IOWA ADMINISTRATIVE BULLETIN

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Pages 2317 to 2538 include **ARC 3086C** to **ARC 3116C**

PREFACE

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

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

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

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

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CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making
2017

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

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
1	**Friday, June 16, 2017**	**July 5, 2017**
2	**Wednesday, June 28, 2017**	**July 19, 2017**
3	**Friday, July 14, 2017**	**August 2, 2017**

PLEASE NOTE:

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

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

Note change of filing deadline

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Human resources procedures, amendments to chs 4, 53, 54, 59 to 64, 70 IAB 5/24/17 **ARC 3072C**	Conference Rooms 5 and 6, A Level Hoover State Office Bldg. Des Moines, Iowa	June 14, 2017 8:30 to 9:30 a.m.
Military leave, 63.9 IAB 6/7/17 **ARC 3111C**	Joint Forces Headquarters Bldg. 6100 NW 78th Ave. Johnston, Iowa	June 29, 2017 10 a.m. to 12 noon
Terrace Hill endowment for the musical arts, amendments to ch 116 IAB 6/7/17 **ARC 3113C**	Carriage House Visitors Center at Terrace Hill 2300 Grand Ave. Des Moines, Iowa	June 27, 2017 9 to 10 a.m.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Licensure—egg handlers, milk haulers, milk graders, bulk milk tankers, can milk truck bodies, pesticide dealers, amendments to chs 36, 45, 63, 66, 68 IAB 6/7/17 **ARC 3091C**	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 27, 2017 2 p.m.

EDUCATION DEPARTMENT[281]

School health services; special education, amendments to chs 14, 41 IAB 6/7/17 **ARC 3088C**	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	June 27, 2017 10 to 11 a.m.
Community colleges, 21.2(9), 21.32(1), 21.33 IAB 6/7/17 **ARC 3087C**	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	June 27, 2017 11 a.m. to 12 noon
Educating homeless children and youth, amendments to ch 33 IAB 6/7/17 **ARC 3089C**	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	June 27, 2017 9 to 10 a.m.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

911 telephone systems, amendments to ch 10 IAB 6/7/17 **ARC 3090C**	Cyclones Conference Room, Suite 500 7900 Hickman Rd. Windsor Heights, Iowa	June 27, 2017 11 a.m.

MEDICINE BOARD[653]

Physician supervision of a physician assistant, amendments to ch 21 IAB 5/24/17 **ARC 3069C**	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	June 13, 2017 9 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Trauma care facility categorization and verification, 134.1 to 134.3 IAB 5/24/17 **ARC 3075C**	Room 517 Lucas State Office Bldg. Des Moines, Iowa	June 13, 2017 1 to 2 p.m.
Trauma education and training, 137.1 to 137.4 IAB 5/24/17 **ARC 3076C**	Room 517 Lucas State Office Bldg. Des Moines, Iowa	June 13, 2017 2 to 2:30 p.m.

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Licensure of brokers, salespersons, and nonresident licensees, amendments to chs 3 to 5 IAB 5/24/17 **ARC 3065C**	Commission Office, Suite 350 200 E. Grand Ave. Des Moines, Iowa	June 13, 2017 12 noon

The following list will be updated as changes occur.

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

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

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

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ARC 3111C

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 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 section 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 8A.104(5), the Department of Administrative Services hereby gives Notice of Intended Action to amend Chapter 63, "Leave," Iowa Administrative Code.

The proposed amendment is intended to create more equality among employees whose shifts are greater than 16 hours with employees whose shifts are 16 hours or less. The proposed amendment accomplishes this by limiting military leave for employees whose shifts are more than 16 hours to 30 calendar days in accordance with Iowa Code section 29A.28(1)"a" for military duty of 30 days or more, while providing 30 work days of leave for employees whose shifts are 16 hours or less.

Interested persons may make written comments on the proposed amendment until 4:30 p.m. on June 28, 2017. Comments should be directed to Tami Wiencek, Department of Administrative Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-6140 or by e-mail to tami.wiencek@iowa.gov.

A public hearing will be held on June 29, 2017, from 10 a.m. to 12 noon at the Joint Forces Headquarters Building, 6100 NW 78th Avenue, Johnston, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling (515)725-2017.

A mobilization of 16, 24-hour shift employees in six-month rotations is anticipated within the Iowa Department of Public Defense in October 2017 and ending in November 2018. The impact on the Iowa Department of Defense budget will exceed $510,795 or more than 8 percent of the Department's budget. This amendment will prevent that fiscal impact.

The Department of Administrative Services will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department's rules concerning waivers.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 3115C**. The content of that submission is incorporated by reference.

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

This amendment is intended to implement Iowa Code sections 8A.413 and 29A.28.

ARC 3113C

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 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 section 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 8A.104(5), the Department of Administrative Services hereby gives Notice of Intended Action to amend Chapter 116, "Terrace Hill Endowment for the Musical Arts," Iowa Administrative Code.

The Terrace Hill Commission has reviewed and is proposing to amend these rules to be consistent with statute and to reflect and clarify Commission practice. The proposed amendment aligns Chapter 116 with Iowa Code section 8A.326, which was amended in 2013.

Interested persons may make written comments on the proposed amendment until 4:30 p.m. on June 27, 2017. Comments should be directed to Tami Wiencek, Department of Administrative Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-6140 or by e-mail to tami.wiencek@iowa.gov.

A public hearing will be held on June 27, 2017, from 9 to 10 a.m. in the Carriage House Visitors Center at Terrace Hill, 2300 Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling (515)725-2017.

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

The Department will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department's rules concerning waivers.

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

This amendment is intended to implement Iowa Code section 8A.326.

The following amendment is proposed.

Amend **11—Chapter 116** as follows:

CHAPTER 116
TERRACE HILL ENDOWMENT FOR THE MUSICAL ARTS

[Prior to 5/31/89, see Historical Division[223] Ch 27]
[Prior to 2/16/94, see Historical Division[223] Ch 57]
[Prior to 1/21/04, see 401—Ch 16]

11—116.1(8A) Structure. The Terrace Hill endowment for the musical arts (THEMA) functions under the Terrace Hill commission with all final authority resting with the commission. A board of not less than seven members called the board of trustees will conduct two piano competitions: a senior competition for high school seniors and a junior competition for students in grades 9 through 11. The board will direct payments from the endowment for scholarships to one or more winners of the senior competition. No endowment money is to be used for awards to winners of the junior competition. The board will be appointed by the commission. ~~The majority of the members of the board of trustees shall be members of the Terrace Hill commission and the Terrace Hill Society.~~ Staggered terms of three years will be set by the commission for THEMA trustees. All policies, fund-raising activities and decisions concerning the competition and the ~~scholarship, its growth, and presentation~~ scholarships are under the jurisdiction of the trustees, subject to Terrace Hill commission oversight and approval.

11—116.2(8A) ~~Scholarship~~ Senior competition scholarship established. The Terrace Hill commission maintains an endowment fund to be used for the ~~sole purpose~~ purposes of ~~providing a biennial grant, and a one-time second- and third-place grant, to an Iowa high school senior or resident~~ conducting a piano competition and providing scholarships to the winners of the senior piano competition. Participants in the competition must be Iowa high school seniors who will be ~~an~~ entering ~~freshman~~ freshmen with a piano major or minor at one of Iowa's public or private colleges or universities. The scholarship is called "The First ~~Lady~~ Family of Iowa ~~Award~~ Scholarship from the Terrace Hill Endowment for the Musical Arts." ~~The successful applicant shall receive a one-time grant of not less than $2,000. One thousand dollars of this grant will be presented each year for a two-year period.~~ The first-, second- and third-place participants shall receive one-time scholarships. One-half of each scholarship shall be presented each year for a two-year period. In the event the ~~successful applicant~~ first-place participant is disqualified or otherwise unable to utilize the ~~grant~~ scholarship, the judges may choose to award the ~~grant~~ first-place scholarship to the second- or third-place ~~applicant~~

participant. Such a decision must be accompanied by a written statement in which the judges set out their opinion that the second- or third-place ~~contestant~~ participant has sufficient talent to merit the increased ~~award~~ scholarship. The ~~cash award~~ scholarship may be supplemented by other benefits, publicity or opportunities as may be arranged by the commission.

~~In addition to the first-place grant, a one-time $750 grant will be made to the second-place applicant and a one-time $500 grant will be made to the third-place applicant.~~ All scholarships will be determined by the THEMA board of trustees as set forth in the requirements the board establishes and posts on the THEMA Web site: www.TerraceHillPianoCompetition.org. The ~~grants~~ scholarships will be paid directly to the ~~college~~ colleges or ~~university~~ universities attended by the ~~applicants~~ participants.

~~The successful applicant is not eligible to compete again for the grant.~~

11—116.3(8A) Application. Application forms for both competitions are available from the Terrace Hill Commission, 2300 Grand Avenue, Des Moines, Iowa 50312, and on the THEMA Web site: www.TerraceHillPianoCompetition.org. Telephone requests may be made by calling the commission at (515)281-7205. The form contains the ~~date it must be submitted~~ deadline for submission to the commission in order for a participant to be eligible for the ~~grant~~ scholarship awarded for that particular school year. ~~Applications are not held over from one contest to another. Applicants must submit new applications each time they wish to be eligible for the grant.~~ Procedures and standards for application and acceptance are set by the THEMA board of trustees.

11—116.4(8A) Funding. All funds to support and maintain the ~~scholarship~~ piano competitions and scholarships have been raised by public and private donations and shall not be used for any other purpose. ~~They are held in trust under the Terrace Hill foundation, a nonprofit, charitable foundation.~~ Funds are deposited into a segregated account with the Terrace Hill partnership, a public charitable foundation organization of which the commission is the sole member. Funds are disbursed as directed by the THEMA board of trustees, subject to commission approval. All proceeds generated from investment interest by the scholarship moneys are themselves deposited into the scholarship ~~trust~~ account. The treasurer for the ~~scholarship~~ THEMA endowment fund is the treasurer for the ~~commission and the foundation~~ Terrace Hill partnership.

11—116.5(8A) Selection criteria and judging. The sole criterion for the ~~grant~~ scholarships will be the talent of the ~~applicant, as determined by a competition conducted by a panel of judges~~ participants. Representatives of the board of trustees may conduct an initial review of the participants' applications to narrow the field of participants. The selected participants will perform before a panel of judges, who will select the scholarship winners.

116.5(1) *Selection of judges.* The THEMA board of trustees ~~of the endowment~~ shall establish a selection committee to choose judges for the ~~competition~~ competitions. All members of the selection committee shall have a background in piano and piano education. To ensure the competence of the judges, each must be approved by the selection committee as being competent to judge piano talent. ~~The committee will assist and advise in the actual ceremonies for the scholarship judging and presentation and in the additional appearances by the scholarship recipient.~~

116.5(2) ~~*The competition*~~ *Competitions.* All rules and procedures for the competitions will be determined by the THEMA board of trustees and will be posted on the THEMA Web site: www.TerraceHillPianoCompetition.org. All ~~applicants~~ participants shall be given ~~not less than~~ at least two weeks' notice of the date, time, and location of the ~~competition~~ competitions, and the amount of time available for each ~~applicant's recital~~ participant's performance. ~~The recitals shall be performed~~ All participants shall perform on a piano furnished by the commission. The judges may impose additional requirements as needed to preserve the order and decorum of the ~~competition~~ competitions and to ensure that each ~~applicant~~ participant has a fair opportunity to perform.

~~The successful competitor will be asked during the two-year course of the scholarship to perform at several functions at the pleasure of the governor or the governor's spouse.~~

116.5(3) *Selection.* At the conclusion of the ~~competition~~ competitions, the judges shall meet in closed session to review the performances and select the successful ~~applicant~~ participants. The decision of the judges is final, with no review available by the Terrace Hill commission.

These rules are intended to implement ~~2003~~ Iowa Code ~~Supplement~~ section 8A.326.

ARC 3091C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 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 section 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 sections 163.1, 169A.13A(4), 192.111, 196.2, and 206.5, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 36, "Egg Handlers," Chapter 45, "Pesticides," Chapter 63, "Branding," Chapter 66, "Livestock Movement," and Chapter 68, "Dairy," Iowa Administrative Code.

The proposed amendments reflect changes in the period of licensure from one year to two years for egg handlers, milk haulers, milk graders, bulk milk tankers and can milk truck bodies. The rule regarding an interim milk hauler license is rescinded. Subrule 63.1(2) now provides that similar livestock brands can be located on the animal in a different location only if recorded prior to 1996. Also, licensure costs for pesticide dealers with less than $100,000 in gross retail pesticide sales is updated.

Any interested persons may make written suggestions or comments on the proposed amendments on or before June 27, 2017. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to Margaret.Thomson@IowaAgriculture.gov.

A public hearing will be held on June 27, 2017, at 2 p.m. in the second floor conference room of the Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319.

These proposed amendments are subject to the Department's general waiver provisions.

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

These amendments are intended to implement 2017 Iowa Acts, House File 617, and Iowa Code sections 159.2, 192.111 and 206.8.

The following amendments are proposed.

ITEM 1. Amend subrules 36.2(2) and 36.2(7) as follows:

36.2(2) A license is valid for ~~one year~~ two years, is renewable, and expires on October 1.

36.2(7) License fees for egg handlers are based on the total number of cases of eggs purchased or handled during the month of April (Iowa Code section 196.3) and are charged as follows:

a. For less than 125 cases—~~$20.20~~ $40.40;
b. For 125 to 249 cases—~~$47.25~~ $94.50;
c. For 250 to 999 cases—~~$67.50~~ $135.00;
d. For 1,000 to 4,999 cases—~~$135.00~~ $270.00;
e. For 5,000 to 9,999 cases—~~$236.25~~ $472.50;
f. For 10,000 or more cases—~~$337.50~~ $675.00.

For the purpose of determining fees, each case shall be 30 dozen eggs.

ITEM 2. Amend rule 21—45.48(206) as follows:

21—45.48(206) Dealer license fees. A dealer license fee ~~for initial application~~ for a dealer ~~license~~ with less than $100,000 in gross retail pesticide sales shall be $10 if the annual gross retail sales are less than $10,000; $25 if the annual gross retail sales are $10,000 or more but less than $25,000; $50 if the annual gross retail sales are $25,000 or more but less than $50,000; $75 if the annual gross retail sales are $50,000 or more but less than $75,000; and $100 if the annual gross retail sales are $75,000 or more but less than $100,000. The annual dealer license ~~renewal~~ fee for a dealer with $100,000 or more in gross retail pesticide sales shall be based on one-tenth of one percent of the gross annual sales of all pesticides sold the previous fiscal year ~~or $25, whichever is greater~~. The fiscal year shall begin July 1 and end June 30 of the following year.

45.48(1) A pesticide dealer license expires on June 30 of each year. However, a three-month grace period ~~beginning July 1 and extending to October 1 of each year~~ shall be allowed for renewal of pesticide dealer licenses. A late fee of ~~2 percent of the license fee due based on the gross pesticide retail sales shall be imposed upon the licensure of a pesticide dealer applying for licensure renewal during October; a late fee of 4 percent of the license fee due based on the gross pesticide retail sales shall be imposed upon the licensure of a pesticide dealer applying for licensure renewal during November;~~ $25 is imposed on a dealer with less than $100,000 in gross retail pesticide sales, and a late fee of 5 percent of the license fee due based on the gross pesticide retail sales shall be imposed upon the licensure of a pesticide dealer ~~applying for licensure renewal during December; and an additional 5 percent penalty for each month thereafter shall be imposed~~ with $100,000 or more in gross retail pesticide sales. The application for renewal shall be considered complete once the required fees and reports have been submitted to the department.

45.48(2) No change.

This rule is intended to implement Iowa Code sections 206.6, 206.8 and 206.12.

ITEM 3. Amend subrule 63.1(2) as follows:

63.1(2) ~~Each~~ For brands recorded prior to 1996, each location is considered a separate brand and not in or under conflict with the same or similar brand in a different location or on a different side.

ITEM 4. Amend subrules 68.41(3), 68.41(5) and 68.41(6) as follows:

68.41(3) A license pursuant to this rule expires June 30 ~~annually~~ biennially and is not transferable between tankers.

68.41(5) The cost of the bulk milk tanker license is ~~$25 per year~~ $50.

68.41(6) If the bulk milk tanker and accessories have been inspected within the last 12 months and carry a current license, the bulk milk tanker renewal license application and a return envelope will be mailed to the owner of the tanker in April ~~annually~~ biennially by the dairy products control bureau office in Des Moines.

ITEM 5. Amend subrules 68.48(2), 68.48(3) and 68.48(5) as follows:

68.48(2) The cost of a milk hauler license is ~~$10~~ $20.

68.48(3) A milk hauler license obtained pursuant to this rule expires June 30 ~~annually~~ biennially and is not transferable between persons.

68.48(5) If a milk hauler with a current license has had an on-the-farm evaluation within the last two years and has attended a state milk hauler training school within the last three years, a milk hauler renewal application and a return envelope will be mailed to the milk hauler in April ~~annually~~ biennially by the dairy products control bureau office in Des Moines.

ITEM 6. Rescind and reserve rule **21—68.49(192)**.

ITEM 7. Amend subrules 68.69(3) to 68.69(5) as follows:

68.69(3) The cost of a milk grader license is ~~$10~~ $20.

68.69(4) A milk grader license obtained pursuant to this rule expires June 30 ~~annually~~ biennially and is not transferable between persons.

68.69(5) As a condition of relicensing:

a. and *b.* No change.

c. If the milk grader has had an evaluation within the last two years and, if required, has attended a milk hauler training school within the last three years, a milk grader renewal application and a return envelope will be mailed ~~annually~~ biennially in April to the milk grader by the dairy products control bureau office in Des Moines.

ITEM 8. Amend subrules 68.71(3) and 68.71(5) as follows:

68.71(3) A license pursuant to this rule expires June 30 ~~annually~~ biennially and is not transferable between truck bodies.

68.71(5) The cost of the can milk truck body license is ~~$25 per year~~ $50.

ARC 3088C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 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 section 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 256.7(5), the State Board of Education hereby proposes to amend Chapter 14, "School Health Services," and Chapter 41, "Special Education," Iowa Administrative Code.

This Notice proposes the following changes:

- Items 1 and 2 adopt rules on school health and medication administration. The content of the rules is currently in the special education chapter (Chapter 41) but is being moved to the school health chapter (Chapter 14) to make clear that these provisions apply to all students, not just students with disabilities. The rules also modernize technical language to account for current standards of nursing practice.
- Item 3 rescinds the rule that defines "highly qualified special education teachers" because the Every Student Succeeds Act (ESSA) repealed this federal requirement.
- Item 4 rescinds the rule that defines "scientifically based research" because ESSA repealed this language.
- Item 5 amends rule 281—41.156(256B,34CFR300) to account for the repeal of the federal "highly qualified" requirement.
- Items 6, 7, 8, and 9 contain amendments to account for recent federal special education regulations on local maintenance of fiscal effort. Unlike in other states, maintenance of effort is not a contentious issue in Iowa. Each Iowa district has maintained effort for all years at issue.
- Items 10, 11, 12, and 13 rescind from Chapter 41 rule language on school health that is being relocated to Chapter 14.
- Item 14 adds to rule 281—41.412(256B,34CFR300) language about additional permissive sources of funds for purchase or lease of special transportation expenses, as well as clarifies how purchased equipment is depreciated.
- Items 15 and 16 are amendments required by a recent federal rule making to address significant disproportionality in special education. Iowa's method of calculating significant disproportionality is nearly identical to the mandatory minimum method for calculating significant disproportionality, and any practice change will be minor or technical.
- Items 17 and 18 provide more discretion to the parties regarding document disclosure in mediation conferences and due process hearings. These amendments will eliminate document disclosures that are not requested by any party.

- Item 19 eliminates a paragraph which provides that a child's due process complaint becomes moot when the child moves from the district. This rule is inconsistent with federal special education law.
- Item 20 provides a time frame for the Iowa Department of Education to certify the administrative record from a due process hearing when a party requests judicial review in state or federal district court.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments until June 27, 2017, at 4:30 p.m. Comments on the proposed amendments should be directed to Thomas Mayes, Iowa Department of Education, Third Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)242-5614; e-mail thomas.mayes@iowa.gov; or fax (515)242-5988.

A public hearing will be held on June 27, 2017, from 10 to 11 a.m. in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Education and advise of specific needs by calling (515)281-5295.

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

These amendments are intended to implement Iowa Code chapters 256 and 256B, the Individuals with Disabilities Education Act, and the Elementary and Secondary Education Act, as amended.

The following amendments are proposed.

ITEM 1. Adopt the following **new** rule 281—14.1(256):

281—14.1(256) Medication administration. Each school district, area education agency, and school shall establish medication administration policy and procedures, which include the following:

14.1(1) A statement on administration of prescription and nonprescription medication.

14.1(2) A statement on an individual health plan pursuant to rule 281—14.2(256) when administration requires ongoing professional health judgment.

14.1(3) A statement that persons administering medication shall include authorized practitioners, such as licensed registered nurses and physicians, and persons to whom authorized practitioners have delegated the administration of prescription and nonprescription drugs (who shall have successfully completed a medication administration course). Individuals who have demonstrated competency in administering their own medications may self-administer their medication. Individuals shall self-administer asthma or other airway constricting disease medication with parent and physician consent on file, without the necessity of demonstrating competency to self-administer these medications.

14.1(4) A provision for a medication administration course provided by the department that is completed every five years with an annual medication administration procedural skills check completed with a registered nurse or pharmacist. A registered nurse or licensed pharmacist shall conduct the course. A record of course completion shall be maintained by the school.

14.1(5) A requirement that the individual's parent provide a signed and dated written statement requesting medication administration at school.

14.1(6) A statement that medication shall be in the original labeled container either as dispensed or in the manufacturer's container.

14.1(7) A requirement that a written medication administration record shall be on file at the school and shall include:

a. Date.
b. Individual's name.
c. Prescriber or person authorizing administration.
d. Medication.
e. Medication dosage.
f. Administration time.
g. Administration method.
h. Signature and title of the person administering medication.

i. Any unusual circumstances, actions or omissions.

14.1(8) A statement that medication shall be stored in a secured area unless an alternate provision is documented.

14.1(9) A requirement for a written statement by the individual's parent or guardian requesting the individual's co-administration of medication, when competency is demonstrated.

14.1(10) A requirement for emergency protocols for medication-related reactions.

14.1(11) A statement regarding confidentiality of information.

ITEM 2. Adopt the following **new** rule 281—14.2(256):

281—14.2(256) Special health services. Some individuals need special health services to participate in an educational program. These individuals shall receive special health services along with their educational program.

14.2(1) *Definitions.* The following definitions shall be used in this rule, unless the context otherwise requires:

"Assignment and delegation" occurs when licensed health personnel, in collaboration with the education team, determine the special health services to be provided and the qualifications of individuals performing the health services. Primary consideration is given to the recommendation of the licensed health personnel. Each designation considers the individual's special health service. The rationale for the designation is documented.

"Co-administration" is the eligible individual's participation in the planning, management and implementation of the individual's special health service and demonstration of proficiency to licensed health personnel.

"Educational program" includes all school curricular programs and activities both on and off school grounds.

"Education team" may include the individual, the individual's parent, administrator, teacher, licensed health personnel, and others involved in the individual's educational program. The education team may be the team required by the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973 if the child is eligible under either of those statutes.

"Health assessment" is health data collection, observation, analysis, and interpretation relating to the individual's educational program.

"Health instruction" is education by licensed health personnel to prepare qualified designated personnel to deliver and perform special health services contained in the eligible individual's health plan. Documentation of education and periodic updates shall be on file at school.

"Individual health plan" is the confidential, written, preplanned and ongoing special health service in the educational program. It includes assessment, nursing diagnosis, outcomes, planning, interventions, evaluation, student goals, if applicable, and a plan for emergencies to provide direction in managing an individual's health needs. The plan is updated as needed and at least annually. Licensed health personnel develop this written plan with collaboration from the parent or guardian, individual's health care provider or education team.

"Licensed health personnel" means a licensed registered nurse, licensed physician, or other licensed health personnel legally authorized to provide special health services and medications.

"Prescriber" means licensed health personnel legally authorized to prescribe special health services and medications.

"Qualified designated personnel" means a person instructed, supervised, and competent in implementing the eligible individual's health plan.

"Special health services" includes, but is not limited to, services for eligible individuals whose health status (stable or unstable) requires:

1. Interpretation or intervention,
2. Administration of health procedures and health care, or
3. Use of a health device to compensate for the reduction or loss of a body function.

"Supervision" is the assessment, delegation, monitoring, and frequency of evaluation and documentation of special health services by licensed health personnel. Levels of supervision include situations in which:

1. Licensed health personnel are physically present.
2. Licensed health personnel are available at the same site.
3. Licensed health personnel are available on call.

14.2(2) *Special health services policy.* Each board of a public school or the authorities in charge of an accredited nonpublic school shall, in consultation with licensed health personnel, establish policy and guidelines for the provision of confidential special health services in conformity with this chapter. Such policy and guidelines shall address the following:

a. Licensed health personnel shall provide special health services under the auspices of the school. Duties of the licensed health personnel include:

(1) Participating as a member of the education team.

(2) Providing the health assessment.

(3) Planning, implementing and evaluating the written individual health plan.

(4) Planning, implementing and evaluating special emergency health services.

(5) Serving as a liaison and encouraging participation and communication with health service agencies and individuals providing health care.

(6) Providing health consultation, counseling and instruction with the eligible individual, the individual's parent and the staff in cooperation and conjunction with the prescriber.

(7) Maintaining a record of special health services. The documentation shall include the eligible individual's name, special health service, prescriber or person authorizing, date and time, signature and title of the person providing the special health service and any unusual circumstances in the provision of such services.

(8) Reporting unusual circumstances to the parent, school administration, and prescriber.

(9) Assigning and delegating to, instructing, providing technical assistance to and supervising qualified designated personnel.

(10) Updating knowledge and skills to meet special health service needs.

b. Prior to the provision of special health services, the following shall be on file:

(1) A written statement by the prescriber detailing the specific method and schedule of the special health service, when indicated.

(2) A written statement by the individual's parent requesting the provision of the special health service.

(3) A written report of the preplanning staffing or meeting of the education team.

(4) A written individual health plan available in the health record and integrated into the IEP or 504 plan, if applicable.

c. Licensed health personnel, in collaboration with the education team, shall determine the special health services to be provided and the qualifications of the individuals performing the special health services. The documented rationale shall include the following:

(1) Analysis and interpretation of the special health service needs, health status stability, complexity of the service, predictability of the service outcome and risk of improperly performed service.

(2) Determination that the special health service, task, procedure or function is part of the person's job description.

(3) Determination of the assignment and delegation based on the individual's needs and qualifications of school personnel performing health services.

(4) Review of the designated person's competency.

(5) Determination of initial and ongoing level of supervision, monitoring and evaluation required for safe, quality services.

d. Licensed health personnel shall supervise the special health services, define the level of frequency of supervision and document the supervision.

e. Licensed health personnel shall instruct qualified designated personnel to deliver and perform special health services contained in the individual health plan. Documentation of instruction, written

consent of personnel as required in Iowa Code section 280.23 and periodic updates shall be on file at the school.

f. Parents shall provide the usual equipment, supplies and necessary maintenance of the equipment. The equipment shall be stored in a secure area. The personnel responsible for the equipment shall be designated in the individual health plan. The individual health plan shall designate the role of the school, parents and others in the provision, supply, storage and maintenance of necessary equipment.

14.2(3) *Relationship between this rule and other laws and rules.* In complying with this rule, for children who are eligible under the Individuals with Disabilities Education Act and 281—Chapter 41 or Section 504 of the Rehabilitation Act of 1973, the school health services must comply with any additional requirements imposed by those laws based on a specific child's needs.

ITEM 3. Rescind and reserve rule **281—41.18(256B,34CFR300)**.

ITEM 4. Rescind and reserve rule **281—41.35(34CFR300)**.

ITEM 5. Amend rule 281—41.156(256B,34CFR300) as follows:

281—41.156(256B,34CFR300) Personnel qualifications.

41.156(1) *General.* The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of Part B of the Act and of this chapter are appropriately and adequately prepared, ~~and~~ trained, and licensed, including ensuring that those personnel have the content knowledge and skills to serve children with disabilities.

41.156(2) *Related services personnel and paraprofessionals.* The qualifications under subrule 41.156(1) must include qualifications for related services personnel and paraprofessionals that:

a. Are consistent with any state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

b. Ensure that related services personnel who deliver services in their discipline or profession:

(1) Meet the requirements of 41.156(2)*"a"*; and

(2) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(3) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulation, or written policy, in meeting the requirements of this chapter to be used to assist in the provision of special education and related services under this chapter to children with disabilities.

41.156(3) *Qualifications for special education teachers.* The qualifications described in subrule 41.156(1) must ensure that each person employed as a public school special education teacher in the state who teaches in an elementary school, middle school, or secondary school ~~is highly qualified as a special education teacher by the deadline established in Section 1119(a)(2) of the ESEA.~~ meets the following standards:

a. The teacher has obtained full state certification as a special education teacher, including certification obtained through alternative routes to certification, or has passed the state special education teacher licensing examination and holds a license to teach in the state as a special education teacher, except that a teacher teaching in a public charter school must meet the certification or licensing requirements, if any, set forth in the state's public charter school law;

b. The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

c. The teacher holds at least a bachelor's degree.

41.156(4) *Policy.* In implementing this rule, the state must adopt a policy that includes a requirement that AEAs and LEAs in the state take measurable steps to recruit, hire, train, and retain ~~highly qualified~~ personnel described in this rule to provide special education and related services under Part B of the Act and this chapter to children with disabilities.

41.156(5) *Rule of construction.* Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this chapter shall be construed to create a right of

action on behalf of an individual student or a class of students for the failure of a particular SEA, AEA, or LEA employee to ~~be highly qualified~~ meet the requirements of this rule, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this chapter.

41.156(6) *Positive efforts to employ and advance qualified individuals with disabilities.* Each recipient of assistance under Part B of the Act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the Act.

41.156(7) *Additional rules of construction.*

a. A special educator teaching in one or more core academic subjects must be appropriately licensed in each core academic subject or must collaborate with an appropriately licensed teacher.

b. A teacher will be considered to meet the standard in subrule 41.156(3) if that teacher is participating in an alternative route to special education certification program as follows:

(1) The teacher meets the following requirements:

1. Before and while teaching, receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction;

2. Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or in a teacher mentoring program;

3. Assumes functions as a teacher only for a specified period of time not to exceed three years; and

4. Demonstrates satisfactory progress toward full certification as prescribed by the state; and

(2) The state ensures, through its certification and licensure process, that the provisions in subparagraph 41.156(7)*"b"*(1) are met.

ITEM 6. Rescind rule 281—41.203(256B,34CFR300) and adopt the following **new** rule in lieu thereof:

281—41.203(256B,34CFR300) Maintenance of effort.

41.203(1) *Eligibility standard.*

a. For purposes of establishing the LEA's eligibility for an award for a fiscal year, the SEA must determine that the LEA budgets, for the education of children with disabilities, at least the same amount, from at least one of the following sources, as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available:

(1) Local funds only;

(2) The combination of state and local funds;

(3) Local funds only on a per capita basis; or

(4) The combination of state and local funds on a per capita basis.

b. When determining the amount of funds that the LEA must budget to meet the requirement in paragraph 41.203(1)*"a,"* the LEA may take into consideration, to the extent the information is available, the exceptions and adjustment provided in rules 281—41.204(256B,34CFR300) and 281—41.205(256B,34CFR300) that the LEA:

(1) Took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which the LEA is budgeting; and

(2) Reasonably expects to take in the fiscal year for which the LEA is budgeting.

c. Expenditures made from funds provided by the federal government for which the SEA is required to account to the federal government or for which the LEA is required to account to the federal government directly or through the SEA may not be considered in determining whether an LEA meets the standard in paragraph 41.203(1)*"a."*

41.203(2) *Compliance standard.*

a. Except as provided in rules 281—41.204(256B,34CFR300) and 281—41.205(256B,34CFR300), funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

b. An LEA meets this standard if it does not reduce the level of expenditures for the education of children with disabilities made by the LEA from at least one of the following sources below the level

of those expenditures from the same source for the preceding fiscal year, except as provided in rules 281—41.204(256B,34CFR300) and 281—41.205(256B,34CFR300):

(1) Local funds only;

(2) The combination of state and local funds;

(3) Local funds only on a per capita basis; or

(4) The combination of state and local funds on a per capita basis.

c. Expenditures made from funds provided by the federal government for which the SEA is required to account to the federal government or for which the LEA is required to account to the federal government directly or through the SEA may not be considered in determining whether an LEA meets the standard in paragraphs 41.203(2)*"a"* and 41.203(2)*"b."*

41.203(3) *Subsequent years.*

a. If, in the fiscal year beginning on July 1, 2013, or July 1, 2014, an LEA fails to meet the requirements of 34 CFR 300.203 and rule 281—41.203(256B,34CFR300) in effect at that time, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not the LEA's reduced level of expenditures.

b. If, in any fiscal year beginning on or after July 1, 2015, an LEA fails to meet the requirement of subparagraph 41.203(2)*"b"*(1) or 41.203(2)*"b"*(3) and the LEA is relying on local funds only, or local funds only on a per capita basis, to meet the requirements of subrule 41.203(1) or 41.203(2), the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required under subparagraph 41.203(2)*"b"*(1) or 41.203(2)*"b"*(3) in the absence of that failure, not the LEA's reduced level of expenditures.

c. If, in any fiscal year beginning on or after July 1, 2015, an LEA fails to meet the requirement of subparagraph 41.203(2)*"b"*(2) or 41.203(2)*"b"*(4) and the LEA is relying on the combination of state and local funds, or the combination of state and local funds on a per capita basis, to meet the requirements of subrule 41.203(1) or 41.203(2), the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required under subparagraph 41.203(2)*"b"*(2) or 41.203(2)*"b"*(4) in the absence of that failure, not the LEA's reduced level of expenditures.

41.203(4) *Consequence of failure to maintain effort.* If an LEA fails to maintain its level of expenditures for the education of children with disabilities in accordance with subrule 41.203(2), the SEA is liable in a recovery action under Section 452 of the General Education Provisions Act (20 U.S.C. 1234a) to return to the U.S. Department of Education, using nonfederal funds, an amount equal to the amount by which the LEA failed to maintain its level of expenditures in accordance with subrule 41.203(2) in that fiscal year, or the amount of the LEA's Part B subgrant in that fiscal year, whichever is lower.

ITEM 7. Amend rule 281—41.204(256B,34CFR300), introductory paragraph, as follows:

281—41.204(256B,34CFR300) Exception to maintenance of effort. Notwithstanding the restriction in subrule ~~41.203(1)~~ 41.203(2), an AEA or LEA may reduce the level of expenditures by the AEA or LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

ITEM 8. Amend subrule 41.205(1) as follows:

41.205(1) *Amounts in excess.* Notwithstanding 41.202(1)*"b,"* 41.202(2), and ~~41.203(1)~~ 41.203(2), and except as provided in 41.205(4) and 34 CFR 300.230(e)(2), for any fiscal year for which the allocation received by an LEA under rule 281—41.705(256B,34CFR300) exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by subrule ~~41.203(1)~~ 41.203(2) by not more than 50 percent of the amount of that excess.

ITEM 9. Amend subrule 41.208(1), introductory paragraph, as follows:

41.208(1) *Uses.* Notwithstanding rule 281—41.202(256B,34CFR300) and subrules ~~41.203(1)~~ 41.203(2) and 41.162(2), funds provided to an LEA under Part B of the Act may be used for the following activities:

ITEM 10. Rescind and reserve paragraphs **41.404(1)"f"** and **"g."**

ITEM 11. Rescind and reserve paragraphs **41.404(2)"d"** and **"e."**

ITEM 12. Rescind and reserve subrule **41.404(3)**.

ITEM 13. Rescind and reserve rule **281—41.405(256B)**.

ITEM 14. Amend subrules 41.412(3) and 41.412(4) as follows:

41.412(3) *Purchase of transportation equipment.* When it is necessary for an LEA to purchase equipment to transport eligible individuals to special education instructional services, this equipment shall be purchased from the LEA's general fund, the physical plant and equipment levy (PPEL) fund, or the secure an advanced vision for education (SAVE) fund, if appropriate. The direct purchase of transportation equipment is not an appropriate expenditure of special education instructional funds generated through the weighting plan. A written schedule of depreciation for this transportation equipment shall be developed by the LEA, using the method specified in Iowa Code section 285.1(12). An annual charge to special education instructional funds generated through the weighting plan for depreciation of the equipment shall be made and reported as a special education transportation cost in the LEA Certified Annual Report if the equipment was purchased from the general fund. If the transportation equipment was purchased using funds from the PPEL fund or SAVE fund, that purchase is not reported as a cost from special education funds generated through the weighting plan. Annual depreciation charges~~, except in unusual circumstances,~~ on transportation equipment purchased with funds from the PPEL fund or SAVE fund shall be calculated by the LEA according to the directions provided with the Annual Transportation Report and adjusted to reflect the proportion of special education mileage to the total annual mileage.

41.412(4) *Lease of transportation equipment.* An LEA may elect to lease equipment to transport eligible individuals to special education instructional services, in which case the lease cost would be an expenditure from the PPEL fund or the SAVE fund, if appropriate. Cost of the lease, or that portion of the lease attributable to special education transportation expense, shall not be considered a special education transportation cost and shall not be reported in the LEA Certified Annual Report.

ITEM 15. Amend rule 281—41.646(256B,34CFR300) as follows:

281—41.646(256B,34CFR300) Disproportionality.

41.646(1) *General.* ~~The~~ Using the methodology required by rule 281—41.647(256B,34CFR300), the state shall collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring in the state and the LEAs of the state with respect to the following:

a. The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in Section 602(3) of the Act;

b. The placement in particular educational settings of these children; and

c. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

41.646(2) *Review and revision of policies, practices, and procedures.* In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, or the incidence, duration, and type of disciplinary actions, in accordance with subrule 41.646(1) and rule 281—41.647(256B,34CFR300), the state must proceed as follows:

a. Provide for the annual review and, if appropriate, revision of the policies, procedures, and practices used in the identification, ~~or~~ placement, or disciplinary actions to ensure that the policies, procedures, and practices comply with the requirements of the Act; and

~~*b.* Require any LEA identified under subrule 41.646(1) to reserve the maximum amount of funds under rule 281—41.226(256B,34CFR300) to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under subrule 41.646(1); and~~

~~*c.*~~ *b.* Require the LEA to publicly report on the revision of policies, practices, and procedures described under 41.646(2)*"a."* in a manner consistent with the requirements of the Family Educational Rights and Privacy Act, its implementing regulations in 34 CFR Part 99, and Section 618(b)(1) of the Act.

41.646(3) *Comprehensive coordinated early intervening services.* Except as provided in subrule 41.646(4), any LEA identified under subrule 41.646(1) shall reserve the maximum amount of funds under Section 613(f) of the Act to provide comprehensive coordinated early intervening services to address factors contributing to the significant disproportionality.

a. In implementing comprehensive coordinated early intervening services an LEA:

(1) May carry out activities that include professional development and educational and behavioral evaluations, services, and supports.

(2) Must identify and address the factors contributing to the significant disproportionality, which may include, among other identified factors, a lack of access to scientifically based instruction; economic, cultural, or linguistic barriers to appropriate identification or placement in particular educational settings; inappropriate use of disciplinary removals; lack of access to appropriate diagnostic screenings; differences in academic achievement levels; and policies, practices, or procedures that contribute to the significant disproportionality.

(3) Must address a policy, practice, or procedure it identifies as contributing to the significant disproportionality, including a policy, practice or procedure that results in a failure to identify, or the inappropriate identification of, a racial or ethnic group (or groups).

b. An LEA may use funds reserved for comprehensive coordinated early intervening services to serve children from age 3 through grade 12, particularly, but not exclusively, children in those groups that were significantly over identified under subrule 41.646(1), including:

(1) Children who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment; and

(2) Children with disabilities.

c. An LEA may not limit the provision of comprehensive coordinated early intervening services under this subrule to children with disabilities.

41.646(4) *Exception to comprehensive coordinated early intervening services.* The state shall not require any LEA that serves only children with disabilities identified under subrule 41.646(1) to reserve funds to provide comprehensive coordinated early intervening services.

41.646(5) *Rule of construction.* Nothing in this rule authorizes the state or an LEA to develop or implement policies, practices, or procedures that result in actions that violate the requirements of this chapter, including requirements related to child find and ensuring that a free appropriate public education is available to all eligible children with disabilities.

ITEM 16. Adopt the following **new** rule 281—41.647(256B,34CFR300):

281—41.647(256B,34CFR300) Determining significant disproportionality.

41.647(1) *Definitions.*

"Alternate risk ratio" is a calculation performed by dividing the risk of a particular outcome for children in one racial or ethnic group within an LEA by the risk of that outcome for children in all other racial or ethnic groups in the state.

"Comparison group" consists of the children in all other racial or ethnic groups within an LEA or within the state, when reviewing a particular racial or ethnic group within an LEA for significant disproportionality.

"Minimum cell size" is the minimum number of children experiencing a particular outcome, to be used as the numerator when calculating either the risk for a particular racial or ethnic group or the risk for children in all other racial or ethnic groups.

"Minimum n-size" is the minimum number of children enrolled in an LEA with respect to identification, and the minimum number of children with disabilities enrolled in an LEA with respect to

placement and discipline, to be used as the denominator when calculating either the risk for a particular racial or ethnic group or the risk for children in all other racial or ethnic groups.

"Risk" is the likelihood of a particular outcome (identification, placement, or disciplinary removal) for a specified racial or ethnic group (or groups), calculated by dividing the number of children from a specified racial or ethnic group (or groups) experiencing that outcome by the total number of children from that racial or ethnic group or groups enrolled in the LEA.

"Risk ratio" is a calculation performed by dividing the risk of a particular outcome for children in one racial or ethnic group within an LEA by the risk for children in all other racial and ethnic groups within the LEA.

"Risk ratio threshold" is a threshold, determined by the state, over which disproportionality based on race or ethnicity is significant under subrule 41.646(1).

41.647(2) *Significant disproportionality determinations.* In determining whether significant disproportionality exists in the state or LEA under subrule 41.646(1), the state must do all of the following:

a. General. The state must set a:

(1) Reasonable risk ratio threshold;

(2) Reasonable minimum cell size;

(3) Reasonable minimum n-size; and

(4) Standard for measuring reasonable progress if the state uses the flexibility described in paragraph 41.647(4)*"b."*

b. Flexibility. The state may, but is not required to, set the standards set forth in paragraph 41.647(2)*"a"* at different levels for each of the categories described in paragraphs 41.647(2)*"f"* and 41.647(2)*"g."*

c. Development and review of standards. The standards set forth in paragraph 41.647(2)*"a"*:

(1) Must be based on advice from stakeholders, including state advisory panels, as provided under Section 612(a)(21)(D)(iii) of the Act; and

(2) Are subject to monitoring and enforcement for reasonableness by the Secretary consistent with Section 616 of the Act.

d. Presumption of reasonability. When monitoring for reasonableness under subparagraph 41.647(2)*"c"*(2), the following are presumptively reasonable:

(1) A minimum cell size under subparagraph 41.647(2)*"a"*(2) no greater than ten; and

(2) A minimum n-size under subparagraph 41.647(2)*"a"*(3) no greater than 30.

e. Application. The state must apply the risk ratio threshold or thresholds determined in paragraph 41.647(2)*"a"* to risk ratios or alternate risk ratios, as appropriate, in each category described in paragraphs 41.647(2)*"f"* and 41.647(2)*"g"* and the following racial and ethnic groups:

(1) Hispanic/Latino of any race; and, for individuals who are non-Hispanic/Latino only;

(2) American Indian or Alaska Native;

(3) Asian;

(4) Black or African American;

(5) Native Hawaiian or Other Pacific Islander;

(6) White; and

(7) Two or more races.

f. Calculation of risk ratio: identification. Except as provided in paragraph 41.647(2)*"h"* and subrule 41.647(3), the state must calculate the risk ratio for each LEA, for each racial and ethnic group in paragraph 41.647(2)*"e"* with respect to:

(1) The identification of children ages 3 through 21 as children with disabilities; and

(2) The identification of children ages 3 through 21 as children with the following impairments:

1. Intellectual disabilities;
2. Specific learning disabilities;
3. Emotional disturbance;
4. Speech or language impairments;
5. Other health impairments; and

6. Autism.

g. Calculation of risk ratio: placement and disciplinary removals. Except as provided in paragraph 41.647(2)*"h"* and subrule 41.647(3), the state must calculate the risk ratio for each LEA, for each racial and ethnic group in paragraph 41.647(2)*"e"* with respect to the following placements into particular educational settings, including disciplinary removals:

(1) For children with disabilities ages 6 through 21, inside a regular class less than 40 percent of the day;

(2) For children with disabilities ages 6 through 21, inside separate schools and residential facilities, not including homebound or hospital settings, correctional facilities, or private schools;

(3) For children with disabilities ages 3 through 21, out-of-school suspensions and expulsions of ten days or fewer;

(4) For children with disabilities ages 3 through 21, out-of-school suspensions and expulsions of more than ten days;

(5) For children with disabilities ages 3 through 21, in-school suspensions of ten days or fewer;

(6) For children with disabilities ages 3 through 21, in-school suspensions of more than ten days; and

(7) For children with disabilities ages 3 through 21, disciplinary removals in total, including in-school and out-of-school suspensions, expulsions, removals by school personnel to an interim alternative education setting, and removals by a hearing officer.

h. Alternate risk ratio. The state must calculate an alternate risk ratio with respect to the categories described in paragraphs 41.647(2)*"f"* and 41.647(2)*"g"* if the comparison group in the LEA does not meet the minimum cell size or the minimum n-size.

i. Identification as having significant disproportionality. Except as provided in subrule 41.647(4), the state must identify as having significant disproportionality based on race or ethnicity under subrule 41.646(1) any LEA that has a risk ratio or alternate risk ratio for any racial or ethnic group in any of the categories described in paragraphs 41.647(2)*"f"* and 41.647(2)*"g"* that exceeds the risk ratio threshold set by the state for that category.

j. Reporting under this subrule to the Secretary. The state must report all risk ratio thresholds, minimum cell sizes, minimum n-sizes, and standards for measuring reasonable progress selected under subparagraphs 41.647(2)*"a"*(1) through 41.647(2)*"a"*(4), and the rationales for each, to the U.S. Department of Education at a time and in a manner determined by the Secretary. Rationales for minimum cell sizes and minimum n-sizes not presumptively reasonable under paragraph 41.647(2)*"d"* must include a detailed explanation of why the numbers chosen are reasonable and how they ensure that the state is appropriately analyzing and identifying LEAs with significant disparities, based on race and ethnicity, in the identification, placement, or discipline of children with disabilities.

41.647(3) *Exception.* The state is not required to calculate a risk ratio or alternate risk ratio, as outlined in paragraphs 41.647(2)*"f,"* 41.647(2)*"g,"* and 41.647(2)*"h,"* to determine significant disproportionality if:

a. The particular racial or ethnic group being analyzed does not meet the minimum cell size or minimum n-size; or

b. In calculating the alternate risk ratio under paragraph 41.647(2)*"h,"* the comparison group in the state does not meet the minimum cell size or minimum n-size.

41.647(4) *Flexibility.* The state is not required to identify an LEA as having significant disproportionality based on race or ethnicity under subrule 41.646(1) until:

a. The LEA has exceeded a risk ratio threshold set by the state for a racial or ethnic group in a category described in paragraphs 41.647(2)*"f"* and 41.647(2)*"g"* for up to three prior consecutive years preceding the identification; and

b. The LEA has exceeded the risk ratio threshold and has failed to demonstrate reasonable progress, as determined by the state, in lowering the risk ratio or alternate risk ratio for the group and category in each of the two prior consecutive years.

41.647(5) *Rule of construction.* Nothing in this rule shall be construed to require identification or classification of any child by impairment.

EDUCATION DEPARTMENT[281](cont'd)

ITEM 17. Amend paragraph **41.1002(1)"f"** as follows:

f. The individual's complete school record shall be available to the participants at the conference if the record is requested in writing at least ten calendar days before the conference.

ITEM 18. Amend subrule 41.1003(3) as follows:

41.1003(3) *Notice.* The director of education or designee shall, within five business days after the receipt of the appeal, notify the proper officials with the LEA and the AEA of the filing of the due process complaint and shall request in writing that the proper school officials file with the ~~department~~ assigned administrative law judge all records relevant to the due process complaint if such records are requested by the assigned administrative law judge. The officials shall, within 20 business days after receipt of the request from the administrative law judge, file with the ~~department~~ administrative law judge all records relevant to the decision appealed.

