under Iowa Code section 20.22(12), an arbitrator's decision on impasse items "shall be deemed to be the collective bargaining agreement between the parties." We have for many years held that the State is bound by contracts it enters. We previously recognized the binding contractual nature of arbitration under the Iowa public employment relations Act. The State nevertheless contends it is not bound because arbitration determinations are subordinate to the appropriation process. The State also thinks three of our Constitution's most elemental prescripts are inimical to its contractual liability: the Constitution's appropriation clause, its doctrine of separation of powers and its prohibition against undue delegation of duties. III. We find that the trial court was correct in resolving the foregoing statutory and constitutional issues in favor of the unions. Whatever strengths could be perceived in the State's position simply cannot be used to frustrate its contractual obligations. Contractual rights enjoy strong validation in both the federal and our own Constitution. It would be no favor to the State to exonerate it from contractual liability. To do so would seriously impair its

No. 92-70. **AFSCME/IOWA COUNCIL 61 v. STATE** (continued).

ability to function. Authorities from other jurisdictions also indicate that these principles apply to enforce wage agreements for public employees. We also reject the State's other constitutional arguments. The governor's right to participate in the appropriation process, including his item veto power, though great, is subject to limited judicial review. IV. Iowa Code section 20.17(6) provides an affirmative defense for parties who claim the arbitration decision is not valid or enforceable; the party claiming invalidity necessarily bears the burden of proof. We find that the State has not carried this burden; the facts render the affirmative defense untenable. All limitations or impairments suggested by the State as qualifying under section 20.17(6) were derived from actions of, or were under the control of, the State. The shortage of funds, at least to the extent of liability on these contracts, can be ascribed to discretionary funding choices. Under the circumstances here we also think concerns about comparable worth cannot constitute an affirmative defense under section 20.17(6). V. We do not hold that the governor's veto was invalid. The governor had the power to veto the particular appropriation bill in question. We affirm the trial court finding that the governor did not act in bad faith in exercising it. But the veto did not serve to erase the underlying obligation of the State. Our holding is only that the trial court was correct in its determination that the arbitration decisions amounted to binding obligations of the State, a matter that was not adjudicated at the time of the governor's veto. VI. The trial court determined that the wage increases should draw interest and we agree. Interest shall be computed on each underpayment from the date due until paid at the five percent rate specified in Iowa Code section 535.2. Opinion filed March 25, 1992.

No. 91-1635. **HESLINGA v. BOLLMAN.**

Appeal from the Iowa District Court for Mahaska County, James P. Rielly, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Lavorato, Neuman, and Snell, JJ. Opinion by Neuman, J. (5 pages $2.00)

Arbor Robertson died in December 1985. Fern Bollman, her sister and a resident of Kansas, traveled to Iowa to care for her prior to her death. After Robertson's death, Bollman took charge of her assets and sought the advice of an Iowa lawyer about their disposition. Bollman distributed some of her sister's assets and then took the

No. 91-1635. **HESLINGA v. BOLLMAN** (continued).

remaining personal property back to Kansas. Robertson's niece and nephew objected to the distribution. They retained an attorney, Garold Heslinga, who eventually commenced estate proceedings and was appointed administrator. Bollman was eventually found in contempt for disobeying a probate order to return Robertson's assets. Heslinga then sued Bollman for conversion. She was personally served in Kansas and the court overruled her attorney's motion to dismiss on jurisdictional grounds. A default judgment was entered in Heslinga's favor. Bollman has appealed. **OPINION HOLDS:** We are convinced that the quantity, nature, and source of Bollman's connection with this Iowa cause of action justifies the exercise of personal jurisdiction by an Iowa court. Bollman has had an ongoing connection with Iowa and its residents concerning her sister. We affirm the district court's denial of her motion to dismiss.

No. 90-1855. **BERG v. DES MOINES GENERAL HOSPITAL CO.**
Appeal from the Iowa District Court for Polk County, Raymond Hanrahan, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Larson, Lavorato, Neuman, and Andreasen, JJ. Per curiam. (6 pages $2.40)

On October 31, 1985, David Berg suffered a heart attack while a patient at Des Moines General Hospital. This appeal is the second chapter in his suit against the hospital and his attending physicians for alleged delay in diagnosis and resultant damage to his heart muscle. In his first appeal, Berg claimed the court erred when it refused to compel production of reports prepared by nurses just after the incident. We agreed and remanded the case with directions to reassess Berg's motion for new trial in light of the statements. On remand the district court reviewed the statements of the two nurses and concluded that the withholding of these statements had not prejudiced Berg and he was not entitled to a new trial. Plaintiff now appeals. **OPINION HOLDS:** We are unable to concur in the trial court's implicit judgment that all of these contemporaneous statements were mere duplicates of information known to counsel pretrial and fully developed before the jury. We are persuaded these nurses' statements would not only have strengthened Berg's claims, they carry the potential of seriously discrediting Dr. Friedgood's professed unawareness of critical symptoms. The court's determination that no prejudice was suffered by the withholding of the statements is not reasonable. We reverse the district court and remand for a new trial against the hospital and Dr. Friedgood. The judgment in favor of Dr. Leong shall stand.

No. 91-422. ZURN v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY.