ITEM 19. Rescind and reserve paragraph **41.1003(7)"c."**

ITEM 20. Adopt the following **new** subrule 41.1014(3):

41.1014(3) *Filing of certified administrative record.* The department shall file a certified copy of the administrative record within 30 days of receiving the informational copy referred to in subrule 41.1014(2).

ARC 3087C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 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 section 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 256.7(5), the State Board of Education hereby proposes to amend Chapter 21, "Community Colleges," Iowa Administrative Code.

The proposed amendments to Chapter 21 incorporate changes to the rules which establish basic requirements for certificate, diploma, and degree programs and instructional courses for drinking drivers, both offered by community colleges. Regarding subrule 21.2(9), changes include updating terminology from technical "specialty component" to technical "core" and establishing a minimum technical core course requirement for diplomas. Regarding rule 281—21.32(321J), changes include an increase in tuition fees for an instructional course for drinking drivers offered by community colleges to $140 and an increase in the administrative fee collected by the Department to $15 for individuals enrolled in an Iowa instructional course for drinking drivers and to $37.50 for individuals enrolled in an out-of-state instructional course for drinking drivers. The fee adjustments reflect the recommendation of a drinking drivers instruction course advisory committee and reflect the cost of providing such courses.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments on or before June 27, 2017, at 4:30 p.m. Comments on the proposed amendments should be directed to Nicole Proesch, Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-8661; e-mail nicole.proesch@iowa.gov; or fax (515)242-5988.

A public hearing will be held on June 27, 2017, from 11 a.m. to 12 noon in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling (515)281-5295.

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

These amendments are intended to implement Iowa Code chapter 260C.

The following amendments are proposed.

ITEM 1. Amend paragraph **21.2(9)"d"** as follows:

d. Associate of applied science (AAS). The degree is awarded upon completion of a state-approved program of study that is intended to prepare students for entry-level career and technical occupations. An associate of applied science degree shall consist of a minimum of 60 semester (90 quarter) credit hours and a maximum of 86 semester (129 quarter) credit hours. The general education component of the associate of applied science degree program shall consist of a minimum of 12 semester (18 quarter) credit hours of general education and shall include at least one course from each of the following areas: communications, social science or humanities, and mathematics or science. The technical ~~specialty component~~ core of the associate of applied science degree shall constitute a minimum of 50 percent of the course credits.

ITEM 2. Amend paragraph **21.2(9)"e"** as follows:

e. Associate of applied arts (AAA). The degree is awarded upon completion of a state-approved program of study that is primarily intended for career training in providing students with professional skills for employment in a specific field of work such as arts, humanities, or graphic design. An associate of applied arts degree shall consist of a minimum of 60 semester (90 quarter) credit hours and a maximum of 86 semester (129 quarter) credit hours. The general education component of the associate of applied arts degree program shall consist of a minimum of 12 semester (18 quarter) credit hours of general education and shall include at least one course from each of the following: communications, social science or humanities, and mathematics or science. The technical ~~specialty component~~ core of the associate of applied arts degree shall constitute a minimum of 50 percent of the course credits.

ITEM 3. Amend subparagraph **21.2(9)"f"(3)** as follows:

(3) An associate of professional studies degree shall consist of a minimum of 62 semester (93 quarter) credit hours and a maximum of 68 semester (102 quarter) credit hours. The general education component of the associate of professional studies degree shall consist of a minimum of 30 semester (45 quarter) credit hours of general education including 3 semester (4.5 quarter) credit hours of each of the following: speech, mathematics, humanities, social and behavioral sciences, science; 6 semester (9 quarter) credit hours of writing; and 9 semester (13.5 quarter) credit hours distributed among mathematics, social and behavioral sciences, humanities, and science. The technical ~~specialty component~~ core of the associate of professional studies degree shall consist of a minimum of 16 semester (24 quarter) credit hours of career and technical coursework accepted by a receiving baccalaureate degree-granting institution with an aligned program as applying toward a specific major or program of study. The technical ~~specialty component~~ core of the degree shall also consist of a minimum of 16 additional semester (24 quarter) credit hours of career and technical coursework accepted by the receiving institution as electives.

ITEM 4. Amend paragraph **21.2(9)"g"** as follows:

g. Diploma. The diploma is awarded upon completion of a state-approved program of study that is a coherent sequence of courses consisting of a minimum of 15 semester (22.5 quarter) credit hours and a maximum of 48 semester (72 quarter) credit hours including at least 3 semester (4.5 quarter) credit hours of general education. The general education component shall be from any of the following areas: communications, social science or humanities, and mathematics or science. The technical core of the diploma shall constitute a minimum of 70 percent of the course credits. A diploma may be a component of and apply toward subsequent completion of an associate of applied science or associate of applied arts degree.

ITEM 5. Amend subrule 21.32(1) as follows:

21.32(1) Each person enrolled in an instructional course for drinking drivers shall pay to the community college or a substance abuse treatment program licensed under Iowa Code chapter 125 a tuition fee of ~~$85~~ $140 for the approved 12-hour course, plus a reasonable book fee. The court may

allow an offender to combine the required course with a program that incorporates jail time. Reasonable fees may be assessed for costs associated with lodging, meals, and security.

ITEM 6. Amend rule 281—21.33(321J) as follows:

281—21.33(321J) Administrative fee established.

21.33(1) *Students enrolled in Iowa.* Each person enrolled in Iowa in an instructional course for drinking drivers under this chapter shall be charged an administrative fee of ~~$10~~ $15. This fee is in addition to tuition and shall be collected by the provider of the instructional course in conjunction with the tuition fee established under 281—21.32(321J). The administrative fee shall be forwarded to the department of education on a quarterly basis as prescribed by the department. If a student has been declared by the court as indigent, no administrative fee will be charged to that student.

21.33(2) *Students enrolled in another state.* Each person enrolled outside the state of Iowa in an instructional course for drinking drivers under this chapter shall be charged an administrative fee of ~~$25~~ $37.50. This fee is in addition to tuition and shall be paid directly to the department of education by the student. Upon payment of the fee, the department of education shall review the educational component of the course taken by the student and shall inform the department of transportation whether the educational component is approved by the department of education.

ARC 3089C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 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 section 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 256.7(5), the State Board of Education hereby proposes to amend Chapter 33, "Educating the Homeless," Iowa Administrative Code.

The revised Chapter 33 incorporates changes to the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431, et seq.), as reauthorized in December 2015 by the Every Student Succeeds Act (ESSA). The proposed amendments as a result of ESSA include modifying the requirements of the State Plan to include procedures that ensure that homeless students have equal access to the same free, appropriate public education, including a public preschool education, as provided to other students. This equal access includes removing barriers that prevent students from accessing academic or extracurricular activities because of their homelessness. Other amendments include removal of "awaiting foster care placement" from the definition of "homeless child or youth," revisions to the definition of "school of origin," and clarifications regarding required transportation for the school of origin.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments on or before June 27, 2017, at 4:30 p.m. Comments on the proposed amendments should be directed to Nicole Proesch, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-8661; e-mail nicole.proesch@iowa.gov; or fax (515)242-5988.

A public hearing will be held on June 27, 2017, from 9 to 10 a.m. in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Education and advise of specific needs by calling (515)281-5295.

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

These amendments are intended to implement the provisions of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431, et seq.), as reauthorized in December 2015 by the Every Student Succeeds Act (ESSA).

The following amendments are proposed.

ITEM 1. Amend **281—Chapter 33**, title, as follows:

EDUCATING ~~THE~~ HOMELESS CHILDREN AND YOUTH

ITEM 2. Amend rule 281—33.2(256) as follows:

281—33.2(256) Definitions.

"District of origin" is defined as the public school district in Iowa in which the child was last enrolled or which the child last attended when permanently housed.

"Guardian" is defined as a person of majority age with whom a homeless child or youth of school age is living or a person of majority age who has accepted responsibility for the homeless child or youth, whether or not the person has legal guardianship over the child or youth.

"Homeless child or youth" is defined as a child or youth from the age of 3 years through 21 years who lacks a fixed, regular, and adequate nighttime residence and includes the following:

1. A child or youth who is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; is living in a motel, hotel, trailer park, or camping grounds due to the lack of alternative adequate accommodations; is living in an emergency or transitional shelter; or is abandoned in a hospital~~; or is awaiting foster care placement~~;
2. A child or youth who has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
3. A child or youth who is living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar setting; or
4. A migratory child or youth who qualifies as homeless because the child or youth is living in circumstances described in paragraphs "1" through "3" above.

"Preschool child" is defined as a child who is three, four, or five years of age before September 15.

"School of origin" is defined as the school that a child or youth attended when permanently housed or the school in which the child or youth was last enrolled, including a preschool. When the child or youth completes the final grade level served by the school of origin, the term "school of origin" shall include the designated receiving school at the next grade level for all feeder schools.

"Unaccompanied youth" is defined as a youth not in the physical custody of a parent or guardian.

ITEM 3. Amend subrule 33.3(3) as follows:

33.3(3) The board shall examine and revise, if necessary, existing school policies or rules that create barriers to the enrollment of homeless children or youth, consistent with these rules. Examination and revision include identifying and removing barriers that prevent such children and youth from receiving appropriate credit for full or partial coursework satisfactorily completed while attending a prior school, in accordance with state, local, and school policies. Examination and revision also include ensuring that homeless children and youth who meet the relevant eligibility criteria do not face barriers to accessing academic and extracurricular activities, including magnet school, summer school, career and technical education, advanced placement, online learning, and charter school programs, if such programs are available at the state and local levels. School districts are encouraged to cooperate with agencies and organizations for the homeless to explore comprehensive, equivalent alternative educational programs and support services for homeless children and youth when necessary to implement the intent of these rules.

ITEM 4. Amend subrule 33.3(7) as follows:

33.3(7) The board shall designate ~~an appropriate staff person~~ as the district's local educational agency liaison for homeless children and youth an appropriate staff person who is able to and has been trained to carry out the following duties:

a. Ensure that a homeless child or youth is identified by school personnel ~~and~~ through outreach and coordination activities with other entities and agencies;

b. Ensure that ~~a~~ homeless ~~child or~~ children and youth ~~is~~ are enrolled in, and ~~has~~ have a full and equal opportunity to succeed in, schools of the district;

c. Ensure that homeless families~~,~~ and homeless children~~,~~ and youth receive educational services for which such families, children, and youth are eligible, including services through Head Start ~~and Even Start~~ programs (including Early Head Start programs) under the Head Start Act (42 U.S.C. Section 9831, et seq.), early intervention services under Part C of the Individuals with Disabilities Education Act (20 U.S.C. Section 1431, et seq.), ~~tuition-free~~ and other preschool programs administered by the district, and referrals to health care services, dental services, mental health services, and other appropriate services;

d. Ensure that homeless families and homeless children and youth receive referrals to health care services, dental services, mental health and substance abuse services, housing services, and other appropriate services;

~~*d.*~~ *e.* Ensure that the parents or guardians of homeless children and youth are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;

~~*e.*~~ *f.* Ensure that public notice of the educational rights of homeless children and youth is disseminated ~~where such children and youth receive services under the federal McKinney-Vento Homeless Assistance Act, such as~~ in locations frequented by parents or guardians of such children and youth, and unaccompanied youth, including schools, ~~family~~ shelters, public libraries, and soup kitchens, in a manner and form understandable to the parents and guardians of homeless children and youth, and unaccompanied youth;

~~*f.*~~ *g.* Ensure that enrollment disputes are mediated in accordance with 42 U.S.C. Section 11432(g)(3)(E), which requires the following:

(1) The child or youth shall be immediately enrolled in the school in which enrollment is sought, pending resolution of the dispute (which must be either the local attendance center or the school of origin);

(2) The parent or guardian of the child or youth shall be provided with a written explanation of the school's decision regarding school selection or enrollment, including the rights of the parent, guardian, or youth to appeal the decision;

(3) The child, youth, parent, or guardian shall be referred to the local educational agency liaison designated under this subrule, who shall carry out the dispute resolution process set forth in rule 281—33.9(256);

(4) In the case of an unaccompanied youth, the local educational agency liaison shall ensure that the youth is immediately enrolled in the school in which enrollment is sought pending resolution of the dispute;

~~*g.*~~ *h.* Ensure that the parent or guardian of a homeless child or youth, or the unaccompanied youth, is fully informed of all transportation services and is assisted in accessing transportation to the school of enrollment;

i. Ensure that school personnel providing services under this chapter receive professional development and other support;

j. Ensure that unaccompanied homeless youth:

1. Are enrolled in school;

2. Have opportunities to meet the same challenging academic standards as are established for other children and youth, including through implementation of the procedures under the Every Student Succeeds Act; and

3. Are informed of their status as independent students under Section 480 of the Higher Education Act of 1965 (20 U.S.C. 1087vv) and that the youth may obtain assistance from the local educational agency liaison to receive verification of such status for the purposes of the Free Application for Federal Student Aid described in Section 483 of such Act (20 U.S.C. 1090); and

~~*h.*~~ *k.* Coordinate and collaborate with state coordinators and community and school personnel responsible for the provision of education and related services to homeless children and youth.

ITEM 5. Amend subrule 33.9(1) as follows:

33.9(1) If the child is identified as a special education student under Iowa Code chapter 256B, the manner of appeal shall be by letter from the homeless child or youth, or the homeless ~~child~~ child's or youth's parent or guardian, to the department of education as established in Iowa Code section 256B.6 and ~~Iowa Administrative Code 281—41.32(17A,256B,290)~~ rule 281—41.508(256B,34CFR300). The letter shall not be rejected for lack of notarization, however. Representatives of the public school district where the child or youth desires to attend and of the corresponding area education agency, as well as the child, youth, or parent or guardian of the child or youth, shall present themselves at the time and place designated by the department of education for hearing on the issue. The hearing shall be held in accordance with ~~the rules established in 281—41.32(17A,256B,290)~~ rule 281—41.508(256B,34CFR300).

ITEM 6. Amend rule 281—33.11(256) as follows:

281—33.11(256) School services.

33.11(1) The school district designated for the homeless child's or youth's enrollment shall make available to the child or youth all services and assistance, including but not limited to the following services, on the same basis as those services and assistance are provided to resident pupils:

a. Compensatory education;
b. Special education;
c. English as a Second Language;
d. ~~Vocational~~ Career and technical education courses or programs;
e. Programs for gifted and talented pupils;
f. Health services;
g. Preschool (including Head Start ~~and Even Start~~);
h. ~~Before~~ Before- and ~~after school~~ after-school child care;
i. Food and nutrition programs~~.~~;
j. School counseling services to advise homeless students and prepare and improve the readiness of such students for college.

33.11(2) A district must include homeless students in its academic assessment and accountability system under the federal ~~No Child Left Behind Act, P.L. 107-110~~ Every Student Succeeds Act, P.L. 114-95. ~~Assessments should be included in the economically disadvantaged category for reporting purposes. Schools are not required to disaggregate information regarding homeless students as a separate category, but may be asked to do so in accordance with the duties of the United States Secretary of Education and the Office of the State Coordinator.~~ A district must report disaggregated data regarding the academic achievement and graduation rates for homeless children, as required by Section 1111 of the Every Student Succeeds Act.

ITEM 7. Amend **281—Chapter 33**, implementation sentence, as follows:

These rules are intended to implement the provisions of the ~~Stewart B. McKinney Homeless Assistance Act, as reauthorized in January 2002 as the~~ McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431, et seq.), as reauthorized December 10, 2015, by Title IX, Part A, of the Every Student Succeeds Act.

ARC 3090C

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 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 section 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 34A.22, the Homeland Security and Emergency Management Department hereby gives Notice of Intended Action to amend Chapter 10, "Enhanced 911 Telephone Systems," Iowa Administrative Code.

The proposed amendments are intended to implement 2017 Iowa Acts, Senate File 500, which amends Iowa Code chapter 34A. A majority of these amendments change the terms "Enhanced 911" and "E911" to "911" to reflect the merging of E911 with Next Generation 911 services to make improvements to the network. For policy implementation purposes, it is easier to simply refer to the telephone system and the associated elements as 911.

Several definitions are updated to reflect the current and future operating environment for 911 telephone systems and the public and private partners that are involved in their operation.

No amendments have been made to the flow of wireline 911 service surcharge detailed in rule 605—10.5(34A).

Several amendments are made to the flow of the emergency communication service surcharge as described in rule 605—10.9(34A). The result of these amendments is as follows:

- The surcharge pass-through to the public safety answering point (PSAP) remains at 60 percent.
- Wireless carrier cost recovery remains in place.
- Originating service providers, wireline carriers, and third-party 911 providers' cost recovery remains in place.
- The program manager is allowed to make grants to the joint 911 service boards and the Department of Public Safety to develop and maintain geographic information system data.
- Language related to the use of surcharge funds to pay for costs associated with the financing of the statewide interoperable communications system is removed.
- The amount of funding available for use from the Carryover Fund is increased from $4.4 million in fiscal year 2017 to $7 million in fiscal year 2018.
- Carryover funds may be used for grants for PSAPs to physically consolidate. Grants for virtual consolidation are removed.
- Carryover funds not utilized for consolidation grants will pass equally to the PSAPs and be used in the manner for which the funds have been used in the past.

Consideration will be given to all written suggestions and comments on the proposed amendments received on or before June 27, 2017. Such written materials should be sent to the Administrative Rules Coordinator, Department of Homeland Security and Emergency Management, 7900 Hickman Road, Suite 500, Windsor Heights, Iowa 50324; fax (515)725-3260; or e-mail to john.benson@iowa.gov.

Also, there will be a public hearing on June 27, 2017, at 11 a.m. in the Department of Homeland Security and Emergency Management Cyclones Conference Room at 7900 Hickman Road, Suite 500, Windsor Heights, Iowa. At that 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 will have a fiscal impact to the joint E911 service boards. The increase in the amount of funds available from the Carryover Fund has the potential to increase the amount of funds a joint E911 service board receives for the PSAP(s) the board operates. In fiscal year 2017, the total amount

available was $4.4 million, or $38,938 for each of the 113 PSAPs within Iowa. In fiscal year 2018, this amount increases to $7 million total, or $61,946 per PSAP. These per-PSAP figures are estimates. The actual per-PSAP amount depends on the amount of funds used for consolidation grants. Any funds used for consolidation will decrease the per-PSAP figure. Additional funding will be directed to the PSAPs to support geographic information system functionality. The Department anticipates that this funding will be in the amount of $15,000 per PSAP.

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

These amendments are intended to implement Iowa Code chapter 34A as amended by 2017 Iowa Acts, Senate File 500.

The following amendments are proposed.

ITEM 1. Amend **605—Chapter 10**, title, as follows:

~~ENHANCED~~ 911 TELEPHONE SYSTEMS

ITEM 2. Amend rule 605—10.1(34A) as follows:

605—10.1(34A) Program description. The purpose of this program is to provide for the orderly development, installation, and operation of ~~enhanced~~ 911 emergency telephone systems and to provide a mechanism for the funding of these systems, either in whole or in part. These systems shall be operated under governmental management and control for the public benefit. These rules shall apply to each joint ~~E911~~ 911 service board or alternative 28E entity as provided in Iowa Code chapter 34A and to each provider of ~~enhanced~~ 911 service.

ITEM 3. Amend the following definitions in rule **605—10.2(34A)**:

"Communications service" means a service capable of accessing, connecting with, or interfacing with a 911 system by dialing, initializing, or otherwise activating the system exclusively through the digits 911 by means of a local telephone device, ~~or~~ wireless communications device or any other device capable of interfacing with the 911 system.

"~~E911~~ 911 communications council" means the council as established under the provisions of Iowa Code section 34A.15.

"~~E911~~ 911 program manager" means that person appointed by the director of the homeland security and emergency management department, and working with the ~~E911~~ 911 communications council, to perform the duties specifically set forth in Iowa Code chapter 34A and this chapter.

"~~Enhanced~~ 911 ~~(E911)~~ service area" means the geographic area ~~to be served, or currently served under an enhanced 911 service plan, provided that any enhanced 911 service area shall at a minimum encompass~~ encompassing at least one entire county~~. The enhanced 911 service area~~, and which may encompass ~~more than~~ a geographical area outside the one entire county ~~and need~~ not ~~be~~ restricted to county boundaries, serviced or to be serviced under a 911 service plan. ~~This definition applies only to wire-line enhanced 911 service.~~

"~~Enhanced~~ 911 ~~(E911)~~ service plan ~~(wire-line)~~" means a plan, produced by a joint ~~E911~~ 911 service board, which includes the information required by Iowa Code subsection 34A.2(7) as amended by 2017 Iowa Acts, Senate File 500, section 3(2).

"~~Enhanced wireless 911~~ Wireless NG911 service area" means the geographic area to be served, or currently served, by a PSAP under ~~an enhanced~~ a wireless ~~911~~ NG911 service plan.

"Joint ~~E911~~ 911 service board" means those entities that are created under the provisions of Iowa Code section 34A.3, which include the legal entities created pursuant to Iowa Code chapter 28E referenced in Iowa Code subsection 34A.3(3) and that operate a 911 telephone system for the public benefit within a defined 911 service area.

"Selective routing (SR)" means ~~an enhanced~~ a 911 system feature that enables all 911 calls originating from within a defined geographical region to be answered at a predesignated PSAP.

"Voice over internet protocol" ~~means a technology used to transmit voice conversations over a data network such as a computer network or internet.~~ means a service to which all of the following apply:

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

2. The service is offered to the public, or such classes of users as to be effectively available to the public.

3. The service has the capability to originate traffic to, and terminate traffic from, the public switched telephone network or a successor network.

"Wireless E911 phase 1" means a 911 call made from a wireless device in which the wireless communications service provider delivers the call-back number and the address of the tower that received the call to the appropriate public safety answering point.

"Wireless E911 phase 2" means a 911 call made from a wireless device in which the wireless communications service provider delivers the call-back number and the latitude and longitude coordinates of the wireless device to the appropriate public safety answering point.

"~~Wire-line E911~~ Wireline 911 service surcharge" means a charge assessed on each ~~wire-line~~ wireline access line which physically terminates within the ~~E911~~ 911 service area in accordance with Iowa Code section 34A.7.

ITEM 4. Rescind the definitions of "Communications service provider," "Enhanced 911 service surcharge," and "Wireless communications surcharge" in rule **605—10.2(34A)**.

ITEM 5. Adopt the following **new** definitions in rule **605—10.2(34A)**:

"Emergency communications service surcharge" means a charge established by the program manager in accordance with Iowa Code section 34A.7A.

"Emergency services internet protocol network" or *"ESInet"* means a system using broadband packet-switched technology that is capable of supporting the transmission of varying types of data to be shared by all public and private safety agencies that are involved in an emergency.

"Geographic information system" or *"GIS"* means a system designed to capture, store, manipulate, analyze, manage, and present spatial or geographical data.

"Next generation 911 network" means an internet protocol-enabled system that enables the public to transmit digital information to public safety answering points and replaces enhanced 911 and that includes ESInet, GIS, cybersecurity, and other system components.

"Originating service provider" means a communications provider that allows its users or subscribers to originate 911 voice or nonvoice messages from the public to public safety answering points, including but not limited to wireline, wireless, and voice over internet protocol services.

ITEM 6. Amend rule 605—10.3(34A) as follows:

605—10.3(34A) Joint ~~E911~~ 911 service boards. Each county board of supervisors shall establish a joint ~~E911~~ 911 service board.

10.3(1) *Membership.*

a. Each political subdivision of the state, having a public safety agency serving territory within the county ~~E911~~ 911 service area, and each local emergency management agency as defined in Iowa Code section 29C.2 operating within the 911 service area is entitled to one voting membership. For the purposes of this paragraph, a township that operates a volunteer fire department providing fire protection services to the township, or a city that provides fire protection services through the operation of a volunteer fire department not financed through the operation of city government, shall be considered a political subdivision of the state having a public safety agency serving territory within the county.

b. Each private safety agency, such as privately owned ambulance services, airport security agencies, and private fire companies, serving territory within the county ~~E911~~ 911 service area, is entitled to a nonvoting membership on the board.

c. Public and private safety agencies headquartered outside but operating within a county ~~E911~~ 911 service area are entitled to membership according to their status as a public or private safety agency.

d. A political subdivision that does not operate its own public safety agency but contracts for the provision of public safety services is not entitled to membership on the joint ~~E911~~ 911 service board. However, its contractor is entitled to one voting membership according to the contractor's status as a public or private safety agency.

e. The joint ~~E911~~ 911 service board elects a chairperson and vice chairperson.

f. The joint ~~E911~~ 911 service board shall annually submit a listing of members, to include the political subdivision they represent and, if applicable, the associated 28E agreement, to the ~~E911~~ 911 program manager. A copy of the list shall be submitted within 30 days of adoption of the operating budget for the ensuing fiscal year and shall be on the prescribed form provided by the ~~E911~~ 911 program manager.

10.3(2) *Alternate 28E entity.* The joint ~~E911~~ 911 service board may organize as an Iowa Code chapter 28E agency as authorized in Iowa Code subsection 34A.3(3), provided that the 28E entity meets the voting and membership requirements of Iowa Code subsection 34A.3(1).

10.3(3) *Joint ~~E911~~ 911 service board bylaws.* Each joint ~~E911~~ 911 service board shall develop bylaws to specify, at a minimum, the following information:

a. The name of the joint ~~E911~~ 911 service board.

b. to *m.* No change.

Each member shall sign the adopted bylaws.

The joint ~~E911~~ 911 service board shall record the signed bylaws with the county recorder and shall forward a copy of the signed bylaws to the ~~E911~~ 911 program manager at the homeland security and emergency management department.

10.3(4) *Executive board.* The joint ~~E911~~ 911 service board may, through its bylaws, establish an executive board to conduct the business of the joint ~~E911~~ 911 service board. Members of the executive board must be selected from the eligible voting members of the joint ~~E911~~ 911 service board. The executive board will have such other duties and responsibilities as assigned by the joint ~~E911~~ 911 service board.

10.3(5) *Meetings.*

a. The provisions of Iowa Code chapter 21, "Official Meetings Open to the Public," are applicable to joint ~~E911~~ 911 service boards.

b. Joint ~~E911~~ 911 service boards shall conduct meetings in accordance with their established bylaws and applicable state law.

ITEM 7. Amend rule 605—10.4(34A) as follows:

605—10.4(34A) ~~Enhanced~~ 911 service plan ~~(wire-line)~~.

10.4(1) The joint ~~E911~~ 911 service board shall be responsible for developing ~~an E911~~ a 911 service plan as required by Iowa Code section 34A.3 and as set forth in these rules. The plan will remain the property of the joint ~~E911~~ 911 service board. Each joint ~~E911~~ 911 service board shall coordinate planning with each contiguous joint ~~E911~~ 911 service board. A copy of the plan and any modifications and addenda shall be submitted to:

a. The homeland security and emergency management department.

b. All public and private safety agencies serving the ~~E911~~ 911 service area.

c. All providers affected by the ~~E911~~ 911 service plan.

10.4(2) The ~~E911~~ 911 service plan shall, at a minimum, encompass the entire county, unless a waiver is granted by the director. Each plan shall include:

a. The mailing address of the joint ~~E911~~ 911 service board.

b. A list of voting members on the joint ~~E911~~ 911 service board.

c. A list of nonvoting members on the joint ~~E911~~ 911 service board.

d. The name of the chairperson and of the vice chairperson of the joint ~~E911~~ 911 service board.

e. A geographical description of the ~~enhanced~~ 911 service area.

f. A list of all public and private safety agencies within the ~~E911~~ 911 service area.

g. The number of public safety answering points within the ~~E911~~ 911 service area.

h. Identification of the agency responsible for management and supervision of the ~~E911~~ 911 emergency telephone communication system.

i. A statement of recurring and nonrecurring costs to be incurred by the joint ~~E911~~ 911 service board. These costs shall be limited to costs directly attributable to the provision of ~~E911~~ 911 service.

j. The total number of telephone access lines by a telephone company or companies having points of presence within the ~~E911~~ 911 service area and the number of this total that is exempt from surcharge collection as provided in rule 605—10.9(34A) and Iowa Code subsection 34A.7(3).

k. If applicable, a schedule for implementation of the plan throughout the ~~E911~~ 911 service area. A joint ~~E911~~ 911 service board may decide not to implement ~~E911~~ 911 service.

l. The total property valuation in the ~~E911~~ 911 service area.

m. Maps of the ~~E911~~ 911 service area showing:

(1) to (5) No change.

n. and *o.* No change.

10.4(3) All plan modifications and addenda shall be filed with, reviewed, and approved by the ~~E911~~ 911 program manager.

10.4(4) The ~~E911~~ 911 program manager shall base acceptance of the plan upon compliance with the provisions of Iowa Code chapter 34A and the rules herein.

10.4(5) The ~~E911~~ 911 program manager will notify in writing, within 20 days of review, the chairperson of the joint ~~E911~~ 911 service board of the approval or disapproval of the plan.

a. If the plan is disapproved, the joint ~~E911~~ 911 service board will have 90 days from receipt of notice to submit revisions/addenda.

b. Notice for disapproved plans will contain the reasons for disapproval.

c. The ~~E911~~ 911 program manager will notify the chairperson, in writing within 20 days of review, of the approval or disapproval of the revisions.

ITEM 8. Amend rule 605—10.5(34A) as follows:

605—10.5(34A) ~~Wire-line E911~~ Wireline 911 service surcharge.

10.5(1) One source of funding for the ~~E911~~ 911 emergency communications system shall come from a surcharge of one dollar per month, per access line on each access line subscriber.

10.5(2) The ~~E911~~ 911 program manager shall notify ~~a~~ local ~~communications service provider~~ exchange carriers and competitive local exchange service providers scheduled to provide exchange access ~~E911~~ 911 service within ~~an E911~~ a 911 service area that implementation of ~~an E911~~ a 911 service plan has been approved by the joint ~~E911~~ 911 service board and by the ~~E911~~ 911 program manager and that collection of the surcharge is to begin within 60 days. The ~~E911~~ 911 program manager shall also provide notice to all affected public safety answering points. The 60-day notice to ~~local exchange service~~ the carriers and providers shall also apply when an adjustment in the ~~wire-line~~ wireline surcharge rate is made.

10.5(3) The ~~local communications service provider~~ carriers and providers shall collect the surcharge as a part of ~~its~~ their monthly billing to ~~its~~ their subscribers. The surcharge shall appear as a single line item on a subscriber's monthly billing entitled "~~E911~~ 911 emergency communications service surcharge."

10.5(4) The ~~local communications service provider~~ carriers and providers may retain 1 percent of the surcharge collected as compensation for the billing and collection of the surcharge. If the compensation is insufficient to fully recover a carrier's or provider's costs for the billing and collection of the surcharge, the deficiency shall be included in the carrier's or provider's costs for rate-making purposes to the extent it is reasonable and just under Iowa Code section 476.6.

10.5(5) The ~~local communications service~~ carrier or provider shall remit the collected surcharge to the joint ~~E911~~ 911 service board on a calendar quarter basis within 20 days of the end of the quarter.

10.5(6) The joint ~~E911~~ 911 service board may request, not more than once each quarter, the following information from the ~~local communications service~~ carrier or provider:

a. to *e.* No change.

f. The amount retained by the ~~local communications service~~ carrier or provider from the 1 percent administrative fee.

Access line counts and surcharge remittances are confidential public records as provided in Iowa Code section 34A.8.

10.5(7) Collection for a surcharge shall terminate if ~~E911~~ 911 service ceases to operate within the respective ~~E911~~ 911 service area. The ~~E911~~ 911 program manager for good cause may grant an extension.

a. The director shall provide 100 days' prior written notice to the joint ~~E911~~ 911 service board or the operating authority and to the ~~local communications service~~ carrier(s) or provider(s) collecting the fee of the termination of surcharge collection.

b. Individual subscribers within the ~~E911~~ 911 service area may petition the joint ~~E911~~ 911 service board or the operating authority for a refund. Petitions shall be filed within one year of termination. Refunds may be prorated and shall be based on funds available and subscriber access lines billed.

c. At the end of one year from the date of termination, any funds not refunded and remaining in the ~~E911~~ 911 service fund and all interest accumulated shall be retained by the joint ~~E911~~ 911 service board. However, if the joint ~~E911~~ 911 service board ceases to operate any ~~E911~~ 911 service, the balance in the ~~E911~~ 911 service fund shall be payable to the homeland security and emergency management department. Moneys received by the department shall be used only to offset the costs for the administration of the ~~E911~~ 911 program.

ITEM 9. Amend rule 605—10.6(34A) as follows:

605—10.6(34A) Waivers, variance request, and right to appeal.

10.6(1) All requests for variances or waivers shall be submitted to the ~~E911~~ 911 program manager in writing and shall contain the following information:

a. and *b.* No change.

c. A copy of the resolution or minutes of the joint ~~E911~~ 911 service board meeting which authorizes the application for a variance or waiver.

d. The signature of the chairperson of the joint ~~E911~~ 911 service board.

10.6(2) The ~~E911~~ 911 program manager may grant a variance or waiver based upon the provisions of Iowa Code chapter 34A or other applicable state law.

10.6(3) Upon receipt of a request for a variance or waiver, the ~~E911~~ 911 program manager shall evaluate the request and schedule a review within 20 working days of receipt of the request. Review shall be informal, and the petitioner may present materials, documents and testimony in support of the petitioner's request. The ~~E911~~ 911 program manager shall determine if the request meets the criteria established and shall issue a decision within 20 working days. The ~~E911~~ 911 program manager shall notify the petitioner, in writing, of the acceptance or rejection of the petition. If the petition is rejected, such notice shall include the reasons for denial.

ITEM 10. Amend rule 605—10.7(34A) as follows:

605—10.7(34A) ~~Enhanced wireless E911 service plan~~ Wireless NG911 Implementation and Operations Plan. Each joint ~~E911~~ 911 service board, the department of public safety, the ~~E911~~ 911 communications council, and wireless communications service providers shall cooperate with the ~~E911~~ 911 program manager in preparing ~~an enhanced wireless E911 service plan~~ the Wireless NG911 Implementation and Operations Plan for statewide implementation of ~~enhanced~~ wireless ~~E911~~ NG911 service.

10.7(1) *Plan specifications.* The ~~enhanced wireless E911 service plan~~ Wireless NG911 Implementation and Operations Plan shall include, at a minimum, the following information:

1. Maps showing the geographic location within the county of each PSAP that receives ~~enhanced~~ wireless ~~E911~~ 911 telephone calls.

2. to 4. No change.

10.7(2) No change.

ITEM 11. Amend rule 605—10.8(34A) as follows:

605—10.8(34A) Emergency communications service surcharge.

10.8(1) The ~~E911~~ 911 program manager shall adopt a monthly surcharge of one dollar to be imposed on each ~~wireless communications~~ originating service number provided in this state. The surcharge shall not be imposed on ~~wire-line-based~~ wireline-based communications or prepaid wireless telecommunications service.

10.8(2) The ~~E911~~ 911 program manager shall order the imposition of a surcharge uniformly on a statewide basis and simultaneously on all ~~communications~~ originating service numbers by giving at least 60 days' prior notice to wireless carriers to impose a monthly surcharge as part of their periodic billings. The 60-day notice to wireless carriers shall also apply when the program manager is making an adjustment in the ~~wireless~~ emergency communications service surcharge rate.

10.8(3) The ~~wireless~~ emergency communications surcharge shall be one dollar per month, per customer service number, until changed by rule.

10.8(4) The ~~communications~~ originating service provider shall list the surcharge as a separate line item on the customer's billing indicating that the surcharge is for ~~E911~~ 911 emergency telephone service. The ~~communications~~ originating service provider is entitled to retain 1 percent of any wireless surcharge collected as a fee for collecting the surcharge as part of the subscriber's periodic billing. The ~~wireless E911~~ emergency communications service surcharge is not subject to sales or use tax.

10.8(5) Surcharge funds shall be remitted on a calendar quarter basis by the close of business on the twentieth day following the end of the quarter with a remittance form as prescribed by the ~~E911~~ 911 program manager. Providers shall issue their checks or warrants to the Treasurer, State of Iowa, and remit to the ~~E911~~ 911 Program Manager, Homeland Security and Emergency Management Department, 7900 Hickman Road, Suite 500, Windsor Heights, Iowa 50324.

ITEM 12. Amend rule 605—10.9(34A) as follows:

605—10.9(34A) ~~E911~~ 911 emergency communications fund.

10.9(1) ~~Wireless E911~~ Emergency communications service surcharge money, collected and remitted by ~~wireless~~ originating service providers, shall be placed in a fund within the state treasury under the control of the director.

10.9(2) No change.

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

a. An amount as appropriated by the general assembly to the department shall be allocated to the director and program manager for implementation, support, and maintenance of the functions of the director and program manager and to employ the auditor of state to perform an annual audit of the ~~E911~~ 911 emergency communications fund.

b. The program manager shall allocate to each joint ~~E911~~ 911 service board and to the department of public safety a minimum of $1,000 per calendar quarter for each public safety answering point (PSAP) within the service area of the department of public safety or joint ~~E911~~ 911 service board that has submitted an annual written request to the program manager. The written request shall be made with the Request for Wireless ~~E911~~ 911 Funds form contained in the Wireless NG911 Implementation and Operations Plan. The request is due to the program manager by May 15, or the next business day, of each year.

(1) The amount allocated under paragraph 10.9(3)*"b"* shall be 60 percent of the total amount of surcharge generated per calendar quarter. The minimum amount allocated to the department of public safety and the joint ~~E911~~ 911 board shall be $1,000 per PSAP operated by the respective authority.

(2) Additional funds shall be allocated as follows:

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

2. Thirty-five percent of the total dollars available for allocation shall be allocated in proportion to the wireless ~~E911~~ 911 calls taken at the PSAP in the 911 service area to the total number of wireless ~~E911~~ 911 calls originating in this state.

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

c. No change.

d. The program manager shall reimburse communications service providers on a calendar quarter basis for carriers' eligible expenses for transport costs between the wireless selective router and the PSAPs related to the delivery of wireless E911 phase ~~I~~ 1 services and the integration of an

~~Internet~~ internet protocol-enabled next generation 911 network as specified in the Wireless NG911 Implementation and Operations Plan. The program manager may also provide grants to the joint 911 service boards and the department of public safety for the purpose of developing and maintaining GIS data to be used in support of the next generation 911 network. The program manager shall provide a notice of availability of such grants and provide guidance and application forms on the department's Web site, www.homelandsecurity.iowa.gov.

e. The program manager shall reimburse ~~wire-line~~ wireline carriers and third-party ~~E911~~ 911 automatic location information database providers on a quarterly basis for the costs of maintaining and upgrading the ~~E911~~ 911 components and functionalities beyond the input to the ~~E911~~ 911 selective router, including the ~~E911~~ 911 selective router and the automatic location information database.

~~*f.* The program manager shall allocate $4,380,000 to the department of public safety in the fiscal year beginning July 1, 2016, and ending June 30, 2017, for payments and other costs due under the financing agreement entered into by the treasurer of state for building the statewide interoperable communications system pursuant to Iowa Code section 29C.23(2) as amended by 2016 Iowa Acts, Senate File 2326.~~

~~*g.*~~ *f.* The department may, in a reserve account established within the ~~E911~~ 911 emergency communications fund, credit each fiscal year an amount of up to 12½ percent of the annual emergency communications service surcharge collected pursuant to rule 605—10.8(34A) and the prepaid wireless ~~E911~~ 911 surcharge collected pursuant to rule 605—10.17(34A). However, the moneys contained in such reserve account shall not exceed 12½ percent of the total surcharges collected for each fiscal year. Moneys credited to the reserve account shall only be used by the department for the purpose of repairing or replacing equipment in the event of a catastrophic equipment failure, as determined by the director.

~~*h.*~~ *g.* If moneys remain in the fund after all obligations are fully paid under paragraphs 10.9(3)*"a," "b," "c," "d," "e,"* and*"f,"* ~~and "g,"~~ an amount of up to ~~$4,400,000~~ $7,000,000 shall, for the fiscal year beginning July 1, ~~2016~~ 2017, and ending June 30, ~~2017~~ 2018, be expended and distributed in the following priority order:

(1) The director, in consultation with the program manager and the ~~E911~~ 911 communications council, may provide grants for nonrecurring costs to the department of public safety or joint ~~E911~~ 911 service board operating a PSAP agreeing to consolidate. For purposes of this subparagraph, "consolidate" means ~~either~~ the consolidation of all PSAP systems, functions, ~~enhanced~~ 911 service areas, and physical facilities of two or more PSAPs, resulting in responsibility by the consolidated PSAP for all call answering and dispatch functions for the combined ~~enhanced~~ 911 service area~~, or the consolidation of two or more PSAPs utilizing shared services technology to combine PSAP systems, including but not limited to 911 call processing equipment, computer-aided dispatch, mapping, radio, and logging recorders~~. Such a grant to a PSAP shall not exceed one-half of the projected cost of consolidation, or $200,000, whichever is less. The department of public safety or joint ~~E911~~ 911 service board wishing to apply for such funds shall complete an Intent to Consolidate Application form prior to December 1, ~~2016~~ 2017. The form can be found on the department's Web site, www.homelandsecurity.iowa.gov. Such applications shall provide a detailed consolidation plan and demonstrate that the proposed project shall be completed prior to June 30, ~~2017~~ 2018.

(2) The program manager, in consultation with the ~~E911~~ 911 communications council, shall allocate an amount, not to exceed $100,000 per fiscal year, for development of public awareness and educational programs related to the use of 911 by the public; for educational programs for personnel responsible for the maintenance, operation, and upgrading of local ~~E911~~ 911 systems; and for the expenses of members of the ~~E911~~ 911 communications council for travel, monthly meetings, and training, provided, however, that the members have not received reimbursement funds for such expenses from another source.

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

1. No change.

2. Local costs related to access the statewide interoperable communications system pursuant to Iowa Code section 29C.23 ~~as amended by 2016 Iowa Acts, Senate File 2326~~.

(4) No change.

10.9(4) Payments to local communications service providers and wireless service providers shall be made quarterly, based on original, itemized claims or invoices presented within 20 days of the end of the calendar quarter. Claims or invoices not submitted within 20 days of the end of the calendar quarter are not eligible for reimbursement and may not be included in future claims and invoices. Payments to providers shall be made in accordance with these rules and the State Accounting Policy and Procedures Manual.

10.9(5) Local communications service providers shall be reimbursed for only those items and services that are defined as eligible in the ~~enhanced wireless 911 service plan~~ Wireless NG911 Implementation and Operations Plan and when initiation of service has been ordered and authorized by the ~~E911~~ 911 program manager.

10.9(6) If it is found that an overpayment has been made to an entity, the ~~E911~~ 911 program manager shall attempt recovery of the debt from the entity by certified letter. Due diligence shall be documented and retained at the homeland security and emergency management department. If resolution of the debt does not occur and the debt is at least $50, the homeland security and emergency management department will then utilize the income offset program through the department of revenue. Until resolution of the debt has occurred, the homeland security and emergency management department may withhold future payments to the entity.

ITEM 13. Amend rule 605—10.10(34A) as follows:

605—10.10(34A) ~~E911~~ 911 surcharge exemptions. The following agencies, individuals, and organizations are exempt from imposition of the ~~E911~~ 911 surcharge:

1. No change.
2. Indian tribes for access lines on the tribe's reservation upon filing a statement with the joint ~~E911~~ 911 service board, signed by appropriate authority, requesting surcharge exemption.
3. An enrolled member of an Indian tribe for access lines on the reservation, who does not receive ~~E911~~ 911 service, and who annually files a signed statement with the joint ~~E911~~ 911 service board that the person is an enrolled member of an Indian tribe living on a reservation and does not receive ~~E911~~ 911 service. However, once ~~E911~~ 911 service is provided, the member is no longer exempt.
4. No change.
5. Individual ~~wire-line~~ wireline subscribers to the extent that they shall not be required to pay on a single periodic billing the surcharge on more than 100 access lines, or their equivalent, in ~~an E911~~ a 911 service area.

All other subscribers not listed above, that have or will have the ability to access 911, are required to pay the surcharge, if imposed by the official order of the ~~E911~~ 911 program manager.

ITEM 14. Amend rule 605—10.11(34A) as follows:

605—10.11(34A) ~~E911~~ 911 service fund.

10.11(1) The department of public safety and each joint ~~E911~~ 911 service board have the responsibility for the ~~E911~~ 911 service fund.

a. ~~An E911~~ A 911 service fund shall be established in the office of the county treasurer for each joint ~~E911~~ 911 service board and with the state treasurer for the department of public safety.

b. Collected surcharge moneys and any interest thereon, as authorized in Iowa Code chapter 34A, shall be deposited into the ~~E911~~ 911 service fund. ~~E911~~ 911 surcharge moneys must be kept separate from all other sources of revenue utilized for ~~E911~~ 911 systems.

c. For joint ~~E911~~ 911 service boards, withdrawal of moneys from the ~~E911~~ 911 service fund shall be made on warrants drawn by the county auditor, per Iowa Code section 331.506, supported by claims and vouchers approved by the chairperson or vice chairperson of the joint ~~E911~~ 911 service board or the appropriate operating authority so designated in writing.

d. For the department of public safety, withdrawal of moneys from the ~~E911~~ 911 service fund shall be made in accordance with state laws and administrative rules.

10.11(2) The ~~E911~~ 911 service funds shall be subject to examination by the department at any time during usual business hours. ~~E911~~ 911 service funds are subject to the audit provisions of Iowa Code chapter 11. A copy of all audits of the ~~E911~~ 911 service fund shall be furnished to the department within 30 days of receipt. If through the audit or monitoring process the department determines that a joint ~~E911~~ 911 service board is not adhering to an approved plan or does not have a valid board membership, or if the department determines that a joint ~~E911~~ 911 service board or the department of public safety is not using funds in the manner prescribed in these rules or Iowa Code chapter 34A, the director may, after notice and hearing, suspend surcharge imposition and order termination of expenditures from the ~~E911~~ 911 service fund. The joint ~~E911~~ 911 service board or department of public safety is not eligible to receive or expend surcharge moneys until such time as the ~~E911~~ 911 program manager determines that the board or department of public safety is in compliance with the approved plan, board membership, and fund usage limitations.

ITEM 15. Rescind and reserve rule **605—10.12(34A)**.

ITEM 16. Amend rule 605—10.13(34A) as follows:

605—10.13(34A) Limitations on use of funds. Surcharge moneys in the ~~E911~~ 911 service fund may be used to pay recurring and nonrecurring costs including, but not limited to, network equipment, software, database, addressing, initial training, and other start-up, capital, and ongoing expenditures. ~~E911~~ 911 surcharge moneys shall be used only to pay costs directly attributable to the provision of ~~E911~~ 911 telephone systems and services and may include costs directly attributable to the receipt and disposition of the 911 call.

ITEM 17. Amend rule 605—10.14(34A) as follows:

605—10.14(34A) Minimum operational and technical standards.

10.14(1) Each ~~E911~~ 911 system, supplemented with ~~E911~~ 911 surcharge moneys, shall, at a minimum, employ the following features:

a. to *c.* No change.

d. Each PSAP shall provide two emergency seven-digit numbers arranged in rollover configuration for use by telephone company operators for transferring a calling party to the PSAP over the ~~wire-line~~ wireline network. Wireless calls must be transferred to PSAPs that are capable of accepting ANI and ALI.

e. No change.

10.14(2) ~~E911~~ 911 public safety answering points shall adhere to the following minimum standards:

a. No change.

b. The primary published emergency number in the ~~E911~~ 911 service area shall be 911.

c. to *l.* No change.

10.14(3) ~~Communications~~ Originating service providers shall adhere to the following minimum requirements:

a. The PSAP and ~~E911~~ the 911 program manager shall be notified of all service interruptions in accordance with 47 CFR Part 4.

~~*b.* All communications service providers shall submit separate itemized bills to the E911 program manager, the department of public safety, a joint E911 service board or PSAP operating authority, as appropriate.~~

~~*c.*~~ *b.* The ~~communications~~ originating service provider shall respond, within a reasonable length of time, to all appropriate requests for information from the director, the department of public safety, a joint ~~E911~~ 911 service board or operating authority and shall expressly comply with the provisions of Iowa Code section 34A.8.

~~*d.*~~ *c.* Access to the wireless ~~E911~~ 911 selective router and next generation 911 network shall be approved by the ~~E911~~ 911 program manager. ~~Communications~~ Originating service providers must provide the company name, address and point of contact with their request. If the ~~communications~~

originating service provider utilizes a third-party vendor, the vendor must provide this information listing the vendor's customer's requested information.