Appeal from the Iowa District Court for Appanoose County, James P. Rielly, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Lavorato, Neuman, and Snell, JJ. Opinion by Harris, J. (8 pages $3.20)

Ricky Zurn was jogging in Centerville, Iowa, when he was struck and injured by a drunk driver. Zurn, a Minnesota resident, was insured under a policy with State Farm Mutual Automobile Insurance Company. Zurn brought a negligence action against the driver, a dramshop action against the lounge at which the driver had been drinking, and an underinsured motorist claim against State Farm. Zurn settled with the driver for $25,000, the limits of her automobile liability insurance coverage, and with the lounge for $50,000, the limit of its dramshop insurance coverage. The parties in the underinsurance claim stipulated that Zurn's damages were at least $125,000, and that the underinsured motorist coverage had a limit of $50,000. The district court applied the Minnesota statute in effect on the date of the accident, and it determined that Zurn's recovery from the driver, but not his dramshop recovery, should be deducted from the underinsurance limit. The district court therefore entered a $25,000 judgment for Zurn. Both parties have appealed. **OPINION HOLDS:** I. On the date of the accident, the controlling Minnesota statute limited recovery under underinsurance provisions to the difference between the underinsurance limit in the policy and any amounts paid by others to the insured for the same loss. Under the current Minnesota statute, any amounts paid by tortfeasors are deducted, not from the underinsurance limit, but from the insured's damages. Zurn's claim is controlled by the statute in effect on the date of the accident, not by the current statute. The Minnesota legislature had clear authority to set the effective date for change of its statutory rule. The district court was correct in determining that we are bound to abide by it. II. The next question is whether, in addition to Zurn's recovery from the driver, his dramshop recovery should be deducted from the underinsurance limit. Although this question is also one of Minnesota law, we must decide it on the basis of our own. Unless the law of a sister state is pled and proven at trial, we presume it to be the same as our own. Minnesota, as most states, seems never to have ruled on the question. In our view, underinsurance coverage is designed to make the victim whole. We think Zurn's dramshop recovery should be treated similarly. The district court was correct in declining to deduct it from the underinsurance limit.

No. 90-1337. **SNIPES v. CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY.**

Appeal from the Iowa District Court for Pottawattamie County, Leo F. Connolly, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Lavorato, Neuman, and Andreasen, JJ. Opinion by Neuman, J. (12 pages $4.80)

A jury awarded plaintiff Herbert Snipes $357,500 on his claim for a work-related injury under the Federal Employers' Liability Act (FELA), 45 U.S.C. sections 51-60 (1989). Snipes' claim stems from an accident that occurred at the train yard in Council Bluffs, Iowa. On the day of the accident a co-worker asked Snipes to help close a "rough shutting" boxcar door. While attempting to shut the door, the door unexpectedly came off its track, hitting Snipes' right side, throwing him onto the loading dock, and injuring Snipes' shoulder, arm, and foot. Snipes' employer, defendant Chicago, Central & Pacific Railroad Company (railroad), now appeals the judgment. **OPINION HOLDS:** I. The railroad claims the record contains no substantial proof of its negligence. In addition, because the jury assigned no fault to the plaintiff, the railroad claims the verdict is without support in the record, thus entitling it to a new trial. At trial, however, Snipes' co-worker admitted that he had not inspected the track of the boxcar door with which he sought Snipes' help. Nor had he determined whether the boxcar had been inspected by anyone else. Yet in spite of these deviations from company policy and his own job duties, he engaged Snipes' assistance. We think a jury could reasonably find he negligently imperiled Snipes' safety by doing so. Nor do we think it was unreasonable for the jury to assign all the fault for this mishap to the co-worker and none to Snipes. The task of inspection was plainly assigned to Jones. Snipes testified that he figured Jones already had everything checked out or he would never have brought the forklift up to the door. We cannot say as a matter of law that the jury erred in its assessment of their relative fault. II. We reject the railroad's claim that the jury's verdict is unsupported by the record and generally excessive. The record clearly contains substantial evidence of causation to support the jury's verdict. We cannot say as a matter of law that the jury's assessment of Snipes' loss was either lacking in evidentiary support or flagrantly excessive. III. The railroad sought to introduce evidence that Snipes received a monthly annuity under the Railroad Retirement Act, 45 U.S.C. 231a(a). The federal law is well settled that, under the FELA, the collateral source rule operates to prevent consideration of disability pension payments in mitigation of damages suffered by an injured employee. We conclude that the district court properly applied the federal law in excluding this evidence. We also reject the railroad's alternative claim that the jury's award should have been reduced by the total RRA payments received by Snipes or, at a minimum, by that portion representing the railroad's contribution to the annuity.

No. 90-1370. HUMISTON GRAIN CO. v. ROWLEY INTERSTATE TRANSPORTATION COMPANY.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Dubuque County, Robert J. Curnan, Judge. **DECISION OF COURT OF APPEALS VACATED; JUDGMENT OF DISTRICT COURT AFFIRMED IN PART, REVERSED IN PART AND REMANDED.** Considered by Harris, P.J., and Larson, Lavorato, Neuman, and Andreasen, JJ. Opinion by Andreasen, J. (12 pages $4.80)