10.14(4) Voluntary standards. Current technical and operational standards applying to ~~E911~~ 911 systems and services can be found in the "American Society for Testing and Materials Standard Guide for Planning and Developing 911 Enhanced Telephone Systems" and in publications issued by the National Emergency Number Association. Master street address guides are encouraged to be developed and maintained by using National Emergency Number Association technical standards 02-010 and 02-011. Standards contained in these documents shall be considered as guidance, and adherence thereto shall be voluntary. Notwithstanding the minimum standards published in these rules, it is intended that ~~E911 communications~~ 911 originating service providers and joint ~~E911~~ 911 service boards and operating authorities employ the best and most affordable technologies and methods available in providing ~~E911~~ 911 services to the public.

ITEM 18. Amend rule 605—10.15(34A) as follows:

605—10.15(34A) Administrative hearings and appeals.

10.15(1) ~~E911~~ 911 program manager decisions regarding the acceptance or refusal of ~~an E911~~ a 911 service plan, in whole or in part, the implementation of ~~E911~~ 911 and the imposition of the ~~E911~~ 911 surcharge within a specific ~~E911~~ 911 service area may be contested by an affected party.

10.15(2) Request for hearing shall be made in writing to the homeland security and emergency management department director within 30 days of the ~~E911~~ 911 program manager's mailing or serving of a decision and shall state the reason(s) for the request and shall be signed by the appropriate authority.

10.15(3) to **10.15(6)** No change.

ITEM 19. Amend rule 605—10.16(34A) as follows:

605—10.16(34A) Confidentiality. All financial or operations information provided by a ~~communications~~ originating service provider to the ~~E911~~ 911 program manager shall be identified by the provider as confidential trade secrets under Iowa Code section 22.7(3) and shall be kept confidential as provided under Iowa Code section 22.7(3) and ~~Iowa Administrative Code~~ 605—Chapter 5. Such information shall include numbers of accounts, numbers of customers, revenues, expenses, and the amounts collected from said ~~communications~~ originating service provider for deposit in the fund. Notwithstanding such requirements, aggregate amounts and information may be included in reports issued by the director if the aggregated information does not reveal any information attributable to an individual ~~communications~~ originating service provider.

ITEM 20. Amend rule 605—10.17(34A) as follows:

605—10.17(34A) Prepaid wireless ~~E911~~ 911 surcharge. Administration of the prepaid wireless ~~E911~~ 911 surcharge is under the control of the Iowa department of revenue. To administer this function, the department of revenue has adopted rules that can be found in 701—paragraph 224.6(2)*"b"* and rule 701—224.8(34A)~~, Iowa Administrative Code~~.

ITEM 21. Amend **605—Chapter 10**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 34A as amended by 2017 Iowa Acts, Senate File 500.

ARC 3110C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 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 section 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 sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 52, "Dependent Adult Abuse in Facilities and Programs," Iowa Administrative Code.

The proposed amendments add personal degradation as a form of dependent adult abuse by caretakers in facilities and programs regulated by the Department. The proposed amendments provide that a caretaker in a facility or program licensed or certified by the Department may be found to have committed dependent adult abuse if the individual knowingly and willfully takes, transmits, or displays a photographic image that degrades the personal dignity of a dependent adult.

The proposed amendments implement 2017 Iowa Acts, House File 544, which was signed into law by Governor Terry Branstad on March 30, 2017.

The Department does not believe that the proposed amendments will pose any financial hardship on any regulated entity or individual.

The State Board of Health initially reviewed the proposed amendments at its May 10, 2017, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before June 27, 2017. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Third Floor, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to david.werning@dia.iowa.gov.

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

These amendments are intended to implement Iowa Code section 135C.14 and 2017 Iowa Acts, House File 544.

The following amendments are proposed.

ITEM 1. Amend rule **481—52.1(235E)**, definition of "Dependent adult abuse," as follows:

"Dependent adult abuse" means any of the following as a result of the willful misconduct or gross negligence or reckless act or omission of a caretaker, taking into account the totality of the circumstances: physical injury, unreasonable confinement, unreasonable punishment, assault, sexual offense, sexual exploitation, exploitation, ~~or~~ neglect, or personal degradation. "Dependent adult abuse" does not include any of the following:

1. to 3. No change.

ITEM 2. Adopt the following **new** definition of "Personal degradation" in rule **481—52.1(235E)**:

"Personal degradation" means a willful act or statement by a caretaker intended to shame, degrade, humiliate, or otherwise harm the personal dignity of a dependent adult, or where the caretaker knew or reasonably should have known the act or statement would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person. "Personal degradation" includes the taking, transmission, or display of an electronic image of a dependent adult by a caretaker, where the caretaker's actions constitute a willful act or statement intended to shame, degrade, humiliate, or otherwise harm the personal dignity of the dependent adult, or where the caretaker knew or reasonably should have known the act would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person.

ARC 3086C
SOIL CONSERVATION AND WATER QUALITY DIVISION[27]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 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 section 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 sections 161A.4(1) and 208.26, the Division of Soil and Water Quality Conservation hereby gives Notice of Intended Action to amend Chapter 1, "Regions of Representation for State Soil Conservation Committee Farmer Members," Chapter 2, "Operation of State Soil Conservation Committee," Chapter 3, "Contested Case Proceedings and Practice," Chapter 10, "Iowa Financial Incentive Program for Soil Erosion Control," Chapter 11, "Conservation Practices Revolving Loan Fund," Chapter 12, "Water Protection Practices—Water Protection Fund," Chapter 20, "Iowa Soil 2000 Program," Chapter 21, "Water Quality Protection Projects—Water Protection Fund," Chapter 22, "Soil and Water Resource Conservation Plans," Chapter 30, "Agricultural Drainage Wells—Alternative Drainage System Assistance Program," Chapter 40, "Coal Mining," Chapter 50, "Iowa Abandoned Mined Land Reclamation Program," and Chapter 60, "Minerals Program," Iowa Administrative Code.

The proposed amendments change the name of the State Soil Conservation Committee to the State Soil and Water Quality Committee and adopt a definition of "edge-of-field practice." A mineral mining license being renewed would be valid for two years instead of one year and would cost $20 instead of $10.

Any interested persons may make written suggestions or comments on the proposed amendments on or before June 27, 2017. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to Margaret.Thomson@IowaAgriculture.gov.

These proposed amendments are subject to the Division's general waiver provisions.

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

These amendments are intended to implement 2017 Iowa Acts, House File 617.

The following amendments are proposed.

ITEM 1. Amend **27—Chapter 1**, title, as follows:

REGIONS OF REPRESENTATION FOR STATE SOIL CONSERVATION AND WATER QUALITY COMMITTEE FARMER MEMBERS

ITEM 2. Amend rule 27—1.1(161A) as follows:

27—1.1(161A) Scope. This chapter delineates the regional boundaries from which the six farmer members of the state soil conservation and water quality committee shall be appointed. The three members representing the mining industry, cities and towns, and tree farming shall be selected from the state at large.

ITEM 3. Amend rule 27—1.2(161A), introductory paragraph, as follows:

27—1.2(161A) Regions of representation. The farmer members of the state soil conservation and water quality committee shall be selected from the northwest, north central, northeast, southwest, south central, and southeast regions of the state.

ITEM 4. Amend **27—Chapter 2**, title, as follows:

OPERATION OF STATE SOIL CONSERVATION AND WATER QUALITY COMMITTEE

SOIL CONSERVATION AND WATER QUALITY DIVISION[27](cont'd)

ITEM 5. Amend rule 27—2.1(161A) as follows:

27—2.1(161A) Scope. This chapter governs the conduct of business by the state soil conservation and water quality committee. Rule-making proceedings held as part of committee meetings and contested case proceedings involving the committee are consistent with Iowa Code chapter 17A.

ITEM 6. Amend subrule 2.4(3) as follows:

2.4(3) *Distribution of agenda.* Agenda will be mailed to anyone who files a request with the director. The request should state whether the agenda for a particular meeting is desired, or whether the requester desires to be on the division's mailing list to receive the agenda for all meetings of the state soil conservation and water quality committee.

ITEM 7. Amend rule **27—3.2(17A,161A)**, definition of "Committee," as follows:

"Committee" means the state soil conservation and water quality committee established at Iowa Code section 161A.4.

ITEM 8. Amend rule 27—10.10(161A) as follows:

27—10.10(161A) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in implementing the state's financial incentive program for soil erosion control. It also establishes standards and guidelines to which the soil conservation districts shall conform in fulfilling their responsibilities under this program.

ITEM 9. Amend rule **27—10.20(161A)**, definitions of "Committee" and "Soil conservation practices," as follows:

"Committee" or *"state soil conservation and water quality committee"* means the committee established by Iowa Code section 161A.4 as the policymaking body of the division of soil conservation and water quality.

"Soil conservation practices" means any of the practices which serve to reduce erosion of soil by wind and water on land used for agricultural or horticultural purposes and approved by the state soil conservation and water quality committee.

ITEM 10. Adopt the following **new** definition of "Edge-of-field practice" in rule **27—10.20(161A)**:

"Edge-of-field practice" means a wetland, bioreactor, or saturated buffer.

ITEM 11. Amend rule 27—10.33(161A), introductory paragraph, as follows:

27—10.33(161A) Appeals and reviews. A landowner or farm operator who has been ordered to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement may, as appropriate, review the order with the district commissioners or the division of soil conservation and water quality. Appeals to the state soil conservation and water quality committee may be made by the district, a landowner or a farm operator following a review by the division director or the director's designee.

ITEM 12. Amend subrule 10.33(3) as follows:

10.33(3) Appeal to the state soil conservation and water quality committee. In those cases where the district, landowner, or farm operator is not satisfied with the decision rendered as a conclusion of a division review concerning an order to maintain, repair or reconstruct a temporary or permanent practice covered by a maintenance/performance agreement, the district, landowner, or farm operator may appeal the division's decision to the state soil conservation and water quality committee. This proceeding shall be a formal, contested case hearing. The district, landowner, or farm operator shall make the appeal to the state committee in writing within 30 days following completion of the division's review.

ITEM 13. Amend subrule 10.60(4) as follows:

10.60(4) *Mandatory.* The rate of cost share for permanent soil and water conservation practices required as a result of an administrative order shall be 50 percent of the total cost to the landowner of installing the approved practice. The cost must be certified by the technician as being reasonable, proper and incurred by the landowner. The rate of cost share for temporary soil and water conservation practices is set by the state soil conservation and water quality committee.

ITEM 14. Amend rule 27—11.10(161A) as follows:

27—11.10(161A) Authority and scope. These rules provide procedures and standards to be followed by the division of soil conservation and water quality, department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in administering the conservation practices revolving loan fund and the standards and guidelines to which the soil and water conservation districts shall conform in all contracts under this program.

ITEM 15. Amend rule 27—12.10(161C) as follows:

27—12.10(161C) Authority and scope. This chapter establishes procedures and standards to be followed by soil and water conservation districts and the division of soil conservation and water quality of the department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in implementing water protection practices through the water protection fund created in Iowa Code section 161C.4. This account shall be used to establish water protection practices with individual landowners.

ITEM 16. Amend rule 27—12.75(161C) as follows:

27—12.75(161C) Priority watersheds and water quality problems. Practices listed in rule 27—12.73(161C) will be eligible for landowner reimbursement from water protection practices funds only for watersheds and water quality problems designated by soil and water conservation district commissioners and approved by the state soil conservation and water quality committee.

12.75(1) *District designation.* Districts shall submit to the division the description of high priority watershed(s) or water quality problems within their district to be designated as eligible for practices listed in rule 27—12.73(161C).

12.75(2) *State soil conservation and water quality committee evaluation.* The state soil conservation and water quality committee shall examine the district submission under 12.75(1) with respect to the following criteria.

a. The public value and current use of the water resource to be protected.

b. The nature, extent and severity of the water quality problem to be addressed.

c. The degree to which the district designation focuses practice application in a manner that will achieve a water quality benefit from the funds available.

12.75(3) *Review time limit.* The state soil conservation and water quality committee shall approve or disapprove the district designation within 90 days of receipt by the division.

12.75(4) *Disapproval of designation.* In the event of disapproval of district designation, the state soil conservation and water quality committee shall inform the district of the reason for disapproval.

ITEM 17. Amend rule 27—12.85(161C) as follows:

27—12.85(161C) Special practice and cost-share procedures eligibility. Districts may submit requests to establish eligible practices, develop cost-share procedures, experiment with new conservation practices and explore new technologies with approval of the state soil conservation and water quality committee.

12.85(1) *District designation.* Districts shall submit to the ~~SSCC~~ state soil conservation and water quality committee the description of their intentions, which could include:

a. Type of practice.

b. Cost-share rate.

c. Resource to be protected.

d. Estimated cost.

e. Landowner interest.

f. Technology to be addressed.

12.85(2) *State soil conservation and water quality committee evaluation.* The state soil conservation and water quality committee shall examine the district submission under 12.85(1) with respect to the following criteria.

a. The public and current use of the resource to be protected.

b. The nature, extent, and severity of the problem to be addressed.

c. The degree to which the request focuses practice or technology application in a manner that will achieve a soil erosion or water quality benefit from the funds available.

d. Whether a specification can be developed by NRCS or DNR for the new technology or practice.

12.85(3) *Review time limit.* The state soil conservation and water quality committee shall approve or disapprove the district designation within 90 days of receipt by the division.

12.85(4) *Disapproval of designation.* In the event of disapproval of district requests, the state soil conservation and water quality committee shall inform the district of the reason for disapproval.

This rule is intended to implement Iowa Code chapters 161A and 161C.

ITEM 18. Amend rule 27—20.10(161A) as follows:

27—20.10(161A) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in implementing the Iowa Soil 2000 Program goal of satisfactorily controlling erosion on all Iowa land. It also establishes standards and guidelines which the soil and water conservation districts will use in fulfilling their responsibilities under this program.

ITEM 19. Amend rule 27—21.10(161A) as follows:

27—21.10(161A) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in implementing water quality protection projects through the water protection fund created in Iowa Code chapter 161C. These projects will protect the state's groundwater and surface water from point and nonpoint sources of contamination, including but not limited to agricultural drainage wells, sinkholes, sedimentation, and chemical pollutants. Water protection fund resources will provide administrative, operational, and personnel support for the projects and funds for management and structural measures to address identified water quality problems.

ITEM 20. Amend subrule 21.20(1), introductory paragraph, as follows:

21.20(1) *Announcement of application opportunities.* The state soil conservation and water quality committee will announce to districts and other interested parties the opportunity to submit applications for projects. The announcement will state:

ITEM 21. Amend rule 27—21.40(161A) as follows:

27—21.40(161A) Proposal review. Part 4 establishes the process that the state soil conservation and water quality committee will follow in reviewing the applications submitted~~,~~ and selecting which, if any, will be funded.

21.40(1) The state soil conservation and water quality committee will give consideration to the following criteria in evaluating the project proposals submitted:

a. The water resource to be protected.

b. The nature, extent and severity of water quality issues identified and targeted for correction.

c. The nature and variety of the proposed project measures.

d. The level of financial contribution requested for the project.

e. The cost-effectiveness of the proposed project measures.
f. Agency, organization and landowner participation.
g. The public benefits projected.
h. The likelihood of project success within the projected time frame.

21.40(2) Proposal presentation. The state soil conservation and water quality committee may, at its discretion, ask the project applicant to make a formal presentation concerning the application or provide additional information.

21.40(3) Review assistance. The state soil conservation and water quality committee may receive assistance in the evaluation of project applications from division staff or other agencies.

21.40(4) Negotiation. The state soil conservation and water quality committee may negotiate any part of the proposal with the applicant prior to project selection.

21.40(5) Project selection. Projects selected will be funded on an annual basis. Funding for additional years of the projects will be provided on the basis of satisfactory progress and available funds of the water protection fund.

21.40(6) Notification. The state soil conservation and water quality committee will inform each applicant of the final determination with respect to ~~their~~ the applicant's application.

ITEM 22. Amend rule 27—21.70(161A), introductory paragraph, as follows:

27—21.70(161A) Annual project review, continuation, amendment and termination. Part 7 describes procedures that the state soil conservation and water quality committee will follow to review annual progress for each project and to approve continuation, amend, or terminate them.

ITEM 23. Amend subrule 21.70(1), introductory paragraph, as follows:

21.70(1) *Annual review.* The state soil conservation and water quality committee and district(s) will review each project annually. Upon completion of the annual review, the committee will inform the district(s) of their findings. Based on their findings, the committee will do one or more of the following:

ITEM 24. Amend rule 27—22.10(161A) as follows:

27—22.10(161A) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in implementing the development of soil and water resource conservation plans in all soil and water conservation districts in Iowa and developing a comprehensive soil and water resource conservation plan for the state of Iowa. It establishes standards and guidelines which the soil and water conservation districts will use in fulfilling their responsibilities under this program.

ITEM 25. Amend subrule 22.40(2) as follows:

22.40(2) *Approval.* The district shall submit their completed plan or amendment to the state soil conservation and water quality committee for approval. If found to meet the content requirements of rule 27—22.30(161A), the state soil conservation and water quality committee shall approve the plan or amendment by motion at their regularly scheduled meeting. The approved plan will be signed by the administrator of the division.

ITEM 26. Amend rule 27—30.10(161A,460) as follows:

27—30.10(161A,460) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in implementing the agricultural drainage wells — alternative drainage system assistance program. This program provides financial assistance for closing agricultural drainage wells and constructing alternative drainage systems that are part of a drainage district. These rules establish the assistance program, provide for the allocation of assistance funds, and establish procedures and standards for eligibility to receive assistance under the program.

SOIL CONSERVATION AND WATER QUALITY DIVISION[27](cont'd)

ITEM 27. Amend rule 27—30.31(161A,460) as follows:

27—30.31(161A,460) Other funds. Funds for the agricultural drainage wells—alternative drainage system assistance program may be from moneys available to and obtained or accepted by the division or the state soil conservation and water quality committee from the United States or private sources for placement in the fund.

ITEM 28. Amend paragraph **40.99(1)"c"** as follows:

c. An appeal to the committee may be initiated by the division or a party of record by filing with the administrator, and serving on all parties, a written statement captioned "Notice of Appeal to the State Soil Conservation and Water Quality Committee," which shall also state the number of the notice or order involved in the hearing and the docket number assigned by the administrator to the contested case proceeding.

ITEM 29. Amend rule 27—50.10(207) as follows:

27—50.10(207) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee, to participate in the federal abandoned mined land and reclamation program as established in the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, and Iowa Code chapter 207.

These rules will also provide for the establishment of a state abandoned mined land fund for use in conducting the Iowa abandoned mined land reclamation program, and will also establish authority for the division to request, receive and administer grant moneys for use in the program.

ITEM 30. Amend rule 27—60.10(208) as follows:

27—60.10(208) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee, in implementing the requirements of Iowa Code chapter 208 to ensure reclamation upon completion of mining operations for gypsum, clay, stone, sand, gravel, and other ores or mineral solids, except coal.

Information and forms can be obtained on the department's Web site or by contacting: Mines and Minerals Bureau, Division of Soil Conservation and Water Quality, Wallace State Office Building, Des Moines, Iowa 50319. Telephone: (515)242-5003 or ~~(515)281-6142~~ (515)281-4246.

ITEM 31. Amend rule **27—60.12(208)**, definition of "Committee," as follows:

"Committee" means the state soil conservation and water quality committee.

ITEM 32. Amend subrules 60.20(2) to 60.20(4) as follows:

60.20(2) *Fees.* Licensing and license renewal fees are established by Iowa Code section 208.7 at $50 for ~~a new~~ an initial license and ~~$10~~ $20 for a license renewal.

60.20(3) *License term and expiration.* A license shall be maintained by the operator until all sites have been properly reclaimed or transferred to another licensed operator.

The initial license shall expire on December 31 of the year in which the license was obtained. A license for renewal shall expire on December 31 of the second year in which the license was issued. Any applications for renewal received within 30 days of the expiration date shall be accepted as renewals for the previous license. New licenses obtained after November 1 shall remain valid for a period to include the next calendar year or years.

60.20(4) *License renewal.* Any operator who fails to renew the mining license within the 30-day period following the expiration deadline established in subrule 60.20(3) will be required to apply for ~~a new~~ an initial license. Failure to renew a license within 30 days after official notice will invalidate all registrations.

SOIL CONSERVATION AND WATER QUALITY DIVISION[27](cont'd)

ITEM 33. Amend subrule 60.70(2) as follows:

60.70(2) *Underground mine maps.* The state geologist shall provide the division with copies of each map and map extension received pursuant to Iowa Code section ~~460A.12~~ 456.11.

ARC 3112C

SOIL CONSERVATION AND WATER QUALITY DIVISION[27]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 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 section 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 161A.4(1), the Division of Soil Conservation and Water Quality hereby gives Notice of Intended Action to amend Chapter 12, "Water Protection Practices—Water Protection Fund," Iowa Administrative Code.

The proposed amendments provide for the recall of water protection practices funds and the reallocation to districts that have the immediate ability to use the funds. Cost-share funding would be authorized for access control to pay the fencing cost of keeping livestock out of intermittent streams. The practice identified as "STRIPS" is specifically identified as an allowable cost-share practice as a contour buffer strip or filter strip.

Any interested persons may make written suggestions or comments on the proposed amendments on or before June 27, 2017. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to Margaret.Thomson@IowaAgriculture.gov.

These proposed amendments are subject to the Division's general waiver provisions.

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

These amendments are intended to implement Iowa Code section 161A.2.

The following amendments are proposed.

ITEM 1. Amend subrule 12.51(3) as follows:

12.51(3) *Supplemental allocations.* The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by September 1. ~~The allocation to any district will be the lesser amount of~~ Factors to be considered in making a supplemental allocation to a district include:

a. The sum of cost estimates (for pending applications) in each district, divided by the total cost estimates (for pending applications) for all 100 districts, multiplied by the remaining available program funds; ~~or~~ and

b. ~~Three~~ Whether or not the proposed supplemental allocation exceeds three times the original allocation to the district.

ITEM 2. Amend subrule 12.51(5) as follows:

12.51(5) *Woodland, native grass and forbs fund.* Twenty-five percent of the funds and any additional appropriations for reforestation will be allocated to districts.

a. Original allocation. ~~Seventy-five percent of the~~ The funds distributed to this program will be allocated equally to the 100 soil and water conservation districts at the beginning of each fiscal year.

b. Supplemental allocation. The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by September 1. ~~The allocation to any district will be the lesser amount of~~ Factors to be considered in making a supplemental allocation to a district include:

(1) The sum of cost estimates (for pending applications) in each district, divided by the total cost estimates (for pending applications) for all 100 districts, multiplied by the remaining available program funds; ~~or~~ and

(2) ~~Three~~ Whether or not the proposed supplemental allocation exceeds three times the original allocation to the district.

c. Eligibility of soil and water conservation districts for supplemental allocation. For a district to qualify for a supplemental allocation, the district must meet the following requirement: ~~ninety~~ seventy-five percent of the woodland, native grass and forbs funds shall be obligated to landowners.

ITEM 3. Adopt the following **new** subrule 12.51(7):

12.51(7) *Recall and reallocation of funds by division director.* If districts are not demonstrating an ability to use available funding, the division director may recall these funds and reallocate the funds to a district that has an immediate need for additional funding.

ITEM 4. Adopt the following **new** paragraph **12.63(3)"c"**:

c. Tracts of land enrolled in the United States Department of Agriculture's Conservation Reserve Program (CRP) that have more than 90 days left on the contract, except for woodland establishment, management and protection practices, and native grass and forb establishment practices under rule 27—12.82(161C) shall not qualify.

ITEM 5. Amend subrules 12.72(2) and 12.72(4) as follows:

12.72(2) Contour buffer strips. The practice includes science-based trials of row crops integrated with prairie strips (STRIPS) planted on contour.

12.72(4) Filter strips. The practice includes science-based trials of row crops integrated with prairie strips (STRIPS) planted at the foot slope.

ITEM 6. Adopt the following **new** subrule 12.72(10):

12.72(10) Access control. The practice involves fencing an area to exclude livestock from intermittent streams (defined on U.S. Geological Survey topographic maps as "3 dot" blue-line streams) or larger streams. Eligibility for cost-share assistance extends only to fencing required to implement this practice, but does not extend to fences along roads or land boundaries.

ITEM 7. Amend subrule 12.77(1) as follows:

12.77(1) *Cost-share rates.* Cost-share rates for practices designated in rule 27—12.72(161C) shall be 50 percent of the eligible or estimated cost of installation, whichever is less, except for contour buffer strips, ~~and~~ field borders, and access control. Cost-share rates for 12.72(2), contour buffer strips, and 12.72(3), field borders, shall be a one-time payment of 50 percent of the eligible or estimated cost of installation, whichever is less, up to $25 per acre. Cost-share rates for 12.72(10), access control, shall include a one-time payment of up to $200 per acre. In addition, fencing systems used to implement access control are eligible for 50 percent of the eligible or estimated cost, whichever is less, not to exceed $14 per rod for permanent fencing. Cost-share assistance for this practice may not be provided on the same acres that already received a cost-share payment through the buffer initiative program.

ITEM 8. Amend paragraph **12.84(4)"a"** as follows:

a. ~~75~~ Seventy-five percent of the eligible or estimated cost, whichever is less, not to exceed ~~$450~~ $600 per acre, for tree planting including the following:

(1) to (4) No change.

ITEM 9. Amend **27—Chapter 12**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 161A and 161C~~,~~ and Iowa Code section ~~99E.34 and 1989 Iowa Acts, chapter 236~~ 455A.19.

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:

USURY(cont'd)

June 1, 2016 — June 30, 2016	3.75%
July 1, 2016 — July 31, 2016	3.75%
August 1, 2016 — August 31, 2016	3.75%
September 1, 2016 — September 30, 2016	3.50%
October 1, 2016 — October 31, 2016	3.50%
November 1, 2016 — November 30, 2016	3.75%
December 1, 2016 — December 31, 2016	3.75%
January 1, 2017 — January 31, 2017	4.25%
February 1, 2017 — February 28, 2017	4.50%
March 1, 2017 — March 31, 2017	4.50%
April 1, 2017 — April 30, 2017	4.50%
May 1, 2017 — May 31, 2017	4.50%
June 1, 2017 — June 30, 2017	4.25%

ARC 3114C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 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 section 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 96.11, the Director of the Department of Workforce Development hereby gives Notice of Intended Action to amend Chapter 22, "Employer Records and Reports," Chapter 24, "Claims and Benefits," and Chapter 25, "Benefit Payment Control," Iowa Administrative Code.

These proposed amendments update, clarify and simplify the procedures by which claimants and employers interact with Iowa Workforce Development. The amendments also bring the rules up to date by reflecting changes in technology and efficiencies developed within the agency since the affected rules were enacted. The agency needs to have administrative rules that address these changes.

Any interested person may make written or oral suggestions or comments on the proposed amendments on or before June 27, 2017, directed to David J. Steen, Attorney, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to david.steen@iwd.iowa.gov.

These amendments do not have any fiscal impact on the State of Iowa.

Waiver provisions do not apply to this rule making.

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

These amendments are intended to implement Iowa Code chapter 96.

The following amendments are proposed.

ITEM 1. Amend rule 871—22.2(96) as follows:

871—22.2(96) Reports. Each employing unit shall make such reports at such times as the department may require~~,~~ and shall comply with the instructions ~~printed upon any report form~~ issued by the department pertaining to the preparation and return of such report.

This rule is intended to implement Iowa Code section 96.11(1).

ITEM 2. Amend subrule 22.3(1) as follows:

22.3(1) Each employer shall, by the due date, ~~file a 65-5300, Employer's Contribution & Payroll Report,~~ electronically submit contribution and payroll for each quarter listing wages paid with respect to all the employer's business maintained within this state computed in accordance with the Iowa Code and these rules.

ITEM 3. Rescind and reserve subrule **22.3(2)**.

ITEM 4. Amend subparagraph **24.1(25)"b"(19)** as follows:

(19) ~~*Subsequent*~~ *Second benefit year claim.* A new claim with an effective date for a ~~subsequent~~ second benefit year which ~~immediately follows~~ is filed within 180 calendar days following the last week of the individual's previous benefit year. The individual is notified ~~by mail~~ of the ~~transition between the benefit years and is requested to provide the department with the information which has changed from the previous benefit year's claim for benefits~~ expiration of the previous benefit year.

ITEM 5. Amend paragraph **24.2(1)"b"** as follows:

b. ~~The procedure for filing an initial claim. An individual, following a separation from work, shall report in person at the nearest workforce development center with the individual's social security number, and the individual shall register for work and file a claim for benefits on the Form 60-0330, Application for Job Placement Assistance and/or Job Insurance, prescribed by the department and shall provide, in addition to other requested information, the following information~~ When filing an initial claim for benefits, an individual must provide the following information to the department:

(1) The name and complete mailing address of such individual's last employing unit or employer~~;~~.

(2) The location of the last job~~;~~.

(3) Last day of work~~;~~.

(4) The reason for separation from work~~;~~.

(5) That such individual is unemployed~~;~~.

(6) That the individual registers for work~~;~~.

(7) The individual's last job occupation~~;~~.

(8) Number, name and relationship of any dependents claimed. As used in this subparagraph, "dependent" is defined as: spouse, son or daughter of the claimant, or a dependent of either; stepson or stepdaughter; foster child or child for whom claimant is a legal guardian; brother, sister, stepbrother, stepsister; father or mother of claimant, stepfather or stepmother of the claimant; son or daughter of a brother or sister of the claimant (nephew or niece); brother or sister of the father or mother of the claimant (uncle or aunt); son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the claimant; an individual who lived in the claimant's home as a member of the household for the whole year; cousin.

A "spouse" is defined as an individual who does not earn more than $120 in gross wages in one week. The reference week for this monetary determination shall be the gross wages earned by the spouse in the calendar week immediately preceding the effective date of the claim.

A "dependent" means an individual who has been or could have been claimed for the preceding tax year on the claimant's income tax return or will be claimed for the current income tax year. The same dependent shall not be claimed on two separate monetarily eligible concurrent established benefit years. An individual cannot claim a spouse as a dependent if the spouse has listed the claimant as a dependent on a current claim.

(9) ~~The option of filing for continued benefits by using the voice response continued claim system or by other means designated by the department.~~ The individual's social security number and alien registration number, if applicable.

(10) Such other information as required by the ~~form~~ department.

ITEM 6. Amend paragraph **24.7(3)"b"** as follows:

b. Did not ~~work in and~~ receive wages from insured work for:

(1) Three or more calendar quarters in the base period, or

(2) Two calendar quarters and lacked qualifying wages from insured work during another quarter of the base period.

ITEM 7. Amend rule 871—24.27(96) as follows:

871—24.27(96) Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 ~~or 60-0186~~, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

This rule is intended to implement Iowa Code section 96.5(1)*"g."*

ITEM 8. Amend paragraph **24.33(2)"n"** as follows:

n. The employer will receive separate notices of claim filing for each claimant and shall make any protest in the appropriate section on ~~the reverse side of~~ Form 65-5317, Notice of Claim. The employer will receive a copy of the decision which may be appealed.

ITEM 9. Amend paragraph **25.7(6)"a"** as follows:

a. The department shall always demand immediate repayment of the overpayment as its first option for those claimants not in benefit claiming status at the time of the initial overpayment determination. If not paid immediately, the overpayment amount will be deducted from future benefits. Recovery of overpayments due to misrepresentation or fraud may also include the filing of a notice of lien or other civil action. Upon finalization of the determination of overpayment by reason of a claimant's fault or fraud, interest shall accrue at a rate of 1/30th of 1 percent per day until the overpayment is paid in full.

ITEM 10. Amend subrule 25.12(3) as follows:

25.12(3) An employer may choose to participate in the automated crossmatch procedure by following the ~~magnetic media~~ electronic submission guidelines.

ITEM 11. Adopt the following **new** subrule 25.12(4):

25.12(4) An employer that fails to respond to a request for wage information pertaining to specific claimant(s) as such request pertains to benefit payments will be charged a fee of $25 per claimant.

ARC 3115C

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 8A.104(5), the Department of Administrative Services hereby amends Chapter 63, "Leave," Iowa Administrative Code.

The amendment is intended to create more equality among employees whose shifts are greater than 16 hours with employees whose shifts are 16 hours or less. The amendment accomplishes this by limiting military leave for employees whose shifts are more than 16 hours to 30 calendar days in accordance with Iowa Code section 29A.28(1)"a" for military duty of 30 days or more, while providing 30 work days of leave for employees whose shifts are 16 hours or less.

Pursuant to Iowa Code section 17A.4(3), the Department of Administrative Services finds that notice and public participation are unnecessary because of projected fiscal impacts related to an anticipated deployment as early as October 1, 2017, within the Iowa Department of Public Defense.

In compliance with Iowa Code section 17A.4(3)"a," the Administrative Rules Review Committee at its May 3, 2017, meeting reviewed the Department's determination and this rule making and approved the emergency adoption.

Pursuant to Iowa Code section 17A.5(2)"b"(1)(b), the Department of Administrative Services also finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective May 17, 2017, because the amendment confers a benefit to the public.

This amendment is also published herein under Notice of Intended Action as **ARC 3111C** to allow for public comment.

A mobilization of 16, 24-hour shift employees in six-month rotations is anticipated within the Iowa Department of Public Defense in October 2017 and ending in November 2018. The impact on the Iowa Department of Defense budget will exceed $510,795, or more than 8 percent of the Department's budget. This amendment will prevent that fiscal impact.

The Department of Administrative Services will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department's rules concerning waivers.

The Department of Administrative Services adopted this amendment on May 4, 2017.

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

This amendment is intended to implement Iowa Code sections 8A.413 and 29A.28.

This amendment became effective May 17, 2017.

The following amendment is adopted.

Amend rule 11—63.9(8A) as follows:

11—63.9(8A) Military leave. For purposes of subrules 63.9(1) and 63.9(3) and as applied to nontemporary employees whose regularly scheduled work shift is 16 hours or less, "30 days" means 30 work days. For nontemporary employees whose regularly scheduled work shift is more than 16 hours, "30 days" in subrules 63.9(1) and 63.9(3) shall be defined in accordance with the provisions of Iowa Code section 29A.28.

63.9(1) A nontemporary employee who is a member of the uniformed services, when ordered by proper authority to serve in the uniformed services, shall be granted leave without loss of pay for 30 days each calendar year. Absences required for military service shall be in accordance with the rules on vacation, compensatory leave, or leave without pay, 38 U.S.C. Sections 4301-4333, and 20 CFR Part 1002. Military leave may be utilized for up to 30 days in each calendar year. Any amount of military leave taken during any part of an employee's scheduled workday, regardless of the number of hours actually taken, shall count as one day toward the 30 paid day maximum. If the employee's work shift crosses two calendar days, only one day shall count toward the 30 paid day maximum. Work schedule changes shall not be made for the purpose of avoiding payment for military leave.

63.9(2) A nontemporary employee who is ordered by proper authority to military duty as defined in Iowa Code section 29A.28 may elect to be placed on leave without pay or be separated and removed from the payroll.

63.9(3) Nontemporary employees who elect to separate from employment when ordered by proper authority to military duty shall be given 30 days of regular pay in a lump sum with their last paycheck. Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days.

Employees who elect to be placed on leave without pay when ordered by proper authority to military duty shall continue to receive regular pay and benefits for 30 days. Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days.

63.9(4) At the conclusion of military service, the employee must notify the employee's appointing authority of the intent to exercise return rights pursuant to 38 U.S.C. Sections 4301-4344.

63.9(5) An employee taking military leave may use any vacation or compensatory leave that was accrued prior to service. Employees who elect to use vacation or compensatory leave shall continue to receive benefits in accordance with the state of Iowa's benefits program policies and procedures. Upon return to employment, the employee's accrual rate for vacation shall be at the same rate as if the employee had not taken military leave.

63.9(6) An employee may maintain health and dental insurance coverage while on military leave for up to 24 months. The employee is responsible for paying the employee's share of the health and dental insurance premiums if the period of military service is less than 31 days. If more than 30 days, the employee shall be required to pay 102 percent of the full premium under the plan to maintain coverage. Upon return to employment, the employee may elect to have health and dental insurance coverage become effective either on the first day of the month the employee returns to employment or the first day of the month following the month in which the employee returned to employment. Coverage under the plans will not have an exclusion or waiting period upon return to employment. An exclusion or waiting period may be imposed, however, in connection with any illness or injury determined by the Secretary of the U.S. Department of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services.

63.9(7) A person reemployed under this rule shall be treated as not having incurred a break in service with the employer by reason of such person's period of service in the uniformed services.

[Filed Emergency 5/17/17, effective 5/17/17]
[Published 6/7/17]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/7/17.

ARC 3092C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 170, "Child Care Services," Iowa Administrative Code.

These amendments change subrule 170.4(2), specifically, the child care assistance (CCA) fee chart, to be in compliance with new federal poverty levels (FPL). These amendments also update rules regarding job search for new applicants to allow three months of job searching instead of one month. In addition, these amendments correct a minor technical error and update rule cross references.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2973C** on March 15, 2017. The Department received no comments during the public comment period. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on May 10, 2017.

Pursuant to Iowa Code section 17A.5(2)"b"(1)(b), the Department finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective

July 1, 2017, because the amendments confer a benefit on the public. The annual poverty level increase will allow families that have received increased income to maintain eligibility for child care assistance without paying increased fees.

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

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

These amendments are intended to implement Iowa Code section 234.6.

These amendments will become effective July 1, 2017.

The following amendments are adopted.

ITEM 1. Amend subparagraph **170.2(2)"b"(5)** as follows:

(5) The parent is looking for employment. Child care for job search hours shall be limited to only those hours the parent is actually looking for employment, including travel time. Job search shall be limited to a maximum of 90 consecutive calendar days.

1. For applicants, ~~a job search plan shall be approved by the department and be limited to a maximum of 30~~ job search shall be approved for a maximum of 90 consecutive calendar days ~~in a 12-month period. EXCEPTION: Additional job search hours may be paid for PROMISE JOBS participants if approved by the PROMISE JOBS worker~~. If the parent has not started employment within 90 days, assistance shall be canceled.

2. For ongoing participants, job search shall be limited to a maximum of 90 consecutive calendar days and will be treated the same as a temporary lapse in need as described at 170.2(2)*"b"*(9) and (10).

ITEM 2. Amend subparagraph **170.2(2)"b"(10)** as follows:

(10) Family eligibility shall be canceled if the lapse in need is not temporary because the ~~family eligibility~~ lapse will continue for more than 3 consecutive months.

ITEM 3. Amend paragraph **170.3(5)"d"** as follows:

d. Families who apply for child care assistance because the parent is seeking employment are not subject to review requirements because eligibility is limited to ~~30~~ 90 consecutive calendar days. This waiver of the review requirement applies only when the parent who is seeking employment does not have another need for service.

ITEM 4. Amend subparagraph **170.4(2)"a"(1)** as follows:

(1) The fee schedule shown in the following table is effective for eligibility determinations made on or after July 1, ~~2016~~ 2017:

Level	Monthly Income According to Family Size													Unit Fee Based on Number of Children in Care		
	1	2	3	4	5	6	7	8	9	10	11	12	13+	1	2	3 or more
A	~~$941~~ $955	~~$1,268~~ $1,286	~~$1,596~~ $1,617	~~$1,924~~ $1,948	~~$2,252~~ $2,279	~~$2,579~~ $2,610	~~$2,908~~ $2,940	~~$3,238~~ $3,272	~~$3,567~~ $3,602	~~$3,896~~ $3,933	~~$4,226~~ $4,265	~~$4,555~~ $4,595	~~$4,884~~ $4,926	$0.00	$0.00	$0.00
B	~~$990~~ $1005	~~$1,335~~ $1,354	~~$1,680~~ $1,702	~~$2,025~~ $2,050	~~$2,370~~ $2,399	~~$2,715~~ $2,747	~~$3,061~~ $3,095	~~$3,408~~ $3,444	~~$3,755~~ $3,792	~~$4,101~~ $4,140	~~$4,448~~ $4,489	~~$4,795~~ $4,837	~~$5,141~~ $5,185	$0.20	$0.45	$0.70
C	~~$1,018~~ $1,033	~~$1,372~~ $1,392	~~$1,727~~ $1,750	~~$2,082~~ $2,107	~~$2,436~~ $2,466	~~$2,791~~ $2,824	~~$3,147~~ $3,182	~~$3,503~~ $3,540	~~$3,860~~ $3,898	~~$4,216~~ $4,256	~~$4,573~~ $4,615	~~$4,929~~ $4,972	~~$5,285~~ $5,330	$0.45	$0.70	$0.95
D	~~$1,045~~ $1,061	~~$1,410~~ $1,430	~~$1,774~~ $1,797	~~$2,138~~ $2,165	~~$2,503~~ $2,533	~~$2,867~~ $2,901	~~$3,232~~ $3,268	~~$3,599~~ $3,637	~~$3,965~~ $4,004	~~$4,331~~ $4,372	~~$4,697~~ $4,740	~~$5,064~~ $5,108	~~$5,429~~ $5,475	$0.70	$0.95	$1.20
E	~~$1,075~~ $1,091	~~$1,449~~ $1,470	~~$1,824~~ $1,848	~~$2,198~~ $2,225	~~$2,573~~ $2,604	~~$2,947~~ $2,982	~~$3,323~~ $3,360	~~$3,700~~ $3,739	~~$4,076~~ $4,116	~~$4,452~~ $4,494	~~$4,829~~ $4,873	~~$5,205~~ $5,251	~~$5,581~~ $5,629	$0.95	$1.20	$1.45
F	~~$1,104~~ $1,121	~~$1,489~~ $1,510	~~$1,873~~ $1,898	~~$2,258~~ $2,286	~~$2,643~~ $2,675	~~$3,028~~ $3,063	~~$3,413~~ $3,451	~~$3,800~~ $3,841	~~$4,187~~ $4,229	~~$4,573~~ $4,617	~~$4,960~~ $5,006	~~$5,347~~ $5,394	~~$5,733~~ $5,782	$1.20	$1.45	$1.70
G	~~$1,135~~ $1,152	~~$1,530~~ $1,552	~~$1,926~~ $1,951	~~$2,321~~ $2,350	~~$2,717~~ $2,750	~~$3,112~~ $3,149	~~$3,509~~ $3,548	~~$3,907~~ $3,948	~~$4,305~~ $4,347	~~$4,701~~ $4,746	~~$5,099~~ $5,146	~~$5,497~~ $5,545	~~$5,893~~ $5,944	$1.45	$1.70	$1.95
H	~~$1,166~~ $1,183	~~$1,572~~ $1,594	~~$1,978~~ $2,004	~~$2,385~~ $2,414	~~$2,791~~ $2,825	~~$3,197~~ $3,235	~~$3,605~~ $3.645	~~$4,013~~ $4,056	~~$4,422~~ $4,465	~~$4,829~~ $4,875	~~$5,238~~ $5,286	~~$5,647~~ $5,696	~~$6,054~~ $6,106	$1.70	$1.95	$2.20
I	~~$1,198~~ $1,217	~~$1,616~~ $1,639	~~$2,034~~ $2,060	~~$2,451~~ $2,482	~~$2,869~~ $2,904	~~$3,287~~ $3,325	~~$3,706~~ $3,747	~~$4,126~~ $4,169	~~$4,546~~ $4,590	~~$4,964~~ $5,012	~~$5,385~~ $5,434	~~$5,805~~ $5,855	~~$6,223~~ $6,277	$1.95	$2.20	$2.45
J	~~$1,231~~ $1,250	~~$1,660~~ $1,684	~~$2,089~~ $2,116	~~$2,518~~ $2,549	~~$2,947~~ $2,983	~~$3,376~~ $3,416	~~$3,806~~ $3,849	~~$4,238~~ $4,283	~~$4,669~~ $4,715	~~$5,100~~ $5,148	~~$5,531~~ $5,582	~~$5,963~~ $6,015	~~$6,393~~ $6,448	$2.20	$2.45	$2.70
K	~~$1,266~~ $1,285	~~$1,707~~ $1,731	~~$2,148~~ $2,176	~~$2,589~~ $2,621	~~$3,030~~ $3,067	~~$3,471~~ $3,512	~~$3,913~~ $3,956	~~$4,357~~ $4,403	~~$4,800~~ $4,847	~~$5,243~~ $5,292	~~$5,686~~ $5,739	~~$6,130~~ $6,183	~~$6,572~~ $6,628	$2.45	$2.70	$2.95
L	~~$1,300~~ $1,320	~~$1,753~~ $1,778	~~$2,206~~ $2,235	~~$2,659~~ $2,692	~~$3,112~~ $3,150	~~$3,565~~ $3,607	~~$4,020~~ $4,064	~~$4,475~~ $4,523	~~$4,931~~ $4,980	~~$5,385~~ $5,437	~~$5,841~~ $5,895	~~$6,297~~ $6,352	~~$6,751~~ $6,809	$2.70	$2.95	$3.20
M	~~$1,336~~ $1,357	~~$1,802~~ $1,828	~~$2,268~~ $2,298	~~$2,734~~ $2,767	~~$3,199~~ $3,238	~~$3,665~~ $3,708	~~$4,132~~ $4,178	~~$4,601~~ $4,649	~~$5,069~~ $5,119	~~$5,536~~ $5,589	~~$6,005~~ $6,060	~~$6,473~~ $6,530	~~$6,940~~ $6,999	$2.95	$3.20	$3.45
N	~~$1,373~~ $1,394	~~$1,851~~ $1,878	~~$2,330~~ $2,360	~~$2,808~~ $2,843	~~$3,286~~ $3,327	~~$3,765~~ $3,809	~~$4,245~~ $4,292	~~$4,726~~ $4,776	~~$5,207~~ $5,258	~~$5,687~~ $5,741	~~$6,168~~ $6,225	~~$6,649~~ $6,707	~~$7,129~~ $7,190	$3.20	$3.45	$3.70
O	~~$1,411~~ $1,433	~~$1,903~~ $1,930	~~$2,395~~ $2,426	~~$2,887~~ $2,922	~~$3,379~~ $3,420	~~$3,870~~ $3,916	~~$4,364~~ $4,412	~~$4,858~~ $4,910	~~$5,353~~ $5,406	~~$5,846~~ $5,902	~~$6,341~~ $6,399	~~$6,835~~ $6,895	~~$7,329~~ $7,391	$3.45	$3.70	$3.95
P	~~$1,450~~ $1,472	~~$1,955~~ $1,983	~~$2,460~~ $2,492	~~$2,965~~ $3,002	~~$3,471~~ $3,513	~~$3,976~~ $4,023	~~$4,482~~ $4,532	~~$4,991~~ $5,043	~~$5,499~~ $5,553	~~$6,005~~ $6,062	~~$6,513~~ $6,574	~~$7,022~~ $7,083	~~$7,528~~ $7,593	$3.70	$3.95	$4.20

Level	Monthly Income According to Family Size													Unit Fee Based on Number of Children in Care		
	1	2	3	4	5	6	7	8	9	10	11	12	13+	1	2	3 or more
Q	~~$1,490~~ $1,513	~~$2,010~~ $2,038	~~$2,529~~ $2,562	~~$3,048~~ $3,086	~~$3,568~~ $3,611	~~$4,087~~ $4,135	~~$4,608~~ $4,659	~~$5,130~~ $5,184	~~$5,653~~ $5,708	~~$6,173~~ $6,232	~~$6,696~~ $6,758	~~$7,218~~ $7,281	~~$7,739~~ $7,805	$3.95	$4.20	$4.45
R	~~$1,531~~ $1,554	~~$2,064~~ $2,094	~~$2,598~~ $2,632	~~$3,131~~ $3,170	~~$3,665~~ $3,710	~~$4,198~~ $4,248	~~$4,733~~ $4,786	~~$5,270~~ $5,326	~~$5,807~~ $5,864	~~$6,342~~ $6,402	~~$6,878~~ $6,942	~~$7,415~~ $7,480	~~$7,950~~ $8,018	$4.20	$4.45	$4.70
S	~~$1,574~~ $1,598	~~$2,122~~ $2,152	~~$2,671~~ $2,706	~~$3,219~~ $3,259	~~$3,767~~ $3,814	~~$4,316~~ $4,367	~~$4,866~~ $4,920	~~$5,418~~ $5,475	~~$5,969~~ $6,028	~~$6,519~~ $6,581	~~$7,071~~ $7,136	~~$7,622~~ $7,689	~~$8,172~~ $8,242	$4.45	$4.70	$4.95
T	~~$1,617~~ $1,641	~~$2,180~~ $2,211	~~$2,743~~ $2,779	~~$3,307~~ $3,348	~~$3,870~~ $3,917	~~$4,433~~ $4,486	~~$4,998~~ $5,054	~~$5,565~~ $5,624	~~$6,132~~ $6,192	~~$6,697~~ $6,760	~~$7,263~~ $7,330	~~$7,830~~ $7,899	~~$8,395~~ $8,467	$4.70	$4.95	$5.20
U	~~$1,662~~ $1,687	~~$2,241~~ $2,273	~~$2,820~~ $2,857	~~$3,399~~ $3,441	~~$3,978~~ $4,027	~~$4,558~~ $4,611	~~$5,138~~ $5,196	~~$5,721~~ $5,781	~~$6,303~~ $6,366	~~$6,884~~ $6,950	~~$7,467~~ $7,536	~~$8,049~~ $8,120	~~$8,630~~ $8,704	$4.95	$5.20	$5.45
V	~~$1,707~~ $1,733	~~$2,302~~ $2,335	~~$2,897~~ $2,935	~~$3,492~~ $3,535	~~$4,087~~ $4,137	~~$4,682~~ $4,737	~~$5,278~~ $5,337	~~$5,877~~ $5,939	~~$6,475~~ $6,539	~~$7,072~~ $7,139	~~$7,670~~ $7,741	~~$8,269~~ $8,341	~~$8,865~~ $8,941	$5.20	$5.45	$5.70
W	~~$1,755~~ $1,782	~~$2,367~~ $2,400	~~$2,978~~ $3,017	~~$3,590~~ $3,634	~~$4,201~~ $4,253	~~$4,813~~ $4,870	~~$5,426~~ $5,486	~~$6,041~~ $6,105	~~$6,656~~ $6,722	~~$7,270~~ $7,339	~~$7,885~~ $7,958	~~$8,500~~ $8,574	~~$9,113~~ $9,191	$5.45	$5.70	$5.95
X	~~$1,803~~ $1,830	~~$2,431~~ $2,466	~~$3,059~~ $3,099	~~$3,687~~ $3,733	~~$4,316~~ $4,369	~~$4,944~~ $5,002	~~$5,574~~ $5,636	~~$6,206~~ $6,271	~~$6,838~~ $6,905	~~$7,468~~ $7,539	~~$8,100~~ $8,174	~~$8,732~~ $8,808	~~$9,362~~ $9,442	$5.70	$5.95	$6.20
Y	~~$1,853~~ $1,881	~~$2,499~~ $2,535	~~$3,145~~ $3,186	~~$3,791~~ $3,838	~~$4,437~~ $4,491	~~$5,082~~ $5,142	~~$5,730~~ $5,794	~~$6,380~~ $6,447	~~$7,029~~ $7,098	~~$7,677~~ $7,750	~~$8,326~~ $8,403	~~$8,976~~ $9,055	~~$9,624~~ $9,706	$5.95	$6.20	$6.45
Z	~~$1,904~~ $1,933	~~$2,567~~ $2,604	~~$3,231~~ $3,273	~~$3,894~~ $3,942	~~$4,557~~ $4,613	~~$5,221~~ $5,282	~~$5,886~~ $5,952	~~$6,553~~ $6,623	~~$7,221~~ $7,292	~~$7,886~~ $7,961	~~$8,553~~ $8,632	~~$9,221~~ $9,301	~~$9,886~~ $9,970	$6.20	$6.45	$6.70
AA	~~$1,957~~ $1,987	~~$2,639~~ $2,677	~~$3,321~~ $3,364	~~$4,003~~ $4,052	~~$4,685~~ $4,742	~~$5,367~~ $5,430	~~$6,051~~ $6,118	~~$6,737~~ $6,808	~~$7,423~~ $7,496	~~$8,107~~ $8,184	~~$8,793~~ $8,874	~~$9,479~~ $9,562	~~$10,163~~ $10,250	$6.45	$6.70	$6.95
BB	~~$3,000~~ $4,000	~~$4,000~~ $5,000	~~$5,000~~ $6,000	~~$6,000~~ $7,000	~~$7,000~~ $8,000	~~$8,000~~ $9,000	~~$8,000~~ $9,000	~~$8,000~~ $9,000	~~$8,000~~ $9,000	~~$8,500~~ $9,500	~~$9,000~~ $10,000	~~$10,000~~ $10,500	~~$11,000~~ $11,500	$6.70	$6.95	$7.20

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 5. Amend paragraph **170.5(1)"h"** as follows:

h. The provider is found to have more children in care at one time than allowed for the provider type as found at rule ~~441—110.4(237A)~~ 441—110.6(237A) and 441—subrules ~~110.8(1)~~ 110.13(1), ~~110.9(1)~~ 110.14(1), ~~110.10(1)~~ 110.15(1), 120.6(1) and 170.4(3).

[Filed Emergency After Notice 5/10/17, effective 7/1/17]
[Published 6/7/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/7/17.

ARC 3093C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services hereby amends Chapter 7, "Appeals and Hearings," Iowa Administrative Code.

On April 1, 2016, the Department of Human Services transitioned most Iowa Medicaid members to a managed care program called Iowa Health Link. This program is administered by three contracted Managed Care Organizations (MCOs) that provide members with comprehensive health care services, including physical, behavioral and long-term care services and support. These adopted amendments to Chapter 7 clarify that appeals related to health care decisions made by an MCO must follow a different process than the one used for other Department appeals. A member, the member's representative, or a provider acting on the member's behalf with the member's written consent may file an appeal; however, the appellant must exhaust the first-level review process with the MCO prior to appealing to the Department. Providers cannot file an appeal on their own behalf or relating to a claims dispute issue with an MCO. The managed care contract does not allow appeal hearings to be granted for either instance.

Currently, individuals who are appealing a food assistance, Medicaid, or Healthy and Well Kids in Iowa action may appeal verbally. All other individuals must appeal in writing. These amendments allow individuals who are appealing a child care assistance or Family Investment Program action to also be able to file an appeal verbally. This change expands the programs that can accept verbal appeals.

Individuals who appeal an action taken regarding the Autism Support Program currently have 30 calendar days to file an appeal. These amendments extend the time frame to file an appeal related to this program to 90 calendar days to provide appellants better access to the appeals process.

Whenever the Department proposes to cancel or reduce assistance or services or to revoke a license, certification, approval, registration, or accreditation, it must give timely and adequate notice. These amendments remove the requirement that the Employees' Manual chapter number and subheading be included on a Department notice to make it an adequate notice.

Assistance shall not be reduced, restricted, discontinued, or terminated, nor shall a license or registration be revoked, or other proposed adverse action be taken pending a final decision on an appeal when certain criteria are met. As the criteria for food assistance decisions and MCO decisions are different, the rule regarding continuation of benefits while an appeal is pending is revised. The amendments provide general standards for when benefits will or will not continue and include new provisions that set forth the specific criteria for food assistance decisions and MCO decisions.

If an appellant indicates that the appellant's life, health or ability to attain, maintain or regain maximum function could seriously be jeopardized if the appellant has to wait for a standard resolution of an appeal, the appellant can request an expedited appeal hearing, which must be held within three working days of the date on the appeal request. These amendments include the criteria that must be met in order to receive an expedited appeal hearing regarding a health care decision made by the MCO.

When an appeal hearing is scheduled and the appellant or Department's representative is unable to attend, the appellant or Department's representative may request a continuance. These amendments clarify that food assistance appeals and intentional program violation appeals can be rescheduled but add restrictions as to how long an appeal may be postponed.

When the Department fails to appear for an appeal hearing and files a motion to vacate a default decision, the Department will now be required to follow the same process it follows when filing a review request. The motion to vacate will need to be presented to the Appeals Advisory Committee.

If an appellant fails to appear for an appeal hearing and files a motion to vacate a default decision, the appeal is returned to the administrative law judge to rule on the appellant's motion to vacate. If the motion is granted, the judge orders that a new appeal hearing be scheduled. However, the current rules require that a final decision be issued before the new appeal hearing can be scheduled. This requirement is confusing for appellants and Department staff. Typically, when the final decision is issued, this means

the appeal is closed. These amendments remove the requirement that a final decision be issued after a motion to vacate is granted. Instead, the appeal record will be held to allow all parties an opportunity to request a review if they disagreed with the granting of the motion to vacate, but instead of issuance of a final decision after the review time frame is exhausted, the file will be returned to the Department of Inspections and Appeals to schedule an appeal hearing.

Other amendments are made to remove outdated references, update form names and numbers, and provide further clarification where necessary.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2972C** on March 15, 2017. The Department received comments from two respondents during the public comment period. The respondents' comments and the Department's responses to those comments are as follows:

Comment 1: One respondent argued that the proposed change regarding witnesses being allowed to appear by teleconference if they request to do so is in conflict with Iowa Code section 17A.13. The respondent stated that witnesses are permitted to appear by telephone, in most hearings, but there may be times when the demeanor of a witness or another issue may be so critical that in-person testimony is necessary.

Another respondent requested that the proposed change be expanded to allow a party to request that a witness appear by teleconference. The respondent also requested the addition of language stating that, if a witness has been subpoenaed to appear in person and good cause is shown, the witness may be required to appear in person.

Department response 1: The Department agrees with the second respondent's proposed changes and has amended subrule 7.10(5) to read as follows:

"**7.10(5)** *Method of hearing.* The department of inspections and appeals shall determine whether the appeal hearing is to be conducted in person, by videoconference or by teleconference call. The parties to the appeal may participate from multiple sites for videoconference or teleconference hearings. Any appellant is entitled to an in-person hearing if the appellant requests one. Upon advance request, a witness shall be permitted to appear by teleconference unless the administrative law judge determines that the physical presence of the witness is necessary for the administration of justice and does not impose an undue burden on the witness. All parties shall be granted the same rights during a teleconference hearing as specified in rule 441—7.13(17A). The appellant may request to have a presiding officer render a decision for attribution appeals through an administrative hearing."

Comment 2: One respondent stated there was no reason provided as to why continuances on food assistance and intentional program violation cases would be limited to 30 days. The respondent requested that the proposed language be removed as there are situations when a longer continuance would be justified.

In addition, one respondent commented that the change limiting the number of continuance requests on intentional program violation cases is ambiguous and confusing. The respondent agreed with the change but requested minor revisions for clarification purposes.

Department response 2: Federal regulations at 7 CFR 273.15(c)(4) limit continuances on food assistance cases and postponements shall not exceed 30 days. Federal regulations at 7 CFR 273.16(e)(2)(iv) limit continuances on intentional program violation cases. The hearing cannot be postponed for more than a total of 30 days. While the regulations are not new, references were added to the Department's rules for clarification purposes.

However, based on the comments received, new paragraph 7.10(6)"c" has been revised to read as follows:

"*c.* For intentional program violation appeals, the hearing may be rescheduled provided that the request for postponement is made at least ten days in advance of the date of the scheduled hearing. The hearing shall not be postponed for more than a total of 30 days."

Comment 3: One respondent questioned the proposed change to subrule 7.24(1) to define which agency may issue a written order to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the Department of Human Services' jurisdiction by emergency adjudicative order. The respondent did not have concerns with the

amendment but questioned the intent of the change and whether there will be an anticipated increase in the use of the procedure.

Department response 3: The Department does not anticipate an increase in the use of this procedure. While no amendments were proposed to the existing definitions of "agency," "department," or "department of inspections and appeals" in rule 441—7.1(17A), subrule 7.24(1) was revised because the terminology used within the rule was used interchangeably to mean either the Department of Human Services or the Department of Inspections and Appeals. The amendment clarifies which department is responsible for the actions stated. No change was made to subrule 7.24(1) as the result of comments from the respondent.

Comment 4: One respondent commented on subrule 7.2(5), which states that a member or authorized representative or provider who acts on behalf of a member can get a state fair hearing if that person has exhausted the first-level review process through a managed care organization and remains dissatisfied with the outcome. The respondent suggested additional language be added stating, "if the managed care organization fails to adhere to notice and timing requirements, then it may be deemed that the member, their authorized representative or provider when acting on behalf of a member has exhausted the managed care organizations appeals process and may initiate a state fair hearing."

Department response 4: The Department has revised subrule 7.2(5) by adding a new paragraph "c," which reads as follows:

"*c.* If the managed care organization fails to adhere to the notice and timing requirements in 42 CFR 438.408, the Medicaid member, authorized representative or provider who is acting on behalf of the member is deemed to have exhausted the managed care organization's appeals process. The Medicaid member, authorized representative or provider who is acting on behalf of the member may initiate a state fair hearing."

Comment 5: One respondent commented on subrule 7.5(1), which states that a hearing shall be granted to any appellant when the right to a hearing is granted by state or federal law. The respondent argues that the proposed change in the Notice of Intended Action removes the right to a hearing as granted by the Constitution.

Department response 5: Whether or not the word "Constitution" is present in the rule, the Constitution still applies to any action taken by a state agency, and therefore, any constitutional requirement for a hearing would still be present. The Department did not remove the amendment to subrule 7.5(1) based on the respondent's comment.

Comment 6: One respondent commented on subrule 7.5(2) regarding when a hearing is not granted. A hearing cannot be granted when the appellant has not exhausted the first-level review process with a managed care organization. The respondent suggested additional language that would allow a hearing to be granted when it is deemed the appeals process with the managed care organization has been exhausted, even if the appellant has not exhausted the first-level review process.

Department response 6: The Department agrees with the respondent and has revised subparagraph 7.5(2)"d"(3) to read as follows:

"(3) The appellant has not exhausted the first-level review process with a managed care organization except as provided at paragraph 7.2(5)*'c.'*"

Comment 7: One respondent commented that the term "medical assistance" referenced in subrule 7.5(4) and rule 441—7.8(17A) is not defined in rule 441—7.1(17A). The proposed amendments to subrule 7.5(4) regarding the time limit for granting a hearing to an appeal remove references to "Medicaid or healthy and well kids in Iowa" and replaced them with a reference to "medical assistance." The commenter requested that the Department either define the term "medical assistance" in rule 441—7.1(17A) or restore the reference to the Healthy and Well Kids in Iowa Program in subrule 7.5(4).

The respondent also requested that additional language be added to paragraph 7.5(4)"b" to clarify that a hearing will be held if an appeal is made within 90 days after the appeal is deemed to be exhausted.

Department response 7: While the term "medical assistance" is not defined in rule 441—7.1(17A), it is believed the definition utilized in subrule 7.2(3) addresses the respondent's concern. Subrule 7.2(3) provides a list of Medicaid coverage groups or programs that are considered in the term "medical

assistance." Healthy and Well Kids in Iowa is one of the items included in this list. Based on the comment received, paragraph 7.5(4)"b" has been revised to read as follows:

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

Comment 8: One respondent objected to the proposed change to subparagraph 7.7(1)"e"(3). The change removes the requirement that Department notices contain the manual chapter number and subheading that support the action. The respondent requested that the Department rescind this change and leave the requirement that manual information be included on notices.

Department response 8: Federal regulations at 42 CFR 431.210 and 7 CFR 273.13 dictate the information that must be provided on a notice of adverse action. Regulations require that the Department only provide references to the regulations that support the action that was taken. There are no federal requirements directing the Department to provide manual references on notices. Also, the Employees' Manual has not been adopted as a formal agency rule, so it does not have the force and effect of law. The manual cannot serve as the legal basis for the Department's position. The Department did not change the amendment to subparagraph 7.7(1)"e"(4) as requested.

Comment 9: One respondent commented on proposed new subrule 7.9(3) regarding continuation of benefits for the Food Assistance Program. The respondent is concerned specifically with paragraph "e," which indicates that food assistance benefits that were time-limited through a certification period would not continue for food assistance. The respondent requested that this change be removed to allow food assistance benefits to continue pending an appeal, even when the benefits or services were time-limited. The respondent requested that if this change is based on a federal or state law, a reference to such law be included.

The respondent is also concerned with the language about "previously authorized course of treatment," "ordered by an authorized provider," and "original period covered by the original authorization" in new subrules 7.9(5) and 7.9(6). The respondent argues that it is unclear what types of situations would be covered by the subrules and believes that these changes violate state and federal regulations.

Finally, the respondent argues that new grounds for discontinuation of services have been added in subparagraph 7.9(5)"b"(3) and are inconsistent with federal regulations.

Department response 9: This change is not based on a recent federal or state law change. This requirement is part of the Department's current rules at paragraph 7.9(2)"b" and is supported by federal regulations at 7 CFR 273.15(k)(1).

The Department agrees with the respondent that notice must be given when benefits or services are terminated, suspended or reduced and that a member, the member's authorized representative or provider who has obtained written consent from the member has the right to appeal an adverse benefit determination by a managed care organization. However, federal regulations at 42 CFR 438.420 indicate when benefits can continue while the first-level review and state fair hearing appeals are pending. If an individual is receiving Medicaid waiver services and the managed care organization decides at an annual review to reduce the number of hours or minutes or units of service the individual can receive per week or month, the proposed language in new subrules 7.9(5) and 7.9(6) indicates that benefits or services would not continue as the period covered by the original authorization has expired. The individual can appeal the denial, but the individual's services may not be continued pending the outcome of the appeals process. In order for benefits or services to continue, all requirements must be met.

The Department did not adopt the language proposed in subparagraph (3) of paragraph 7.9(5)"b" of the Notice and has renumbered subparagraph (4) as (3). Paragraph 7.9(5)"b" now reads as follows:

"*b.* If, at the appellant's request, the managed care organization continues or reinstates the member's health care services while the appeal is pending, the benefits must continue until one of the following occurs:

"(1) The appellant withdraws the appeal.

"(2) The appellant fails to request an appeal within ten calendar days from the date the managed care organization mails the notice of action.

"(3) A hearing decision is issued that is adverse to the appellant."

Comment 10: The respondent suggested changes to new paragraph 7.10(4)"f" regarding expedited hearings. The respondent is concerned that the language in paragraph "f" would limit an appellant's ability to have an expedited appeal hearing to situations when the managed care organization had handled the first-level review expeditiously. The respondent argues that there may be times when an MCO does not handle a first-level review expeditiously, but the appellant's life, physical or mental health, or ability to attain, maintain or regain maximum function could seriously be jeopardized if the appellant waits for standard resolution of the appeal.

Department response 10: The Department's Appeals Section does not have a medical professional on staff and does not have someone that the Section can readily access to review medical necessity in emergency situations. All of the managed care organizations have medical professionals on staff who can evaluate and determine whether someone's life, physical or mental health or ability to attain, maintain or regain maximum function could seriously be jeopardized if that person waits for the standard resolution of the appeal.

It is expected that if the person's situation is an emergent one, the MCO would handle the first-level review expeditiously. If the MCO handles the first-level review as an expedited request, then the state fair hearing would also be held expeditiously, if the Medicaid member meets the requirements in paragraph 7.10(4)"f."

The respondent's comment will be considered in a future rules revision as the Centers for Medicaid and Medicare Services have proposed additional regulations regarding expedited appeal hearings. If those proposed regulations become final, Chapter 7 will be revisited and all references to expedited hearings will be reviewed at that time.

Comment 11: The respondent requested that the Department reinstate language about notifying appellants by certified mail, return receipt requested, in paragraph 7.10(7)"c" as intentional program violations carry serious consequences.

Department response 11: The Department agrees that intentional program violations carry serious consequences. The Department previously notified individuals that they had been referred for an intentional program violation using both first-class mail and certified mail, return receipt requested. However, during a recent integrity review, the Department was instructed by the Food and Nutrition Services (FNS) to mail Notices of Hearing by either first-class mail or certified mail, return receipt requested, as allowed by 7 CFR 273.16(e)(3)(i). The Department did not revise the proposed amendment to paragraph 7.10(7)"c" as requested.

The Council on Human Services adopted these amendments on May 10, 2017.

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

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

These amendments are intended to implement Iowa Code section 217.6.

These amendments will become effective July 12, 2017.

The following amendments are adopted.

ITEM 1. Rescind the definition of "Aggrieved person" in rule **441—7.1(17A)** and adopt the following **new** definition in lieu thereof:

"Aggrieved person" means a person against whom the department has taken an adverse action. This includes a person who meets any of the conditions in rule 441—7.2(17A).

ITEM 2. Amend rule **441—7.1(17A)**, definitions of "Bidder" and "Reconsideration," as follows:

"Bidder" means an individual or entity that submits a proposal in response to a competitive procurement issued by the department of human services.

"Reconsideration" means a review process that must be exhausted before an appeal hearing is granted. Such review processes include, but are not limited to, a reconsideration request through:

1. The Iowa Medicaid enterprise (IME) ~~or its subcontractors~~,

~~2. The managed health care review committee,~~

~~3.~~ 2. A division or bureau within the department,

~~4.~~ 3. The mental health and disability services commission,

~~5.~~ 4. A licensed health care professional as specified in 441—paragraph 9.9(1)*"i,"* or

~~6.~~ 5. Any division or bureau within the department, from a bidder in a competitive procurement bid process.

Once the reconsideration process is complete, a notice of decision or notice of action will be issued with appeal rights.

ITEM 3. Adopt the following **new** definitions of "First-level review," "FMAP-related," "'Managed care organization' or 'MCO'" and "SSI-related" in rule **441—7.1(17A)**:

"First-level review" means a review process that must be exhausted through a managed care organization before an appeal hearing is granted. Once the first-level review process is complete, a notice of decision will be issued by the managed care organization and will identify further appeal rights, if applicable.

"FMAP-related" describes coverage groups whose eligibility criteria are derived in relation to the family medical assistance program, directed toward children and their parents or caretakers.

"Managed care organization" or *"MCO"* means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of "health maintenance organization" in Iowa Code section 514B.1.

"SSI-related" describes medical assistance coverage groups whose eligibility criteria, except for income and resource limits, are derived from the supplemental security income (SSI) program for people who are aged, blind, or disabled.

ITEM 4. Adopt the following **new** rule 441—7.2(17A):

441—7.2(17A) Conditions of an aggrieved person. To be eligible for an appeal hearing, a person must meet the definition of "aggrieved person" in rule 441—7.1(17A) and qualify on a program-specific basis.

7.2(1) *Financial assistance.* Financial assistance includes, but is not limited to, the family investment program; refugee cash assistance; child care assistance; emergency or disaster assistance; family or community self-sufficiency grants; family investment program hardship exemptions; and state supplementary assistance dependent person, in-home health-related care, and residential care facility benefits. Issues may include:

a. A request to be given an application was denied.

b. An application for assistance has been denied or has not been acted on in a timely manner.

c. The effective date of assistance is contested.

d. The amount of benefits granted is contested.

e. The assistance will be reduced or canceled.

f. An overpayment of benefits has been established, and repayment is requested.

7.2(2) *Food assistance.* Issues may include:

a. A request to be given an application was denied.

b. An application for assistance has been denied or has not been acted on in a timely manner.

c. The effective date of assistance is contested.

d. The amount of benefits granted is contested.

e. The assistance will be reduced or canceled.

f. A request to receive a credit for benefits from an electronic benefit transfer (EBT) account has been denied.

g. An overpayment of benefits has been established, and repayment is requested.

7.2(3) *Medical assistance eligibility.* Medical assistance eligibility includes, but is not limited to, FMAP-related coverage groups, SSI-related coverage groups, the breast and cervical cancer treatment program, the health insurance premium payment program, healthy and well kids in Iowa (HAWK-I), the Iowa Health and Wellness Plan, family planning services, and waiver services. Issues may include:

a. A request to be given an application was denied.

b. An application has been denied or has not been acted on in a timely manner.

c. The person's eligibility has been terminated, suspended or reduced.

d. The level of benefits the person is eligible to receive has been reduced.

e. A determination of the amount of medical expenses that must be incurred to establish income eligibility for the medically needy program or a determination of income for the purposes of imposing any premiums, enrollment fees or cost sharing is contested.

f. The level of care requirements have not been met.

g. The failure to take into account the appellant's choice in assignment to a coverage group.

h. The effective date of assistance is contested.

i. The amount or effective date of one of the following is contested:

(1) Health insurance premiums,

(2) Healthy and well kids in Iowa premiums,

(3) Medicaid for employed people with disabilities premiums,

(4) Iowa Health and Wellness Plan contributions,

(5) Client participation, or

(6) Medically needy program spenddown.

j. An overpayment of benefits has been established, and repayment is requested.

7.2(4) *Fee-for-service medical coverage.* Issues may include:

a. The level of services that the person is eligible to receive has been reduced.

b. The level of services provided by a nursing facility is not needed based on a preadmission screening and resident review (PASRR) evaluation.

c. The effective date of services is contested.

d. A claim for payment or prior authorization has been denied.

e. The medical assistance hotline has issued notification that services not received or services for which an individual is billed are not payable by medical assistance.

f. Nonemergency medical transportation services by the broker designated by the department pursuant to rule 441—78.13(249A) have been denied.

7.2(5) *Managed care organization medical coverage.*

a. A Medicaid member, an authorized representative or a provider who is acting on behalf of a member has been notified that the first-level review process through a managed care organization has been exhausted and remains dissatisfied with the outcome.

b. If a provider is acting on behalf of a member by filing this type of appeal, the member's written consent to appeal must be submitted with the appeal request.

c. If the managed care organization fails to adhere to the notice and timing requirements in 42 CFR 438.408, the Medicaid member, authorized representative or provider who is acting on behalf of the member is deemed to have exhausted the managed care organization's appeals process. The Medicaid member, authorized representative or provider who is acting on behalf of the member may initiate a state fair hearing.

7.2(6) *Providers.* Providers can be an individual or an entity. Issues may include:

a. A license, certification, registration, approval or accreditation has been denied or revoked or has not been acted on in a timely manner.

b. A fee-for-service claim for payment or request for prior authorization of payment has been denied in whole or in part and the provider states that the denial was not made according to department policy.

c. A medical assistance patient manager contract has been terminated.

d. A payment has been withheld to recover a prior overpayment, or an order to repay an overpayment pursuant to 441—subrule 79.4(7) has been received.

e. An application for child care quality rating has not been acted upon in a timely fashion.

f. A child care quality rating decision is contested.

g. A certificate of child care quality rating has been revoked.

h. An adverse action has been taken relating to the Iowa electronic health record incentive program pursuant to rule 441—79.16(249A), including:

(1) Provider eligibility determination,

(2) Incentive payments, or

(3) Demonstration of adopting, implementing, upgrading and meaningful use of technology.

i. An application or reapplication for licensure was issued as a provisional license.

j. A license has been issued for a limited time.

7.2(7) *Social services.* Social services include, but are not limited to, adoption, foster care, and family-centered services. Issues may include:

a. A request to be given an application was denied.

b. An application for services or payment for adoption subsidy or foster care has been denied or has not been acted on in a timely manner.

c. An application or license has been denied based on a record check evaluation.

d. A determination that a person must participate in a service program is contested.

e. A claim for payment of services has been denied.

f. A protective or vendor payment has been established.

g. The services have been reduced or canceled.

h. An overpayment of services has been established, and repayment is requested.

i. An adoptive placement of a child has been denied or delayed when an adoptive family is available outside the jurisdiction with responsibility for handling the child's case.

j. A referral to community care was not made as provided in rule 441—186.2(234).

k. A referral to community care as provided in rule 441—186.2(234) was made and the community care provider's dispute resolution process has been exhausted.

7.2(8) *Child support recovery.* Issues may include:

a. A person is not entitled to a support payment in full or in part because of the date of collection, as provided under rule 441—95.13(17A), or a dispute based on the date of collection has not been acted on in a timely manner.

b. A claim or offset is contested as provided in 441—subrule 95.6(3), 95.7(8), or 98.81(3) by a person's alleging a mistake of fact. "Mistake of fact" means a mistake in the identity of the obligor or in whether the delinquency meets the criteria for referral or submission. The issue on appeal shall be limited to a mistake of fact. Any other issue may be determined only by a court of competent jurisdiction.

c. A name has been certified for passport sanction as provided in Iowa Code section 252B.5.

d. A termination in services has occurred as provided in rule 441—95.14(252B).

7.2(9) *PROMISE JOBS.* Issues may include:

a. A claim for participation allowances has been denied, reduced, or canceled.

b. The contents of the family investment agreement are not sufficient or necessary for the family to reach self-sufficiency.

c. The results of informal grievance resolution procedures are contested, an opportunity for an informal grievance resolution has been declined, or a decision was not made within the 14-day period.

d. PROMISE JOBS services will be canceled due to imposition of a limited benefit plan.

e. An overpayment of benefits has been established, and repayment is requested.

f. Acts of discrimination are alleged on the basis of race, creed, color, sex, age, physical or mental disability, religion, national origin, or political belief.

7.2(10) *Child abuse registry, dependent adult abuse registry, or record check evaluation.* Issues may include:

a. A person is alleged responsible for child abuse.

b. A correction of dependent adult abuse information has been requested.

c. A record check evaluation restricted or denied employment in a health care facility, state institution, or other facility. "Employment" includes, but is not limited to, service as an employee, a volunteer, a provider, or a contractor. "Facility" includes, but is not limited to, county or multicounty juvenile detention homes and juvenile shelter care homes, child-placing agencies, substance abuse treatment programs, group living foster care facilities, child development homes, child care centers, state resource centers, mental health institutes, and state training schools.

d. A record check evaluation results in the restriction of participation in an educational training program.

7.2(11) *Mental health and disability services.* Issues may include:

a. An application for state payment under 441—Chapter 153, Division IV, has been denied or has not been acted upon in a timely manner.

b. Services under the state payment program have been reduced or canceled.

c. A request to be given an application was denied.

d. The person's eligibility has been terminated, suspended or reduced.

e. The level of benefits or services the person is eligible to receive has been reduced.

f. The effective date of assistance or services is contested.

g. The reconsideration process has been exhausted, and a person remains dissatisfied with the outcome.

h. The amount or effective date of cost-sharing requirements for the autism support program is contested.

i. A service authorization request for applied behavioral analysis services has been denied or reduced.

7.2(12) *HIPAA (Health Insurance Portability and Accountability Act).* A current or former applicant for or recipient of Medicaid or HAWK-I, or a person currently or previously in a department facility whose request:

a. To restrict use or disclosure of protected health information was denied.

b. To change how protected health information is provided was denied.

c. For access to protected health information was denied. When the denial is subject to reconsideration under 441—paragraph 9.9(1)*"i,"* persons denied access due to a licensed health care professional's opinion that the information would constitute a danger to that person or another person must first exhaust the reconsideration process.

d. To amend protected health information was denied.

e. For an accounting of disclosures was denied.

7.2(13) *Drug manufacturers.* A manufacturer that has received a notice of decision regarding disputed drug rebates pursuant to the dispute resolution procedures of a national drug rebate agreement or an Iowa Medicaid supplemental drug rebate agreement disagrees with the decision.

7.2(14) *Bidders that have participated in a competitive procurement bid process.* Appeals resulting from a competitive procurement bid process will be handled pursuant to Chapter 7, Division II.

7.2(15) *Other individuals or providers.* Individuals or providers that are not listed in rule 441—7.2(17A) may meet the definition of an aggrieved person if the department has taken an adverse action against that individual or provider.

ITEM 5. Amend rule 441—7.5(17A), introductory paragraph, as follows:

441—7.5(17A) The right to appeal. ~~Any person or group of persons~~ An aggrieved person who qualifies for an appeal as stated in rule 441—7.2(17A) may file an appeal ~~with the department concerning any issue~~. The ~~department~~ appeals section shall determine whether a hearing shall be granted.

ITEM 6. Amend subrule 7.5(1) as follows:

7.5(1) *When a hearing is granted.* A hearing shall be granted to any appellant when the right to a hearing is granted by state or federal law ~~or Constitution~~, except as limited in subrules 7.5(2) and 7.5(4).

ITEM 7. Amend subrule 7.5(2) as follows:

7.5(2) *When a hearing is not granted.* A hearing shall not be granted when:

a. One of the following issues is appealed:

(1) to (8) No change.

(9) A rate determination for foster group care services has been reviewed under rule 441—152.3(234).

(10) to (17) No change.

(18) An MCO provider ~~or Iowa plan contractor~~ fails to submit a document providing the member's approval of the request for appeal.

(19) and (20) No change.

(21) Notice has been issued regarding an MCO grievance request.

(22) Notice has been issued by an MCO to a provider regarding a claims dispute issue.

b. and *c.* No change.

d. The appeal is filed prematurely as:

(1) There is no adverse action by the department, ~~or~~

(2) The appellant has not exhausted the reconsideration process~~.~~, or

(3) The appellant has not exhausted the first-level review process with a managed care organization except as provided at paragraph 7.2(5)*"c."*

e. and *f.* No change.

~~*g.* The appellant is an "aggrieved party" as defined in rule 441—22.1(225C) and is eligible for a compliance hearing with the mental health and developmental disabilities commission in accordance with rule 441—22.5(225C).~~

h. and *i.* No change.

ITEM 8. Amend subrule 7.5(3) as follows:

7.5(3) *Group hearings.* The ~~department~~ appeals section may respond to a series of individual requests for hearings by requesting the department of inspections and appeals to conduct a single group hearing in cases in which the sole issue involved is one of state or federal law or policy or change in state or federal law or policy. An appellant scheduled for a group hearing may withdraw and request an individual hearing.

ITEM 9. Amend paragraph **7.5(4)"b"** as follows:

b. Food assistance, ~~Medicaid or healthy and well kids in Iowa~~ medical assistance or autism support program standard. For appeals regarding food assistance, ~~Medicaid or the healthy and well kids in Iowa program~~ medical assistance or the autism support program, a hearing shall be held if the appeal is made within 90 days after official notification of an action. For appeals regarding a health care decision made by a managed care organization, a hearing shall be held if the appeal is made within 90 days after written notification that the first-level review process through the managed care organization has been exhausted. A hearing shall be held if the appeal is made within 90 days after the appeal is deemed to have exhausted the managed care organization's appeals process, as provided in paragraph 7.2(5)*"c."*

ITEM 10. Amend paragraph **7.5(4)"c,"** introductory paragraph, as follows:

c. Offset standards. For appeals regarding state or federal tax or debtor offsets, a hearing shall be held if the appeal is made within 15 days after official notification of the action. Counties have 30 days to appeal offsets, as provided in 441~~—paragraph 14.4(1)~~*"e."* subrule 14.4(3). When the appeal is made more than 15 days but less than 90 days after notification, the director shall determine whether a hearing shall be granted.

ITEM 11. Amend paragraph **7.5(6)"a"** as follows:

a. Subject to the time limits described in subrule 7.5(4), a person's right to appeal the existence, computation, and amount of a FIP, RCA, or PROMISE JOBS overpayment begins when the department sends the first notice informing the person of the overpayment. The notice shall be sent on:

~~1. Form 470-2616, Demand Letter for FIP/RCA Agency Error Overissuance;~~

~~2. Form 470-3490, Demand Letter for FIP/RCA Client Error Overissuance;~~

~~3. Form 470-3990, Demand Letter for PROMISE JOBS Agency Error Overissuance;~~

~~4. Form 470-3991, Demand Letter for PROMISE JOBS Client Error Overissuance; or~~

~~5. Form 470-3992, Demand Letter for PROMISE JOBS Provider Error Overissuance.~~

(1) Form 470-4683, Notice of FIP or RCA Overpayment; or

(2) Form 470-4688, Notice of PROMISE JOBS Overpayment.

ITEM 12. Amend subrule 7.5(7) as follows:

7.5(7) *Appeals of ~~Medicaid~~ medical assistance, state supplementary assistance (SSA), and HAWK-I program overpayments.*

a. Subject to the time limits described in subrule 7.5(4), a person's right to appeal the existence and amount of a medical assistance, state supplementary assistance, or healthy and well kids in Iowa (HAWK-I) program overpayment begins when the department sends the first notice informing the person of the overpayment. The notice shall be sent on:

(1) No change.

(2) Form 470-3984, Notice of Healthy and Well Kids in Iowa (HAWK-I) Premium Overpayment.

b. No change.

c. A program overpayment means medical assistance, state supplementary assistance, or healthy and well kids in Iowa (HAWK-I) assistance was received by or on behalf of a person in excess of that allowed by law, rules or regulations for any given month or in excess of the dollar amount of assistance. Subrule 7.5(7) relates to overpayments received by recipients, not by providers of the medical assistance program.

ITEM 13. Amend subrule 7.5(9) as follows:

7.5(9) *Appeals of child care assistance benefit ~~overissuances or~~ overpayments.*

a. and *b.* No change.

c. A program overpayment means child care assistance was received by or on behalf of a person in excess of that allowed by law, rules or regulations for any given month or in excess of the dollar amount of assistance. Subrule 7.5(9) relates to overpayments received by recipients and child care providers. Either entity may be responsible for repayment.

ITEM 14. Amend paragraph **7.5(10)"a"** as follows:

a. Subject to the time limits described in subrule 7.5(4), a person's right to appeal the existence, computation, and amount of a food assistance overpayment begins when the department sends the first notice informing the person of the food assistance overpayment. The notice shall be sent on~~:~~ Form 470-4668, Notice of Food Assistance Overpayment.

~~(1) Form 470-0338, Demand Letter for Food Assistance Agency Error Overissuance;~~

~~(2) Form 470-3486, Demand Letter for Food Assistance Intentional Program Violation Overissuance; or~~

~~(3) Form 470-3487, Demand Letter for Food Assistance Inadvertent Household Error Overissuance.~~

ITEM 15. Amend subparagraph **7.7(1)"e"(4)** as follows:

(4) The ~~manual chapter number and subheading supporting the action and the~~ corresponding rule reference,

ITEM 16. Amend paragraph **7.7(2)"k"** as follows:

k. The department terminates or reduces benefits or makes changes based on a completed Form 470-2881, 470-2881(S), 470-2881(M), or ~~470-4083(MS)~~ 470-2881(MS), Review/Recertification Eligibility Document, as described at 441—~~paragraph 40.27(1)"b"~~ subrule 40.27(3) or rule 441—75.52(249A).

ITEM 17. Rescind paragraph **7.7(5)"e."**

ITEM 18. Amend rule 441—7.8(17A) as follows:

441—7.8(17A) Opportunity for hearing.

7.8(1) *Initiating an appeal.* To initiate an appeal, a person, the person's authorized representative or an individual or organization recognized by the department as acting responsibly for the person pursuant

to policy governing a particular program must state in writing that the person disagrees with a decision, action, or failure to act on the person's case.

a. ~~All appeals shall be made in writing, except for food~~ Food assistance, ~~Medicaid and healthy and well kids in Iowa~~ medical assistance, child care assistance and family investment program appeals~~, which~~ may be made in person, by telephone or in ~~person~~ writing as specified in subrule 7.8(2).

b. ~~A written request may be submitted via the department's Web site or may be delivered by mail, electronic mail, facsimile transmission or personal delivery to the appeals section, to the local office, or to the department office that took the adverse action.~~ All other appeals, subject to paragraph 7.8(1)*"a,"* shall be made in writing.

c. ~~A request by telephone or in person may be made to the appeals section or to the department office that took the adverse action.~~ A written request may be submitted via the appeals section's Web site or may be delivered by mail, electronic mail, facsimile transmission or personal delivery to the appeals section, to the local office, or to the department office that took the adverse action.

d. A request by telephone or in person may be made to the appeals section or to the department office that took the adverse action.

e. A Medicaid provider requesting a hearing on behalf of the member must have the prior express written consent of the member or the member's lawfully appointed guardian, except when appealing a medical assistance eligibility determination. No hearing will be granted unless the provider submits a document providing the member's consent to the request for a hearing.

7.8(2) *Filing the appeal.* The appellant shall be encouraged, but not required, to make written appeal on Form 470-0487 or 470-0487(S), Appeal and Request for Hearing, and the worker shall provide any instructions or assistance required in completing the form. When the appellant is unwilling to complete or sign this form, nothing in this rule shall be construed to preclude the right to perfect the appeal, as long as the appeal is in writing (except for food assistance, ~~Medicaid and healthy and well kids in Iowa~~ medical assistance, child care assistance and family investment program appeals) and has been communicated to the department by the appellant or appellant's representative.

A written appeal submitted by mail is filed on the date postmarked on the envelope sent to the department, or, when the postmarked envelope is not available, on the date the appeal is stamped received by the agency. When an appeal is submitted through an electronic delivery method, such as electronic mail, submission of an online form, or facsimile, the appeal is filed on the date it is submitted. The electronic delivery method shall record the date and time the appeal request was submitted. If there is no date recorded by the electronic delivery method, the date of filing is the date the appeal is stamped received by the agency. Receipt date of all appeals shall be documented by the office where the appeal is received.

7.8(3) *Informal conference.* When requested by the appellant, an informal conference with a representative of the department or one of its contracted partners, including a managed care organization, shall be held as soon as possible after the appeal has been filed. An appellant's representative shall be allowed to attend and participate in the informal conference, unless precluded by federal rule or state statute.

An informal conference need not be requested for the appellant to examine the contents of the case record, including any electronic case record, as provided in subrule 7.13(1) and 441—Chapter 9.

7.8(4) *Prehearing conference.* When requested ~~by the appellant or department~~, a prehearing conference may be held with the appellant, a representative of the department and a presiding officer as soon as possible after the appeal has been filed. An appellant's representative shall be allowed to attend and participate in the prehearing conference, unless precluded by federal rule or state statute.

7.8(5) No change.

7.8(6) *Right ~~of the department~~ to deny or dismiss an appeal.* The ~~department~~ appeals section or the department of inspections and appeals has the right to deny or dismiss the appeal when:

a. It has been withdrawn by the appellant pursuant to subrule 7.8(8).

b. The sole issue is one of state or federal law requiring automatic grant adjustments for classes of recipients.

c. It has been abandoned.

d. The agency, by written notice, withdraws the action appealed and restores the appellant's status that existed before the action appealed was taken.

e. The agency implements action and issues a notice of decision or notice of action to correct an error made by the agency which resulted in the appeal.

Abandonment may be deemed to have occurred when the appellant, ~~or~~ the appellant's authorized representative, or the department fails, without good cause, to appear at the prehearing or hearing.

7.8(7) and **7.8(8)** No change.

7.8(9) *Department's responsibilities.* Unless the appeal is voluntarily withdrawn, the department worker or agent responsible for representing the department at the hearing shall:

a. Within one working day of receipt of an appeal request, ~~complete the worker information section of Form 470-0487 or 470-0487(S), Appeal and Request for Hearing, and~~ forward ~~that form~~ Form 470-0487 or 470-0487(S), Appeal and Request for Hearing, the written appeal, the postmarked envelope, if there is one, and a copy of the notification of the proposed adverse action to the appeals section.

b. Forward a summary and supporting documentation of the worker's or agent's factual basis for the proposed action to the appeals section within ten days of the receipt of the appeal.

c. Provide the appellant and the appellant's representative copies of all materials sent to the appeals section or the presiding officer to be considered in reaching a decision on the appeal at the same time as the materials are sent to the appeals section or the presiding officer.

ITEM 19. Amend rule 441—7.9(17A) as follows:

441—7.9(17A) Continuation of assistance pending a final decision on appeal.

7.9(1) ~~*When*~~ *General standards for when assistance continues.*

a. and *b.* No change.

c. Assistance shall be continued on the basis authorized immediately prior to the notice of adverse action, subject to paragraph 7.9(2)*"c."*

d. The appellant may ask to have the appellant's benefits continue on Form 470-0487 or 470-0487(S), Appeal and Request for Hearing. If the form does not positively indicate that the appellant has waived continuation of benefits, the department shall assume that continuation of benefits is desired.

e. Once benefits are continued or reinstated, the department will not reduce or terminate benefits while the appeal is pending, subject to subrule 7.9(2).

7.9(2) ~~*When*~~ *General standards for when assistance does not continue.* Assistance shall be suspended, reduced, restricted, or canceled; a license, registration, certification, approval, or accreditation shall be revoked; and other proposed action shall be taken pending a final decision on appeal when:

a. to *d.* No change.

~~**7.9(3)** *Recovery of excess assistance paid pending a final decision on appeal.* Continued assistance is subject to recovery by the department if its action is affirmed, except as specified at subrule 7.9(5).~~

~~When the department action is sustained, excess assistance paid pending a hearing decision shall be recovered to the date of the decision. This recovery is not an appealable issue. However, appeals may be heard on the computation of excess assistance paid pending a hearing decision.~~

7.9(3) *When assistance continues for food assistance.*

a. Assistance, subject to paragraph 7.9(3)*"b,"* shall not be suspended, reduced, restricted, or canceled or other proposed adverse action taken pending a final decision on an appeal when the appellant requests a hearing within ten days from receipt of a notice suspending, reducing, restricting, or canceling benefits.

The date on which the notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period.

b. If it is determined at a hearing that the issue involves only federal or state law or policy, assistance will be immediately discontinued.

c. Assistance shall be continued on the basis authorized immediately prior to the notice of adverse action, subject to paragraph 7.9(4)*"c."*

d. The appellant may ask to have the appellant's benefits continue on Form 470-0487 or 470-0487(S), Appeal and Request for Hearing. If the form does not positively indicate that the appellant has waived continuation of benefits, the department shall assume that continuation of benefits is desired.

e. Once benefits are continued or reinstated, the department must not reduce or terminate benefits while the appeal is pending, subject to subrule 7.9(4).

~~**7.9(4)** *Recovery of excess assistance paid when the appellant's benefits are changed prior to a final decision.* Recovery of excess assistance paid will be made to the date of change which affects the improper payment. The recovery shall be made when the appellant's benefits are changed due to one of the following reasons:~~

~~*a.* A determination is made at the hearing that the sole issue is one of state or federal law or policy or change in state or federal law or policy and not one of incorrect grant computation, and the grant is adjusted.~~

~~*b.* A change affecting the appellant's grant occurs while the hearing decision is pending and the appellant fails to request a hearing after notice of the change.~~

7.9(4) *When assistance does not continue for food assistance.* Assistance shall be suspended, reduced, restricted, or canceled or other proposed action shall be taken pending a final decision on appeal when:

a. An appeal is not filed within ten days from the date notice is received. The date on which notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period.

b. Benefits or services were time-limited through a certification period or for which adequate notice was provided.

c. The appellant directs the worker in writing to proceed with the intended action.

d. Adverse action was taken because the appellant failed to return a complete review form.

~~**7.9(5)** *Recovery of assistance when a new limited benefit plan is established.* Assistance issued pending the final decision of the appeal is not subject to recovery when a new limited benefit plan period is established. A new limited benefit plan period shall be established when the department is affirmed in a timely appeal of the establishment of the limited benefit plan. All of the following conditions shall exist:~~

~~*a.* The appeal is filed either:~~

~~(1) Before the effective date of the intended action on the notice of decision or notice of action establishing the beginning date of the LBP, or~~

~~(2) Within ten days from the date on which a notice establishing the beginning date of the LBP is received. The date on which notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period.~~

~~*b.* Assistance is continued pending the final decision of the appeal.~~

~~*c.* The department's action is affirmed.~~

7.9(5) *When assistance continues for managed care organization health care services.*

a. Health care services may not be reduced, limited, suspended, canceled or other proposed adverse action taken pending a final decision on an appeal when:

(1) An appeal is filed timely. "Timely" means the appeal is filed on or before the effective date of the adverse benefit determination or within ten calendar days of the date the managed care organization sent the notice of adverse benefit determination. The date on which the notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period;

(2) The appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;

(3) The services were ordered by an authorized provider;

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

(5) The appellant requests that health care services be continued.

b. If, at the appellant's request, the managed care organization continues or reinstates the member's health care services while the appeal is pending, the benefits must continue until one of the following occurs:

(1) The appellant withdraws the appeal.

(2) The appellant fails to request an appeal within ten calendar days from the date the managed care organization mails the notice of action.

(3) A hearing decision is issued that is adverse to the appellant.

~~**7.9(6)** *Recovery of assistance when a new ineligibility period is established for the use of an electronic access card at a prohibited location.* Assistance issued pending the final decision of the appeal is not subject to recovery when a new ineligibility period is established for the use of an electronic access card at a prohibited location. A new ineligibility period pursuant to 441—subrule 41.25(11) shall be established when the department is affirmed in an appeal of the establishment of an ineligibility period for the use of an electronic access card at a prohibited location. All of the following conditions shall exist:~~

~~*a.* The appeal is filed either:~~

~~(1) Before the effective date of the intended action on the notice of decision or notice of action establishing the beginning date of the ineligibility period, or~~

~~(2) Within ten days from the date on which a notice establishing the beginning date of the ineligibility period is received. The date on which notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period.~~

~~*b.* Assistance is continued pending the final decision of the appeal.~~

~~*c.* The department's action is affirmed.~~

7.9(6) *When assistance does not continue for health care services managed by a managed care organization.* Health care services may be reduced, limited, suspended, canceled or other proposed adverse action taken pending a final decision on an appeal when:

a. An appeal is not filed timely. "Timely" means the appeal is filed on or before the effective date of the adverse benefit determination or within ten calendar days of the date the managed care organization sent the notice of adverse benefit determination. The date on which the notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period;

b. The appeal does not involve the termination, suspension, or reduction of a previously authorized course of treatment;

c. The services were not ordered by an authorized provider;

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

e. The appellant fails to request that health care services be continued.

7.9(7) *Recovery of excess assistance paid pending a final decision on appeal.* Continued assistance is subject to recovery by the department if the department's action is affirmed, except as specified at subrule 7.9(9).