Humiston Grain Co. (Owner) and Rowley Interstate Transport (Carrier), entered into an independent contractor agreement. Under the terms of the agreement, Humiston was to provide a tractor as well as a driver. Rowley would in turn furnish trailers and cargo to be hauled by the Humiston tractor and driver. Humiston was to be paid a certain percentage of the revenues earned in hauling the cargo as rental fees. The agreement specifically directed that Rowley must furnish cargo insurance and Humiston must furnish liability insurance. There was no specific mention, however, as to physical damage insurance for Rowley trailers. The contract did provide that Humiston was to be responsible for losses incurred by Rowley because of Humiston's negligence. To clarify what types of insurance Humiston would need to carry, Humiston's insurance agent, James Earnest, telephoned Rowley and was told that Rowley would provide cargo and physical damage coverage on the trailers and that Humiston was to provide liability coverage. As a result, Humiston's agent procured liability insurance but did not procure physical damage insurance for Rowley's trailers. A Rowley trailer was then destroyed in a collision with a train while being pulled by a Humiston tractor driven by Humiston's employee, Robert Greer. It was stipulated that the collision was the result of Greer's negligence and that the damage to the trailer was in the amount of $32,000. At the time of the collision, Rowley owed $8,633.91 in rental fees to Humiston. As a set-off for the loss on the trailer, Rowley withheld the $8,633.91 due and owing to Humiston. Humiston sued Rowley for its rental fees. Rowley counterclaimed seeking recovery for the loss of its trailer based on theories of breach of contract, bailment, and negligence. Humiston later brought in the insurance agent, Earnest, as a third-party defendant alleging malpractice for not obtaining proper insurance coverage. The district court entered judgment for Humiston on the $8,633.91 rental fees. Rowley's counterclaims for the value of the damage to the trailer were dismissed because the court found Humiston proved its estoppel defense based on the representations made by Rowley concerning physical damage insurance coverage. Humiston's claim against Earnest was then declared moot. On appeal, the court of appeals affirmed the district court. We granted further review.

No. 90-1370. HUMISTON GRAIN CO. v. ROWLEY INTERSTATE TRANSPORTATION COMPANY. (continued).

OPINION HOLDS: I. We find there is substantial evidence in the record to support the trial court's finding that Humiston proved estoppel. Rowley's representative, with apparent authority to act for Rowley, falsely represented to Humiston's insurance agent that Rowley would provide physical damage coverage for the trailer with the knowledge and intent that Humiston would rely upon the representation. We conclude that Rowley is estopped from recovering on its breach of contract claim. II. The finding of estoppel as to the contract claim is not, however, an affirmative defense to Rowley's negligence claim. Because the facts as to the issues of negligence and damage are stipulated, we reverse and remand for entry of a judgment of $32,000 in favor of Rowley upon its claim of negligence against Humiston. We affirm the $8,633.91 judgment in favor of Humiston upon its claim for the rental fees against Rowley. We remand for further proceedings involving Humiston's third-party action against Earnest; due to our decision today it is no longer moot.

No. 91-401. IN RE MARRIAGE OF LOAN.

Appeal from the Iowa District Court for Linn County, Paul J. Kilburg, Judge. **AFFIRMED AS MODIFIED.** Considered by McGiverin, C.J., and Schultz, Carter, Lavorato, and Andreasen, JJ. Per Curiam. (7 pages $2.80)

Former husband Darrell Loan appeals from a district court order which enforced the property division of a marriage dissolution decree by awarding former wife Audrey Loan damages against not only the supersedeas bond Darrell had posted during an appeal of the dissolution decree but also certain other money held in trust. **OPINION HOLDS:** On appeal, Darrell challenges only two of the district court's items of damages: the $12,250 award for the PIK checks and certificates Audrey was to have received under the dissolution decree, and the $12,880 award for the proceeds from stored corn Audrey was to have received under the dissolution decree. We find that there was substantial evidence, but for a mathematical error, to support the district court's determination of the value of the PIK checks and certificates. We also find that there was substantial evidence to support the district court's determination of the value of the stored corn. We modify the district court's order to reflect the correct total amount of damages as $30,214.14 rather than $31,229.

No. 90-1650. OSCAR MAYER FOODS CORPORATION v. TASLER.
On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Rodney J. Ryan, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by Harris, P.J., and Larson, Lavorato, Neuman, and Snell, JJ. Opinion by Snell, J. (19 pages $7.60)

Tasler filed five separate petitions with the Industrial Commissioner, each seeking compensation for injuries allegedly sustained during the course of her employment with Oscar Mayer. The Commissioner concluded that, although none of the five injuries constituted a compensable disability when considered separately, together the five injuries constituted a "cumulative, repetitive, overuse type of injury," for which workers' compensation was due. The Industrial Commissioner found that Tasler had sustained a fifteen percent permanent-partial industrial disability entitling her to disability benefits. The Commissioner chose February 3, 1989, the date on which the plant was closed, as the date of injury for Tasler's case. The fifteen percent disability was based upon her salary as of February 16, 1988, which was the last date on which Tasler alleged she had sustained a compensable injury. Oscar Mayer appealed this decision to the district court, which affirmed the Commissioner's final order. The court of appeals reversed the decision of the district court. We granted further review. **OPINION HOLDS:** I. We conclude that Oscar Mayer was sufficiently apprised of the possibility that the cumulative injury doctrine might be relied upon to justify awarding Tasler workers' compensation. II. We reject Oscar Mayer's contention that Tasler is barred from receiving any workers' compensation benefits as a matter of law because she continued to work until the plant closed, despite the injuries now claimed. III. For purposes of the cumulative injury rule, the Commissioner's determination regarding the date on which the injury manifests itself, so long as supported by substantial evidence, will not be disturbed on appeal. Our review of the record leads us to conclude that there is substantial support for the Commissioner's determination that the various traumas Tasler sustained in the course of her five and a half years with Oscar Mayer combined to manifest themselves as a single compensable injury on February 3, 1989, the date the plant closed. IV. We find substantial evidence to support the Commissioner's decision basing the disability calculation on earnings as of February 6, 1988, the last date of traumatic injury alleged in the petitions. The Commissioner apparently concluded that Tasler's earnings as of February 6, 1988, remained constant through the date of injury, February 3, 1989. No evidence was offered by Oscar Mayer to rebut this reasonable presumption. V. We conclude that the Commissioner's determination that Tasler is, as a practical matter, permanently foreclosed from engaging in physically