When the department's action is sustained, excess assistance paid pending a final decision shall be recovered to the date of the decision. This recovery is not an appealable issue. However, appeals may be heard on the computation of excess assistance paid pending a final decision.

7.9(8) *Recovery of excess assistance paid when the appellant's benefits are changed prior to a final decision.* Recovery of excess assistance paid will be made to the date of change which affects the improper payment. The recovery shall be made when the appellant's benefits are changed due to one of the following reasons:

a. A determination is made at the hearing that the sole issue is one of state or federal law or policy or change in state or federal law or policy and not one of incorrect grant computation, and the grant is adjusted.

b. A change affecting the appellant's grant occurs while the final decision is pending and the appellant fails to request a hearing after notice of the change.

7.9(9) *Recovery of assistance when a new limited benefit plan is established.* Assistance issued pending the final decision of the appeal is not subject to recovery when a new limited benefit plan period is established. A new limited benefit plan period shall be established when the department is affirmed in a timely appeal of the establishment of the limited benefit plan. All of the following conditions shall exist:

a. The appeal is filed either:

(1) Before the effective date of the intended action on the notice of decision or notice of action establishing the beginning date of the limited benefit plan, or

(2) Within ten days from the date on which a notice establishing the beginning date of the limited benefit plan is received. The date on which notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period.

b. Assistance is continued pending the final decision of the appeal.

c. The department's action is affirmed.

7.9(10) *Recovery of assistance when a new ineligibility period is established for the use of an electronic access card at a prohibited location.* Assistance issued pending the final decision of the appeal is not subject to recovery when a new ineligibility period is established for the use of an electronic access card at a prohibited location. A new ineligibility period pursuant to 441—paragraph 41.25(11)*"e"* shall be established when the department is affirmed in an appeal of the establishment of an ineligibility period for the use of an electronic access card at a prohibited location. All of the following conditions shall exist:

a. The appeal is filed either:

(1) Before the effective date of the intended action on the notice of decision or notice of action establishing the beginning date of the ineligibility period, or

(2) Within ten days from the date on which a notice establishing the beginning date of the ineligibility period is received. The date on which notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period.

b. Assistance is continued pending the final decision of the appeal.

c. The department's action is affirmed.

ITEM 20. Amend rule 441—7.10(17A) as follows:

441—7.10(17A) Procedural considerations.

7.10(1) *Registration.* Upon receipt of the notice of appeal, the ~~department~~ appeals section shall register the appeal.

7.10(2) *Acknowledgment.*

a. Upon receipt of the notice of appeal, the ~~department~~ appeals section shall send an acknowledgment of receipt of the appeal to the appellant, representative, or both. A copy of the acknowledgment of receipt of appeal will be sent to the appropriate departmental office.

b. and *c.* No change.

7.10(3) *Granting a hearing.* The ~~department~~ appeals section shall determine whether an appellant may be granted a hearing and the issues to be discussed at that hearing in accordance with the applicable rules, state statutes, or federal regulations.

a. The appeals of those appellants who are granted a hearing shall be certified to the department of inspections and appeals for the hearing to be conducted. The ~~department~~ appeals section shall indicate at the time of certification the issues to be discussed at that hearing.

b. The appeals of those appellants who are denied a hearing shall not be closed until issuance of a letter to the appellant and the appellant's representative, advising of the denial of hearing and the basis upon which that denial is made. Any appellant that disagrees with a denial of hearing may present additional information relative to the reason for denial and request reconsideration by the ~~department~~ appeals section or a hearing over the denial.

7.10(4) *Hearing scheduled.* For those records certified for hearing, the department of inspections and appeals shall establish the date, time, method and place of the hearing, with due regard for the convenience of the appellant as set forth in 481—Chapter 10 of the department of inspections and ~~appeals~~ appeals' rules ~~481—Chapter 10~~ unless otherwise designated by federal or state statute or regulation.

a. No change.

b. In cases of appeals by ~~vendors or~~ agencies, the hearing shall be scheduled by teleconference call or at the most appropriate department office.

c. No change.

d. In cases involving an appeal of a sex offender risk assessment, the hearing or administrative review shall be held within 30 days of the date of the appeal request.

e. No change.

f. In cases involving appellants who indicate that their lives, physical or mental health, or ability to attain, maintain or regain maximum function could seriously be jeopardized if they wait for standard resolution of their appeals, the hearing shall be held within three working days of the date on the appeal request if:

(1) The managed care organization handled the first-level review expeditiously; and

(2) The appellant or a provider acting on the appellant's behalf requested an expedited appeal hearing.

7.10(5) *Method of hearing.* The department of inspections and appeals shall determine whether the appeal hearing is to be conducted in person, by videoconference or by teleconference call. The parties to the appeal may participate from multiple sites for videoconference or teleconference hearings. Any appellant is entitled to an in-person hearing if the appellant requests one. Upon advance request, a witness shall be permitted to appear by teleconference unless the administrative law judge determines that the physical presence of the witness is necessary for the administration of justice and does not impose an undue burden on the witness. All parties shall be granted the same rights during a teleconference hearing as specified in rule 441—7.13(17A). The appellant may request to have a presiding officer render a decision for attribution appeals through an administrative hearing.

7.10(6) *Reschedule requests.* Requests by the appellant or the department to set another date, time, method or place of hearing shall be made to the department of inspections and appeals directly except as otherwise noted. The granting of the requests will be at the discretion of the department of inspections and appeals.

a. The appellant may request that the teleconference hearing be rescheduled as an in-person hearing. All requests made to the ~~department~~ appeals section or to the department of inspections and appeals for a teleconference hearing to be rescheduled as an in-person hearing shall be granted. Any appellant request for an in-person hearing made to the ~~department~~ appeals section shall be communicated to the department of inspections and appeals immediately.

b. ~~All other requests concerning the scheduling of a hearing shall be made to the department of inspections and appeals directly.~~ For food assistance appeals, the hearing may be rescheduled if requested by the appellant; however, the postponement shall not exceed 30 days.

c. For intentional program violation appeals, the hearing may be rescheduled provided that the request for postponement is made at least ten days in advance of the date of the scheduled hearing. The hearing shall not be postponed for more than a total of 30 days.

d. Reschedule requests made by the department shall only be granted in instances of inclement weather when the department office is closed. The department's representative shall arrange coverage by a coworker in instances including, but not limited to, when inclement weather is present, but the department office remains open or when a family emergency, sudden illness or death occurs.

e. All other requests, subject to paragraph 7.10(6)*"a,"* concerning the scheduling of a hearing shall be made to the department of inspections and appeals directly.

7.10(7) *Notification.* For those appeals certified for hearing, the department of inspections and appeals shall send a notice to the appellant at least ten calendar days in advance of the hearing date.

a. and *b.* No change.

c. Notices of hearing regarding an intentional program violation shall be served upon the appellant ~~both by certified mail, return receipt requested, and~~ by first-class mail, postage prepaid, addressed to the appellant at the last-known address at least 30 days in advance of the date the hearing is scheduled. All other notices of hearing shall be mailed by first-class mail, postage prepaid, addressed to the appellant at the appellant's last-known address.

ITEM 21. Amend paragraph **7.13(5)"b"** as follows:

b. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for the party's failure to appear or participate at the contested case proceeding ~~and~~. A party must ~~be filed~~ file the motion with the Department of Human Services, Appeals Section, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. The department or its representative shall file a motion to vacate as specified in subrule 7.16(6). Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact. Each affidavit must be attached to the motion. In lieu of submitting an affidavit, the moving party may submit business records or other acceptable documentation from a disinterested third party that substantiates the claim of good cause.

(1) The appeals section shall be responsible for serving all parties with the motion to vacate. All parties to the appeal shall have ten days from service by the ~~department~~ appeals section to respond to the motion to vacate. All parties to the appeal shall be allowed to conduct discovery as to the issue of good cause and shall be allowed to present evidence on the issue before a decision on the motion, if a request to do so is included in that party's response. If the department responds to any party's motion to vacate, all parties shall be allowed another ten days to respond to the ~~department~~ appeals section.

(2) No change.

ITEM 22. Amend paragraph **7.13(5)"f"** as follows:

f. ~~Upon a final decision granting a motion to vacate~~ Once the time limit to appeal a proposed decision has expired, the contested case hearing shall proceed accordingly, after proper service of notice to all parties. The situation shall be treated as the filing of a new appeal for purposes of calculating time limits, with the filing date being the date the decision granting the motion to vacate became final.

ITEM 23. Amend paragraph **7.13(6)"c"** as follows:

c. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for the party's failure to appear or participate at the contested case proceeding ~~and~~. A party must ~~be filed~~ file a motion with the Department of Human Services, Appeals Section, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114.

(1) The appeals section shall be responsible for serving all parties with the motion to vacate. All parties to the appeal shall have ten days from service by the ~~department~~ appeals section to respond to the motion to vacate. All parties to the appeal shall be allowed to conduct discovery as to the issue of good cause and shall be allowed to present evidence on the issue before a decision on the motion, if a request to do so is included in that party's response. If the department responds to any party's motion to vacate, all parties shall be allowed another ten days to respond to the ~~department~~ appeals section.

(2) No change.

ITEM 24. Amend paragraph **7.13(6)"g"** as follows:

g. ~~Upon a final decision granting a motion to vacate~~ Once the time limit to appeal a proposed decision has expired, a new contested case hearing shall be held after proper service of notice to all parties. The situation shall be treated as the filing of a new appeal for purposes of calculating time limits, with the filing date being the date the decision granting the motion to vacate became final.

ITEM 25. Amend subrule 7.16(4), introductory paragraph, as follows:

7.16(4) *Appeal of the proposed decision.* After issuing a proposed decision, the administrative law judge shall submit it to the ~~department~~ appeals section with copies to the appeals advisory committee.

ITEM 26. Amend paragraph **7.16(9)"a"** as follows:

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

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

(2) and (3) No change.

ITEM 27. Amend rule 441—7.19(17A) as follows:

441—7.19(17A) Accessibility of hearing decisions. Summary reports of all hearing decisions shall be made available to local offices and the public upon request. The information shall be presented in a manner consistent with requirements for safeguarding personal information concerning applicants and recipients.

ITEM 28. Amend subrule 7.21(1) as follows:

7.21(1) *Appeal hearings.* All appeal hearings in the food assistance program shall be conducted in accordance with ~~federal regulation, Title 7, Section~~ 7 CFR 273.15~~, as amended to January 1, 2008~~.

ITEM 29. Amend subrule 7.21(2) as follows:

7.21(2) *Food assistance administrative disqualification hearings.* All food assistance administrative disqualification hearings shall be conducted in accordance with ~~federal regulation, Title 7, Section~~ 7 CFR 273.16~~, as amended to January 1, 2008~~.

ITEM 30. Amend subrule 7.24(1), introductory paragraph, as follows:

7.24(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the United States Constitution and the Iowa Constitution and other provisions of law, the department of inspections and appeals may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the ~~department~~ agency by emergency adjudicative order. Before issuing an emergency adjudicative order, the department of inspections and appeals shall consider factors including, but not limited to, the following:

ITEM 31. Amend subrule 7.42(3) as follows:

7.42(3) The day after the department's decision on reconsideration is issued is the first day of the period in which the appeal may be filed. The mailing address is: Department of Human Services, Appeals Section, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Appeals may also be sent by fax, e-mail, or in-person delivery.

When an appeal is submitted through an electronic delivery method, such as electronic mail or facsimile, the appeal is filed on the date it is submitted. The electronic delivery method shall record the date and time the appeal request was submitted. If there is no date recorded by the electronic delivery method or the appeal was filed via in-person delivery, the date of filing is the date the appeal is stamped received by the agency. Receipt date of all appeals shall be documented by the office where the appeal is received.

When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/7/17.

ARC 3094C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

This amendment increases premiums for applicants and recipients under the Medicaid for Employed People with Disabilities (MEPD) program with income over 150 percent of the federal poverty level (FPL).

Iowa Code section 249A.3(2)"a"(1) requires that "the maximum premium payable by an individual whose income exceeds one hundred fifty percent of the official poverty guidelines shall be commensurate with the cost of state employees' group health insurance in this state." The average cost to the state for state employees' health insurance for a single person is $852 per month effective January 1, 2017. Therefore, the maximum premium must be set at that amount.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3001C** on March 29, 2017. The Department received no comments during the public comment period. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on May 10, 2017.

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

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

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

This amendment will become effective August 1, 2017.

The following amendment is adopted.

Amend subparagraph **75.1(39)"b"(3)** as follows:

(3) Premiums shall be assessed as follows:

IF THE INCOME OF THE APPLICANT IS ABOVE:	THE MONTHLY PREMIUM IS:
150% of Federal Poverty Level	~~$33~~ $34
165% of Federal Poverty Level	~~$46~~ $47
180% of Federal Poverty Level	~~$55~~ $56
200% of Federal Poverty Level	~~$64~~ $66
225% of Federal Poverty Level	~~$76~~ $77
250% of Federal Poverty Level	~~$88~~ $89
300% of Federal Poverty Level	~~$110~~ $112
350% of Federal Poverty Level	~~$135~~ $137
400% of Federal Poverty Level	~~$158~~ $161
450% of Federal Poverty Level	~~$183~~ $186
550% of Federal Poverty Level	~~$228~~ $232
650% of Federal Poverty Level	~~$276~~ $280
750% of Federal Poverty Level	~~$324~~ $329
850% of Federal Poverty Level	~~$383~~ $389
1000% of Federal Poverty Level	~~$460~~ $467
1150% of Federal Poverty Level	~~$539~~ $547

HUMAN SERVICES DEPARTMENT[441](cont'd)

IF THE INCOME OF THE APPLICANT IS ABOVE:	THE MONTHLY PREMIUM IS:
1300% of Federal Poverty Level	~~$622~~ $631
1480% of Federal Poverty Level	~~$718~~ $729
1530% of Federal Poverty Level	~~$735~~ $746
1590% of Federal Poverty Level	~~$767~~ $778
1660% of Federal Poverty Level	$812
1740% of Federal Poverty Level	$852

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ARC 3095C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 237A.12, the Department of Human Services hereby amends Chapter 109, "Child Care Centers," Chapter 110, "Child Development Homes," and Chapter 120, "Child Care Homes," Iowa Administrative Code.

The following amendments are federally mandated as a result of the Child Care and Development Block Grant (CCDBG) reauthorization. The amendments:

- Require child care centers, child development homes and child care homes to have written emergency plans for response to food or allergic reactions;
- Include the preservice/orientation training component of child development; and
- Clarify the intent of essential child care training requirements for substitutes.

In addition, these amendments provide technical updates to rules for child care regarding first-aid/CPR requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2998C** on March 29, 2017. The Department received no comments during the public comment period. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on May 10, 2017.

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

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

These amendments are intended to implement Iowa Code section 237A.12.

These amendments will become effective August 1, 2017.

The following amendments are adopted.

ITEM 1. Adopt the following **new** subparagraph **109.7(1)"e"(10)**:

(10) Child development, on or after August 1, 2017.

ITEM 2. Adopt the following **new** paragraph **109.9(2)"g"**:

g. For any child with allergies, a written emergency plan is available in case of an allergic reaction. A copy of this information shall accompany the child if the child leaves the premises.

ITEM 3. Adopt the following **new** paragraph **109.10(3)"d"**:

d. A child care staff member shall not provide medications to a child if the staff member has not completed preservice/orientation training that includes medication administration.

ITEM 4. Amend paragraph **110.9(3)"e"** as follows:

e. Certification or other documentation that minimum health and safety training has been completed in compliance with paragraph 110.10(1)~~*"a."*~~ *"a"* within three months of a substitute's hiring or before a substitute provides care, whichever occurs first.

ITEM 5. Amend subrule 110.9(4) as follows:

110.9(4) *Children's files.* An individual file for each child shall be maintained and updated annually or when the provider becomes aware of changes. The file shall contain:

a. to *g.* No change.

h. For any child with allergies, a written emergency plan in case of an allergic reaction. A copy of this information shall accompany the child if the child leaves the premises.

~~*h.*~~ *i.* A list that is signed by the parent and names persons authorized to pick up the child. The authorization shall include the name, telephone number, and relationship of the authorized person to the child.

~~*i.*~~ *j.* Written permission from the parent for the child to attend activities away from the child development home. The permission shall include:

(1) Times of departure and arrival.

(2) Destination.

(3) ~~Persons~~ Names of persons who will be responsible for the child.

~~*j.*~~ *k.* Injury report forms documenting injuries requiring first aid or medical care.

~~*k.*~~ *l.* If the child meets the definition of homelessness as defined by Section 725(2) of the McKinney-Vento Homeless Education Assistance Act, the family shall receive a 60-day grace period to obtain medical documentation.

ITEM 6. Adopt the following **new** subparagraph **110.10(1)"a"(10)**:

(10) Child development, on or after August 1, 2017.

ITEM 7. Amend subparagraph **110.10(1)"c"(2)** as follows:

(2) ~~First-aid~~ CPR training shall include certification in infant and child ~~first aid~~ CPR.

ITEM 8. Amend subrule 120.9(2) as follows:

120.9(2) The file shall contain:

a. to *g.* No change.

h. For any child with allergies, a written emergency plan in case of an allergic reaction. A copy of this information shall accompany the child if the child leaves the premises.

~~*h.*~~ *i.* Written permission from the parent for the child to attend activities away from the child care home. The permission shall include:

(1) Times of departure and arrival.

(2) Destination.

(3) Names of persons who will be responsible for the child.

~~*i.*~~ *j.* If the child meets the definition of homelessness as defined by Section 725(2) of the McKinney Vento Homeless Education Assistance Act, the family shall receive a 60-day grace period to obtain medical documentation.

ITEM 9. Adopt the following **new** paragraph **120.10(1)"j"**:

j. Child development, on or after August 1, 2017.

ITEM 10. Amend paragraph **120.10(3)"b"** as follows:

b. ~~First-aid~~ CPR training shall include certification in infant and child ~~first aid~~ CPR.

ITEM 11. Adopt the following **new** subrule 120.10(5):

120.10(5) Approved substitutes must have certification or other documentation that minimum health and safety training has been completed in compliance with 441—subrule 110.10(1) within three months of a substitute's hiring or before a substitute provides care, whichever occurs first.

[Filed 5/10/17, effective 8/1/17]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/7/17.

ARC 3096C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 237A.12, the Department of Human Services hereby amends Chapter 109, "Child Care Centers," Chapter 110, "Child Development Homes," and Chapter 120, "Child Care Homes," Iowa Administrative Code.

These amendments revise the rules to require that child care providers report to the Department serious injuries that occur in child care settings. As a result, better data will be maintained allowing parents to make better-informed decisions regarding child care for their children.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2997C** on March 29, 2017. The Department received no comments during the public comment period. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on May 10, 2017.

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

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

These amendments are intended to implement Iowa Code section 237A.12.

These amendments will become effective August 1, 2017.

The following amendments are adopted.

ITEM 1. Rescind subrule 109.10(10) and adopt the following **new** subrule in lieu thereof:

109.10(10) *Recording incidents.*

a. Incidents involving a child, including minor injuries, minor changes in health status, or other minor behavioral concerns, shall be reported to the parents, guardians, and legal custodians on the day of the incident. Incidents resulting in an injury to a child shall be reported to the parent on the day of the incident.

b. Incidents resulting in a serious injury, as defined in Iowa Code section 702.18, to a child in the child care facility or in the care of child care facility staff or incidents resulting in a significant change in the health status of a child shall be verbally reported to the parents, guardians, and legal custodians immediately.

(1) Serious injuries shall be reported to the department within 24 hours of the incident.

(2) Serious injuries shall be documented and information maintained in the child's file as required by subrule 109.9(2).

c. The parents, guardians, and legal custodians of any child included in incidents involving inappropriate, sexually acting-out behavior shall be notified immediately after the incident. A written report fully documenting every incident shall be provided to the parent or person authorized to remove the child from the center. The written report shall be prepared by the staff member who observed the incident, and a copy shall be retained in the child's file.

ITEM 2. Adopt the following **new** paragraph **110.8(1)"s"**:

s. Serious injuries.

(1) Serious injuries, as defined in Iowa Code section 702.18, that occur in a child care facility or when a child is in the care of child care facility staff shall be reported to the department within 24 hours of the incident.

(2) Serious injuries shall be documented and information maintained in the child's file as required by subrule 110.9(4).

ITEM 3. Adopt the following **new** paragraph **120.8(1)"p"**:

p. Serious injuries.

(1) Serious injuries, as defined in Iowa Code section 702.18, that occur in a child care home or when a child is in the care of child care home staff shall be reported to the department within 24 hours of the incident.

(2) Serious injuries shall be documented and information maintained in the child's file as required by subrule 120.9(2).

[Filed 5/10/17, effective 8/1/17]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/7/17.

ARC 3109C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code sections 10A.104(5), 135C.2(3)"d" and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 64, "Intermediate Care Facilities for the Intellectually Disabled," Iowa Administrative Code.

Iowa Code section 135C.2(3)"d" requires the Department to cause the Interpretive Guidelines to be published in the Iowa Administrative Bulletin and the Iowa Administrative Code. The section further states that the publication of the guidelines is not subject to the rule-making provisions of Iowa Code sections 17A.4 and 17A.5. The current guidelines were published in August 2013. This amendment adopts the updated version of the guidelines.

This rule making was reviewed and approved by the State Board of Health at its May 10, 2017, meeting.

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

This amendment is intended to implement Iowa Code sections 10A.104(5), 135C.2(3)"d," and 135C.14.

This amendment shall become effective July 12, 2017.

The following amendment is adopted.

Rescind the "Interpretive Guidelines" Appendix and adopt the following **new** Appendix in lieu thereof:

Interpretive Guidelines**

§440.150 Intermediate Care Facility Services, Other Than in Institutions for Mental Diseases

W101

W101 is reassigned to §483.410(e). Section 442.251, the standard which requires that facilities meet the requirement for a State license, is redesignated to §483.410(e) and W101 is reassigned as well to afford a sense of continuity.

W102

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.410 Condition of participation: Governing body and management (a) Standard: Governing body

W103

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.410(a) The facility must identify an individual or individuals to constitute the governing body of the facility.

Guidance §483.410(a)

If concerns are noted regarding the governing body, written documentation verifies that the facility has designated the individual or individuals to constitute the governing body and their titles.

W104

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.410(a)(1) The governing body must exercise general policy, budget, and operating direction over the facility.

Guidance §483.410(a)(1)

The governing body develops, monitors, and revises, as necessary, policies and operating directions which ensure the necessary staffing, training resources, equipment and environment to provide clients with active treatment and to provide for their health and safety.

Direction by the Governing Body includes areas such as health, safety, sanitation, maintenance and repair, and utilization and management of staff.

Condition level operational deficiencies may be associated with a failure by the Governing Body to exercise general direction of the facility.

W105

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.410(a)(2) The governing body must set the qualifications (in addition to those already set by State law, if any) for the administrator of the facility.

Guidance §483.410(a)(2)

The policies of the facility must include the qualifications of the administrator, and the qualifications are stated in the job description of the administrator.

W106

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.410(a)(3) The governing body must appoint the administrator of the facility.

Guidance §483.410(a)(3)

This appointment must be in writing.

(b) Standard: Compliance with Federal, State and local laws

§483.410(b) The facility must be in compliance with all applicable provisions of Federal, State and local laws, regulations and codes pertaining to:

Guidance §483.410(b)

The facility has no final adverse action by a Federal, State, or local authority. Such adverse actions include, but are not limited to fines, limitation on services that may be provided, or loss of licensure.

The facility must be able to provide for review, current licenses and permits as well as applicable reports of inspections by State or local health authorities.

If a situation is identified indicating the provider may not be in compliance with Federal, State, or local law, refer that information to the authority having jurisdiction (AHJ) for follow-up actions. See W107, W108, or W109.

W107

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.410(b) health,

Guidance §483.410(b)

Reference the specific law, regulation, or code not met.

W108

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.410(b) safety, and

Guidance §483.410(b)

Reference the specific law, regulation, or code not met.

W109

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.410(b) sanitation.
Guidance §483.410(b)
Reference the specific law, regulation, or code not met.
(c) Standard: Client Records
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
W110
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.410(c)(1) The facility must develop and maintain a record keeping system that includes a separate record for each client and;
W111
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.410(c)(1) that documents the client's health care, active treatment, social information, and protection of the client's rights.
Guidance §483.410(c)(1)
The structure and content of a client's record must be an accurate, functional representation of the actual experience of the client in the facility.
The record should contain an accurate account of all information relevant to the client's health care, active treatment, social information and protection of the client's rights, such as communications, correspondence, program plans (to include both in-house and outside service programs), progress summaries, activity plans and activity participation, incidents, consent forms and all medical information.
If the records are maintained electronically, the facility staff should be able to access various parts of the record without difficulty. If they are unable to access components of the record upon request, then this may indicate a lack of training by the facility.
W112
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.410(c)(2) The facility must keep confidential all information contained in the clients' records, regardless of the form or storage method of the records.
Guidance §483.410(c)(2)
"Keep confidential" means safeguarding the content of information including video, audio, and/or computer stored information from unauthorized disclosure without the specific informed consent of the client, parent of a minor child, or legal guardian, and consistent with the advocate's right of access. Facility staff and consultants, hired to provide services to the client, sign confidentiality agreements before having access to client records and should have access to only that portion of information that is necessary to provide effective responsive services to the client.
These agreements should be renewed according to the policies of the facility. The agreement may stipulate that the agreements are in place until either the facility or member terminates the agreement.
The facility has in place safeguards to ensure that access to all information regarding clients is limited to those clients designated by Health Insurance Portability and Accountability Act (HIPAA) requirements, the Developmental Disabilities Act, State law and facility policy.
The facility should prevent any instances of unauthorized access or dissemination. For example, the staff is observed to leave the client record (hard copy or electronic version) in the living room of the house when visitors or persons not authorized to access client records are present. Client records must be secured when staff is not present.
The facility must develop and follow procedures for maintaining the confidentiality of client information during transport to medical appointments or to other locations outside the facility.
Confidentiality applies to both central records and information kept at dispersed locations. If there is information considered too confidential to place in the record used by all staff (e.g., identification of the family's financial assets, sensitive medical data), it may be retained in a companion record located in a secure location in the facility with a notation made in the primary record as to the location of confidential information. The facility must ensure that any client information provided to day services programs is maintained confidential.

The sharing of client specific information with members of the "specially constituted committee" required by §483.440(f)(3), who are not affiliated with the agency, does not violate a client's right to have information about him or her kept confidential. The committee must have relevant information to function properly.

Facility confidentiality safeguards include the development and implementation of written policies to assure that members of the specially constituted team maintain confidentiality. Such processes may include signed confidentiality agreements. These agreements should be renewed according to the policies of the facility. The agreement may stipulate that the agreements are in place until either the facility or member terminates the agreement.

W113

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.410(c)(3) The facility must 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.

Guidance §483.410(c)(3)

The facility develops and follows written policies governing the release of client information.

Release of any personally identifiable information does not occur unless consent(s) is obtained prior to the release.

These policies must address at a minimum who must give consent for the release of information from records. The policy and procedures should account for other situations involving the release of client information, such as:

- who should be notified when records have been released;
- procedures to be followed with subpoenas;
- time frames for providing requested information; and
- information regarding a client's HIV status may not be released without specific consent and may not be in the record if that consent has not been given.

W114

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

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

Guidance §483.410(c)(4)

Illegible writing in hard copy records can contribute to communication deficits among staff. Illegible writing which cannot be easily interpreted by facility staff upon surveyor request may constitute a safety issue.

Electronic signatures are acceptable in the electronic record system.

W115

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

W116

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

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

Guidance §483.410(c)(6)

"Appropriate" means those parts of each client's record are most likely (or known) to be needed by the residential staff to carry out the client's active treatment program in the unit; to alert staff to health risks and other aspects of medical treatment; to support the psychosocial needs of the client; to contact family or emergency contacts, and to provide anything else necessary to the staff's ability to work on behalf of the client.

The staff of the residential living unit has, and can access, all information which is relevant to implementing client program plans, appropriate care of, interaction with, and provision of services for the client.

(d) Standard: Services provided under agreements with outside sources

W117
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.410(d)(1) If a service required under this subpart is not provided directly, the facility must have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.
Guidance §483.410(d)(1)
If a service is not provided directly, there must be a written agreement for such services.
Written agreements are required for emergency services such as dentists and pharmacies. For those services that require a visit to a hospital, the Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) typically utilizes services from an emergency department of the hospital, thus no written contract is required.
Federal statute (P.L. 94-142) requires all school-aged children to receive a free and appropriate school education. Therefore, a written agreement between ICF/IIDs and public schools is not necessary.
W118
(d)(2)(i) Contain the responsibilities, functions, objectives, and other terms agreed to by both parties; and
W119
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.410(d)(2)(ii) Provide that the facility is responsible for assuring that the outside services meet the standards for quality of services contained in this subpart.
W120
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.410(d)(3) The facility must assure that outside services meet the needs of each client.
Guidance §483.410(d)(3)
Outside services are any services needed by the clients and not provided directly by the facility (hospital visits, dental visits, day program services, etc.).
Programs and services must be coordinated between the facility and the outside service, and foster consistency of implementation across settings of teaching strategies and behavior management.
The facility monitors outside services on an ongoing basis to ensure that services provided are consistent with the needs of each client as identified in the Individual Program Plan (IPP). For example, if the facility is implementing a behavior management or a communication program for the client, it is shared with the outside program and implemented by the outside program (workshop, day program, etc.) and the outside program agrees to incorporate it into their day program. At periodic intervals, the facility staff visit or communicate with the outside program to verify consistency across the two settings.
With outside resources, it is the responsibility of the facility to assure that the services are provided in a safe clean environment, by appropriately qualified professions, and any untoward outcome of services are promptly addressed. If, in spite of attempts by the facility to assure compliance, the outside program does not implement the program for the client, then the facility remains responsible for the lack of active treatment.
W121
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.410(d)(4) If living quarters are not provided in a facility owned by the ICF/IID, the ICF/IID remains directly responsible for the standards relating to physical environment that are specified in §483.470(a) through (g), (j) and (k).
Guidance §483.410(d)(4)
Even though the facility's premises may be rented from a landlord, the facility must ensure that the requirements for physical environment are met, either through arrangement with the landlord or through the facility's own services.
(e) Standard: Licensure
§483.420(a) Standard: Protection of Clients' Rights
The facility must ensure the rights of all clients. Therefore, the facility must
Guidelines §483.420(a)

"Ensure" means that the facility actively asserts the individual's rights and does not wait for him or her to claim a right. This obligation exists even when the individual is less than fully competent and requires that the facility is actively engaged in activities which result in the pro-active assertion of the individual's rights, e.g., guardianship, advocacy, training programs, use of specially constituted committee, etc.

§483.410(e) Standard: Licensure

W101

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.410(e) The facility must be licensed under applicable State and local law.

Guidance §483.410(e)

The facility has a current, valid State license when required under State law.

W122

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.420 Condition of participation: Client protections

(a) Standard: Protection of clients' rights

§483.420(a) The facility must ensure the rights of all clients. Therefore the facility must

Guidance §483.420(a)

The facility must ensure the client's rights and does not wait for him or her to claim a right. This obligation exists even when the client is less than fully competent and requires that the facility is actively engaged in activities which result in the protection of the client's rights, advocacy for individual clients who have no family or an inactive family, and training programs for clients and staff on the understanding and protection of client rights.

W123

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.420(a)(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;

Guidance §483.420(a)(1)

The obligation to inform requires that the facility presents information on rights to the client, his or her family or his or her legal guardian in a manner and form which they can understand. In most instances, family means parent. However, in those instances where parents are deceased or choose not to be active in the client's life and there is another family member who does wish to be active, but is not the legal guardian, this family member should be informed of the client's rights. Printed materials should be provided in understandable terms and provided in the language necessary to ensure understanding. Specialized methods, as indicated, should be provided for communication with clients, families or legal guardians with hearing or vision impairment.

Pro-active assertion of client rights includes, but is not limited to:

- Signed evidence that the client, his or her family and/or his or her legal guardian have been informed of the client's rights, and
- Evidence that the communication of these rights were provided at the client's level of comprehension, and in the language understandable to the client.

The obligation to inform also requires that the facility make some determination of whether the client and his or her family, or legal guardian understood the rights presented and made additional efforts to communicate the rights if the rights were not understood.

If the facility has written "rules of the facility", these rules must be communicated to the client, their family and or legal guardians at the time of admission and must not be in conflict with any of the rights listed in 42 CFR 483.420 (a) (1-13).

W124

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.420(a)(2) Inform each client, parent (if the client 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;

Guidance §483.420(a)(2)

Clients, their families or legal guardians are promptly informed of any change in the client's medical or behavioral needs that requires immediate alteration to programmatic or medical intervention. Promptly is defined by the level of severity of the alteration. In each case, they must also be informed of the attendant risks of any recommended treatments or interventions and of their right to refuse treatment, training or services.

If parents or legal guardians wish for other members of the client's family to be informed of such changes, they must put this permission in writing.

The communication of this information must be provided in the manner and language understood by the client or their family or legal guardian (language boards, sign language, etc.).

The term "attendant risks of treatment" describes the risk vs. risk and risk vs. benefit associated with the treatment. These risks include possible side effects, other complications from treatments including medical and drug therapy, unintended consequences of treatment, other behavioral or psychological ramifications arising from treatment, etc.

The facility actively attempts to engage clients who refuse to participate in active treatment. While the regulation recognizes the client's right to refuse treatment, persistent refusal that impacts the health and safety of the client and/or others, or the ability to provide overall active treatment, may result in facility's consideration of alternative placements for the client. It is expected, however, that the facility has assessed the reason for refusal, and developed and implemented all possible interventions to engage the client in active treatment programs prior to referring the client to another therapeutic setting.

A client, his or her family member, or legal guardian who refuses a particular treatment (e.g., a behavior control, seizure control medication or a particular intervention strategy) must be offered information about acceptable alternatives to the treatment, if acceptable alternatives are available. The client's preference about alternatives should be elicited and considered in deciding on the course of treatment.

If the client, family member, or legal guardian also refuses the alternative treatment, or if no alternative exists to the treatment refused, the facility must consider the effect this refusal may have on other clients, the client himself or herself, and if they can continue to provide services to the client consistent with these regulations.

If the facility is unable to provide services to a client due to consistent refusal to participate, they must weigh all options including an involuntary discharge. Involuntary discharge must be for good cause (see 483.440(b)(4)(i)).

When a client is considered for participation in experimental research the client, his/her family and/or legal guardian must be fully informed of the nature of the experiment (e.g., what medications or physical interventions will be utilized, the length of the research, any possible side effects and how the information from the research will be utilized). Information regarding the possible consequences of participating or not participating must be provided to the client, family member or legal guardian. The written consent of the client, his/her family or legal guardian must be received prior to participation. For a client who is a minor or who has been adjudicated as incompetent, the written informed consent of the parents of the minor or the legal guardian is required. The signed, informed consent documentation must be in compliance with HHS Guidelines for Research Involving Human Subjects. The signed consent must also include a clear discussion of what treatments will be included in the research, the time limits for the research and should clearly inform the client, family member or legal guardian that the client may end participation at any time without fear of recrimination. If the research protocol indicates that clients receive compensation, then clients are compensated per the protocol.

Any research must be reviewed and approved by the Specially Constituted Committee. See W263.

W125

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.420(a)(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;

Guidance §483.420(a)(3)

To the extent that a client is able, choices are made on his/her own. Each client has autonomy of decision making and choice.

They are free to move about without limitations imposed due to staff preferences or staff convenience. Clients are not restricted without due cause or due process.

To the extent that the client is able to make decisions for him or herself, it is inappropriate to delegate the person's right to others (e.g. parents, family members, etc.).

The facility has an obligation to assure client health and safety and must balance that obligation with the rights of clients.

If the facility has implemented a restriction, the following should be in place:

- An assessment supporting the need for the restriction;
- An individualized behavior plan to reduce the need for the restriction has been developed and implemented;
- A written informed consent for the behavior plan which includes the restriction;
- Approval of the Specially Constituted Committee; and
- Monitoring by the Committee of the progress of the training program, designed to reduce and eventually eliminate the restriction.

Clients, families, and legal guardians have the right to register a complaint with the facility and the State Survey Agency. If so, the facility must respond promptly and appropriately. The facility must ensure protection of the client from any form of reprisal or intimidation as a result of a complaint or grievance reported by the client, family, or legal guardian.

Issues involving the exercise of constitutional rights such as voting should be addressed as a component of the IPP when the Interdisciplinary Team (IDT) determines a need for training. Clients who have been adjudged to need guardianship or have been assessed as needing assistance to advocate for themselves should receive assistance or support so they may exercise their rights as citizens of the United States.

W126

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

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

Guidance §483.420(a)(4)

The regulation is clear that in those cases where a client already possesses the skills necessary to independently manage their own financial affairs, the facility will allow the client to continue to do so. Formal training in financial management must be provided for all other clients in the facility to the extent of their capabilities. The regulation places the responsibility for determining the extent of the client's capabilities in this matter upon an assessment and interdisciplinary process within the facility.

To reach a determination as to whether a money management program is appropriate, the facility IDT uses the comprehensive functional assessment (CFA) to evaluate the ability of each client to participate in such a program. Under 42 C.F.R. 483.440(c)(3), the team evaluation must establish, through documentation, that the IDT considers all of the objective data within the assessment in reaching their determination, especially the identification of client skills which can be used across training programs. Examples of assessment findings that may be considered by the IDT include skills that can be cross-utilized in training programs such as:

1. Fine motor coordination;
2. The ability to make choices;
3. The ability to identify preferences; and
4. Cognitive abilities including tracking, attention span, communication, and the client's ability to understand the cause and effect. (The client understands of cause and effect is significant in the determination.)

Money management includes a broad spectrum of programs with varying levels of participation by the client ranging from the use of choice in money expenditures, to an understanding of the concept of money, and ultimately to actual money handling and budgeting. The IDT must not conclude that a money management program is inappropriate based solely upon the level of intellectual or physical disability of the client.

The CFA must be reviewed at least annually per 42 C.F.R.483.440(f)(2). As a part of this annual review, a client's ability to participate in money management will also be reviewed. The annual review should

always include an update to the CFA and take into consideration any changes in the client's circumstances since the last IPP. The need for a formal money management program must be addressed in every client's IPP by the IDT on an annual basis.

The determination of the appropriateness of a formal money management program is made by the IDT and must be based upon a CFA. The IDT discussions resulting in that determination must be established through documentation in the client's IPP.

W127

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.420(a)(5) Ensure that clients are not subjected to physical, verbal, sexual or psychological abuse or punishment;

Guidance §483.420(a)(5)

Identification of patterns or isolated instances of physical, verbal, sexual or psychological abuse or punishment without prompt identification and corrective action by the facility would result in a non-compliance determination for this Standard and Condition level non-compliance.

The facility must develop and implement systems that protect clients from all forms of abuse, neglect, or mistreatment, including client to client abuse, neglect, or mistreatment.

a. The facility is expected to ensure that staff possess and demonstrate needed competencies to effectively and appropriately interact with clients.

b. The facility must monitor to assure that systems are effectively implemented and the facility takes immediate actions to address circumstances where abuse, neglect, or mistreatment have occurred and prevent reoccurrence.

c. The facility must be organized in such a manner as to proactively assure clients are free from any threat to their physical and psychological health and safety.

d. The facility must act to prevent physical, verbal, sexual or psychological abuse. If the facility fails to implement appropriate corrective action, the potential of additional threats to the clients remain at the facility.

"Threat", for the purposes of this guideline, is considered any condition/situation which could cause or result in severe, temporary or permanent injury or harm to the mental or physical condition of clients, or in their death.

"Abuse", for the purposes of this guideline, is the willful infliction of injury, unreasonable confinement, intimidation or punishment with the resulting physical harm, pain or personal anguish.

Physical abuse refers to any action intended to cause physical harm or pain, trauma or bodily harm (e.g., hitting, slapping, punching, kicking, pinching, etc.). It includes the use of corporal punishment as well as the use of any restrictive, intrusive procedure to control inappropriate behavior for purposes of punishment.

Verbal abuse refers to any use of insulting, demeaning, disrespectful, oral, written or gestured language directed towards and in the presence of the client. Psychological abuse includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation, sexual coercion and intimidation (e.g. living in fear in one's own home). Since many clients residing in ICF/IIDs are unable to communicate feelings of fear, humiliation, etc. associated with abusive episodes, the assumption is made that any actions that would usually be viewed as psychologically or verbally abusive by a member of the general public, would also be viewed as abusive by the client residing in the ICF/IID, regardless of that client's perceived ability to comprehend the nature of the incident.

Sexual abuse includes any incident where a client is coerced or manipulated to participate in any form of sexual activity for which the client did not give affirmative permission (or gave affirmative permission without the attendant understanding required to give permission) or sexual assault against a client who is unable to defend him/herself.

The facility must implement, through policies, oversight and training, safeguards to ensure that clients are not subjected to abuse by anyone including, but not limited to, facility staff, consultants or volunteers, staff of other agencies serving the client, family members or legal guardians, friends, other clients, or the general public.

The facility must take whatever action is necessary to protect the clients residing there. For example, if a facility is forced by court order or arbitration rulings to retain or reinstate an employee found to be abusive, the facility must take measures to protect the clients of the facility (such as assigning the employee to an area where there is no contact with clients).

W128

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.420(a)(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;

Guidance §483.420(a)(6)

The facility must implement an aggressive active treatment program, which includes appropriate replacement behaviors, to address the reduction/elimination of physical restraints and drugs to manage behaviors.

For purposes of this Guideline drugs to manage behavior are "unnecessary" if there is evidence the drugs are being used:

- In excessive dose (duplicate therapy);
- For excessive duration;
- Not monitored adequately;
- Without adequate indications for its use;
- With adverse consequences which indicate the dose should be reduced or discontinued; or
- Any combination of the reasons listed above.

The long term use of a drug/physical restraint to manage behavior combined with one or more of the following may indicate unnecessary use:

- The client's developmental and/or behavioral needs are not being met and the appropriateness of less restrictive approaches to manage inappropriate behaviors should be questioned;
- Staff behavior may be prompting behaviors in clients which result in the chronic use of physical restraints and drugs to control behavior;
- Staff may have inadequate training and/or experience to provide active treatment and employ preventive measures;

Restraints applied for behaviors when less restrictive measures have not been tried or have been tried and found to be just as effective.

W129

(Rev. 144, Issued: 08-14-15, Effective: 08-14-15, Implementation: 08-14-15)

§483.420(a)(7) Provide each client with the opportunity for personal privacy and

Guidance §483.420(a)(7)

The facility must provide areas within the living area in which the client can have time to be alone, when appropriate, and to have privacy (their conversations cannot be overheard) for personal interactions/activities. There should be a location where the client can meet privately with family and/or friends and a telephone available where he/she can hold private telephone conversations.

Personal privacy for clients also includes the right to have certain personal information about them kept confidential. Staff should not discuss one client in front of others (clients, parents, legal guardians, visitors, etc.) and should not post personal information about clients in areas where other clients, families and the public can read the information.

Video/audio taping or live feed must not be used in place of or for the convenience of staff. The facility may install video/audio equipment for purposes of observing client/staff interactions. Video/audio equipment may only be installed in common areas (in no case may videotaping or live feed be done in bathrooms or areas where private visits are conducted). The clients, families and/or legal guardians of the clients residing in the areas where videotaping or live feed will occur must give informed consent for the installation and must be assured that no personal privacy will be jeopardized. The use of the equipment must be presented at and approved by the specially constituted committee for the facility prior to the installation of video or audio devices.

Motion sensors should not be considered cameras.

W130

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.420(a)(7) ensure privacy during treatment and care of personal needs;
Guidance §483.420(a)(7)
Clients must be provided privacy during personal hygiene activities (e.g., toileting, bathing, dressing) and during medical/nursing treatments that require exposure of one's body.
People not involved in the care of the client should not be present without their consent while they are being examined or treated.
Whenever possible, the facility should be sensitive to clients' preferences for same sex care in private situations.
W131
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.420(a)(8) Ensure that clients are not compelled to perform services for the facility and
Guidance §483.420(a)(8)
Clients are not required or expected to be a source of labor for a facility. The client must not be required or expected to do productive work for the facility, other than appropriate care of one's own personal space or shared responsibilities for common areas.
W132
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.420(a)(8) ensure that clients who do work for the facility are compensated for their efforts at prevailing wages and commensurate with their abilities;
Guidance §483.420(a)(8)
"Work", as used in the regulation, means any directed activity, or series of related activities which results in a benefit to the economy of the facility or in a contribution to its maintenance, or in the production of a salable product. In deciding whether a particular activity constitutes "work" as defined above, the key determinant is whether the facility would be required to hire additional full or part-time staff (or pay overtime to existing staff) to perform the service the client is asked to perform.
Clients volunteering to do real work that benefits the facility should give informed consent for such practices and understand that by providing employable services they are able to be compensated. This does not preclude a client from helping out a friend or being kind to others. Self-care activities related to the care of one's own person or property are not considered "work" for purposes of compensation.
In general, participation in any household task which promotes greater independent functioning and assists the client to prepare for less restrictive setting (and which the client has not yet learned) is permitted as long as tasks are included in the IPP in written behavioral and measurable terms. This participation must be supervised, and indices of performance should be available. No task may be performed for the convenience of staff (e.g., supervising clients, running personal errands).
"Compensated" means the client is provided with money or other forms of negotiable compensation for work (including work performed in an occupational training program) and such compensation is to be used at the client's discretion.
Prevailing wage refers to the wage paid to non-disabled workers in nearby industry or the surrounding community for essentially the same type, quality and quantity of work or work requiring comparable skills. A client who works in the facility must be paid at least the prevailing minimum wage, unless an appropriate certificate has been obtained by the facility in accordance with current regulations and guidelines issued under the Fair Labor Standards Act, as amended.
Any client performing "work", as defined above, must be compensated in direct proportion to his or her output. The facility should utilize Department of Labor and/or Department of Vocational Rehabilitation formulas and techniques for determining rate of pay. A client's pay is not dependent on the production of other clients when he or she works in a group.
When the client's active treatment program includes assignment to occupational or vocational training or work, specific work objectives of anticipated progress should be included in the IPP along with reasons for the assignments. If the training of clients on particular occupational activities or functions involves "real work" to be accomplished for the facility, the clients must be compensated based on ability. For example, if in the process of work training activities which involve learning to clean a floor, the floor

for a particular building is cleaned and does not require further janitorial cleanup, then the client must be compensated for this activity at the prevailing wage.

W133

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.420(a)(9) Ensure clients the opportunity to communicate, associate and meet privately with individuals of their choice,

Guidance §483.420(a)(9)

Privacy must be provided for both face-to-face interactions and electronic interactions.

The facility must provide opportunities for the client to communicate, through regular mail, telephone and/or electronic mail and meet in private with persons of their choice (e.g., friends from the community, family members, and advocates). There may be instances where legal guardians override the wishes of the client. In these instances, the facility should be actively working with the legal guardian and the client to reach the maximum agreeable level of interaction for the client.

Space must be provided for clients to receive visitors in reasonable comfort and privacy.

W134

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.420(a)(9) and to send and receive unopened mail;

Guidance §483.420(a)(9)

Clients must be provided the opportunity to send/receive all types of mail unopened and read the contents themselves if able. If the staff has to open and read mail to the client, this should be done in a private place allowing the client as much participation as possible.

Clients who have their own electronic equipment must be provided the opportunity to send, receive, and read electronic mail with privacy.

W135

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.420(a)(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;

Guidance §483.420(a)(10)

Any restriction of telephone access must be explained in the IPP with a plan to advance the client's access. For persons with hearing loss who could benefit, Text Telephone (TTY) services or other accommodations should be provided.

As with any other rights restriction, the restriction must be addressed in the IPP, written informed consent obtained, and the plan must be reviewed and approved by the specially constituted committee.

W136

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.420(a)(11) Ensure clients the opportunity to participate in social, religious, and community group activities;

Guidance §483.420(a)(11)

Clients should be offered the opportunity to participate in various types of activities in the community (e.g., going to grocery stores, hair salons, restaurants, places of worship, pharmacies, community meetings and events) based on their interests and choices. The facility must make accommodations for physical issues such as hearing impairment and mobility limitations. In addition, clients should be taught the applicable skills to participate in their choice of activities to the fullest extent of their abilities.

It is not acceptable for all client activities to be provided in the facility.

When a client is identified to be on restriction from community integration opportunities, interview clients, families, legal guardians and staff to determine if due process was afforded for this restriction and whether the restriction is included in the IPP.

In the event of a court placement that restricts community access, due process does not apply.

There should be evidence that the facility assists and encourages all clients, regardless of functioning levels, to have input into the decisions on community integration activities.

It is not acceptable to require clients to attend unwanted activities due to staffing considerations.

W137
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.420(a)(12) Ensure that clients have the right to retain and use appropriate personal possessions and clothing, and
Guidance §483.420(a)(12)
Clients should have personal possessions and clothing which meet their needs, interests and choices.
Clients should have free access to their own possessions and clothing. When considering whether a client has free access to their personal possessions and clothing, ensure that physical limitations have been addressed.
Clients who are unable to access and use personal possessions and clothing appropriately are involved in programs to learn the necessary skills to do so.
In situations where the behavior of one or more clients in a living area prevents free access to personal possessions for each client, the facility must develop IPPs for the client with disruptive behavior. The facility must also ensure that during the implementation of this program plan that none of the other clients have their rights infringed upon. Clients should not be without personal possessions because of the behavior of others with whom they live.
All client possessions, regardless of their apparent value to others are treated with respect for what they may represent to the client. Where those choices include socially stigmatizing materials, the facility should provide learning opportunities to make more socially appropriate choices. The facility should encourage clients to use or display possessions of his or her choice in a culturally normative manner.
If a method for identifying personal effects is used, it should be inconspicuous and in a manner that will assist the client to identify them.
"Appropriate" clothing means a supply of clothing that is sufficient, in good repair, accounts for a variety of occasions and seasons, and appropriate to age, size, gender, and level of activity. Modification or adaptation of clothing fasteners should be considered based on the needs of a client with a physical disability to become more independent.
As appropriate, each client's active treatment program maximizes opportunities for choice and self-direction with regard to choosing and shopping for clothing which enhances his or her appearance, and selecting daily clothing in accordance with age, sex and cultural norms.
Clients are permitted to keep personal clothing and possessions for their use while in the facility. Determine how the facility both ensures the safety of personal possessions while at the same time providing client access to them when the client chooses.
Clients are provided the opportunity, encouraged, and trained to use age-appropriate materials. The term "age-appropriate" refers to anything that reinforces recognition of the client as a person of a certain chronological age. Clients who choose to keep items traditionally used by children such as dolls or model cars are not an automatic citation. There must be evidence the facility is encouraging the client to use these possessions in a socially appropriate, non-stigmatizing manner. The facility's environment must be furnished with materials and activities that will enhance opportunities for growth.
W138
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.420(a)(12) ensure that each client is dressed in his or her own clothing each day; and
Guidance §483.420(a)(12)
Clothing such as pajamas, underwear, socks, hats, mittens/gloves, and coats should be the personal property of the client and not considered *"stock"* items. There should be no communal clothes. If clients are unable to do their own personal laundry the facility must ensure that clothing is properly laundered and returned to the appropriate client.
The staff of the facility should ensure that clients dress appropriately for the season and the occasion by implementing training programs or guidance for the client as indicated.
W139
§483.420(a)(13) Permit a husband and wife who both reside in the facility to share a room.
§483.420(b) Standard: Client Finances
(b)(1) The facility must establish and maintain a system that

W140
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.420(b)(1)(i) Assures a full and complete accounting of clients' personal funds entrusted to the facility on behalf of clients; and
Guidance §483.420(b)(1)(i)
All purchases made using client personal funds must be itemized in the accounting record with the exception of pocket money. Pocket money given to the client does not need to be itemized. Pocket money should be considered a nominal amount of five dollars or less at a time. Funds provided by the facility and dispensed to a client as part of a program to train the client in money management, and funds that are not entrusted to the facility (e.g., funds paid directly to the client's representative payee) do not require accounting.
In those instances where a legal guardian or the individual client is in control of their personal funds, no accounting is necessary by the facility.
W141
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.420(b)(1)(ii) Precludes any commingling of client funds with facility funds or with the funds of any person other than another client.
Guidance §483.420(b)(1)(ii)
If the facility elects to pool clients' funds in an interest-bearing account, including common trust accounts, it is expected to know the interest separately accrued by each client, as part of its required accounting of funds. Interest accumulated to a client's account belongs to the client, not the facility.
W142
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.420(b)(2) The client's financial record must be available on request to the client, parents (if the client is a minor) or legal guardian.
Guidance §483.420(b)(2)
Those persons having legal authority to access the accounting records for personal funds such as the client, parent, or legal guardians should be afforded access upon request unless there is documented rationale for withholding the information.
It is not necessary that a facility furnish an annual financial statement to the client, or the client's parent or legal guardian, since the facility is already required to make the financial record available at any time upon request. The client, parent, and/or legal guardian, in turn, is free to choose to make the financial record available to anyone else.
(c) Standard: Communication with clients, parents, and guardians.
§483.420(c)
The Facility must –
W143
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.420(c)(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;
Guidance §483.420(c)(1)
The facility must maintain an on-going effort to communicate with parents, family members and/or legal guardians regarding the implementation of active treatment programs for the client. The facility encourages and engages parents, family members and legal guardians in the continued implementation of active treatment programs even while spending time outside of the facility setting.
"Unobtainable", for the purposes of this guideline, means that the facility has made a good faith effort to seek parental or legal guardian participation in the process, even though the effort may ultimately be unsuccessful (for example, the parent may be impossible to locate or may prove unwilling or unable to participate).

"Inappropriate", for the purposes of this guideline, means that behavior of the parent or legal guardian could be disruptive or detrimental to the client's program outcome. In this case, determine what the facility has done to bring effective resolution to the problem.

W144

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.420(c)(2) Answer communications from clients' families and friends promptly and appropriately;

Guidance §483.420(c)(2)

It is reasonable to expect that the facility will provide at least an interim response to inquiries from the client's families and friends within 48 hours.

W145

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.420(c)(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;

Guidance §483.420(c)(3)

Any limitations on visitors must be implemented as a result of IDT evaluation and discussion and be documented. This documentation should include evidence of approval from the specially constituted committee. Decisions to restrict a visitor for an individual client must be reviewed and re-evaluated each time the IPP is reviewed or at the client's request. Broad restrictions on visitors such as times of the day or certain days of the week are a violation of this requirement.

W146

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.420(c)(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;

W147

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.420(c)(5) Promote frequent and informal leaves from the facility for visits, trips, or vacations; and

Guidance §483.420(c)(5)

The facility should assist and encourage the client to communicate with their families or legal guardians concerning possible outside visits and vacations as frequently as possible. When the client does schedule a trip or vacation, the facility must ensure that all necessary preparation is completed to facilitate the departure.

The facility should not sponsor or allow clients to take a particular type of trip that would jeopardize their safety or health without consultation with parents/legal guardians and/or the IDT.

W148

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.420(c)(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.

Guidance §483.420(c)(6)

"Significant" incidents or changes in the client's condition include serious injury, unusual seizure activity, hospitalization, serious illness, accident, death, allegations of abuse, neglect, or mistreatment, unauthorized absence, or any notifications the parent or legal guardian's requests.

It is reasonable to expect the facility to contact the family or legal guardian of a client as soon as possible after an incident occurs, but no later than 24 hours after the incident. If notification is done via electronic mail, the facility must request a response from the e- mail recipient to confirm notification. Telephone notification must be accomplished by talking to the person directly. If a message is left, the facility must request a call back to confirm receipt of the notification.

Contact by letter may be utilized as follow up confirmation, but not be the initial, primary or sole mode of communication with the family or legal guardian.

If unable to contact the family or legal guardian, there should be evidence that the facility attempted to reach alternate emergency contacts.

Requests from clients who are their own guardian to limit notifications to their families must be honored.

(d) Standard: Staff treatment of clients.

W149

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

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

Guidance §483.420(d)(1)

The facility, through implementation of its policies, must set up a structure that screens and trains employees, protects clients and prevents, identifies, investigates and reports abuse, neglect and mistreatment of clients.

The policies must designate who (either by name or title) has the authority to act in the Administrator's absence and take any immediate corrective actions necessary to assure a client's safety such as removing a staff person from direct client contact.

"Mistreatment", for the purposes of this guideline, includes behavior or facility practices that result in any type of client exploitation such as financial, physical, sexual, or criminal. Mistreatment also refers to the use of behavioral management techniques outside of their use as approved by the specially constituted committee and facility policies and procedures.

"Neglect" means failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness. Staff failure to intervene appropriately to prevent self- injurious behavior may constitute neglect. Staff failure to implement facility safeguards, once client to client aggression is identified, may also constitute neglect.

Refer to W127 for definitions of abuse.

W150

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.420(d)(1)(i) Staff of the facility must not use physical, verbal, sexual or psychological abuse or punishment.

W151

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.420(d)(1)(ii) Staff must not punish a client by withholding food or hydration that contributes to a nutritionally adequate diet.

W152

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.420(d)(1)(iii) The facility must prohibit the employment of individuals with a conviction or prior employment history of child or client abuse, neglect or mistreatment.

Guidance §483.420(d)(1)(iii)

The facility is required to screen potential employees for a prior employment history of child or client abuse, neglect or mistreatment, as well as for any conviction based on those offenses. The abuse, neglect or mistreatment must have been directed toward a child or a client/resident/patient of a health care facility in order for the prohibition of employment to apply.

No one with a conviction or substantiated allegation of child or client abuse, neglect or mistreatment regardless of employment date, is employed by the facility. This requirement also applies to acts of abuse, neglect or mistreatment committed by a current ICF/IID employee outside the jurisdiction of the ICF/IID (e.g., in the community or in another health care facility). The facility must follow state guidelines or requirements for background checks to assure that they make every effort to check new employee's background.

Where the facility has terminated an employee based upon confirmation that abuse, neglect or mistreatment occurred during the employee's performance, and the termination decision was overturned

by either arbitration finding or a court finding, the employee must be returned to a position which does not involve direct contact between that employee and clients of the facility.

A person who abused a resident in a nursing facility, and as a result, is barred from employment in the nursing home setting would also be prohibited from employment in the ICF/IID. While facilities are not required to periodically screen existing employees, if the facility becomes aware that such action has been taken against an employee, the facility is required to prohibit continued employment. This is also true of any conviction in a court of law for child, elder, or client (resident, patient) abuse, neglect or mistreatment. Therefore, conviction for abusing one's own child is also a reason employment would be prohibited.

W153

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.420(d)(2) The facility must 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.

Guidance §483.420(d)(2)

Injuries of unknown source that give rise to a suspicion that they may be the result of abuse or neglect, should be reported immediately.

An injury should be reported as an "injury of unknown source" when:

- The source of the injury was not witnessed by any person and the source of the injury could not be explained by the client; and
- The injury raises suspicions of possible abuse or neglect because of the extent of the injury or the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma) or the number of injuries observed at one particular point in time or the incidence of injuries over time.

It is important to note that members of the ICF/IID population are a mobile population and lead active lives. Therefore, they experience normal day-to-day bumps and minor abrasions as they go about their lives. These minor occurrences which are not of serious consequence to the individual and do not present as a suspicious or repetitive injury (as discussed above) should be recorded by the facility staff once they are aware of them and follow-up should be conducted as indicated. For injuries that do not rise to the level of reportable "injuries of unknown source", the facility should follow its policies and procedures for incident recording, investigation, and tracking.

The facility must immediately report any suspicious injuries of unknown source and all allegations of mistreatment, neglect or abuse to a client residing in the facility regardless of who is the alleged perpetrator (e.g., facility staff, parents, legal guardians, volunteer staff from outside agencies serving the client, neighbors, or other clients, etc.).

If state law requires reporting to an agency or entity other than the administrator, the Centers for Medicare & Medicaid Services (CMS) expects the administrator to be notified as well, in order to ensure facility response to promptly safeguard the client(s).

For the purposes of this regulation "immediately" means there should be no delay between staff awareness of the occurrence and reporting to the administrator or other officials in accordance with State law unless the situation is unstable in which case reporting should occur as soon as the safety of all clients is assured.

W154

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.420(d)(3) The facility must have evidence that all alleged violations are thoroughly investigated and

Guidance §483.420(d)(3)

In the absence of any pre-survey information that would indicate the need for a more thorough review of reports of investigation, review 5 percent of the total client investigations for the last three (3) months (but no less than 10).

A thorough investigation includes at a minimum:

- The collection of all interviews, statements, physical evidence and any pertinent maps, pictures or diagrams;

- Review of all information;
- Resolution of any discrepancies;
- Summary of conclusions; and
- Recommendations for action both to safeguard all the clients during the investigation and after the completion of the report.

If patterns of possible abuse, mistreatment or neglect are identified, or the incident report logs for the past three (3) months indicate an extremely high incident rate, then a full review of the incidents for the past three (3) months should be completed.

W155
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.420(d)(3) must prevent further potential abuse while the investigation is in progress.
Guidance §483.420(d)(3)
The facility must take all measures necessary to protect the client, including removal of the staff from working with the client if indicated. See W154.

W156
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.420(d)(4) The results of all investigations must 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,
Guidance §483.420(d)(4)
Some states require that allegations of abuse must be reported to the police. A police investigation may take longer than five (5) working days. Their investigation does not change the requirement that the facility must complete an internal investigation report of findings within the five day timeframe. When outside authorities are involved, the facility will still be required to complete their investigation within five days to the extent authorized by such entities. "Working days" means Monday through Friday, excluding state and Federal holidays.

W157
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.420(d)(4) if the alleged violation is verified, appropriate corrective action must be taken.
Guidance §483.420(d)(4)
The facility is required to ensure that clients residing in the facility are not subjected to physical, verbal, sexual or psychological abuse or punishment.
Appropriate corrective action is required for findings of abuse, neglect or mistreatment by other clients residing in the facility, staff of outside agencies, parents or any other person, and for injuries to clients resulting from controllable environmental factors.
If the facility receives allegations of abuse, neglect, or mistreatment of a client during out of facility visits with their family, they must report these allegations to the appropriate state authority for investigation. The facility does not have to conduct an internal investigation regarding the alleged violation.
Appropriate corrective action is defined as that action which is reasonably likely to prevent the abuse, neglect, mistreatment or injury from recurring.
This regulation does not require staff termination as the only appropriate corrective action.
The corrective action imposed by the facility is commensurate with the violation.
When a facility is forced to re-hire a staff person, determined by the facility investigation to have been responsible for abuse, neglect, or mistreatment, the facility continues to be responsible for ensuring the health and safety of the clients, and ensures that those staff members do not work directly with clients.

W158
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.430 Condition of participation: Facility staffing.
(a) Standard: Qualified intellectual disability professional

W159
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.430(a) Each client's active treatment program must be integrated, coordinated and monitored by a qualified intellectual disability professional who –

Guidance §483.430(a)

The position of qualified intellectual disability professional (QIDP) is unique to the ICF/IID program. This position can be central to the overall responsiveness and effectiveness of an active treatment program. Whether a supervisory or non-supervisory position, the QIDP is responsible to:

- Orchestrate all facets of the active treatment effort, including the IDT creation of relevant IPPs tailored to meet individual client needs;
- Effectively coordinate internal and external program services and supports to facilitate the acquisition of client skills and adaptive behaviors; and
- Promote competent interactions of residential staff with clients in program implementation and behavior management.

Breakdowns in the provision of needed services does not automatically equate with deficient practice with QIDP regulations. Non-compliance with QIDP regulations exist where the facility has failed to provide a QIDP or sufficient numbers of QIDPs to effectively perform these required functions or the QIDP(s) has failed to assertively attempt to integrate, coordinate and/or monitor each client's active treatment program.

Elements of integrating, coordinating and monitoring active treatment programs include:

- Routinely observing clients across settings in program areas to assess effectiveness of program implementation and consistency of training effort to determine effectiveness of IPPs and making timely modifications to facilitate achieving desired skills or goals.
- Routinely interacting with program staff across settings to assist in determining the effectiveness and continued relevance of program plans in meeting identified client needs.
- Determining the need for program revision based on client performance.
- Identifying inconsistencies in training approaches or programs not being implemented as written and facilitating the resolution of these inconsistencies.
- Assures follow-up occurs for any recommendation for services, equipment or programs so that needed services and supplies are provided in a timely manner to meet the client's needs.

The number of QIDPs will vary depending on such factors as the number of clients the facility serves, the complexity of needs manifested by these clients, the number, qualifications and competencies of additional professional staff members, and whether or not other duties are assigned to the QIDP function. The QIDP function may not be delegated to other employees even though the QIDP co- signs their work.

W160

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.430(a)(1) Has at least one year of experience working directly with persons with intellectual disability or other developmental disabilities; and

Guidance §483.430(a)(1)

"Experience" means providing professional or direct services, either paid or volunteer, in a setting that serves persons with intellectual disabilities. The experience working directly with persons with intellectual or other developmental disabilities can be obtained prior to or after obtaining the qualifying degree or credentials.

§483.430(a)(2) Is one of the following:

W161

(a)(2)(i) A doctor of medicine osteopathy.

W162

(a)(2)(ii) A registered nurse.

W163

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.430(a)(2)(iii) An individual who holds at least a bachelor's degree in a professional category specified in paragraph (b)(5) of this section

Guidance §483.430(a)(2)(iii)

The individual must have at least a bachelor's degree in one of the professions listed in §483.430(b)(5)(i-xi)

(b) Standard: Professional program services

W164

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.430 (b)(1) Each client must receive the professional program services needed to implement the active treatment program defined by each client's individual program plan.

Guidance §483.430 (b)(1)

The effectiveness of the active treatment effort is dependent on a facility's assembly of a competent team of professional program staff, with knowledge of contemporary care practices in intellectual disabilities specific to their field of expertise, that work cooperatively as members of an IDT. The facility is responsible for the acquisition of professional staff necessary to provide direct and indirect professional services to meet client needs.

Professional program services are those services that meet the needs identified by a client's CFA that must be provided by a member of a vocation founded upon specialized education/training.

Professional staff services also include on-going monitoring of the effectiveness of programs and plans developed by professional staff but implemented by non -professional staff.

Indirect professional staff services also include on-going, technical support to staff implementing these programs as well as timely assessment of the need for modification of the program with appropriate communication to the QIDP and IDT.

The needs identified in the initial CFA, as required in §483.440(c)(3)(v), should guide the team in deciding if a particular professional's involvement is necessary and, if so, to what extent professional involvement must continue on a direct or indirect basis.

Since such needed professional expertise may fall within the purview of multiple professional disciplines, based on overlapping training and experience, determine if the facility's delivery of professional services is adequate by the extent to which clients' needs are aggressively and competently addressed. Some examples in which professional expertise may overlap include, but are not limited to:

- Physical development and health: nurse, dietitian, pharmacist.
- Nutritional status: nurse, nutritionist or dietitian.
- Sensorimotor development: educators, recreation therapists, and occupational therapist, physical therapist.
- Affective (emotional) development: special educators, social workers, psychologists, psychiatrists, mental health counselors, rehabilitation counselors, behavior therapists, behavior management specialists, behavior analyst, and medical staff.
- Speech and language (communication) development: speech-language pathologists, special educators for people who are deaf or hearing impaired, and medical staff.
- Auditory functioning: audiologists (basic or comprehensive audiologic assessment and use of amplification equipment); speech-language pathologists (like audiologists, may perform aural rehabilitation); special educators for clients who are hearing impaired and medical staff.
- Cognitive development: teachers (if required by law, e.g., school aged children, or if pursuit of GED is indicated), behavior analysts, psychologists, speech-language pathologists.
- Vocational development: occupational therapists, vocational rehabilitation counselors, or other work specialists (if development of specific vocational skills or work placement is indicated).
- Social Development: teachers, professional recreation staff, social workers, behavior analysts, psychologists (specialized training needs for social skill development).
- Adaptive behaviors or independent living skills: special educators, occupational therapists, behavior analysts, and medical staff.

W165

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.430(b)(1) Professional program staff must work directly with clients

Guidance §483.430(b)(1)

Examples of professional staff working directly with clients include: performing professional assessments of clients, provision of direct support and services and periodic monitoring by the professional of the client working on the program. The amount and degree of direct care that professionals must provide will depend on the needs of the client and the ability of other staff to effectively work with clients on a day-to-day basis.

For those services that must be provided by a professional due to either law, licensure or registration, the client receives the services directly from the professional. Professionals may deliver services through the supervision and direction of subordinates where provided by law.

W166

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.430(b)(1) and with paraprofessional, nonprofessional and other professional program staff who work with clients.

Guidance §483.430(b)(1)

Paraprofessionals are persons in various occupational fields who are trained to assist professionals but are themselves not licensed at the professional level.

Examples of "working with" these other staff may include, but not be limited to:

- Modeling the correct technique for interacting with clients or implementing a specific program objective.
- Designing residential activity programs and teaching staff how to implement them.
- Conducting classes on discipline specific topics.
- Answering questions of staff related to program implementation or specific behavioral management issues.
- Monitoring active treatment areas to identify program implementation or staff-client interaction issues.

W167

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.430(b)(2) The facility must 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.

Guidance §483.430(b)(2)

There should be sufficient professional staff in the facility to ensure that:

- needed assessments by professionals are completed timely;
- direct professional services are provided when indicated;
- clients are receiving interventions as specified in the IPP;
- client outcomes are being monitored by the professional;
- assessments and outcomes are being communicated to the IDT; and
- professional staff are available to consult with team members when needed.

W168

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

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

Guidance §483.430(b)(3)

When a professional does an assessment and determines there are client needs which become incorporated into the IPP, with a current prioritized objective, the professional should actively participate on the IDT. This participation may be through written reports or verbally while attending the IPP meeting or participating via telephone or other electronic means, to provide team members with the opportunity to review and discuss information and recommendations relevant to the client's needs, and to reach decisions as a team, rather than individually, on how best to address those needs.

W169

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.430(b)(4) Professional program staff must participate in on-going staff development and training in both formal and informal settings with other professional, paraprofessional, and nonprofessional staff members.

Guidance §483.430(b)(4)

Professional program staff provides various types of training to staff as indicated by the IPP and IDT.

Formal training: a specific training done at the time a program is implemented or updated by the professional, with all staff who works with the client.

Informal training: when the professional observes the staff not correctly implementing a program, the professional provides informal guidance on correct implementation.

Training on programs that apply to multiple clients: when a particular program applies to several clients in a facility, a professional may provide training to several staff on a particular topic that applies to multiple clients (such as safe transfer techniques).

Professional staff of the facility should participate in ongoing training such as conferences and workshops to maintain current standards of practice in the field of intellectual and developmental disabilities as required by their professional licensure or certification.

W170

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.430(b)(5) Professional program staff must be licensed, certified, or registered, as applicable, to provide professional services by the State in which he or she practices. Those professional program staff who do not fall under the jurisdiction of State licensure, certification, or registration requirements, specified in §483.410(b), must meet the following qualifications:

W171

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.430(b)(5)(i) To be designated as an occupational therapist, an individual must be eligible for certification as an occupational therapist by the American Occupational Therapy Association or another comparable body.

Guidance §483.430(b)(5)(i)

If a professional is not nationally certified, they would have to show evidence they completed the degree and field work in their designated field and are eligible to sit for the national exam.

The American Occupational Therapy Association is now known as the National Board for Certified Occupational Therapists (NBCOT). There is no "other comparable body."

Eligibility means the professional must have completed a degree in their designated field, completed all field work required for a license, must meet licensure requirements in the state they are practicing in, and are registered or certified nationally as applicable.

W172

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.430(b)(5)(ii) To be designated as an occupational therapy assistant, an individual must be eligible for certification as a certified occupational therapy assistant by the American Occupational Therapy Association or another comparable body.

Guidance §483.430(b)(5)(ii)

If a professional is not nationally certified, they would have to show evidence they completed the degree and field work in their designated field and are eligible to sit for the national exam.

The American Occupational Therapy Association is now known as the National Board for Certified Occupational Therapists (NBCOT). There is no "other comparable body."

Eligibility means the professional must have completed a degree in their designated field, completed all field work required for a license, must meet licensure requirements in state they are practicing in, and are registered or certified nationally as applicable.

W173

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.430(b)(5)(iii) To be designated as a physical therapist, an individual must be eligible for certification as a physical therapist by the American Physical Therapy Association or another comparable body.

Guidance §483.430(b)(5)(iii)
If a professional is not nationally certified, they would have to show evidence they completed the degree and field work in their designated filed and are eligible to sit for the national exam.
Eligibility means the professional must have completed a degree in their designated field, completed all field work required for a license, must meet licensure requirements in state they are practicing in, and are registered or certified nationally as applicable.
W174
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.430(b)(5)(iv) To be designated as a physical therapy assistant, an individual must be eligible for registration 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.
Guidance §483.430(b)(5)(iv)
If a professional is not nationally certified, they would have to show evidence they completed the degree and field work in their designated filed and are eligible to sit for the national exam.
Eligibility means the professional must have completed a degree in their designated field, completed all field work required for a license, must meet licensure requirements in State they are practicing in, and are registered or certified nationally as applicable.
W175
§483.430(b)(5)(v) To be designated as a psychologist, an individual must have at least a master's degree in psychology from an accredited school.
§483.430(b)(5)(vi) To be designated as a social worker, an individual must–
W176
§483.430(b)(5)(vi)(A) 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
§483.430(b)(5)(vi)(B) 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.
§483.430(b)(5)(vii) To be designated as a speech-language pathologist or audiologist, an individual must–
W177
§483.430(b)(5)(vii)(A) 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
§483.430(b)(5)(vii)(B) Meet the educational requirements for certification and be in the process of accumulating the supervised experience required for certification.
W178
§483.430(b)(5)(viii) To be designated as a professional recreation staff member an individual must have a bachelor's degree in recreation or in a specialty area such as art, dance, music or physical education.
W179
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.430(b)(5)(ix) To be designated as a professional dietitian, an individual must be eligible for registration by the American Dietetics Association.
Guidance §483.430(b)(5)(ix)
If a professional is not nationally registered as a dietician, they would have to show evidence they completed the degree and field work in their designated field and are eligible to sit for the national exam.
W180
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.430(b)(5)(x) To be designated as a human services professional an individual must have at least a bachelor's degree in a human services field (including, but not limited to: sociology, special education, rehabilitation counseling, and psychology).
Guidance §483.430(b)(5)(x)

Human Services is a diverse field focused on improving the quality of life of clients in communities in which the professional serves. A human services professional works directly with the population being served. Surveyors should see evidence that a human service professional has a bachelor's degree at a minimum.

W181

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.430(b)(5)(xi) If the client's individual program plan is being successfully implemented by facility staff, professional program staff meeting the qualifications of paragraph (b)(5)(i) through (x) of this section are not required-

(A) Except for qualified intellectual disability professionals;

(B) Except for the requirements of paragraph (b)(2) of this section concerning the facility's provision of enough qualified professional program staff; and

(C) Unless otherwise specified by State licensure and certification requirements.

Guidance §483.430(b)(5)(xi)

An individual client program may not require that professional staff perform all of the services as outlined by the IPP (e.g. the direct support staff may be trained by the professional to safely and effectively carry out the designed program), however, any specialized therapy must involve evaluation, program development, and re-assessment by the appropriate professional at periodic intervals.

(c) Standard: Facility staffing

W182

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.430(c)(1) The facility must not depend upon clients or volunteers to perform direct care services for the facility.

Guidance §483.430(c)(1)

The facility must have sufficient staff to provide needed care and services without the use of volunteers or enlisting the help of clients residing in the facility to perform the duties normally performed by facility staff.

The facility may not rely on volunteers in lieu of paid staff to fill required staff positions and perform direct care services. Volunteers are permissible, but must be in addition to the number of paid staff required to carry out a function. Volunteers should have an orientation to the policies and procedures of the facility and oversight is required by facility staff.

W183

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.430(c)(2) There must 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- -

(i) Clients for whom a physician has ordered a medical care plan;

(ii) Clients who are aggressive, assaultive or security risks;

(iii) More than 16 clients; or

(iv) Fewer than 16 clients within a multi-unit building.

Guidance §483.430(c)(2)

Indicators of staff not being awake in relation to the occurrence of incidents, accidents, and injuries may include, but are not limited to:

- incidents of unplanned client absences;
- untimely reaction to a medical emergency;
- injuries from client to client aggression; or
- a pattern of injuries of unknown origin.

If even one client meets 483.430(c)(2)(i-ii) then staff must be awake on a 24-hour basis.

A client has a medical care plan when an acute or chronic occurrence requires clinical assessment and monitoring on a scheduled basis.

W184

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.430(c)(3) There must 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- -
(i) Clients for whom a physician has not ordered a medical care plan;
(ii) Clients who are not aggressive, assaultive or security risks; and
(iii) Sixteen or fewer clients.
Guidance §483.430(c)(3)
At all times, there must be at least one staff person on-duty in the facility if even one client is present. For purposes of this provision, "on duty" staff need not be awake during normal sleeping hours, but do need to respond to injuries, illness, and emergencies promptly.
W185
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.430(c)(4) The facility must 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.
Guidance §483.430(c)(4)
Direct care staff should not be performing support services (e.g., making beds, cooking, cleaning, etc.) independently which takes them away from client interaction and teaching. If support services in the house cannot be done jointly as chores between clients, as part of their training program, and the support staff, additional staff should be added to perform the chores. This does not include any staff chores done during client's sleeping hours.
"Support staff" include all personnel hired by the facility that are not either direct care staff or professional staff. For example, support staff includes, but are not limited to, secretaries, clerks, housekeepers, maintenance and laundry personnel.
(d) Standard: Direct care residential living unit staff
W186
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.430(d)(1) The facility must provide sufficient direct care staff to manage and supervise clients in accordance with their individual program plans.
Guidance §483.430(d)(1)
"Sufficient" means enough direct care staff to effectively implement the active treatment programs as defined in the IPP, to meet client needs, and to respond to emergencies, illness, or injuries.
Even though minimum ratios are defined at §483.430(d)(3), active treatment may require more staff than the minimums required ratios, therefore compliance should not be based on staffing ratios alone.
§483.430(d)(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.
Guidance §483.430(d)(2)
"Direct care staff" are those personnel who are assigned to work directly with the clients providing support during activities of daily living and active treatment programs.
Professional staff who work with clients in a living unit on a periodic basis are not included in direct care staff ratios.
Supervisors of direct care staff can be counted only if they share in the actual work of the direct care of clients on a continuous basis (e.g. take client assignment).
Direct care supervisors whose principle assigned function is to supervise direct care staff may not be included in direct care staff ratios although they may occasionally provide direct services to clients.
Non-direct care staff supervisors whose principle assigned function is to supervise non- direct care staff may not be included in direct care staff ratios.
W187
(Rev. 144, Issued: 08-14-15, Effective: 08-14-15, Implementation: 08-14-15)
§483.430(d)(3) Direct care staff must be provided by the facility in the following minimum ratios of direct care staff to clients:

(i) 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.
(ii) For each defined residential living unit serving moderately retarded clients, the staff to client ratio is 1 to 4.
(iii) 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.
Guidance §483.430(d)(3)
The minimum ratios in this standard indicate the ***minimum*** *number of direct-care staff that must be present and on duty, 24 hours a day, 365 days a year, for each discrete living unit. For example, to calculate the minimum number of living unit staff that must be present and on duty in a discrete living unit serving 16 individuals with multiple disabilities: divide the number of individuals "16," by the number corresponding to the regulation "3.2," the result equals "5." Therefore, the facility must determine how many staff it must hire to ensure that at least 5 staff will be able to be present and on duty during the 24 hour period in which those individuals are present.*
Using the living unit described above, "calculated over all shifts in a 24-hour period" means that there are present and on duty every day of the year: one direct care staff for each eight individuals on the first shift (1:8), one direct care staff for each eight individuals on the second shift (1:8), and one direct care staff for each 16 individuals on the third shift (1:16). Therefore, there are five (5) direct care staff present and on duty for each twenty-four hour day, for 16 individuals. The same calculations are made for the other ratios, whichever applies. Determine if absences of staff for breaks and meals results in a pattern of prolonged periods in which present and on-duty staff do not meet the ratios.
W188
§483.420(d)(4) When there are no clients present in the living unit, a responsible staff member must be available by telephone.
§483.430(e) Standard: Staff Training Program
W189
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.430(e)(1) The facility must provide each employee with initial and continuing training that enables the employee to perform his or her duties effectively, efficiently, and competently.
Guidance §483.430(e)(1)
Newly employed staff receive a supported orientation program (mentor or ongoing supervision) during their early employment. All staff receive continuing education on such issues as abuse and neglect, handling emergency situations, behavior management, and treating people with respect and dignity, etc. The primary evidence of an effective staff training program is the observed competent interaction between staff and clients.
§483.430(e)(2) For employees who work with clients, training must focus on skills and competencies directed toward clients'
W190
(Rev. 144, Issued: 08-14-15, Effective: 08-14-15, Implementation: 08-14-15)
§483.430(e)(2) developmental,
Guidance §483.430(e)(2)
Staff receive training in the following areas:

- developmental programming principles and techniques (e.g. techniques to involve clients in their programs to their highest capability, use of positive reinforcement, use of assistive technology, use of appropriate materials and providing informal opportunities to practice skills);
- use of adaptive equipment and augmentative communication devices and systems;
- and
- effective recordkeeping procedures.

W191
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.430(e)(2) behavioral,
Guidance §483.430(e)(2)
Staff receive training in the following areas:

- use of behavioral principles during interactions between staff and clients;
- use of accurate procedures regarding abuse detection and prevention, restraints, drugs to manage behaviors, client safety, emergencies, etc.;
- use of least restrictive interventions;
- use of positive behavior intervention programming; and
- training clients in appropriate replacement behaviors.

W192
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.430(e)(2) and health needs
Guidance §483.430(e)(2)
Staff receive training in the following areas:

- signs and symptoms of the client's changing health (e.g. constipation, urinary tract infections, adverse drug reactions, as indicated);
- exercise and diet;
- first aid;
- infection control;
- reporting to appropriate healthcare professionals; and
- for those staff who can administer medications, how to include clients in their medication administration by recognizing and encouraging the use of applicable skills.

W193
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.430(e)(3) Staff must be able to demonstrate the skills and techniques necessary to administer interventions to manage the inappropriate behavior of clients.
Guidance §483.430(e)(3)
Staff correctly and consistently implement the interventions specified in the behavior plans of clients with whom they are working.
Inadequate training is evident when staff do not correctly implement behavioral programs, use inappropriate management techniques, cannot explain what intervention is to be used and how it is to be implemented.
W194
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.430(e)(4) Staff must be able to demonstrate the skills and techniques necessary to implement the individual program plans for each client for whom they are responsible.
Guidance §483.430(e)(4)
Staff are observed in various settings during the day correctly and consistently implementing the specific IPPs of the clients with whom they are working.
W195
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440 Condition of participation: Active treatment services
(a) Standard: Active treatment
W196
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(a)(1) Each client must 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 subpart, that is directed toward-
(i) The acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible; and
(ii) The prevention or deceleration of regression or loss of current optimal functional status.

Active treatment embodies an individually- tailored series of daily life and living experiences that serve as the primary opportunity for the acquisition, development and expression of functional skills and adaptive behaviors necessary for the client to experience optimal independence and promote purposeful "self-expression".

The uniqueness of each client is a core consideration in the design of active treatment programs. It is expected that individual clients are given the opportunity to provide input into the content of their day-to-day living experiences.

An active treatment program includes the following elements as substantiated through observation, interview and record review:

a) Each client's needs and strengths have been accurately assessed and relevant input has been obtained from team members; (Observations and interviews with the client by the surveyor should be consistent with the current assessment information. Interview the QIDP regarding any needs observed but not addressed through assessment/programming by the facility).

b) Each client's IPP is based on assessed needs and strengths, and addresses major life areas such as personal skills, home living skills, community living skills, employment skills, etc., essential to increasing independence and ensuring rights;

c) Needs identified as a priority are addressed formally and through activities which are relevant and responsive to client need, interest and choice;

d) Active treatment is consistently implemented in all relevant settings both formally and informally as the need arises or opportunities present themselves. It should not be limited to specific periods of time during the day or environments. Each client should receive aggressive and consistent training, treatments and supports in accordance with their needs and IPP. New skills and appropriate behaviors are encouraged and reinforced across environments and times of day. Each client has the adaptive equipment and environmental adaptations necessary for him/her to progress toward heightened independence as recommended and contained in their IPP. Active treatment means taking advantage of opportunities for the practice of new skills and the use of other skills during the normal rhythm of each client's day.

e) Each client's performance related to IPP objectives is accurately and consistently measured and documented and programs are modified on an ongoing basis based on data and major life changes; and

i. Clients with degenerative conditions receive training, treatment and services designed to retain skills and functioning and to prevent further regression to the extent possible.

ii. Clients may need adjustments to their active treatment programs as functional or endurance limitations are identified associated with the aging process. In such cases, there may be more of an emphasis on the retention of skills already attained and reducing the rate of loss of skills, than on the acquisition of new skills.

In large part, it is this pervasive and continuous reinforcement of "formal" training through "informal" routine daily living experiences and interactions with staff and others that makes active treatment programs effective. Formal settings are those that are planned and specifically structured for training on objectives and interventions. Informal settings are times that are not anticipated or planned but that offer the opportunity for training.

Active treatment programs mirror normal living experiences such as leisure activities and social conversation at the dinner table. It must be clear that active treatment programs are far more than implementation of discreet formal training sessions or programs that are conducted at prescribed times by defined personnel. Learning occurs in the process of the normal rhythm of life and life experiences.

W197

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(a)(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.

Guidance §483.440(a)(2)

All active treatment programs must be based upon assessed developmental needs which are prohibiting the client from living in a more independent setting.

Active treatment moves clients to a more independent setting.

- When a client is in the facility simply for protective oversight and is not in need of training for developmental deficits, this does not constitute active treatment (e.g. a court placement to protect the community or the client from the client's behavior).
- Programs that are simply being provided to maintain a client's independence would not be considered active treatment since the client is not actively being trained to live in a more independent setting. If a client already possesses the skills that enables them to live in a less restrictive environment, and does not require the structure, support and resources that services that only an ICF/IID can provide, they can be considered generally independent.

For example, a client is admitted to the ICF/IID for the primary purpose of competency determination for a court hearing. This client lived independently prior to admission. The active treatment programs they are receiving are focused on maintaining that independence and do not address specific developmental deficits that inhibit independent living. This would not be considered active treatment.

(b) Standard: Admissions, transfers, and discharge

W198

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

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

Guidance §483.440(b)(1)

All client admissions must be based upon assessed developmental deficits which are prohibiting the client from living in a more independent setting and which require those intensive specialized supports, services, and supervision that only an ICF/IID can provide.

The individual components of the provision of active treatment include CFA, IPP, program implementation, program documentation, and program monitoring and change. When any of these individual components of active treatment are not in place, resulting in the clients not receiving active treatment, this regulation this not met.

W199

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

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

Guidance §483.440(b)(2)

Preliminary evaluations should support the need for an admission to an ICF/IID (e.g., deficits in functional skills or adaptive behaviors). The information from the preliminary evaluation must be used by the facility to make an admission decision.

Occasionally, emergency admissions of clients may occur without benefit of a preliminary evaluation having been conducted prior to admission. When situational emergencies necessitate admission before a preliminary evaluation can be conducted, or when pre-admission information is incomplete, the completion of the preliminary admission evaluation within seven (7) calendar days after admission will satisfy compliance with this requirement.

W200

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(b)(3) A preliminary evaluation must 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.

Guidance §483.440(b)(3)

The preliminary evaluation contains specific information useful to determine if the facility can meet the client's needs and if the client can benefit from placement.

The facility makes every reasonable effort to gather all available data to assist in their determination.

Background information would include information that gives insight into the clients' previous living environments and programming efforts.

The assessment must include a consideration as to whether reasonable accommodation as required by the Americans with Disabilities Act would enable the client to benefit from placement in facility.

§483.440(b)(4) If a client is to be either transferred or discharged, the facility must –
W201
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(b)(4)(i) Have documentation in the client's record that the client was transferred or discharged for good cause; and
Guidance §483.440(b)(4)(i)
Transfer or discharge occurs only when the facility cannot meet the client's needs, the client no longer requires an active treatment program in an ICF/IID setting; the individual/guardian chooses to reside elsewhere, or when a determination is made that another level of service or living situation would be more beneficial to the client.
"Transfer" means the temporary movement of a client to another facility (e.g. another ICF/IID, psychiatric hospital, medical hospital) with the intention of return to the original site.
"Discharge" means the permanent movement of a client to another facility or setting which operates independently from the ICF/IID (e.g. the facility is not under the jurisdiction of the facility's governing body).
Documentation includes evidence of an assessment that evaluated the pros and cons of the transfer or discharge and the rationale for the final decision.
W202
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(b)(4)(ii) Provide a reasonable time to prepare the client and his or her parents or guardian for the transfer or discharge (except in emergencies).
Guidance §483.440(b)(4)(ii)
The client and their family or the client and their legal guardian are involved in planning for any transfer or discharge and receive the services necessary to assist in preparing for movement, unless an emergency (medical) situation prevents that involvement. If the client has an advocate, the advocate should participate in the decision-making process.
Orderly, planned transfers and discharges usually take place over an extended period of time. The IPP should reflect objectives or interventions which prepare the client for transfer or discharge. Transfers or discharges executed on short timeframes (e.g. less than 30 days) without "good cause" would not comply with the "reasonable" intent of the regulations.
"Reasonable" time is the time required to provide clients and their families with planned steps and established timeframes to facilitate the successful transition. Time frames are modified based on client needs and emergent situations.
Preparation of the client for transfer may include orientation or trial visits to the new location. Staff should take steps to minimize potential anxiety or any behavioral reactions which could result from the client's transfer.
§483.440(b)(5) At the time of the discharge, the facility must-
W203
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(b)(5)(i) Develop a final summary of the client's developmental, behavioral, social, health and nutritional status
Guidance §483.440(b)(5)(i)
The final summary should be useful for continued services in the client's new setting. The final discharge summary should be entered into the client's record, provide a summary of the client's course of stay in the ICF/IID, provide a final summary of the client's developmental, behavioral, social, health and nutritional status, and include the current status of the objectives listed in the client's IPP.
The status should address whether or not a clients' skills have been maintained, deteriorated, or improved during their stay.
W204
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(b)(5)(i) 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

Guidance §483.440(b)(5)(i)
When the client is discharged, the receiving entity (another ICF/IID, waiver home, family home, nursing home, etc.) is provided a copy of the discharge summary. The ICF/IID should obtain written consent to share this information with the persons who will be providing services to the client in the future and their parents/or legal guardians. Sharing the discharge summary with State Agencies as applicable is determined by state requirements.

W205
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(b)(5)(ii) Provide a post-discharge plan of care that will assist the client to adjust to the new living environment.
Guidance §483.440(b)(5)(ii)
The post discharge plan of care is a component of the discharge summary.
The facility utilizes the information from the discharge summary to prepare the discharge plan of care. The post-discharge plan of care identifies the essential supports and services necessary for the client to successfully adjust to the new living environment and describe necessary coordination of services. It should incorporate the client's preferences. It should identify specific client needs after discharge such as personal care, physical therapy, client/caregiver education needs, and the ability of the client or caregiver to meet those needs after discharge.

(c) Standard: Individual program plan

W206
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(1) Each client must have an individual program plan developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to- -
i) Identifying the client's needs, as described by the comprehensive functional assessments required in paragraph (c)(3) of this section; and
ii) Designing programs that meet the client's needs.
Guidance §483.440(c)(1)
If a need is identified in the CFA, the professional associated with that need will conduct an initial evaluation for the development of the IPP.
The needs identified in the CFA determine the professional, paraprofessional, direct support staff, disciplines or service areas that must participate in the development of the IPP.

W207
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(2) Appropriate facility staff must participate in interdisciplinary team meetings.
Guidance §483.440(c)(2)
While there is no correct number of individuals that comprise the IDT, the team should include appropriate facility staff (professional and paraprofessional staff), that are responsible for designing, developing, and/or implementing the client's IPP and direct support staff who work closely with the clients.
For any prioritized objective, the paraprofessional or professional personnel responsible for the development and monitoring of that program should participate on the team, either through actual attendance or written or verbal input.
Members of the IDT may change as the assessed needs of the client change (e.g. medical issues, nutritional issues, communication needs, fine motor skill needs, gross motor skill needs, social issues or behavioral concerns).

W208
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(2) Participation by other agencies serving the client is encouraged.
Guidance §483.440(c)(2)
The facility must make every effort to coordinate the Individual Education Plan (IEP) from the school or the client's program plan from outside program, work site or workshop with the IPP. This may result in a single document, but there is no requirement for a single combined document. There must be evidence

that all applicable plans were coordinated (evidence of discussion across the plans and observation would confirm integration of the IPP across the various settings). The QIDP is responsible for the coordination of the plans.

The facility should communicate changes in the IPP or in the clients' life situation with teachers and workplace representatives either directly or through written communication.

W209

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(c)(2) Participation by the client, his or her parent (if the client is a minor), or the client's legal guardian is required unless the participation is unobtainable or inappropriate.

Guidance §483.440(c)(2)

The facility should make every effort to schedule team meetings at a time that enables the client parent or legal guardian, to attend without having to forfeit work time or pay.

The facility should make every effort to schedule team meetings at a time that enables the client parent or legal guardian, to attend without having to forfeit work time or pay.

It is expected that the client will routinely attend team meetings unless their participation is unobtainable. Examples of when client participation is not available include, but are not limited to: 1) the client is away from the facility for medical reasons or hospitalization; or 2) although the facility has documented repeated attempts to engage the client, the client refuses to participate.

If families/legal guardians are unable to attend a program planning meeting, the facility provides them information regarding the meeting outcome and gives them an opportunity to discuss the plan with the facility staff.

"Unobtainable", for the purposes of this guideline, means that the facility has made a good faith effort to seek parental or legal guardian participation in the process, even though the effort may ultimately be unsuccessful (for example, the parent may be impossible to locate or may prove unwilling or unable to participate).

"Inappropriate", for the purposes of this guideline, means that the parent or legal guardian's behavior is so disruptive or uncooperative that others cannot effectively participate; the client does not wish his or her parent to participate, and the client is competent to make this decision; or there is strong and documented evidence that the parent or legal guardian is not acting on the client's behalf or in the client's best interest. In the case of the latter, determine what the facility has done to bring effective resolution to the problem.

Instances when it is not appropriate for the client, parent or legal guardian, to attend the team discussion are rare. If the client does not attend the meeting, the facility must document the reason for his/her non-participation.

There may also be instances where a parent or legal guardian is considered unobtainable for a team meeting, such as being out of the country. In these instances, the parent or legal guardian should still be notified of the meeting, provided with information concerning the outcome of the meeting and documentation in the client record should describe why the parent or legal guardian could not attend and what information was provided to them.

If the client is an adult who is competent to make decisions and who is not adjudicated, parents may not participate in the process if their participation is opposed by the client.

In the event that a non-adjudicated adult chooses not to have their family involved in the active treatment process, the surveyor should see evidence in the record of efforts made by the facility to understand why the client has declined family participation. If the client continues to decline family involvement after the facility has held discussions with him/her about the importance of this issue, the facility should honor the wishes of the client.

In general, the more involvement and communication among the team members, the client and the parent or legal guardian the more likely the plan will be successful. The facility goal should be to routinely include these parties unless rare circumstances exist.

W210

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(c)(3) Within 30 days after admission, the interdisciplinary team must perform accurate assessments or reassessments as needed to supplement the preliminary evaluation conducted prior to admission.

Guidance §483.440(c)(3)

For new admissions, the CFA is completed within 30 days after admission and is utilized as the basis for the IPP.

New, revised or updated assessments completed within the first 30 days of admission, accurately identify the functional abilities of the client.

"Accurate" assessments refer to assessment data that are current, relevant and valid, and the skills, abilities, and training needs identified by the assessment correspond to the client's actual, observed status. Assessments must be administered with appropriate adaptations such as specialized equipment, use of an interpreter, use of manual communication and tests designed to measure performance in the presence of visual disability.

The content of or format of the assessments or the particular assessment tools which are to be used for the CFA are not specified. Assessments must include identification of those functional life skills in which the client needs to be more independent and those services needed for the client to become more community integrated.

W211

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(c)(3) The comprehensive functional assessment must 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 must -

Guidance §483.440(c)(3)

During assessment, the client is given opportunities to participate in age-appropriate activities to assess the person's functioning in those activities or settings. For example, the use of baby toys during the assessment of an adult would not be appropriate.

W212

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(c)(3)(i) Identify the presenting problems and disabilities and where possible, their causes;

Guidance §483.440(c)(3)(i)

The CFA includes:

- all diagnoses and developmental deficits for the client;
- the supporting information for each; and
- each evaluation should include conclusions and recommendations which go into the development of an active treatment program for the client.

W213

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(c)(3)(ii) Identify the client's specific developmental strengths;

Guidance §483.440(c)(3)(ii)

The client's identified developmental strengths, preferences, methods of coping/compensation, community use and awareness, friendships and positive attributes and capabilities are clearly described in functional terms in the assessments.

Identified strengths are consistent with the client's observed functional status.