No. 90-1650. OSCAR MAYER FOODS CORPORATION v. TASLER. (continued).

intensive labor of the sort she was accustomed to in the course of her employment with Oscar Mayer is supported by substantial evidence. Based upon the evidence, it is certainly reasonable to conclude that Tasler has sustained a fifteen percent loss of earning capacity. VI. Requiring a claimant to also demonstrate an actual diminution in earnings would place a premium on missing work merely to establish an actual diminution in earnings and thereby penalize devoted employees who faithfully perform job duties despite bodily discomfort and damage. Thus, a showing of actual diminution in earnings will not always be necessary to demonstrate an injury-induced reduction in earning capacity.

No. 91-477. IN RE L.S.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Juvenile Referee. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by McGiverin, C.J., and Harris, Schultz, Carter, Neuman, and Snell, JJ. Opinion by Snell, J. (12 pages $4.80)

The parents and the maternal grandmother of three children appealed the juvenile court order which terminated the parents' parental rights pursuant to Iowa Code section 232.116(1)(e) and gave custody of the children to the human services department for suitable adoptive placement. The court of appeals reversed the termination of parental rights and placed the children in the permanent foster care of their maternal grandmother. We granted further review of the court of appeals decision. **OPINION HOLDS:** Our review of the record made before the juvenile court convinces us that the grounds alleged for termination of parental rights have been proved. It is in the children's best interests to remove them from the detrimental influence of their parents and provide a custodian who is free from the assertion by the parents of their legal rights.

No. 91-584. IN RE A.Y.H.

On review from the Iowa Court of Appeals. Appeal from the Iowa Juvenile Court for Scott County, John G. Mullen, Juvenile Referee. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by Harris, P.J., and Larson, Lavorato, Neuman, and Snell, JJ. Opinion by Snell, J. (11 pages $4.40)

A.Y.H. was born in May 1989 to her mother, C.D.H., and father, R.J.H. A.Y.H. was removed from her mother's custody six months after her birth after having lost twenty-five percent of her body weight in a three-week time span. The child had extensive bruising, including a black eye. At the time of A.Y.H.'s removal and placement in foster care, R.J.H. was incarcerated. While in prison, R.J.H. attempted to improve himself by participating in various programs, including parenting skills. R.J.H. was released from prison on January 30, 1991, and was placed on intensive supervision. He then filed a motion to terminate or modify the dispositional order and have A.Y.H. placed with him. A hearing followed. It was essentially uncontested at the hearing that C.D.H., the mother, continued to present a danger mainly by disinterest in her daughter. He states that he has made arrangements through his church for day care if he is unable to provide it due to employment or other reasons requiring him to leave the home. The juvenile court maintained custody of the child with the department of human services. The father appealed. This disposition was changed by the court of appeals which placed her in her father's custody under the supervision of the Department of Human Services. We granted further review. **OPINION HOLDS:** I. Unlike a child-in-need-of-assistance adjudication and a parental-rights termination proceeding, procedural due process does not mandate that the State shoulder the burden of proof in a modification proceeding. Accordingly, the burden of proof remains upon the petitioning parent, who must show by a preponderance of the evidence that the child, if returned, would not suffer adjudicatory harm as defined in Iowa Code section 232.2(6). II. We recognize, as did the juvenile court, the efforts of R.J.H. to provide care for the child that is not dependent on her mother. The problem with a court's relying on this resolution is that there is no history shown that this would be workable as a safeguard for A.Y.H. At best, it would likely result in periods of time when A.Y.H. was left in the sole care of her mother, who on this record, cannot be found to be a responsible caretaker. Further, R.J.H. is not able to provide any history of responsible care of his daughter by himself. The burden of proof to justify termination of the placement of A.Y.H. and return of custody to R.J.H. has not been met.

No. 91-342. IN RE M.M.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Dubuque County, Joseph Moothart, District Associate Judge. **DECISION OF COURT OF APPEALS VACATED IN PART; DECREE OF THE JUVENILE COURT AFFIRMED.** Considered by McGiverin, C.J., and Schultz, Carter, Lavorato, and Andreasen, JJ. Opinion by Lavorato, J. (16 pages $6.40)

In this termination proceeding, the juvenile court terminated the parent-child relationship between a child and her natural parents. Both parents appealed. We originally transferred this case to the court of appeals. The court of appeals affirmed termination of the father's rights but reversed termination of the mother's rights for lack of clear and convincing evidence. The father has not sought further review. However, the State and the child's guardian ad litem did file an application for further review regarding the mother. We granted this application. OPINION HOLDS: I. We think an appellate court can, in limited circumstances, remand to supplement the record. We think the court of appeals should not have done so in this case. Here, the court of appeals allowed the parties to supplement the record with evidence taken at a dispositional hearing on the mother's four other children and with other information. This put the State and the guardian ad litem in the untenable position of having to defend against a record they never thought would be relevant in this appeal. For these reasons, we do not consider the supplementation of the record on behalf of the mother or the one on behalf of the State. II. We think there is clear and convincing evidence that the child cannot safely be returned to the mother. The mother is simply incapable of meeting the emotional and physical needs of five children, especially as those children grow older. Despite numerous services and painstaking patience by the department and the juvenile court, the mother has simply not demonstrated an ability to carry out what these services were intended to teach her. We agree with the State that this patience is translating into intolerable hardship for the child. Returning the child to the mother at this point would expose the child to the very harm that required her removal in the first place. Because we conclude there was clear and convincing evidence to terminate the mother's parental rights concerning the child, the court of appeals' decision regarding the mother is vacated and the juvenile court decree is affirmed.

No. 91-237. STATE v. GEIER.

Appeal from the Iowa District Court for Lucas County, Darrell Goodhue, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Lavorato, Neuman, and Snell, JJ. Opinion by Snell, J. (15 pages $6.00)

Appellant, Carl Edward Geier, appeals the judgment and sentence entered upon his convictions for Going Armed with Intent, Assault with Intent to Commit Sexual Abuse, Indecent Exposure, and Theft in the Third Degree, in violation of Iowa Code sections 708.8, 709.11, 709.9, and 714.1(4) (1989), respectively. Geier contends that the district court erred in finding that a stun gun is a "dangerous weapon" for purposes of the offense, going armed with intent, and in failing to sever the theft counts from the remaining charges. **OPINION HOLDS:** I. We find that the district court had before it sufficient evidence to support a finding that a stun gun is a "dangerous weapon," as defined in Iowa Code section 702.7. Clearly, a stun gun is a device designed primarily for use in inflicting injury such as physical pain or an impairment of physical condition. We conclude that there was sufficient evidence adduced at trial to convince a rational trier of fact that a stun gun is a "dangerous weapon." II. As a general rule, when the counts neither arise out of the same transaction occurrence nor are part of a common scheme or plan, separate trials would be called for under Iowa Rule of Criminal Procedure 6(1). However, in a bench-trial case, as here, there is less likelihood that a failure to sever has prejudiced the defendant than in a trial to a jury. We conclude that Geier declined to testify at trial because of his prior convictions rather than as a consequence of any purported prejudice from trying the various counts jointly. We also find no proof to support Geier's complaint that the mere fact of including the evidence of assault prejudiced his defense to the theft charge because of its indication of bad character. Having found no substantiation for Geier's claims of prejudice, we conclude that the district court did not err in refusing to sever the theft counts from the remaining counts.

No. 91-372. CITY OF MAQUOKETA V. RUSSELL.

Appeal from the Iowa District Court for Jackson County, David J. Sohr, Judge. **REVERSED.** Considered en banc. Opinion by Lavorato, J. (19 pages $7.60)

In this case two minors challenge the constitutionality of a municipal curfew ordinance following their arrest for and conviction of violating the ordinance. The curfew here is in effect from 11 p.m. to 6 a.m. each night. The minors raise four constitutional issues associated with curfew ordinances that were left unresolved by our recent decision in City of Panora v. Simmons, 445 N.W.2d 363 (Iowa 1989). The conclusion we come to today requires us to reach only one: whether the curfew ordinance in question is invalid because it is unconstitutionally overbroad. OPINION HOLDS: Becki and Jennifer, the two minors, mount a facial challenge to the ordinance. They claim the ordinance is unconstitutionally overbroad and therefore violates the due process clause of the Fourteenth Amendment to the United States Constitution. The city contends that the minors cannot facially challenge the ordinance but instead are limited to showing how the ordinance under the facts of this case violated their constitutional rights. We disagree. We recently held that an overbroad governmental regulation may be invalid on First Amendment grounds even when the litigant's activity is not itself constitutionally protected. As we view the ordinance it would prohibit older minors from attending alone any church services beyond 11 p.m. We do not think the exception "a parentally approved supervised activity" in the ordinance protects minors when returning home from these services past 11 p.m. At best, we think this exception contemplates those events in which adults are physically present for the specific purpose of overseeing or chaperoning minors. The ordinance makes no exception for seventeen-year-olds who are eligible to vote at precinct caucuses. City council meetings provide another example. Emancipated minors are not exempt from the provisions of the ordinance. We recognize that an ordinance which restricts minors' rights to an extent greater than it restricts adults' rights may be sustained if the State or municipality demonstrates that it protects minors' peculiar vulnerability, accounts for their lesser ability to make sound judgments, and reflects society's deference to the guiding role of parents. The ordinance here is not drawn narrowly to provide exceptions for emancipated minors and fundamental rights under the First Amendment. For these reasons we think the ordinance is unconstitutionally overbroad.

NO. 90-1766. PEPPER v. STAR EQUIPMENT, LTD.

Appeal from the Iowa District Court for Story County, M.D. Seiser, Judge. **REVERSED AND REMANDED.** Considered en banc. Opinion by Carter, J. Dissent by Snell, J. (16 pages $6.40)