W214

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(c)(3)(iii) Identify the client's specific developmental and behavioral management needs;

Guidance §483.440(c)(3)(iii)

The CFA must address and identify those skill deficits/needed supports that may be amenable to training, those that must be treated by therapy and/or provision of assistive technology, and those that require adapting the environment and/or providing personal support. Assessment of needed supports should be done within the context of the client's age, gender, and culture.

"Behavioral management needs" include those behaviors that interfere with progress, prevent assimilation into the community, decrease freedom or increase the need for restriction of activities (e.g. spitting, pica, self-injurious behavior, aggressive behavior toward others or self-injurious behavior).

A functional behavioral assessment is a problem-solving process for evaluating client inappropriate behavior. It relies on a variety of techniques and strategies to identify the purpose of the specific behavior(s) and to help the IDT select interventions to directly address the behavior(s). A functional behavior assessment looks beyond the behavior itself. The focus when conducting a functional behavioral assessment is on identifying significant client-specific social, affective, cognitive, and/or environmental factors associated with the occurrence (and non-occurrence) of specific behaviors.

The CFA must identify the specific accommodations that address the client's needs to ensure better opportunity for the client's success. The identified accommodations may be assistive technology which can help a person learn, play, complete tasks, get around, communicate, hear or see better, control their own environment and take care of their personal needs (e.g. door levers instead of knobs, plate switches, audio books, etc.).

W215

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(c)(3)(iv) Identify the client's needs for services without regard to the actual availability of the services needed; and

Guidance §483.440(c)(3)(iv)

Identification of needed services is based on the CFA.

In the presence of significant developmental deficits, it is not acceptable for the facility to say that a particular professional therapy or treatment is not needed or not available if the CFA identifies a deficit. The assessment must identify the course of specific interventions recommended to meet the client's needs, both through direct professional services and non-professional services. For example, a client's communication skill development may not require the intensive services of a speech-language pathologist however, the direct care staff will need to work with the client and use a pre-determined communication system.

§483.440(c)(3)(v) Include

Guidance §483.440(c)(3)(v)

The CFA should include an assessment of each of the areas listed below. Assessments should include specific information about the person's ability to function in different environments, specific skills or lack of skills, and how function can be improved, either through training, environmental adaptations, or provision of adaptive, assistive, supportive, orthotic, or prosthetic equipment.

If assessments are done separately by professional disciplines, there should be evidence that the assessments are brought together in an interdisciplinary approach to address the client's various developmental areas.

The CFA must be completed upon admission and annually as indicated. While the assessment may not have the specific titles of the areas listed below, the surveyor must be able to identify information within assessments from each of the areas below.

W216

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(c)(3)(v) physical development and health,

Guidance §483.440(c)(3)(v)

Physical development and health: This portion of the CFA includes the client's developmental history, results of the physical examination conducted by a licensed physician, physician assistant, or nurse practitioner, health assessment data (including a medication and immunization history); a review and summary of all laboratory reports since the last comprehensive evaluation, a summary of all required medical interventions since the last CFA; skills of the client normally associated with the monitoring and supervision of one's own health status, and administration and/or scheduling of one's own medical treatments. Reports of all specialist consultations should be included in the assessment as indicated by physical examination results.

IDT reviews any current advanced directives that the client may have in place as part of the CFA.

W217
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(3)(v) nutritional status,
Guidance §483.440(c)(3)(v)
Nutritional status: Nutritional status includes height and weight, the client's eating habits and preferences, favorite foods, determination of appropriateness of diet, adequacy of total food intake, bowel habits, means through which the client receives nutrition (e.g. feeding tube) and the skills associated with eating (including chewing, sucking and swallowing disorders).
W218
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(3)(v) sensorimotor development,
Guidance §483.440(c)(3)(v)
Sensorimotor development: Sensorimotor development includes the development of perceptual skills that are involved in observing the environment and making sense of it. Identified sensory deficits should be evaluated in conjunction with the impact they will have on the client's life. A sensory deficit in eye contact may not have a detrimental effect on the client's life if it will not hold the client back from further accomplishments or skill acquisitions. Motor development includes those behaviors that primarily involve: muscular, neuromuscular, or physical skills and varying degrees of physical dexterity. Because sensory and motor development are intimately related and because activities in these areas are functionally inseparable, attention to these two aspects of bodily activity is often combined in the concept of sensorimotor development. For those motor areas that are identified by the assessment as limited, the assessment should specify the extent to which corrective, orthotic, prosthetic, or support devices would impact on functional status and the extent of time the device is to be used throughout the day.
W219
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(3)(v) affective development,
Guidance §483.440(c)(3)(v)
Affective (Emotional) development: Affective or emotional development includes the development of behaviors that relate to one's interests, attitudes, values, morals, emotional feelings and emotional expressions.
W220
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(3)(v) speech and language development
Guidance §483.440(c)(3)(v)
Speech and language (communication) development: One of the most contributable causes of behaviors, frustration by the clients, etc. is lack of effective communication. It is imperative that the CFA identifies how the client communicates, what barriers are present, what services are available and what programs and services will be provided to assist the client to go out into and participate fully in the world. Observed client communication skills match the evaluation results and that training programs are in place to address needs.
Communication development refers to the development of both verbal and nonverbal and receptive and expressive communication skills. Assessment data identify the appropriate intervention strategy to be applied, and which, if any, augmentative or assistive devices will improve communication and functional status. These intervention strategies should provide the client with a viable means of communication which is appropriate to their sensory, cognitive and physical abilities.
W221
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(3)(v) and auditory functioning,
Guidance §483.440(c)(3)(v)
Auditory functioning: Auditory functioning refers to the extent to which a person can hear, to the maximum use of residual hearing if a hearing loss exists, and whether or not the client will benefit from the use of amplification, including a hearing aid or a program of amplification.

W222
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(3)(v) cognitive development,
Guidance §483.440(c)(3)(v)
Cognitive development: Cognitive development refers to the development of those processes by which information received by the senses is stored, recovered, and used. It includes the development of the processes and abilities involved in memory, reasoning and problem solving. It is also the identification of different learning styles the client has and those best used by the trainers. It is critical that the CFA address the individual learning style of the client in order to best direct the way the trainers will teach formal and informal programs.
W223
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(3)(v) social development,
Guidance §483.440(c)(3)(v)
Social Development: Social development refers to the formation of those self-help, recreation and leisure, and interpersonal skills that enable a client to establish and maintain appropriate roles and fulfilling relationships with others. Assessments may address family supports and relationships, sexual awareness and sexuality, friendships, social awareness, social skills and social interests.
W224
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(3)(v) adaptive behaviors or independent living skills necessary for the client to be able to function in the community,
Guidance §483.440(c)(3)(v)
Adaptive behaviors or independent living skills: Adaptive behavior refers to the effectiveness or degree with which clients meet the standards of personal independence and social responsibility and community orientation and integration expected of their age and cultural group. Adaptive behaviors are those behaviors that are developed to cope with deficits in order to be able to perform every day skills as independently as possible. Independent living skills include, but are not limited to, such things as food shopping, meal preparation, housekeeping and kitchen chores, laundry, bed making, and budgeting. Assessment may be performed by anyone trained to do so. Standardized tests are not required. Standardized adaptive behavior scales which identify all or predominantly all "developmental needs" are not sufficient to meet this requirement, but can serve as a basis for screening.
W225
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(3)(v) and as applicable, vocational skills.
Guidance §483.440(c)(3)(v)
Vocational development, "as applicable": Vocational development refers to work interests, work skills, work attitudes, work-related behaviors, and present and future employment options. The determination of whether or not a vocational assessment is "applicable" is typically based on age (adolescents or adults more than likely require this type of assessment). The vocational assessment for each client may address job sampling, job development, on-site job training and long term follow-up, as appropriate to the client and determined by the IDT.
Vocational assessments should describe, for all domains, what clients can and cannot do in terms of skills needed within the context of their daily lives and jobs.
Assessments should be individualized and based on:

- Actual performance of the client against objective criteria;
- Reports by staff/parents/legal guardians; and
- Observed performance in a variety of settings.

W226
§483.440(c)(4) Within 30 days after admission, the interdisciplinary team must prepare for each client an individual program plan
W227

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(4) that states the specific objectives necessary to meet the client's needs, as identified by the comprehensive assessment required by paragraph (c)(3) of this section,
Guidance §483.440(c)(4)
Objectives are developed for those needs that are identified by the CFA and which are considered to be most likely to improve the client's ability to independently function in his/her daily life, as determined by the IDT.
There is a clear link between the specific objectives and the functional assessment data and recommendations.
Objectives are developed for those needs that are observed to most likely impact the client's ability to function in daily life. Training objectives should be developed to address client needs rather than staff oriented objectives.
Clients are expected to have training objectives in the areas of activities of daily living, based on the client's assessed needs and as prioritized by the IDT. If clients have eyeglasses, dentures and/or other assistive devices it is expected that the team considers objectives, based upon the assessment of client needs, addressing the care and use of such devices. However, in the area of programs to teach the clients' money management it is not expected that every client will automatically have a formal training objective to participate in such a program. The decision to prioritize such a program and to what level the program is developed is decided by the IDT based upon the results of the CFA and in consideration of such factors as, transferable skills, the ability to make choices, the ability to identify preferences and cognitive abilities such as attention span and an understanding of the principle of cause and effect.
Similarly, the decision to prioritize and develop a training objective for a client to participate in a self-administration program for medications must be made by the IDT and be based upon information from the CFA. Formal self administration programs should not be confused with informal efforts to include the client in the administration process such as allowing them to hold a glass of water, identify the box where his/her medications are stored or put a pill into their own mouth themselves under the supervision of a person who is qualified to administer medications.
W228
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(4) and the planned sequence for dealing with those objectives.
Guidance §483.440(c)(4)
The objectives identified in W227 are organized in a logical sequence, determined by the team that will assist the client toward the attainment of skills resulting in greater self- choice, independence, and community integration. The logical sequencing of objectives means there is a completion of one objective that serves as the building block for the next with relevance to the client's functional status. Where objectives are logically ordered but do not have relevance to the client's functional status, refer to 483.440(c)(4).
If the IPP is organized in a logical sequence, this requirement is met. For example, if the long term goal is to travel independently in the community, the objective sequencing may involve training the client to recognize traffic signs, cross the street safely, and to obtain help when needed if lost or an emergency arises.
These objectives must –
W229
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(4)(i) Be stated separately, in terms of a single behavioral outcome;
Guidance §483.440(c)(4)(i)
Each objective clearly states one expected learning result.
"Single" behavioral outcome means that there is a separate objective assigned for each discrete behavior that the team intends the client to learn. For example, "Mary will bake a cake and clean the oven" are two separate behaviors and, therefore, should be stated in two separate objectives. Completion of the morning hygiene routine includes programs for performance of face washing, tooth brushing and hair

combing which are three separate objectives; however, the behavioral outcome for each would be the same (e.g. completion of the morning hygiene routine).

W230

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(c)(4)(ii) Be assigned projected completion dates;

Guidance §483.440(c)(4)(ii)

Completion dates are based on the client's rate of learning.

Completion dates are assigned to each objective on which the client is currently working. Completion dates are individualized (e.g. not all the same for all clients and all objectives).

The "projected date of completion" for an IPP objective is not the same as a "review" date. For each objective assigned a priority, the team should assign a projected date (month and year) by which it believes the client will have learned the new skill, based on all of the assessment data. This date triggers the team to evaluate continuously whether or not the client's progress or learning curve is sufficient to warrant a revision to the training program.

W231

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(c)(4)(iii) Be expressed in behavioral terms that provide measurable indices of performance;

Guidance §483.440(c)(4)(iii)

The desired learning outcome is stated in a manner which enables all staff working with the client to consistently identify the target behavior and to clearly identify when it is being displayed.

The objective is stated in a manner which permits it to be measured with quantifiable data.

"Behavioral" terms include only those behaviors which are "client" rather than staff oriented and those that any person would agree can be seen or heard. Determine if all staff who work with the client can define the exact same outcome on which to measure the client's performance.

"Measurable indices of performance" are the quantifiable criteria to use in determining successful achievement of the objective. Quantifiable criteria include various measurements of intensity and duration. For example, "Client X will walk ten feet, with the use of her tripod walker, on each of five (5) consecutive days."

W232

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(c)(4)(iv) Be organized to reflect a developmental progression appropriate to the individual; and

Guidance §483.440(c)(4)(iv)

Objectives must be relevant to the client's current skill sets and abilities as identified in the CFA.

The ICF/IID must consider the person's current functional abilities and project what steps, methods, and strategies are likely to be effective in achieving the objective.

W233

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(c)(4)(v) Be assigned priorities.

Guidance §483.440(c)(4)(v)

Priorities are established based on the needs and in consideration of the desires of the client and emphasize the development of greater independence, self-choice, and community integration.

The team determines which objectives are the highest priority to be addressed, either because the client has an immediate need or the priority objectives must be accomplished before other priorities are addressed.

§483.440(c)(5) Each written training program designed to implement the objectives in the individual program plan must specify:

Guidance §483.440(c)(5)

The following regulations (5) (i-iv) apply to formal training programs developed for current implementation.

W234

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(5)(i) The methods to be used;
Guidance §483.440(c)(5)(i)
The training program provides clear directions to any staff person working with the client on how to implement the teaching strategies. To comply with this requirement the methodologies must be written in a clear enough manner that a substitute staff person will be able to read the methodologies and implement them without substantial differences from a regularly assigned staff person. Methodologies should be consistent across settings, such as when the client is in the day program.
W235
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(5)(ii) The schedule for use of the method;
Guidance §483.440(c)(5)(ii)
Active treatment (the implementation of training programs pursuant to objectives) should be provided in formal and informal settings throughout the rhythm of the client's day. While there may be structured episodes when the client works intensively and singularly on one or more objectives (schedule), the provision of active treatment is not adequate when confined solely to these types of formal settings but should be incorporated into all activities when appropriate (client's routine). For example, objectives on grasping may be as effectively carried out during the client's use of a toothbrush and a spoon as in an isolated session.
W236
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(5)(iii) The person responsible for the program;
Guidance §483.440(c)(4)(v)
The IPP should include the actual name of the staff person who is responsible for the ongoing monitoring of the client's program to ensure it is being implemented appropriately, as well as the designated position which will implement the program.
The QIDP should be familiar with the assessment and recording requirements for each client for each formal objective, including who is responsible for making these observations and completing the recording, and demonstrate a familiarity with the current data recorded for each client.
W237
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(5)(iv) The type of data and frequency of data collection necessary to be able to assess progress toward the desired objectives;
Guidance §483.440(c)(5)(iv)
The IDT must determine the type of data necessary to judge a client's progress on an objective, and describe the data collection method in the written training program. The facility determines what data to collect, but whatever system is chosen for collection must yield accurate measurement of the criteria stated in the client's IPP objectives. For example, if the criteria in the client's IPP objective specified a behavior to be measured by "accuracy," or "successes out of opportunities," then it would not be acceptable for the prescribed data collection method to record "level of prompt".
Examples of a few data collection systems include, but are not limited to:

- level of prompt;
- successful trials completed out of opportunities given;
- frequency counts; and
- frequency sampling.

The IDT must consider and select the type and frequency of data collection for each objective based upon the need to measure appropriately the client's performance toward the targeted IPP skill development. The facility should collect data with enough frequency and content to be able to appropriately measure the client's performance toward the targeted IPP skill development. The frequency of data collection may vary with the objective but must be made at sufficient intervals to allow analysis of the progress of the client.
W238

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(5)(v) The inappropriate client behavior(s), if applicable; and The inappropriate client behavior(s), if applicable; and
Guidance §483.440(c)(5)(v)
Any specific behaviors which would interfere with the client's ability to function in, or benefit from the training program are identified (e.g. a fear of water could interfere with the client's bathing program).
W239
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(5)(vi) Provision for the appropriate expression of behavior and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.
Guidance §483.440(c)(5)(vi)
The training program provides specific information as to how to elicit or strengthen appropriate behavior and what behaviors to teach reinforce or encourage which would reduce or replace the inappropriate behavior.
If a client is exhibiting an inappropriate behavior, the CFA should discover why the behavior is occurring and the team should develop associated training objectives to help the client develop more appropriate behaviors. The objective for decelerating targeted inappropriate behaviors is not solely the reduction of these behaviors. The objective should also include the positive functional replacement behavior (adaptive behavior).
A replacement behavior allows a client to substitute an unconstructive or disruptive behavior with something more constructive and functionally equivalent. For example, instead of throwing work materials as a way to get a break from vocational task demands, teach the client to say or sign for 'break'.
§483.440(c)(6) The individual program plan must also:
W240
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(6)(i) Describe relevant interventions to support the individual toward independence.
Guidance §483.440(c)(6)(i)
Appropriate materials, adaptations and modifications to equipment and the environment are available in order to promote and support individual training programs. Examples may include, but are not limited, to built-up toilet seats, adaptive eating utensils, extended reach devices, and modification to the facility van to accommodate a wheelchair.
The IPP describes supports and services, in addition to the individual goals and objectives that will be provided by the facility to assist the client to function with greater independence.
W241
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(6)(ii) Identify the location where program strategy information (which must be accessible to any person responsible for implementation) can be found.
Guidance §483.440(c)(6)(ii)
This requirement refers to the training program plans, objectives, descriptions of staff interventions and data collection tools which must be readily accessible to any staff in order for the programs to be consistently and effectively carried out and data collected.
W242
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(6)(iii) 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.
Guidance §483.440(c)(6)(iii)
All clients who lack the skills listed within this standard have associated training programs developed to meet their needs according to prioritization. These programs are consistently implemented in both formal and informal settings.

"Developmentally incapable" is a decision made by the IDT that means a client does not have the capacity to acquire certain skill sets. The decision must be based on an assessment of the client's strengths, needs, and functional limitations.

The determination of developmental incapability must be accompanied by written evidence supporting this determination.

Such evidence may include training programs which failed after many different strategies were tried, or physical limitations that preclude the acquisition of the skill. Examples are:

1) Eye contact program was attempted using seven different methods over a two year period;

2) An client has two frozen elbow joints which do not allow her to get her hands to her mouth and consequently she will not be trained on any hand to mouth skills; and

3) Some clients may have insufficient neuromuscular and sensory control to ever be totally independent in toileting skills.

Toilet scheduling alone without any plan to progress would not be considered a toilet training program.

The components of functional skills "training" as used in this regulation means aggressive implementation of a systematic program of formal and informal techniques, which are:

- targeted toward assisting the client achieving the measurable behavioral level of skill competency specified in IPP objectives;
- implemented at natural occurrences of activity and training programs; (e.g.: an objective for a client to increase grasping may be implemented as easily in the workshop with a built up tool as in the bathroom with a toothbrush);
- conducted by all personnel involved with the client including those outside the home such as in day programs; and
- carried out in conversation and interaction with the client appropriate to the situation.

§483.440(c)(6)(iv) Identify mechanical supports, if needed, to achieve proper body position, balance, or alignment. The plan must specify

Guidance §483.440(c)(6)(iv)

The use of mechanical supports are based upon an individual assessment and fitting. Mechanical devices are used to support a client's proper body position or alignment and may be essential to prevent contractures or deformities. However, mechanical supports restrict movement and the client should be released from the support periodically for exercise and free movement. Mechanical supports may not be used as a substitute for programs or therapy. For example, the use of a bolster to position a client upright in a sitting position without any indication there has been an assessment for the need for muscle re-training may be an indication of a mechanical device in lieu of programming. Some supports allow movement and provide opportunity for more increased functioning. Some examples of devices used as mechanical supports include splints, wedges, bolsters, lap trays, etc.

Wheelchairs are not generally used to position or align the body and would not alone constitute a mechanical support. However, adaptations to a wheelchair which facilitate correct body alignment by inhibiting reflexive, involuntary motor activity are mechanical supports and should be included in the plan for the client.

W243
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(6)(iv) the reason for each support,
W244
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(6)(iv) the situations in which each is to be applied,
W245
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(c)(6)(iv) and a schedule for the use of each support.
W246
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(c)(6)(v) 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.

Guidance §483.440(c)(6)(v)

Clients with sensory or physical difficulties should be given the same opportunities to move around in their environments as clients who do not have those difficulties. Even clients who use specialized wheelchairs should be given the opportunity to utilize other devices such as walkers, wagons and scooters to move about and/or change their positions.

With the exception of those clients who are acutely ill (such as those who are hospitalized or incapacitated by a "short term" illness), all clients should be out of bed and outside their bedroom area as long as possible each day, and in proper body alignment at all times. This is a necessity in order to prevent regression, contractures, and deformities and to provide sensory stimulation.

Bed rest is a temporary situation associated most usually with a medical condition and must be ordered by the medical staff of the facility. The term implies that the client will remain in his/her bed for most of any 24-hour period. Although active treatment programs may be carried out to some extent while the client is on bed rest, the client's program cannot be completed in its entirety. While there may be situations where continuous bed rest may be necessary, these situations are rare.

For those rare instances where out-of-bed activity is a threat to a client's health and safety (e.g., blood clot in the leg), active treatment adapted to the medical capacity of the client must be continued.

W247

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(c)(6)(vi) Include opportunities for client choice and self-management.

Guidance §483.440(c)(6)(vi)

Choice and self-management are integral components of becoming independent. Clients should be given opportunities for choice and self-management in both formal and informal settings through the IPP process, leisure activities, and other life choices.

The ICF/IID must incorporate opportunities into daily life experiences that promote choice making and decision making by clients. Examples of some activities leading toward responsibility for one's own self-management include, but are not limited to:

1) choosing housing or roommates;

2) choosing clothing to purchase or wear;

3) choosing what, where, and how to eat (e.g., the use of family style dining, access to condiments and second helpings).

Choices can be made by all clients. The type of choices the person makes may vary from simple to complex, dependent upon client abilities.

Clients are provided opportunities for choice and self-management and the facility does not limit choices by making decisions for the people being served without their input. Clients are provided the opportunity to demonstrate skills to the degree they are capable and only assisted by staff as indicated in their IPP. A lack of facility staffing or staff convenience must not result in a limitation of choices of self-management for the clients.

W248

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(c)(7) A copy of each client's individual plan must 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.

Guidance §483.440(c)(7)

The client or legal representative, as well as the facility staff, and staff from outside agencies, with appropriate consent, have, or can access, a copy of the IPP.

(d) Standard: Program implementation

W249

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(d)(1) As soon as the interdisciplinary team has formulated a client's individual program plan, each client must 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.

Guidance §483.440(d)(1)

There should be no delay in the development and implementation of the IPP. To promote a team process and meaningful discussion, IPP development should take place during IDT meetings. Any IPP objective or modification that is critical to the health and safety of any client should be implemented immediately following IDT discussion."

Each individual receives training and services consistent with the current IPP.

The time period between admission and the 30 day IDT meeting is primarily to assist the client to become adjusted and acclimated to his or her new living environment and to enable the facility to complete the CFA. During this time period the facility should also be providing those services and activities determined during the pre-admission assessment as essential to the client's daily functioning.

The active treatment program for the client is consistently implemented in all relevant settings both formally and informally as opportunities present themselves. It should not be limited to specific periods of time during the day or specific environments.

Each client should receive aggressive and continuous training, treatments and supports in accordance with their needs and IPP. New skills and appropriate behaviors are encouraged and reinforced across environments and times of day.

- During observations confirm that the client activities relate directly to the strengths, needs and objectives in the IPP for each client and are not "busy work," generalized or non-developmental time fillers. For example, screwing nuts on bolts and then unscrewing them repeatedly with no goal or transferable skills is "busy work." Screwing nuts on bolts that will be part of a product is functional reinforcement of skill acquisition.
- Clients use adaptive equipment, assistive devices, environmental supports, materials, supplies, etc., as specified in each client's IPP to assist the client to accomplish stated objectives.

There is no specific number or frequency of interventions that meets this requirement. The surveyors should see that the facility capitalizes on all opportunities throughout the course of the day that promote progress toward the achievement of goals and objectives.

Informal opportunities ("teachable moments") should be utilized to reinforce learning or appropriate skill development and needs are addressed as they present.

Although a client may not be able to reach complete independence in a functional skill, it is crucial that retention of their current skills be supported.

Clients may have defined periods of time where they may engage in leisure activities of their choice which are not necessarily directly associated with their IPP goals and objectives.

W250

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

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

Guidance §483.440(d)(2)

The schedule is individualized, consistent with the client's objectives, and reflects normal daily routines. The staff working with individual clients are familiar with their daily schedules and can produce the schedule upon request.

The active treatment schedule allows flexibility and is adjusted to the needs and preferences of the client, as necessary. It's a schedule of the client's general daily plans, but can be changed.

The active treatment schedule is a functional schedule which enables client and staff to be in the right location in order to participate in the training as scheduled by the IPP.

W251

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(d)(3) Except for those facets of the individual program plan that must be implemented only by licensed personnel, each client's individual program plan must be implemented by all staff who work with the client, including professional, paraprofessional and nonprofessional staff.
Guidance §483.440(d)(3)
All disciplines, including direct care staff, interacting with the client work together to provide a uniform, consistent approach to implementation of the IPP.
(e) Standard: Program documentation
W252
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(e)(1) Data relative to accomplishment of the criteria specified in client individual program plan objectives must be documented in measurable terms.
Guidance §483.440(e)(1)
"Data" are defined to be performance information collected and reported in numerical or quantifiable form for each training objective assigned priority in the IPP.
Data are those performance measurements collected at the time the treatment, procedure, intervention or interaction occurs with the client and recorded as soon as possible. The data should be located in a place accessible to staff who conduct training.
Data should be collected in a form and frequency as required by the plan to enable quantitative (frequency or numbers) analysis of the client's progress.
Data are accurate (e.g., reflective of actual client performance.)
§483.440(e)(2) The facility must document significant events that
W253
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(e)(2) are related to the client's individual program plan and assessments and
Guidance §483.440(e)(2)
Significant events are those events which would cause a reasonable person to be affected and which impact a normal routine. Such events include changes in the client's functional status, emotional health, physical health, accomplishments, activities or needs which impact the CFA and IPP, as well as instances of abuse, neglect or mistreatment.
The client record should contain documentation that such events are evaluated and monitored.
W254
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(e)(2) that contribute to an overall understanding of the client's ongoing level and quality of functioning.
(f) Standard: Program monitoring and change
§483.440(f)(1) The individual program plan must be reviewed at least by the qualified intellectual disability professional and revised as necessary, including, but not limited to situations in which the client- -
Guidance §483.440(f)(1)
Program implementation is a critical piece of each client's active treatment program. The QIDP must review or revise client programs according to 483.440(f)(1)(i-iv) and at such an interval that any of the requirements are promptly identified and addressed.
W255
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(f)(1)(i) Has successfully completed an objective or objectives identified in the individual program plan;
Guidance §483.440(f)(1)(i)
The QIDP ensures the program has been modified or changed in response to the client's specific accomplishments or need for new program.
W256
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(f)(1)(ii) Is regressing or losing skills already gained;

W257
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(f)(1)(iii) Is failing to progress toward identified objectives after reasonable efforts have been made; or
Guidance §483.440(f)(1)(iii)
There should be evidence that the QIDP has reviewed and revised the IPP in those situations when the client's IPP has been consistently implemented yet the client fails to achieve their objectives.
W258
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(f)(1)(iv) Is being considered for training towards new objectives.
§483.440(f)(2) At least annually,
Guidance §483.440(f)(2)
For the "annual" review to meet this requirement, it must be completed by at least the 365th day following the previous review, unless in an isolated or rare instance a client or the client's family is not available for a projected period of time and the subsequent delay is a minimal number of days.
W259
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(f)(2) the comprehensive functional assessment of each client must be reviewed by the interdisciplinary team for relevancy and updated as needed;
Guidance §483.440(f)(2)
The CFA is reviewed at least annually.
The review of the CFA occurs sooner than annually if:

- indicated by the needs of the client;
- reflects any changes in the client since their last evaluation; and
- incorporates information about the client's progress or regression with objectives.

The review of the CFA applies to all evaluations conducted for a client. It is not required that each assessment be completely redone each year, except the physical examination. It is required that at least annually the assessment(s) be updated when changes occur so as to accurately reflect the client's current status.
W260
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.440(f)(2) and the individual program plan must be revised, as appropriate, repeating the process set forth in paragraph (c) of this section.
Guidance §483.440(f)(2)
The IPP reflects the functional changes for the client which occurred since the last IPP. It is unlikely that an active treatment program will have no changes from year to year without documentation to support not changing the plan. Question an IPP that is a duplication of the prior year's plan without explanation.
W261
(Rev. 144, Issued: 08-14-15, Effective: 08-14-15, Implementation: 08-14-15)
§483.440(f)(3) The facility must 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- -
Guidance §483.440(f)(3)
The facility must have a specially constituted committee whose primary function is to proactively protect client rights by monitoring facility practices and programs. The purpose of the committee is to assure that each client's rights are protected utilizing a group of both internal staff and *external participants who have no vested interest in the facility as well as clients as appropriate*. There should be evidence that the committee members have been trained annually on the rights of the clients, what constitutes a restriction of a right and the difference between punishment and training.
Depending on size, complexity and available resources, the ICF/IID may establish more than one specially constituted committee. However, each committee must contain the required membership

and participate regularly and perform the functions of the committee according to the requirements. Participation on the specially constituted committee(s) must be in real time allowing all membership to speak and discuss in an interactive mode.

The regulation does not specify the professional credentials of the "qualified persons" (who have either experience or training in contemporary practices to change inappropriate client behavior). There is no requirement that any specific discipline, such as nurse, physician or pharmacist be a member of the committee.

The intent of including "persons with no ownership or controlling interest" on the committee is to assure that, in addition to having no financial interest in the facility, at least one member of each constituted committee is an impartial outsider in that he/she would not have an "interest" represented by any other of the required members or the facility itself. Staff and consultants employed by the facility or at another facility under the same governing body, cannot fulfill the role of person with no ownership or controlling interest.

Although occasional absences from committee meetings are understandable, patterns of absence by the required membership of the committee is not acceptable. At least a quorum of committee members (as defined by the facility) must review, approve and monitor the programs which involve risk to client rights and protections and that quorum must include one person from each of the required categories.

W262

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(f)(3)(i) 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;

Guidance §483.440(f)(3)(i)

Any program that utilizes restrictive or intrusive techniques must be reviewed and approved by the specially constituted committee prior to implementation. This includes, but is not limited to:

- restraints;
- drugs to manage behavior;
- restrictions on community access;
- contingent denial of any right; or
- restrictions of materials or locations in the home.

The committee should ensure that consequences within a written behavior management program do not violate the client's rights.

There is no requirement for the committee to evaluate whether the proposed program is consistent with current practices in the field. Documentation should verify that the specially constituted committee considered factors, such as whether less intrusive methods have been attempted, whether the severity of behavior outweighs the risks of the proposed program and whether replacement behaviors are included within the plan.

Any revision to a behavior plan that increases the level of intrusiveness must be re- reviewed by the specially constituted committee. The committee need not reapprove a program when revisions are made in accordance with the approved plan. For example, if the physician changes the dosage of a medication in accordance with the drug treatment component of the active treatment plan to which the legally authorized person has given consent and which has already been approved by the committee, then there is no need for the committee or the legally authorized person to reapprove the plan. Generally, this would also apply if the medication was changed to another within the same therapeutic class or family.

W263

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(f)(3)(ii) Insure that these programs are conducted only with the written informed consent of the client, parents (if the client is a minor) or legal guardian; and

Guidance §483.440(f)(3)(ii)

The committee must ensure that written informed consent must be obtained prior to implementation of any restrictive or intrusive program. In the event of an emergency, the facility may obtain a verbal

consent, which must be authenticated in writing as soon as possible and subsequently submitted to the committee as verification.

The consent is required for the entire behavior management program not just the specific restrictive technique.

Consent is informed when the person giving consent is fully aware of the:

- specific treatment;
- reason for treatment or procedure;;
- the attendant risks vs. benefits;
- alternatives;
- right to refuse; and
- the consequences associated with consent or refusal of the program.

Informed consent must be in writing and must be specific to the program and restrictive practice and reflect a specific time frame. Blanket consents are not allowed. In the case of unplanned events such as assault and property destruction requiring immediate action, verbal consent may be obtained. However, it should be authenticated in writing as soon as reasonably possible (within 30 days).

For clients up to the age of 18, their parent or legally appointed guardian must give consent for him or her. At the age of 18, however, clients become adults and are assumed to be competent unless otherwise determined by a court.

For clients who are adults and have not been adjudicated incompetent and have not been assigned a legal guardian who may not fully understand the consequences of the program, informed consent for use of restrictive programs, practices or procedures should be obtained from a person or an entity in accordance with state law, to act as the representative or advocate of the client's interests.

The specially constituted committee must ensure that the informed and voluntary consent of the client, parent of a minor, legal guardian, or the person or organization designated by the state is obtained prior to each of the following circumstances:

- The involvement of the client in research activities; or
- Implementation of programs or practices that could abridge or involve risks to client protections or rights.

W264

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.440(f)(3)(iii) 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 areas that the committee believes need to be addressed.

Guidance §483.440(f)(3)(iii)

The committee has been made aware of and reviewed:

- facility policies and procedures;
- facility services;
- programs; and
- practices which may restrict or violate the rights of client.

The committee has established and uses a mechanism for monitoring clients' rights issues and informs the governing body of any issues of concern in a timely manner. This process is at the discretion of the committee. There is no requirement for periodic review of the policies by the committee.

The function of the committee is not limited to the review, approval and monitoring of restrictive behavior management practices. Examples of issues involving client rights that might be reviewed by the committee, in addition to behavior management, include, but are not limited to:

1) Research proposals involving clients;
2) Abuse, neglect and mistreatment of clients;
3) Allegations dealing with theft of a client's personal property or funds;
4) Damage to a client's goods or denial of other client rights;
5) Client grievances;
6) Visitation procedures;

7) Guardianship/advocacy issues;
8) Rights training programs;
9) Confidentiality issues;
10) Advance directives/DNR orders;
11) Practices which restrict clients (e.g., locked doors, fenced in yards); and
12) Video monitoring.

W265
§483.440(f)(4) The provisions of paragraph (f)(3) of this section may be modified only if, in the judgment of the State survey agency, Court decrees, State law or regulations provide for equivalent client protection and consultation.
W266
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450 Condition of participation: Client behavior and facility practices
(a) Standard: Facility practices– Conduct toward clients
W267
(Rev.135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(a)(1) The facility must develop and implement written policies and procedures for the management of conduct between staff and clients.
Guidance §483.450(a)(1)
The primary survey emphasis is on the implementation of the policies and procedures developed by the facility.
Conduct between staff and clients refers to language, actions, discipline, rules, order and other types of interactions exchanged between staff and clients or imposed upon clients by the staff during a client's daily experiences that affect the quality of a client's life.
§483.450(a)(1) These policies and procedures must –
W268
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(a)(1)(i) Promote the growth, development and independence of the client;
Guidance §483.450(a)(1)(i)
Consistent with facility policies, staff is observed to be engaged in activities which promote the client's growth, development and independence.

1) IPPs and data support the fact that from the time of admission, clients are learning new adaptive and functional skills while becoming more independent.
2) Interactions between clients and staff are consistent and positive.
3) Staff teach and encourage clients to interact with each other in a manner that promotes social integration both in the facility and out in the community.
4) All opportunities to teach and reinforce skill acquisition are utilized.
5) Staff identify and remove impediments in the learning environment (e.g. client is unable to concentrate in a room with a television because when they see the television, they want to watch their favorite show. Staff must identify this learning impediment and train in an environment without a television).
6) Staff encourage clients to complete tasks with as much independence as possible.
7) Staff encourage clients to take risks while providing reasonable safeguards to prevent injury.
8) Encourage clients to make choices during their daily activities.

W269
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(a)(1)(ii) Address the extent to which client choice will be accommodated in daily decision-making, emphasizing self-determination and self-management, to the extent possible;
Guidance §483.450(a)(1)(ii)
Written facility policies describe how the facility will offer choice to the clients during the course of their day.

Written policies describe how self-determination, as defined by free choice of one's own acts and decisions without external coercion or direction, to the extent possible and self- management, as defined by control of one's own routine and daily responsibilities, to the extent possible, are incorporated into the development of program plans and daily routines.

W270

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.450(a)(1)(iii) Specify client conduct to be allowed or not allowed; and

Guidance §483.450(a)(1)(iii)

"Client conduct" refers to any behavior, choice, action, or activity in which a client may choose to engage alone or with others.

Written policies and procedures which may be in the form of "house rules", must not impinge on individual client rights and must not be used as a substitute for the development of individualized programs and plans.

W271

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.450(a)(1)(iv) Be available to all staff, clients, parents of minor children, and legal guardians.

Guidance §483.450(a)(1)(iv)

Policies and procedures for management of conduct between staff and clients (483.450(a)(1)) should be provided to clients, parents of minor children, and legal guardians at admission and upon request. Policies and procedures are available on the residential and program areas if these are in separate buildings.

W272

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.450(a)(2) To the extent possible, clients must participate in the formulation of these policies and procedures.

Guidance §483.450(a)(2)

"To the extent possible" does not mean that the clients are excluded due to the clients' schedule or intellectual or developmental level. Facilities should be able to provide documentation that substantiates that clients were offered the opportunity and participated in the development of the policies. This could be accomplished through client committees or in house meetings. There should be documentation of these discussions between the client representatives and the facility.

W273

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

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

Guidance §483.450(a)(3)

Staff will promptly intervene when any clients tries to independently impose discipline upon another client. For example, a client who is serving dessert to the group withholds dessert from another client based upon their own evaluation of that client's behavior.

(b) Standard: Management of inappropriate client behavior

W274

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.450(b)(1) The facility must develop and implement written policies and procedures that govern the management of inappropriate client behavior

Guidance §483.450(b)(1)

At a minimum, the facility must have written policies and procedures regarding the management of maladaptive behaviors addressing the following:

483.450(b)(1) (W 275 – W284).

- the use of a functional behavior assessment in the development of behavior management programs;
- a hierarchy of least to most intrusive measures; and
- incorporation of behavior management programs into the IPP.

§483.450(b)(1) These policies and procedures must be
W275
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(b)(1) consistent with the provisions of paragraph (a) of this section.
§483.450(b)(1) These procedures must
W276
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(b)(1)(i) Specify all facility approved interventions to manage inappropriate client behavior;
Guidance §483.450(b)(1)(i)
All interventions for the management of inappropriate client behaviors which are approved for use in the facility are clearly stated and described in its policy. Examples of positive interventions include, but are not limited to, verbal praise reward systems, and prompting. Examples of negative interventions include, but are not limited to, removal of a privilege, implementation of restraint, and/or the use of exclusionary time out.
W277
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(b)(1)(ii) Designate these interventions on a hierarchy to be implemented, ranging from most positive or least intrusive, to least positive or most intrusive;
Guidance §483.450(b)(1)(ii)
Policies and procedures must include a clear progression as to how staff implement interventions to manage inappropriate client behavior.
Facility policy and procedures must define the entire hierarchy of possible interventions from the most positive, functionally appropriate approaches to most intrusive approaches authorized. The facility determines at what level in the hierarchy the IPP will begin for each client based on their individual assessment. The plan must still begin at the least intrusive technique shown effective for that client. Individual plans should specify the specific techniques that have been determined through assessment to be least restrictive for each client.
The facility policy for unexpected behavioral incidents must provide direction for the staff in the utilization of the hierarchy. For clients not on a behavior plan, staff must apply the appropriate level of intervention per the established hierarchy, including emergency measures to prevent harm to self or others.
W278
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(b)(1)(iii) Insure 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 demonstrated to be ineffective; and
Guidance §483.450(b)(1)(iii)
Policies must be implemented to ensure that all restrictive procedures begin at the lowest level of the hierarchy unless there is documented evidence that less intrusive interventions have been tried and have been found to be ineffective.
The facility is not required to justify discontinuing the use of a more restrictive technique before initiating a less restrictive technique, since the intent of the regulation is to use the most positive, least intrusive technique possible.
In emergency situations where an unanticipated behavior requires immediate protection of the client or others, the technique chosen is the least restrictive appropriate technique possible.
§483.450(b)(1)(iv) Address the following:
W279
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(b)(1)(iv)(A) The use of time-out rooms;
Guidance §483.450(b)(1)(iv)(A)

"Time-out room" is defined as a separate room that is used to remove a client from stimulation that may be triggering and reinforcing maladaptive behavior. The facility must have written policies and procedures for the use of time out rooms which address all the requirements of 483.450 (c) (1-4) standard: time out room.

W280
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(b)(1)(iv)(B) The use of physical restraints;
Guidance §483.450(b)(1)(iv)(B)

"Physical restraint" is defined as any manual hold or mechanical device that the client cannot remove easily, and which restricts the free movement of, normal functioning of, or normal access to a portion or portions of a client's body. Examples of mechanical devices may include arm splints and mittens.
Policies and Procedures must address:

- the types of physical restraint that are allowed in the facility;
- the persons who apply such restraints;
- the parameters for duration of application;
- the methods that assure the health and safety of clients while in restraints; and
- the specific training required for staff allowed to apply such restraints.

W281
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(b)(1)(iv)(C) The use of drugs to manage inappropriate behavior;
Guidance §483.450(b)(1)(iv)(C)

Applicable policies may include a discussion of:
When a drug can be used to manage inappropriate behavior;
Consistency with diagnosis;
Alternatives tried before a drug is used;
Precautions that must be followed prior to and during the use (lab values, monitoring of side effects);
Implementation of a plan to address the behaviors for which the drug was prescribed; and
Plan to reduce the medication as appropriate.
Drugs to manage inappropriate behavior are defined as any medication prescribed and administered for purposes of modifying the maladaptive behavior of a client.

W282
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(b)(1)(iv)(D) The application of painful or noxious stimuli;
Guidance §483.450(b)(1)(iv)(D)

"Application of painful or noxious stimuli" is defined as any procedure by which staff apply, contingent upon the exhibition of maladaptive behavior, startling, unpleasant, or painful stimuli, or stimuli that have a potentially noxious effect.
While the regulation permits the use of painful or noxious stimuli these techniques are the last resort and can only be utilized for behaviors that are causing significant harm and have not responded to competently administered interventions of less intrusive nature.
Facility policies must state that:

- The use of noxious stimuli is only permitted when the client exhibits behaviors so severe that they present a potential risk for significant or even life-threatening circumstances;
- the IDT and facility must weigh the potential risk of the behavior against the risk involved in the use of the painful or noxious techniques to manage behavior;
- that safeguards and strict oversight must be in place for consideration to use techniques that may be painful or even unpleasant;
- techniques that may be painful or noxious must be time limited;
- the proposed use of these techniques requires scrutiny of clinical effectiveness and specially constituted committee review; and
- on-going monitoring and safeguards must be in place during implementation of the technique.

W283

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(b)(1)(iv)(E) The staff members who may authorize the use of specified interventions;
Guidance §483.450(b)(1)(iv)(E)
W284
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(b)(1)(iv)(F) A mechanism for monitoring and controlling the use of interventions.
Guidance §483.450(b)(1)(iv)(F)
Facility policies must address what supervisory oversight is provided during the application of the intervention in order to ensure that procedures were followed correctly. Procedures should also address what retrospective analysis is done on each intervention to ensure that procedures are being consistently followed.
W285
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(b)(2) Interventions to manage inappropriate client behavior must be employed with sufficient safeguards and supervision to ensure that the safety, welfare and civil and human rights of clients are adequately protected.
§483.450(b)(3) Techniques to manage inappropriate client behavior must never be used
W286
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(b)(3) for disciplinary purposes,
Guidance §483.450(b)(3)
No intervention, whether as a part of a formal program or in emergency situations (see W289) may be used as punishment, retaliation or retribution. A staff member cannot employ a behavior management technique simply because a client refuses to follow a staff request.
The implementation of all interventions, except in emergency situations, must be administered consistent with the IPP and the specific behaviors identified in the IPP requiring the intervention. Instances where an intervention is done as a punishment because the client did not comply with staff instructions and not associated with the IPP include:

- Personal property confiscated for behavior at staff discretion;
- Rights restricted without approved plans; and
- Punitive house rules, such as prohibiting reentry into the kitchen for snacks if a meal is not eaten completely.

W287
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(b)(3) for the convenience of staff
Guidance §483.450(b)(3)
Inadequate numbers of staff, inefficient deployment of staff, and insufficient training of staff can lead to restrictive practices used for staff convenience.
Examples of techniques used to manage client behavior for staff convenience including, but are not limited to:

- Clients allowed to discipline other clients;
- Clients restricted to one area of the home; and
- Unauthorized use of restraints (e.g., lap trays, bean bags, gait belt, and merry walkers for the purpose of restricting movement)

W288
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(b)(3) or as a substitute for an active treatment program.
Guidance §483.450(b)(3)
Substitutions for active treatment programming occur when the staff utilizes interventions and restrictive techniques on their own, either because there is not a formal behavioral program to address the client's behaviors or because the staff do not follow the plan as written.
W289

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(b)(4) The use of systematic interventions to manage inappropriate client behavior must be incorporated into the client's individual program plan, in accordance with §483.440(c)(4) and (5) of this subpart.
Guidance §483.450(b)(4)
The use of behavior interventions are expected to be incorporated into the IPP and be based upon the results of the functional behavioral assessment.
However, there may be isolated and rare instances when a client exhibits unexpected behavior that requires immediate intervention on the part of the staff. In these instances, the least restrictive intervention must be employed and removed as soon as the client is no longer an immediate threat to self or others. The IPP team must then discuss the need for adding a behavioral plan into the clients program.
W290
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(b)(5) Standing or as needed programs to control inappropriate behavior are not permitted.
Guidance §483.450(b)(5)
The staff of the facility may not maintain or use, outside of the IPPs, any list of "as needed" interventions that can be used with any client at any time. With the exception of isolated and rare emergency situations, all restrictive behavior interventions must be incorporated into the formal IPP and individualized for the client.
(c) Standard: Time-out rooms
W291
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(c)(1) A client may be placed in a room from which egress is prevented only if the following conditions are met:
(i) The placement is a part of an approved systematic time-out program as required by paragraph (b) of this section. (Thus, emergency placement of a client into a time-out room is not allowed.)
(ii) The client is under the direct constant visual supervision of designated staff.
(iii) 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.
Guidance §483.450(c)(1)
Seclusion, defined as the placement of a client alone in a locked room, is never allowed.
Time out procedures allows a client to be alone in a room, but do not allow that room to be locked. During a time out procedure, egress can only be prevented by a person standing in the door way, or holding the door closed, but as soon as the staff move from the door way or let go of the door the client can come out.
Use of the timeout room or procedure must be part of an approved behavioral plan and may involve the separation of a client from a group or a particular situation, in a non- locked setting for the purpose of calming or removing the client from the reinforcing stimuli that are sustaining an identified maladaptive behavior.
Designated time out rooms must be set up so that the staff has continuous, direct observation of the client at all times. Because of the danger that staff can get distracted by other events or duties, this cannot be accomplished by a camera in lieu of the staff having direct visual of the client.
Key locks, latch locks, and doors that open inward without an inside doorknob are not permitted by the regulations for use in time out rooms as they do not require constant physical pressure from a staff member to keep the door shut. In each instance where a time out room is used, the client's IPP must include:

- The functional behavioral assessment which resulted in a recommendation for the use of time out procedures; and
- Instructions on how often data is to be collected during the time out period and the criteria for release from time out.

The use of a time out room must be approved by the Specially constituted committee as part of an approved program.

W292

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.450(c)(2) Placement of a client in a time-out room must not exceed one hour.

W293

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

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

Guidance §483.450(c)(3)

Because placement in the time out room is typically secondary to extreme behaviors, it is acceptable that there be no furniture in this room.

A door that opens inward can potentially be held closed, either intentionally or inadvertently, by the client in the room, thereby denying staff immediate access to the room.

W294

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.450(c)(4) A record of time-out activities must be kept.

Guidance §483.450(c)(4)

The documentation in the client's record accurately reflects planned (e.g. part of the IPP) usage and presents a picture of events prior to, during, and following the use of time-out. The IPP should include direction as to how often data must be collected during each use of time out for each individual client.

(d) Standard: Physical restraints

§483.450(d)(1) The facility may employ physical restraint only- -

W295

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.450(d)(1)(i) 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;

Guidance §483.450(d)(1)(i)

The use of physical restraint is specified within the IPP. The plan must address:

1) The specific type of client behavior to be managed by this plan;

2) The less restrictive behavioral approaches which were previously used, but were unsuccessful;

3) The hierarchy of measures that must be utilized prior to the application of physical restraint;

4) The type of physical restraint;

5) The type of client behavior that would indicate that the patient is calm and can be released from the restraint; and

6) The replacement behavior being taught to the client to reduce the need for future restraints.