Michael Pepper filed this products liability action as a result of personal injuries he suffered while operating a skidloader. The skidloader was designed and manufactured by Owatonna Manufacturing Company and sold by Star Equipment to Pepper's employer. Pepper's original petition named only Owatonna as a defendant. However, upon learning that Owatonna was in the midst of bankruptcy proceedings, Pepper filed an amended petition in which he named Star Equipment as defendant. The amended petition sought recovery from Star Equipment on theories of strict liability and negligence. Pepper then dismissed his case against Owatonna. Star Equipment, though, filed a motion seeking permission to file a third-party petition against Owatonna for the purpose of apportioning fault pursuant to Iowa Code chapter 668. Attached to the motion was an order of the bankruptcy court allowing Star Equipment to assert a claim against Owatonna but providing that the automatic stay provisions imposed by the bankruptcy proceeding would bar an attempt to satisfy any judgment in the state court action from Owatonna's assets. The district court granted permission to include Owatonna as a party. We granted Pepper's application for interlocutory appeal. **OPINION HOLDS:** We have held that it is improper to bring parties into an action for purposes of ascertaining their degree of fault in the absence of some claim for affirmative relief against those parties. In the present case, the bar to seeking affirmative relief against Owatonna rests in the federal bankruptcy law. Also, under the applicable substantive law no fault is properly allocable to Owatonna under the circumstances which exist in the present case. We have required that a third-party defendant's fault may not be considered in the apportionment of aggregate fault unless the plaintiff has a viable claim against that party. If, as in the present case, the plaintiff has no possibility of obtaining an enforceable judgment against the third-party defendant, plaintiff has no protection against fault siphoning. On balance, we believe that, in the absence of liability insurance, the same reasons that exist for not considering fault of phantom or nonjoined parties favor denial of impleader of parties protected against a personal judgment by federal bankruptcy laws. **DISSENT ASSERTS:** This decision in effect converts our comparative fault chapter from authorizing apportionment of fault to mandating collectibility of damages. Chapter 668 provides nothing to suggest that an insolvent person or entity may not be made a "party" for purposes of apportioning fault. Furthermore, allowing an insolvent manufacturer to be made a codefendant in a products

NO. 90-1766. PEPPER v. STAR EQUIPMENT, LTD.(continued).

liability suit against a seller who is not also an assembler is consistent with the legislative intent as expressed in Iowa Code section 613.18. I am also unable to find any language in section 613.18 indicating that the nonmanufacturer product seller was intended to be the sole target in cases in which the manufacturer is insolvent. Similarly, no language in chapter 668 suspends its principles when a party is insolvent. I believe the impleader of Owatonna was consistent with our cases and the legislative intent of the statutes. The trial court should be affirmed.

NO. 91-377. STATE v. MAHAN.

Appeal from the Iowa District Court for Henry County, Joel J. Kamp, District Associate Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Schultz, Carter, Lavorato, and Andreasen, JJ. Opinion by Carter, J.

(4 pages $1.60)

On September 12, 1990, a sworn complaint was filed by a Mount Pleasant police officer, accusing the defendant of the public offense of indecent exposure in violation of Iowa Code section 709.9(2) (1989). Based on the affidavit accompanying the complaint, a magistrate found probable cause to believe an offense had been committed. On September 14, 1990, acting pursuant to Iowa Code section 804.1 (1989), the magistrate issued a citation that required the defendant to appear in court. Defendant appeared in court on September 26, 1990. The trial information initiating formal prosecution of the offense was filed on November 7, 1990. This was less than forty-five days after defendant's initial court appearance but more than forty-five days after the issuance of the citation. Following a jury trial, defendant was convicted of indecent exposure. Defendant has appealed. **OPINION HOLDS:** We disagree with defendant's contention that the forty-five-day period for filing the information commenced at the time the magistrate issued the indictment. There is no statutory provision establishing a constructive arrest doctrine upon the issuance of a citation by a magistrate pursuant to section 804.1. We may not measure the speedy indictment or information time prescribed by rule 27(2)(a) in a manner that offends against the plain language of that rule. Nor may we extend the constructive arrest doctrine contained in section 805.1(4) to situations at which that statute is not aimed. The judgment of the district court is affirmed.

NO. 90-1500. MASON v. HALL.

Appeal from the Iowa District Court for Scott County, C.H. Pelton, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Lavorato, Neuman, and Snell, JJ. Opinion by Larson, J. (5 pages $2.00)

The mother of a child appeals from a modification of the child support the father was ordered to pay in her paternity action under Iowa Code chapter 675. The modification increased the child support to $1000 per week with $750 of that amount to be paid into a trust. The father is a professional baseball player whose income had increased to over $800,000 per year. **OPINION HOLDS:** We believe the establishment of the trust was appropriate under the circumstances of this case. See Iowa Code § 675.27 (1989). The district court's concern about the reliability of the father's future child support payments is well founded, both because of his uncertain earning future and his past record of child support delinquencies. We also believe the amount of child support in this case was adequate and a proper exercise of the district court's discretion under our child support guidelines. The mother's application for appellate attorney fees is denied.

NO. 91-617. SIEVERTSEN v. EMPLOYMENT APPEAL BOARD.

Appeal from the Iowa District Court for Scott County, Edward B. deSilva, Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered by McGiverin, C.J., and Schultz, Carter, Lavorato, and Andreasen, J. Opinion by Carter, J. (5 pages $2.00)

The Employment Appeal Board appeals from a district court order reversing in part its final agency decision denying claimant's eligibility for unemployment benefits. The final agency decision also provided for recoupment of benefits previously paid under mistake of law for which claimant was not eligible. Although the district court agreed with the agency's conclusions that claimant was ineligible for the benefits in question and affirmed the agency's denial of future benefits, it held that the agency was estopped to recoup past benefits paid under mistake of law. **OPINION HOLDS:** In considering the district court's determination that the agency was estopped to recoup benefits that had been paid under mistake of law, we are not only faced with a line of cases that have refused to invoke estoppel principles against public agencies, but also must confront Iowa Code section 96.3(7) relating to unemployment benefits. We believe that the authorities cited preclude a finding that the Department of Employment Services is estopped from recouping the payments made to the claimant for which he was ineligible under the controlling regulations. The case is remanded to the district court for an order affirming the final agency decision.

NO. 90-1714. IN RE ESTATE OF FOSTER.

Appeal from the Iowa District Court for Mahaska County, Daniel F. Morrison, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Harris, Schultz, Carter, and Snell, JJ. Opinion by Carter, J. (8 pages $3.20)

Virgie Foster died testate on April 8, 1989. Her will left all of her property to her four sons in equal shares. Two of these sons are the executors of her estate. The other sons are Gordon Foster and Larry Foster. On August 10, 1989, the executors made a partial distribution of $13,000 cash to each beneficiary without court approval. At the time of the August 10 distributions, Larry Foster's former wife, Ruth Foster, was owner and holder of judgments against Larry for unpaid child support. On September 19, 1989, pursuant to Ruth's direction, the sheriff garnished the executors. An execution sale was eventually held, and Ruth bid the full amount of her judgments plus interest and costs to purchase Larry's share of the estate. Ruth then petitioned the district court to require the executors to return the August 10 distributions to the estate. The district court granted that request as to the entire amount. The executors have appealed. **OPINION HOLDS:** Although we agree that Ruth is an interested person who may contest the actions of the executors, we do not agree that she has established that the executors' actions contravened any of her legal rights. There is no statutory requirement for a court order before making a voluntary distribution. The probate court does not function as an aid to creditors of distributees. In the present case, Ruth's interest in the estate of Virgie Foster is that which she purchased at execution sale. The interest purchased was Larry's remaining right to distributions after the August 10 distribution had already taken place. As a result, Ruth had no interest in the money distributed to Larry on August 10, 1989. Ruth implies that she was deceived concerning the extent of the interest on which she was bidding at the execution sale. We think that the doctrine of caveat emptor, which has traditionally been applied to execution sale purchasers, applies to deny her relief on this theory. We conclude that the district court's action in ordering return of the August 10, 1989, distributions was not warranted.

No. 91-63. HAGAN v. VAL-HI, INC.

Appeal from the Iowa District Court for Linn County, Kristin L. Hibbs, Judge. **AFFIRMED AS MODIFIED; CASE REMANDED WITH DIRECTIONS.** Considered by McGiverin, C.J., and Schultz, Carter, Lavorato, and Andreasen, JJ. Opinion by Andreasen, J. (14 pages $5.60)

The district court found a successor nonresident corporation liable for an unpaid judgment against its

No. 91-63. HAGAN v. VAL-HI, INC.(continued).

predecessor Iowa corporation. On appeal, the nonresident corporation claims: (1) the trial court did not have personal jurisdiction over it; (2) interest was incorrectly calculated by the court; and (3) the judgment must be limited to the value of the assets transferred by the Iowa corporation to the successor corporation. **OPINION HOLDS:** I. A. Because Iowa Code section 496A.73 (1985) granted both the privilege to collect amounts due and placed liability on the successor corporation, the merger of a predecessor corporation into a successor corporation is a sufficient minimum contact warranting the assertion of personal jurisdiction. B. Having recognized that personal jurisdiction can be asserted over a successor corporation based upon the conduct and actions of the constituent corporation, we see no reason why, on the present facts, jurisdiction can also be established over a successor corporation resulting from a series of mergers. II. A successor corporation may be liable for a judgment entered against a constituent predecessor corporation. We think it logically follows that the successor is liable for all legal obligations inhering in the original judgment, including prejudgment and postjudgment interest and costs. Because the court in this action improperly awarded interest on all of the original judgment from the date of filing, we remand with directions to the district court clerk to calculate interest according to Iowa law. III. Because the issue of the limited obligation of the successor corporation was not brought to the attention of the trial court, it has not been preserved for appellate review. We therefore decline to address it.

No. 91-867. IN RE S.O.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Dubuque County, Jane Mylrea, Juvenile Referee. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by McGiverin, C.J., and Schultz, Carter, Lavorato, and Andreasen, JJ. Opinion by Andreasen, J. (9 pages $3.60)

The mother appeals from an order of the juvenile court referee terminating her parental rights to her four children. We transferred the case to the court of appeals which reversed the termination order as to the two oldest children. We granted further review. **OPINION HOLDS:** I. Both the juvenile court and the court of appeals found the State had established, at the termination hearing, that the children could not be returned to the custody of their mother. We agree. The State has established by clear and convincing evidence the children cannot be returned to the custody of their mother. II. By statute, a court need not terminate a parent-child relationship if the court finds

No. 91-867. IN RE S.O.(continued).

there is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship. Because the benefit of termination in protecting the children from further abuse and providing them with a stable environment outweigh the detriment in severing the bond, the juvenile court ordered termination of the parent-child relationship. We also do not find clear and convincing evidence that termination will be detrimental to the children due to the closeness of the mother-daughter relationship. III. We do not find the difficulty in finding an adoptive home for children with serious emotional problems to be a sufficient reason for refusal to terminate the parent-child relationship. The children experienced serious emotional problems, obviously arising from the turbulence and violence within the birth family. The older children should have an opportunity for a stable, nurturing environment, free from the threat of physical and sexual abuse.

No. 91-285. SMITHWAY MOTOR XPRESS v. LIBERTY MUT. INS. CO. Appeal from the Iowa District Court for Webster County, Louie F. Beisser, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Schultz, Carter, Lavorato, and Andreasen, JJ. Opinion by Schultz, J. (11 pages $4.40)

Smithway, the insured, appeals from the district court's order granting summary judgment for the insurer in a declaratory judgment action seeking a determination of insurance coverage under a comprehensive liability policy. Smithway sought a determination that Liberty had a duty to defend it concerning a wrongful discharge suit filed against Smithway by a former employee. **OPINION HOLDS:** I. If neither party offers extrinsic evidence concerning the meaning of the policy language, the meaning of the language used in the relevant policy is a matter for the court to decide as a question of law. II. A. The insurance policy covers an occurrence resulting in damage neither expected nor intended from the insured's standpoint. The intentional discharge of an employee is not an accident and any resulting damages claimed are intended and expected. Thus, a wrongful discharge claim is not an "occurrence" covered by the insurance policy. B. The losses arising out of a wrongful discharge claim are not property damages as defined and covered by a comprehensive liability policy. C. The policy herein included an endorsement affording coverage with respect to liability assumed under an incidental contract. However, an employment contract is not an incidental contract under the endorsement because an action against an insured by an employee for wrongful

No. 91-285. SMITHWAY MOTOR XPRESS v. LIBERTY MUT. INS. CO. (continued).

discharge is not a contractual assumption of another's liability. III. The policy language is clear and a reasonable person would understand that an employee's claim for wrongful discharge was not covered under the policy. The doctrine of reasonable expectations is not available to Smithways.

No. 91-524. STALKER V. IOWA DEPARTMENT OF TRANSPORTATION.

Appeal from the Iowa District Court for Cerro Gordo County, Jon Stuart Scoles, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Larson, Lavorato, Neuman, and Snell, JJ. Opinion by Lavorato, J. (7 pages $2.80)

Charles and Lori Stalker seek to reverse the district court's dismissal of their appeal in an eminent domain proceeding for insufficient notice. The district court ruled its jurisdiction had not been properly invoked because the Stalkers failed to serve notice of the appeal on their contract vendor within thirty days of the appraisement notice as required by Iowa Code section 472.18 (1989). OPINION HOLDS: I. The procedural requirements for appeal of an appraisement by the condemnation commission are found at section 472.18. Section 472.18 states in pertinent part: "At the time of appeal, the appellant shall give written notice that the appeal has been taken to the adverse party, or the adverse party's agent or attorney, lienholders, and the sheriff." The Stalkers contend that the contract vendors are not adverse parties within the meaning of section 472.18 and thus not entitled to notice of appeal. Here the Stalkers conclusively established that their contract vendors would not be adversely affected by any change in the condemnation award. The contract vendors waived any rights to the condemnation award by agreeing to not share in any proceeds with the Stalkers prior to the appeal. II. We now hold that a party who waives all interest in a condemnation award before a condemnation appeal is not an adverse party for purposes of section 418.72. A failure to give notice to such a party does not deprive the district court of jurisdiction.

No. 91-596. STATE v. LIPCAMON.

Appeal from the Iowa District Court for Benton County, Thomas L. Koehler, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Schultz, Carter, Lavorato, and Andreasen, JJ. Opinion by Schultz, J. (8 pages $3.20)

We must decide whether the trial court erred by failing to hold a party in contempt of court for violating a no

No. 91-596. STATE v. LIPCAMON (continued).

contact order issued after the party was charged with domestic abuse assault. The trial court stated that defendant Rose Marie Lipcamon made contacts with her husband John, but "the contacts were such that they were not so egregious or unreasonable that a finding of contempt beyond a reasonable doubt is warranted." The State sought and we granted discretionary review of this ruling. **OPINION HOLDS:** When an application for contempt is dismissed, a direct appeal is permitted. 'Our cases impose a special standard of review of the facts in contempt cases. We are not bound by the trial court's conclusions of law and may inquire into whether it applied erroneous rules of law that materially affected its decision. Even though Iowa Code section 236.8 does not mention willfulness, we have always held that a finding of contempt for a violation of a court order or an injunction must be willful. We believe the trial court's recognition of the circumstances of defendant's mental condition, her lack of transportation, her need for medication, and the husband's acquiescence to the contacts, may properly be considered in determining whether defendant acted willfully. We believe the record justifies the trial court's ruling.

No. 91-232. SPEER v. BLUMER.

Appeal from the Iowa District Court for Scott County, Edward B. de Silva, Jr., and James R. Havercamp, Judges. **AFFIRMED.** Considered by McGiverin, C.J., and Schultz, Carter, Lavorato, and Andreasen, JJ. Opinion by McGiverin, C.J. (8 pages $3.20)

The undisputed facts show that Blumer assaulted Speer in August 1986. Blumer was later convicted and ordered to make restitution. The court agreed that the restitution issues which related to the extent of Speer's back injuries could be best left to the civil courts. Speer did not institute his civil action against Blumer until April 1989. This is over seven months after the applicable two-year statute of limitations on actions for injuries to the person ordinarily would have expired. See Iowa Code § 614.1(2). However, Speer argues that the applicable two-year statute of limitations was tolled for roughly twenty months, from the time that Blumer was sentenced on May 8, 1987, until the time that Blumer was discharged from probation on January 27, 1989. Speer bases his argument upon Iowa Code section 910.8. The district court agreed with Speer. Blumer appealed. **OPINION HOLDS:** Because we agree with Speer that the statute of limitations was tolled from the time that Blumer was sentenced in May 1987 until the time that he was discharged from probation in January 1989, we conclude that the district court did not err in overruling Blumer's summary judgment motion and motion for directed verdict.

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