W296

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.450(d)(1)(ii) As an emergency measure, but only if absolutely necessary to protect client or others from injury; or

Guidance §483.450(d)(1)(ii)

Physical restraint may be used as an emergency intervention only in situations where the client is exhibiting behaviors which:

1) the client has not exhibited before;

2) were not identified in the functional analysis of behavior; or

3) are harming other people or themselves.

When there are repeated episodes of the use of physical restraint as an emergency safety measure, these episodes should be assessed for their predictability by the IDT, and revisions to the IPP considered addressing the behaviors through a formal behavior plan in order to reduce/eliminate the use of physical restraint.

W297

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(d)(1)(iii) 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 absolutely necessary for client protection during the time that a medical condition exists.
Guidance §483.450(d)(1)(iii)
Physical restraint during medical procedures must be utilized only when absolutely necessary and be used as a last resort in order for the facility or practitioners to deliver needed medical care to the client. The restraint must be released as soon as the medical procedure is completed unless it is necessary to continue restraint for a longer period of time to continue to deliver care or to prevent the client from displacing tubes or dressings. These restraints may only be used as long as the physician indicates them to be necessary.
For instances where physical restraint are used by the facility or a practitioner during a medical procedure, the client record and interviews should verify that less restrictive measures were attempted before using physical restraint and verify whether any injuries occurred during the use of the physical restraint. Written orders by medical personnel for the application of a physical restraint should include the reason that the restraint is necessary, the type of restraint to be used and the length of time the restraint will be applied.
A restraint device used to prevent a client engaging in self-injurious behavior is not considered a restraint for medical condition.
§483.450(d)(2) Authorizations to use or extend restraints as an emergency measure must be:
Guidance §483.450(d)(2)
Facility policies should list who in the facility is allowed to authorize the emergency use of restraints or to extend the use of an emergency restraint, and the training that is required for those persons who may authorize. Documentation in the client record in those instances should confirm that the facility follows that policy.
W298
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(d)(2)(i) In effect no longer than 12 consecutive hours; and
Guidance §483.450(d)(2)(i)
This regulation does not mean that restraints may be authorized to be applied for up to a 12 hour period. The client must be released from the physical restraint as soon as the client is no longer a risk to self or others. Once the behavior has ceased, the emergency has ended, and the client has been released, another authorization would be required for any new emergency situation.
The 12 consecutive hour period is the absolute maximum period of time that emergency physical restraint may be utilized for a client during an individual behavioral incident. It is reasonable to expect that the facility will reassess the emergency situation for any client who remains in physical restraint for longer than one hour and reassess the situation at least every 30 minutes thereafter up to 12 hours when the physical restraint must be removed.
W299
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(d)(2)(ii) Obtained as soon as the client is restrained or stable.
Guidance §483.450(d)(2)(ii)
There may be instances where the maladaptive behaviors of a client or clients escalate into a serious and immediate event that must be de-escalated quickly in order to prevent harm to clients, staff, other clients, or by standers when incidents occur in the community. In these instances, the staff should contact the appropriate person to obtain authorization for the use of physical restraint as soon as the situation is stable. Retrospective documentation of the incident should confirm the need for authorization after application.
W300
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(d)(3) The facility must not issue orders for restraint on a standing or as needed basis.
Guidance §483.450(d)(3)

All instances of physical restraint must be ordered on a case by case basis with individual assessment of the situation and authorization based upon the individual client. Authorizations should include the rationale for the use of the physical restraint versus other less restrictive measures.

W301

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.450(d)(4) A client placed in restraint must be checked at least every 30 minutes by staff trained in the use of restraints,

Guidance §483.450(d)(4)

The frequency of monitoring will vary according to the type and design of the device and the psychological and physical well-being of the client. The facility should be checking the client often enough to adequately assess the physical status of the client (e.g., circulation, respiration and vital signs) of the client and the need to continued restraint. The more restrictive the intervention, the greater the risk to the client and the more often the client must be assessed. Frequent assessment will assure that the client will be released as soon as possible, however, in no instance may the staff go longer than 30 minutes without checking the client.

W302

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.450(d)(4) released from the restraint as quickly as possible, and

Guidance §483.450(d)(4)

"As quickly as possible" means as soon as the client is no longer a danger to self or others. Documentation should support that the client was released from restraint as soon as they became calm.

W303

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.450(d)(4) a record of these checks and usage must be kept.

§483.450(d)(5) Restraints must be designed and used

W304

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.450(d)(5) so as not to cause physical injury to the client

Guidance §483.450(d)(5)

Physical restraints to include mechanical devices must be the correct size for the client and be applied with the correct amount of pressure according to manufacturer's directions. In addition to observation of any physical mechanical restraint in use at the time of the survey, review incident reports for any injuries as a result of restraint use.

W305

§483.450(d)(5) and so as to cause the least possible discomfort.

§483.450(d)(6) Opportunity for motion and exercise must be provided

W306

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.450(d)(6) for a period of not less than 10 minutes during each two hour period in which restraint is employed,

Guidance §483.450(d)(6)

This requirement does not apply to cases of medical restraints that are specifically ordered for the immobilization of bones and joints during the physical healing process involved with fractures, sprains, etc. (e.g. a broken bone immobilized by a cast or splint).

See 331 483.460(c) regarding surveillance of skin integrity during the use of medical restraints.

However, if a mechanical physical restraint is applied to an extremity to prevent a client from removing post-operative sutures, the restraint must be released every two (2) hours for a period of not less than ten (10) minutes in order to maintain adequate circulation.

Mechanical restraints placed on the client during sleeping hours must be medically based and specifically ordered by a physician. There should be evidence in the client's record why the mechanical physical restraint is necessary during sleeping hours. While it is not necessary to wake the client every two (2) hours to release the restraint and provide opportunity for exercise, the staff must check the restraint

frequently during the night to ensure that the restraint is still properly applied and the client appears comfortable.

W307
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(d)(6) and a record of such activity must be kept.
§483.450(d)(7) Barred enclosures
Guidance §483.450(d)(7)
A bed or play equipment with bars that prevent the client from leaving the bed or voluntarily climbing out of the bed are barred enclosures. The use of such enclosures must be a part of the written IPP and behavioral assessments must clearly state why such an enclosure is necessary, the risks of using the enclosure versus not using it and what less restrictive measures have been tried prior to the implementation of the barred enclosures.
Such devices may not be used in lieu of adequate staffing.
W308
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(d)(7) must not be more than three feet in height and
W309
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(d)(7) must not have tops.
(e) Standard: Drug usage
§483.450(e) Standard: Drug Usage
W310
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(e)(1) The facility must not use drugs in doses that interfere with the individual client's daily living activities.
Guidance §483.450(e)(1)
Clients are alert and available for participation in daily living activities.
Some medications administered for medical reasons or to manage behavior may cause drowsiness as a side effect or due to an accumulation of the drug in the client's system. For clients who are observed to be sleeping in chairs during their work day, their programs or recreational times, there should be evidence that the facility staff notified the medical staff and an assessment was performed of the client including their medication regimen. Medical staff should make adjustments to address the issue if indicated.
§483.450(e)(2) Drugs used for control of inappropriate behavior must
W311
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(e)(2) be approved by the interdisciplinary team and
Guidance §483.450(e)(2)
The physician and other team members discuss the risks and benefits of the medication to address the target behavior/symptoms, and approve the use of the drug as being consistent with the active treatment program. Decisions about the necessity of the use of drugs to manage inappropriate behavior should be made by the IDT. It is the responsibility of the IDT members to provide the physician with sufficient information regarding the need for a client to receive a drug for inappropriate behavior. The physician will make the ultimate decision to order the use of the drug. The IDT should document any disagreement with the physician's order.
In those instances where a client returns from a physician's visit with an order for an unsolicited drug to manage client's inappropriate behaviors, there must be evidence (e.g. IDT meeting notes or clients record) that the team concurred with the necessity for the order without trying less restrictive measures first and discussed any concerns with the physician.
W312
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.450(e)(2) be used only as an integral part of the client's individual program plan that is directed specifically towards the reduction of and eventual elimination of the behaviors for which the drugs are employed.

Guidance §483.450(e)(2)

All medications to manage behavior must be integrated into the IPP and the IPP must specify how the specific target behavior for which the medication is prescribed will be reduced or eliminated. This includes medications which are typically used for medical conditions that may be used to manage behavior (e.g. 1. propranolol (Inderal), an antihypertensive used for self-injurious behavior, and 2. carbamazepine (Tegretol), an anticonvulsant, used for aggression).

Drugs for behavior management must not be ordered on a PRN basis for a client. The facility staff must contact the physician to obtain a one-time order if the situation necessities the use of medication. The facility policy must address the maximum number of times a medication can be used as an emergency prior to being incorporated in the IPP, side effects of such medications, and the frequency of re-evaluation of ongoing behavior and its treatment.

Clients or their legal guardian have the right to choose sedation for medical and dental procedures. However, the facility cannot do routine administration of medication for sedation for medical and dental procedures without the agreement/consent of the client or their parent/legal guardian and they must follow the specific orders of the healthcare practitioner who will be providing services to the client. Decisions to order medications prior to medical and dental procedures must be made on an individual basis. Clients who demonstrate severe anxiety around these procedures should be considered for desensitization programs.

W313

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

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

Guidance §483.450(e)(3)

The risk(s) associated with the drug being used is consistent with the type and severity of the behavior/symptoms it is intended to affect.

At the time the drug was started and incorporated into the IPP, the behaviors were discussed and presented to team members. It was the documented decision of the team that the behaviors were of such a severity that pharmacological intervention was required and the physician was provided with the team information to assist him in his decision to prescribe the medication.

§483.450(e)(4) Drugs used for control of inappropriate behavior must be- -

§483.450(e)(4)(i) Monitored closely,

W314

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.450(e)(4) in conjunction with the physician and the drug regimen review requirement at §483.460(j),

Guidance §483.450(e)(4)

The physician and pharmacist must regularly review use of drugs for control of inappropriate behavior for their effectiveness in changing the targeted behavior/symptoms, untoward side effects, contraindications for continued use, and communicate this information to relevant staff.

W315

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.450(e)(4) for desired responses and adverse consequences by facility staff; and

Guidance §483.450(e)(4)

Direct support staff members are the people who most closely and most frequently observe and record client behaviors. There should be evidence that the direct support staff receive information via the IPP as to the behaviors to be observed, the side effects associated with the medication, the amount and types of documentation required and the communication with clinical staff which is indicated. See 483.430 (e)(1) for training on observations, documentation and communication related to behavior management.

§483.450(e)(4)(ii) Gradually withdrawn
W316
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(e)(4) at least annually
Guidance §483.450(e)(4)
Clients receiving medications to control behavior must be evaluated at least annually for a possible reduction of the medication progressing the client toward final elimination of the drug or lowest possible therapeutic level of the drug. However, evaluation should be done earlier than annually if observations indicate that the client's behavior has improved to the point that reduction may be considered as determined by the IPP, unless otherwise ordered by the client's physician.
W317
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.450(e)(4) in a carefully monitored program conducted in conjunction with the interdisciplinary team, unless clinical evidence justifies that this is contraindicated.
Guidance §483.450(e)(4)
The IDT is aware of and involved in planning the drug reduction program and participates in its implementation and monitoring.
Progress or regression of the client is monitored and taken into consideration in determining the rate of withdrawal and whether to continue withdrawal.
In determining whether there is clinical contraindication to the annual drug withdrawal, the physician and IDT should consider the client's clinical history, diagnostic/behavioral status, previous reduction/discontinuation attempts, and current regimen effectiveness.
If a client also has a diagnosis of a psychiatric condition that requires a stable level of a psychiatric medication in order to control the symptoms associated with the psychiatric diagnosis, the annual evaluation for reduction of that particular medication for the symptoms of the psychiatric diagnosis would not apply. Documentation in the client's record from their psychiatrist or physician that medication reduction would be contraindicated or that the current level of medications is therapeutic meets the intent of this regulation.
W318
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460 Condition of participation: Health care services
(a) Standard: Physician services
W319
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(a)(1) The facility must ensure the availability of physician services 24 hours a day.
Guidance §483.460(a)(1)
A designated physician must be available via telephone, pager, e-mail or on-site in the facility on a 24 hour per day basis for consultation regarding both emergency and non-emergency medical issues. If the facility employs a fulltime physician, there must be procedures in place for coverage in the absence of the physician from the facility.
If the facility contracts with a community-based physician for 24 hour per day coverage, there must be written arrangements in place to detail the responsibilities of the contract physician regarding direct services to the clients, interactions with the direct support staff and the interactions between the nursing staff of the facility and the contract physician. The contract with the contract physician must delineate the process for coverage when he/she is not available.
Upon interview, the staff should be aware of the procedures they are to follow to contact a physician in the event of an illness or injury. Routinely sending clients to emergent care or the emergency room of a hospital because there are no facility physicians available for consultation is not consistent with the regulations.
Interview and record review verify that the physician is available and responsive 24 hours a day.
W320
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(a)(2) The physician must 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.

Guidance §483.460(a)(2)

A medical care plan of treatment is developed for those clients who are either acutely ill and require licensed nursing care and monitoring temporarily on a 24 hour basis or clients whose chronic medical conditions require or indicate 24 hour licensed nursing care and monitoring. The physician determines when 24 hour nursing care is required.

The medical care plan is based upon the orders from the physician for treatments and care and nursing standards of practice. There is evidence in the client's record that the physician and the nursing staff at the facility work together to ensure that the medical care plan is current and appropriate (e.g. changes in physician written orders for care pursuant to observations from the nursing staff and/or direct observations and interactions with the client, and nursing documentation of care).

The fact that a client has a medical care plan in place should not preclude him/her from an active treatment program, except in instances of acute illness where the active treatment program is temporarily suspended. For clients with chronic medical conditions, it may be necessary for their active treatment program to be modified due to the tolerance level of the client or adapted to accommodate medical limitations. However, active treatment must be provided on a continuous basis.

W321

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(a)(2) This plan must be integrated in the individual program plan.

Guidance §483.460(a)(2)

Although the medical care plan can be a separate document, it is always an integral part of the IPP process. There should be evidence that the plans are shared and discussed at the time of all interdisciplinary discussions and the information from the medical care plan is utilized in the development of the IPP objectives.

§483.460(a)(3) The facility must provide or obtain

W322

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(a)(3) preventive and general care

Guidance §483.460(a)(3)

The facility has procedures in place to ensure that the clients receive general health care services to assure optimal levels of wellness. General health care services include assessment and treatment of acute and chronic complaints or situations; teaching relevant heath care principles to staff and clients; and periodic surveillance of the health status of the clients.

As a result of clinical assessment, referrals are made for specialized assessment and tests. Facility health care staff follow-up to ensure the assessments are done and the findings incorporated into the medical care plan and/or the IPP.

The facility must have arrangements in place to provide routine or episodic laboratory, and radiology services for the clients if not provided in-house or through the clients physician. There must be a written agreement that specifies the responsibilities of the facility and outside provider. (See §483.410(a)).

Preventive health care services include screening procedures designed to identify health concerns and initiate treatment as early as possible. The facility should have a health prevention program in place and follow the plan to address those screenings that the facility will perform periodically that are relevant to all clients, and those screenings associated with a particular gender or age or vulnerability.

Physician refusal to perform a test, such as a pap smear, must be consistent with guidelines for clients, per the local standard in the community.

If the facility has a physician that refuses to provide preventative healthcare based on the client's level of functioning, medical staff at the facility should meet with and consult with this physician in order to ensure that clients receive the same health services as persons living in the local community.

Refer to these websites for current recommended screenings: Agency for Healthcare Research and Quality (AHRQ)

For men: http://www.ahrq.gov/ppip/healthymen.htrm
Centers for Disease Control (CDC)
For women: http://www.cdc.gov/women/pubs/cancer.htm
§483.460(a)(3) as well as annual physical examinations of each client that at a minimum include the following:
W323
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(a)(3)(i) Evaluation of vision and hearing;
Guidance §483.460(a)(3)(i)
Information relevant to the client's ability to see and hear is a critical component in the development of appropriate active treatment strategies.
All clients, including clients who are non-verbal, should have evidence in his/her record that they receive an annual evaluation of their vision and hearing which includes a screening as a minimum, follow-up examination as indicated by the screen and timely referrals as indicated by the examination. Screening is a gross assessment of the client's vision and hearing and usually does not include a measurement of acuity. Examinations are conducted to follow-up on issues noted in the screening and are conducted by qualified professionals.
Clients who appear to have vision or hearing problems or the staff indicate that they have vision or hearing problems and no accommodations have been made. The annual vision and hearing evaluation verifies that clients appearing to have vision/hearing issues or if staff indicate that a client has vision/hearing issues that these issues have been/are being addressed.
If a client's vision or hearing can only be assessed through examinations conducted by specialists (e.g., comprehensive ophthalmological examinations and evoked response audiometry (ERA)), these tests need not be conducted yearly, but rather upon the specialist's expressed recommendations. During discussions at the annual IPP review the team reviews information from the health professional, speech and hearing professional, and direct support staff and makes referrals back to the specialist if indicated.
W324
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(a)(3)(ii) 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;
Guidance §483.460(a)(3)(ii)
These immunization guides may be obtained from: American Academy of Pediatrics
www.aap.oxg/healthtopics/immunizations.cfm
Centers for Disease Control (CDC)
www.cdc.gov/vaccines/recs/schedule/default.htm.
W325
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(a)(3)(iii) Routine screening laboratory examinations as determined necessary by the physician,
Guidance §483.460(a)(3)(iii)
The facility may have a set of routine laboratory tests which are to be done on every client annually which is developed and approved by the facility physician. However, such a list is not required. The physician may write orders individually for the clients based upon their medical history, age, gender or medical vulnerabilities.
W326
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(a)(3)(iii) and special studies when needed;
W327
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(a)(3)(iv) Tuberculosis control, appropriate to the facility's population, and in accordance with the recommendations of the American College of Chest Physicians or the section on diseases of the chest of the American Academy of Pediatrics, or both.

Guidance §483.460(a)(3)(iv)

The facility should have in place a system for the identification, reporting, investigation, and control of Tuberculosis (TB) in order to prevent its transmission within the facility. This system should include:

1) Policies and procedures for screening new employees, new clients, and other people who interact on a consistent basis with clients residing in the facility when those persons are volunteers or professional staff hired or utilized directly by the facility (such as volunteers and contract professional staff);

2) Policies and procedures for subsequent screening for clients and for employees, and other people (such as volunteers and contract professional staff) who interact on a consistent basis with clients residing in the facility when those persons are volunteers or professional staff hired or utilized directly by the facility per State Health Department requirements;

3) Policies and procedures for reporting positive TB test results to the appropriate State authorities;

4) Policies for the investigative procedures, per the local health department, that would be put in place should a client or staff person test positive for TB;

5) Policies and procedures for treatment and precautions to be used with clients who display TB symptoms, as substantiated by positive skin testing or x-ray results; and

6) Policies and procedures for the evaluation of the effectiveness of the surveillance system.

When one or more clients or staff display TB symptoms, as substantiated by positive skin testing or x-ray results, they do not return to work until a physician has cleared them to return to work.

W328

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(a)(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 section.

Guidance §483.460(a)(4)

Refer to the applicable State Nurse Practice Act or applicable Board of Medicine Practice Act to determine the extent that the nurse practitioner or physician assistant may provide physician services.

(b) Standard: Physician participation in the individual program plan

§483.460(b) A physician must participate in-

W329

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(b)(1) The establishment of each newly admitted client's initial individual program plan as required by §456.380 of this chapter that specifies plan of care requirements for ICFs; and

Guidance §483.460(b)(1)

During the admission process, which takes place from the time the client is admitted to the facility to the time the initial IPP is completed, a physician is required to ensure that an assessment of the client's medical status is thoroughly considered and incorporated into the IPP planning process by the team as it develops the IPP. The physician's input may be by means of written reports, evaluations, and recommendations.

The physician (consistent with Medicaid Utilization Control regulations at §456.380) must evaluate the client at the time of admission to identify all diagnoses and complaints, provide orders for all medications and treatments and provide recommendations for restorative and rehabilitative services.

§456.380 requires that a physician conduct this initial assessment therefore, it may not be done by a physician extender (e.g., Physician assistant or Advanced Practice Registered Nurse).

W330

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(b)(2) If appropriate, physicians must 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.

Guidance §483.460(b)(2)

The need for physician participation on an individual client's IPP team is determined by the medical needs of the client. How the physician participates (whether through written report, telephone consultation, attendance at the meeting, etc.) is to be left to the discretion of the facility. In instances where a client has no overriding medical issues, the nurse of the facility can represent the medical component on the IDT process or consult with the appropriate physician and share the information with the team. However, in situations where a client's medical condition is unstable/fragile to the extent that it impacts the training/work that may be planned, the physician must participate in providing guidance on the types and extent of programs that would be appropriate considering the client's physical/medical limitations. If a client is noted to be having difficulty participating in the objectives set forth in his/her IPP due to serious medical concerns, review the input that was provided by the physician into the development of the plan and whether the IPP team requested such input.

(c) Standard: Nursing services

W331

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(c) The facility must provide clients with nursing services in accordance with their needs.

Guidance §483.460(c)

The nurse responds in a timely manner to all medical concerns reported, conducts assessments as indicated, effects timely and appropriate interventions, communicates with the client's physicians and other health care professionals as indicated, provides treatments as ordered, monitors client progress following illness or injury and provides training to clients and/or staff as indicated.

§483.460(c) These services must include

W332

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

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

Guidance §483.460(c)(1)

For those clients who have had an uneventful year medically and have no medical/health concerns at the time of the IPP meeting the facility nurse may submit a summary report to the IDT unless the IDT determines that his/her attendance is necessary. An eventful year medically would include a year which required unplanned hospital admissions or in which medical issues necessitated treatment for a prolonged or continuing period. However when a client has had an eventful year medically or current medical/health concerns, this could have an impact on their objectives and accordingly the nurse should participate in the IDT discussion directly.

W333

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(c)(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;

Guidance §483.460(c)(2)

A medical care plan addresses those clinical treatments and observations that are to be done for the client by the medical staff and other staff of the facility in order to either improve an acute medical condition or to maintain a medically fragile client as clinically stable as possible. The medical care plan is an adjunct to the IPP and is not considered a substitution for the IPP.

§483.460(c)(3) For those clients certified as not needing a medical care plan, a review of their health status which must-

W334

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(c)(3)(i) Be by a direct physical examination;

Guidance §483.460(c)(3)(i)

A direct physical examination means a visual review of the body as well as examination/assessment of body systems. This includes observations made through non- verbal communication (including visual, tactile, nonverbal gestures, grimaces, etc.) which may be an indication that there is a potential for further

assessment and/or monitoring. A paper review of the client's medical record and health statistics does not meet the intent of the regulation for a direct physical examination.

W335
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(c)(3)(ii) Be by a licensed nurse;
Guidance §483.460(c)(3)(ii)
The term "licensed nurse", for purposes of these guidelines, means a registered nurse, a licensed practical nurse or a licensed vocational nurse currently licensed by the State in which the facility is located. The nurse must operate consistent with the requirements of the applicable Nurse Practice Act. If this direct physical examination is done by a physician, it is not necessary for the nurse to repeat the exam.

W336
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(c)(3)(iii) Be on a quarterly or more frequent basis depending on client need;
Guidance §483.460(c)(3)(iii)
"On a quarterly basis" means that the examinations are conducted approximately 90 days apart (e.g. scheduled to be conducted approximately once every 90 days). If during the course of a calendar year, there were three quarterly examinations conducted by a licensed nurse and in the fourth quarter the annual physical examination was performed by a physician, the intent of this requirement is met without the nurse performing an additional examination.

W337
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(c)(3)(iv) Be recorded in the client's record; and
Guidance §483.460(c)(3)(iv)
The actual findings of each examination and the date conducted must be incorporated into the client's record.

W338
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(c)(3)(v) Result in any necessary action (including referral to a physician to address client health problems).
Guidance §483.460(c)(3)(v)
The nursing staff document that referrals are made in a timely manner, if indicated, for any concerns identified. Nurses must ensure all concerns they identify are communicated and addressed appropriately, including:

- Need is fully identified in assessment;
- Appropriate referrals are made;
- Revisions are made to IPP/Medical care plan; and
- Follow-up occurs to the new plan.

W339
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(c)(4) Other nursing care as prescribed by the physician or as identified by client needs; and
Guidance §483.460(c)(4)
Nursing interventions are implemented as indicated by the needs of the client and consistent with either standard nursing practice principles or orders from the attending physician. Health and wellness are actively promoted, problems are attended to before they negatively impact the client's health and wellness, and steps are taken to prevent the recurrence of such problems while responding promptly to client's needs.
Client health care complaints that are reported either directly by the client or by the direct care staff are addressed promptly by the nursing staff. Client health care complaints and response by nursing staff are documented in the client's record.

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

W340
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(c)(5)(i) Training clients and staff as needed in appropriate health and hygiene methods;
Guidance §483.460(c)(5)(i)
Nursing staff periodically provides training to clients and staff on how to care for health needs or conditions, personal hygiene, health maintenance, and disease prevention. Nursing staff actively participates in periodic discussions with client and staff to promote health habits in the areas of diet, exercise and non-smoking.
Based upon individual training needs, the nursing staff provides training to individuals in areas such as medications, family planning, prevention of sexually transmitted diseases, control of other infectious diseases, self-monitoring of health status and self-prevention of health problems, etc. The nurses may train clients directly on their objectives or train other staff to do this training as appropriate.
W341
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(c)(5)(ii) Control of communicable diseases and infections, including the instruction of other personnel in methods of infection control; and
Guidance §483.460(c)(5)(ii)
Nursing staff should actively participate in surveillance and reporting of communicable diseases per the Centers for Disease Control (CDC) guidelines and applicable state laws. They should teach and promote infection control techniques such as hand washing by clients and staff and should be making periodic observations to ensure that such good infection control techniques are consistently utilized.
W342
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(c)(5)(iii) 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.
Guidance §483.460(c)(5)(iii)
Nursing staff must train and ensure direct support staff demonstrate competency in detecting signs and symptoms of illness, injury, or change in the client's health baseline (e.g. responsiveness, fatigue, irritability, constipation, diarrhea, dehydration, confusion, unexplained weight loss, changes in endurance and changes in respiratory function).
Staff is responsive to health care needs or injuries of clients and receives instruction and support during temporary illness of clients.
If not, review staff training records to determine whether training was provided periodically to the involved employee. Interview direct care staff to determine their level of understanding regarding the signs and symptoms of illness that are to be reported to the medical staff. The records of clients with recent hospitalizations verify that staff detected and reported relevant symptoms promptly.
(d) Standard: Nursing staff
W343
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(d)(1) Nurses providing services in the facility must have a current license to practice in the State.
Guidance §483.460(d)(1)
The facility should have a procedure in place to ensure that any contract nursing staff members are currently licensed prior to the provision of services. Include any contract nurses used by the facility in the sample of nurses reviewed for licensure.
W344
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(d)(2) The facility must employ or arrange for licensed nursing services sufficient to care for clients' health needs including those clients with medical care plans.
Guidance §483.460(d)(2)

The facility provides for nursing services based on the health needs and conditions of clients residing there. Examples include:

1) physician ordered treatments that require the skills of a licensed nurse;
2) preventive screenings;
3) assessment and intervention;
4) direct physical examination and examination of body systems;
5) teaching; and
6) advocacy for the medical services needed by the client.

Client health care needs are met in a timely manner (within 24 hours) by the available nursing staff.

If nurses who do not have experience in the care of persons with intellectual disabilities are employed by the facility, they should be provided with a formal orientation period and on-going educational opportunities to increase their understanding of the client population.

When one or more clients in the facility has an active medical care plan, there must be 24 hour nursing services available to come to the facility as needed to make skilled assessments and interventions.

W345

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(d)(3) The facility must utilize registered nurses as appropriate and required by State law to perform the health services specified in this section.

Guidance §483.460(d)(3)

Refer to the applicable State Nurse Practice Act.

W346

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(d)(4) If the facility utilizes only licensed practical or vocational nurses to provide health services, it must have a formal arrangement with a registered nurse to be available for verbal or onsite consultation to the licensed practical or vocational nurse.

Guidance §483.460(d)(4)

The facility must have written arrangements with a registered nurse (RN) to provide consultation in those instances where LPNs/LVNs provide all the direct nursing care for the clients. Verify that the agreement requires the RN to respond promptly to all calls from the LPN/LVN and to come on-site to the facility if necessary. The facility must also ensure registered nurse back-up when the primary registered nurse consultant is unavailable (vacations, etc.). Review documentation in the client records to confirm that the LPNs/LVNs of the facility are consulting the registered nurse consultant when indicated and that she/he responds promptly to such calls.

W347

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(d)(5) Non- licensed nursing personnel who work with clients under a medical care plan must do so under the supervision of licensed persons.

The work of any direct support staff (caring for clients with a medical care plan) is directed by an onsite licensed nurse). The nurse evaluates the care provided by the staff as needed, but at least each shift. If observations of care indicate that direct care staff are not providing care as directed by the medical care plan, then review the supervision provided by the nursing staff.

(e) Standard: Dental services

W348

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(e)(1) The facility must 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.

Guidance §483.460(e)(1)

It is expected that the clients will obtain dental services (both diagnostic and treatment) from community dentists whenever possible. In some instances, there may be clients residing in the facility who are physically unable to travel to the community for services. The facility must secure dental services (both diagnostic and treatment) for these clients either through an in-house program, which is part of

the organizational and administrative structure of the facility, or through a written agreement with an outside dental service to come into the facility to provide such services.

W349

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(e)(2) If appropriate, dental professionals must 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.

Guidance §483.460(e)(2)

Reports of dental care may be submitted to the IDT for inclusion in their discussions surrounding either development of the plan or update to the plan. This includes procedures a client may have had or be having during the plan development period, such as root canal or singular extractions. Actual attendance at the IDT meeting by the dentist may be left to the request of the IDT.

W350

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(e)(3) The facility must provide education and training in the maintenance of oral health.

Guidance §483.460(e)(3)

Formal or informal training in the maintenance of oral hygiene is provided to clients who require it, and to those staff who are responsible for carrying out such activities. The IPP should include an assessment of the client's ability to perform oral hygiene independently and an associated program if the client is not independent.

(f) Standard: Comprehensive dental diagnostic services

§483.460(f) Comprehensive dental diagnostic services include

W351

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

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

Guidance §483.460(f)(1)

A "month" is defined as the interval between the date of admission and close of business of the corresponding day in the following month.

A complete intraoral examination includes an oral cancer screen.

§483.460(f)(2) Periodic examination and diagnosis performed

W352

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(f)(2) at least annually,

Guidance §483.460(f)(2)

Dental examinations occur no less frequently than annually. Clients without teeth must receive an annual oral cancer screening examination by a dental professional.

W353

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(f)(2) including radiographs when indicated and detection of manifestations of systemic disease; and

Guidance §483.460(f)(2)

There should be evidence in dental reports that dentists follow current standards of practice for the performance of x-rays in order to assist in the diagnosis and treatment of the client.

W354

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

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

Guidance §483.460(f)(3)

The entry referenced at this regulation is the dental entry into the dental record. See W359 for requirement of copying this dental record into the facility record.

(g) Standard: Comprehensive dental treatment
§483.460(g) The facility must ensure comprehensive dental treatment services that include- -
W355
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(g)(1) The availability for emergency dental treatment on a 24-hour-a-day basis by a licensed dentist; and
Guidance §483.460(g)(1)
The facility should be able to produce upon request, a written contract/agreement between the facility and a licensed dentist for 24/7 guidance/provision of emergency services for the clients. The agreement should also indicate what back-up coverage will be provided when the dentist is not available.
W356
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(g)(2) Dental care needed for relief of pain and infections, restoration of teeth, and maintenance of dental health.
(h) Standard: Documentation of dental services
§483.460(h)(1) If the facility maintains an in-house dental service, the facility must
W357
keep a permanent dental record for each client,
W358
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(h)(1) with a dental summary maintained in the client's living-unit.
Guidance §483.460(h)(1)
The "dental summary" refers to the summary of each visit entered by the dental professional. The note includes any care instructions to be followed up by facility staff as a result of treatment.
§483.460(h)(2) If the facility does not maintain an in-house dental service, the facility must
W359
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(h)(2) obtain a dental summary of the results of dental visits
Guidance §483.460(h)(2)
The facility should receive a written report of each dentist visit for inclusion in the client's record at the facility and for reference by the medical and direct support staff.
W360
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(h)(2) and maintain the summary in the client's living unit.
See guideline above at W359.
(i) Standard: Pharmacy services
W361
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(i) The facility must 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.
Guidance §483.460(i)
The facility either has an onsite pharmacy or has formal arrangements in place for the provision of routine, unanticipated, or emergency drugs. There are no instances where a client does not receive needed medications due to the unavailability of drugs.
(j) Standard: Drug regimen review
W362
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(j)(1) A pharmacist with input from the interdisciplinary team must review the drug regimen of each client at least quarterly.
Guidance §483.460(j)(1)

The primary function of the pharmacist during the quarterly drug review is to identify possible drug interactions, check for evidence of any side effects associated with the drug usage, determine if laboratory results associated with the drug are within normal limits and verify that the facility is administering the medication appropriately and to comment upon the efficacy of the drug use (e.g. blood sugar controlled, blood pressure within normal limits). In the case of drugs used to manage behavior, the pharmacist may need information from the IDT to determine efficacy. See Appendix PP, Indicators for Surveyor Assessment of the Performance of Drug Regimen Reviews, to the State Operations Manual (Pharmaceutical Service Requirements in Long Term Care Facilities).

W363

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

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

Guidance §483.460(j)(2)

The physician and IDT members must discuss, document and take necessary follow-up action for any irregularities noted.

W364

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

W365

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(j)(4) An individual medication administration record must be maintained for each client.

W366

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(j)(5) As appropriate the pharmacist must 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.

Guidance §483.460(j)(5)

Pharmacist participation on the IDT is at the request of the team. It would not be necessary for the pharmacist to routinely attend all team meetings when the client is on a stable drug regimen that does not appear to be influencing his/her active treatment programs. Pharmacist participation may be appropriate, in situations such as assisting the IDT develop the most effective training programs for when the client is in an evolving situation with their medication.

For example:

- A client begins a new or more complex drug regimen;
- The physician orders off-label use of a medication;
- Frequent changes in the drug regimen are affecting IPP implementation.

(k) Standard: Drug administration

W367

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(k) The facility must have an organized system for drug administration that identifies each drug up to the point of administration.

§483.460(k) The system must assure that

W368

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(k)(1) All drugs are administered in compliance with the physician's orders;

Guidance §483.460(k)(1)

Administration errors identified in previous medication administration records qualify as non-compliance with physician's orders.

W369

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.460(k)(2) All drugs, including those that are self-administered, are administered without error;

Guidance §483.460(k)(2)
A medication error is an observed discrepancy during the medication pass between what is ordered and what is administered.
This also applies to self-administered medications.
For small facilities (16 beds or less), the medication administration pass will encompass a total of eight (8) drug doses. The observations should be split between two separate drug passes 4/4 (one in the morning and one in the late afternoon or early evening). The medications observed during the observations may or may not be for clients in the survey sample. Any concerns regarding a medication that is about to be administered should be brought to the attention of the person administering the medication. The record of observation should be reconciled with the most current signed physician's orders.
For large facilities (17 or more beds) with either single or multiple buildings, the medication administration pass will encompass a total of 12 doses. The observations should be split between two separate passes 6/6 (one in the morning and one in late afternoon or early evening). Any concerns regarding a medication that is about to be administered should be brought to the attention of the person administering the medication. The record of observation should be reconciled with the most current signed physician's orders.

W370
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(k)(3) Unlicensed personnel are allowed to administer drugs only if State law permits;
Guidance §483.460(k)(3)
Unlicensed personnel administer only those forms of medication which state law permits. Licensed nurse(s) in the facility oversee any administration of medications by unlicensed persons and periodically evaluate their performance.

W371
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(k)(4) Clients are taught 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;
Guidance §483.460(k)(4)
The IDT decision that a self-administration program is appropriate, as is the case for all formal training objectives, must be based upon accurate, current, valid assessment of the client's skills and potential. The determination as to the appropriateness of a self- administration program must never be made singularly on the client's diagnosis or current functional abilities.
For clients assessed to be inappropriate for a self-administration program, but determined by the IDT to possess the capacity to functionally, cognitively, emotionally or developmentally benefit from participation in the drug administration process, it is expected that the facility will provide opportunities for the client to participate in the medication administration process under direct supervision. This participation can include but is not limited to, identifying the medication taken, reaching/grasping a cup of water during the process and placing oral medications in the mouth, etc.

W372
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(k)(5) The client's physician is informed of the interdisciplinary team's decision that self-administration of medications is an objective for the client;
Guidance §483.460(k)(5)
While the IDT may set an objective of self administration of medication for a client, they are required to notify the client's physician of this proposed objective. If the client's physician objects on medical grounds, the team must not proceed with the objective until such time as a discussion is held with the physician and he/she agrees to proceed after receiving additional information.

W373
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(k)(6) No client self-administers medication until he or she demonstrates the competency to do so;

Guidance §483.460(k)(6)
The written self-administration program for a client must detail the criteria that will be employed by the facility staff to verify that the client successfully completes all phases of the program and continues to comply with all necessary requirements for self administration. Clients who self-administer medications must secure all medications in such a manner as to protect access by other clients or visitors.
W374
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(k)(7) Drugs used by clients while not under the direct care of the facility are packaged and labeled in accordance with State law;
Guidance §483.460(k)(7)
When clients go out of the facility for home visits, or to attend work or school, drugs they are taking must be packaged and labeled in accordance with state law by a person authorized by state law to package and label.
§483.460(k)(8) Drug administration errors and adverse drug reactions are
Guidance §483.460(k)(8)
Documentation of any medication error should be entered into the client's record and should include what error was made, who was notified of the error, the response of the medical person notified, the physical condition of the client at the time of the notification and subsequent observations of the clients physical condition related to the error.
W375
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(k)(8) recorded
Guidance §483.460(k)(8)
Documentation of adverse drug reactions must be entered into the client's record and should include all complaints made by the client or observations made by the staff following the drug administration, the notification of medical personnel, and the response of the medical personnel, any emergency actions that were required and all subsequent observations of the client's condition related to the reaction.
W376
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(k)(8) and reported immediately to a physician.
Guidance §483.460(k)(8)
"Immediately" means at the time the error or reaction is identified.
(l) Standard: Drug storage and recordkeeping
§483.460(l)(1) The facility must store drugs under proper conditions of
Guidance §483.460(l)(1)
Drugs are stored according to manufacturer's recommendations.
W377
sanitation,
W378
temperature,
W379
light,
W380
humidity,
W381
and security.
W382
§483.460(l)(2) The facility must keep all drugs and biologicals locked except when being prepared for administration.
W383
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(l)(2) Only authorized persons may have access to the keys to the drug storage area.

Guidance §483.460(l)(2)
"Authorized persons" is restricted to those who administer the drugs (as allowed by state law) and nursing supervisors (if any). No other personnel should have access to these keys.
W384
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(l)(2) Clients who have been trained to self-administer drugs in accordance with §483.460(k)(4) may have access to keys to their individual drug supply.
Guidance §483.460(l)(2)
Drugs that are self-administered do not have to be double locked. The purpose for the double locking is to limit access to scheduled drugs. Since the client is generally the only one who has access to his/her drug supply (with perhaps the exception of a licensed nurse or whoever has overall responsibility for medication administration at the facility and a facility's Director of Nursing Services, who may have access to all of the facility's drug supplies), there is no need to further limit access.
W385
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(l)(3) The facility must maintain records of the receipt and disposition of all controlled drugs.
Guidance §483.460(l)(3)
The facility must follow state requirements for the control and disposition of controlled drugs.
W386
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(l)(4) The facility must, 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., as implemented by 21 CFR Part 308).
Guidance §483.460(l)(4)
The facility should follow state requirements for the reconciliation of controlled drugs.
W387
§483.460(l)(5) If the facility maintains a licensed pharmacy, the facility must comply with the regulations for controlled drugs
§483.460(m) Standard: Drug Labeling
§483.460(m)(1) Labeling of drugs and biologicals must
W388
§483.460(m)(1)(i) Be based on currently accepted professional principles and practices; and
W389
§483.460(m)(1)(ii) Include the appropriate accessory and cautionary instructions, as well as the expiration date, if applicable.
§483.460(m)(2) The facility must remove from use–
W390
§483.460(m)(2)(i) Outdated drugs; and
W391
§483.460(m)(2)(ii) Drug containers with worn, illegible, or missing labels.
W392
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(m)(3) Drugs and biologicals packaged in containers designated for a particular client must be immediately removed from the client's current medication supply if discontinued by the physician.
(n) Standard: Laboratory services
W393
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(n)(1) If a facility chooses to provide laboratory services, the laboratory must meet the requirements specified in part 493 of this chapter.

Guidance §483.460(n)(1)
If the facility performs laboratory services, it must have a current, valid Clinical Laboratory Improvement Amendment (CLIA) certificate for the types of tests it is performing.
For the purposes of this regulation, a "laboratory service or test" is defined as any examination or analysis of materials derived from the human body for purposes of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of human beings.
W394
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.460(n)(1) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be certified in the appropriate specialties and subspecialties of service in accordance with the requirements of part 493 of this chapter.
Guidance §483.460(n)(1)
A facility performing any laboratory service or test must have applied to CMS, and received a Certificate of Waiver, Certificate of Compliance, or Certificate of Accreditation. An application for a Certificate of Waiver may be made if the facility performs only those tests on the waived list. A complete list of waived tests can be found at: http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfClia/analyteswaived.cfm.
If the facility performs any test, not appearing on the waived list, a Certificate of Compliance or Certificate of Accreditation is required. An appropriate CLIA certificate is required regardless of the frequency with which the laboratory services or tests are conducted. When no tests are performed, a CLIA certificate is not needed. Facilities only collecting specimens and not performing testing do not need a certificate.
A not-for-profit, a state, or local government organization may have one certificate covering all the facilities it operates (e.g., all the separately certified residences which fall under its governing body), if no more than a total of 15 types of waived or moderately complex laboratory tests are used. This exception applies only to laboratories performing limited public health testing. See State Operations Manual (SOM) 6008. Each location where a laboratory tests are performed must file a separate application to be separately certified unless the laboratory meets one if the exceptions outlined at 42CFR493.35(b), 493.443(b), or 493.55(b).
Any laboratory located in a state that has a CMS-approved laboratory program is exempt from CLIA certification. Currently there are two states with approved programs: Washington and New York. New York has a partial exemption; therefore, if the laboratory is located in New York, contact the New York State Agency to determine if the exemption applies.
W406
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.470 Condition of participation: Physical environment. (a) Standard: Client living environment.
W407
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(1) The facility must 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.
Guidance §§483.470(a)(1)
Clients of grossly different ages, functional levels, and/or social needs should not be housed together unless all of the following documentation supports the placement:

- Assessment;
- Client program plan;
- Staff documentation of client response to training programs; and
- QIDP notes.

W408
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

(2) The facility must not segregate clients solely on the basis of their physical disabilities. It must integrate clients who have ambulation deficits or who are deaf, blind, or have seizure disorders, etc., with others of comparable social and intellectual development.
(b) Standard: Client bedrooms.
(1) Bedrooms must- -
W409
§483.470(b)(1)(i) Be rooms that have at least one outside wall
W410
§483.470(b)(1)(ii) Be equipped with or located near toilet and bathing facilities;
W411
§483.470(b)(1)(iii) Accommodate no more than four clients unless granted a variance under paragraph (b)(3) of this section;
§483.470(b)(1)(iv) measure
W412
At least 60 square feet per client in multiple client bedrooms
W413
And at least 80 square feet in single client bedrooms; and
W414
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(v) In all facilities initially certified, or in buildings constructed or with major renovations or conversions on or after October 3, 1988, have walls that extend from floor to ceiling.
Guidance §483.470(b)(l)(v)
If a facility was initially certified on or after October 3, 1988 and/or is under renovations or conversions, they must have walls that extend floor to ceiling.
W415
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(2) If a bedroom is below grade level, it must have a window that–
(i) Is usable as a second means of escape by client(s) occupying the room; and
(ii) Is 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.
Guidance §483.470(b)(2)
The intent of the regulation is to prohibit the housing of clients in basements that are entirely below grade. Clients may be housed on the lower level of housing (e.g. a bi- level house), provided the window height requirements are met and the window is of sufficient size to be used as a means of escape.
W416
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(3) The survey agency 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 intellectual disabilities professional–
(i) 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
(ii) Documents the reason why housing in a room of only four or fewer persons would not be medically feasible.
Guidance §483.470(b)(3)
The medical care plan for each client housed in a room with more than four clients should indicate the need for continuous monitoring. The medical care plan will include:

- the physician certification that the client is severely medically impaired and requires direct and continuous monitoring during sleeping hours; and
- the reason why this housing arrangement for fewer than four people would not be medically feasible.

(4) The facility must provide each client with—

W417
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(i) A separate bed of proper size and height for the convenience of the client;
Guidance §483.470(b)(4)(i)
The client's preference, chronological age, and physical and medical needs are the determining factors in bed size and height.
W418
§483.470(b)(4)(ii) A clean, comfortable, mattress;
W419
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(iii) Bedding appropriate to the weather and climate; and
W420
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(iv) Functional furniture, appropriate to the client's needs,
Guidance §483.470(b)(4)(iv)
Client preferences and program needs should be considered in furniture selection. For clients with physical disabilities, furniture is adapted to accommodate the client's physical challenges and enable the client to use the furniture with minimal support.
W421
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
and individual closet space in the client's bedroom with clothes racks and shelves accessible to the client.
Guidance §483.470(b)(4)(iv)
Closets should have enough space for a reasonable amount of the current season's clothing.
Clients who use wheelchairs or have other physical challenges can reach the racks and shelves in their closets.
The facility is permitted either to provide the client with an individualized closet or with a designated area in a shared closet. The use of central clothing bins in a facility clothing room, in the absence of required client closet space in the bedroom, is not an acceptable practice.
(c) Standard: Storage space in bedrooms.
The facility must provide—
W422
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(1) Space for 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; and
Guidance §483.470(c)(1)
Sufficient space that permits the use of wheelchairs, walkers and other adaptive equipment should be provided within the bedroom.
W423
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(2) Suitable storage space, accessible to clients, for personal possessions, such as TVs, radios, prosthetic equipment and clothing.
Guidance §483.470(c)(2)
Each client should have storage in their bedroom for their personal belongings. Clients should have free access to this storage without the assistance of staff. If it is necessary for clients' personal belongings to be locked due to the behavior of other clients, the client must still be provided free access to his own possessions (See W137 for requirements for locked areas).
(d) Standard: Client bathrooms
The facility must—
W424
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

(1) Provide toilet and bathing facilities appropriate in number, size, and design to meet the needs of the clients;
Guidance §483.470(d)(1)
In a home setting, the toilet facilities need to be of sufficient number to meet the needs of the client without prolonged delay. There must be enough toilets in the living units to meet the program needs of the clients at any given time, as well as provide for intermediate toileting needs of the clients living in the unit.
In a home setting, it may be unrealistic to say a client would never have to wait for a shower or bath or to brush his/her teeth.
Bathrooms and fixtures must be adapted to accommodate clients with physical disabilities.
W425
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(2) Provide for individual privacy in toilets, bathtubs, and showers; and
Guidance §483.470(d)(2)
A bathroom containing multiple toilets, showers or bathtubs, must have doors, curtains, or some other means of protecting the client from view when fully or partially unclothed.
Clients should not be able to be seen through the door or window by passersby when they are using the bathrooms.
Client privacy does not preclude the assistance provided by facility staff when necessitated by the client's condition.
W426
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(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° Fahrenheit.
(e) Standard: Heating and ventilation.
(1) Each client bedroom in the facility must have–
W427
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(i) At least one window to the outside; and
Guidance §483.470(e)(1)(i)
(See also W415)
W428
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(ii) Direct outside ventilation by means of windows, air conditioning, or mechanical ventilation.
(2) The facility must—
W429
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(i) Maintain the temperature and humidity within a normal comfort range by heating, air conditioning or other means; and
Guidance §483.470(e)(2)(i)
A "normal comfort range" in most instances is defined as not going below a temperature of 68 degrees Fahrenheit or exceeding a temperature of 80 degrees Fahrenheit in facilities in most geographic areas of the country.
In extremely hot or extremely cold weather, precautions are taken by the facility to protect the clients, particularly those who are medically compromised, from ill effects of the temperature.
W430
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(ii) Ensure that the heating apparatus does not constitute a burn or smoke hazard to clients.
Guidance §483.470(e)(2)(ii)
Refer to Life Safety Code Chapters 32 and 33
Unvented fuel fired heaters are prohibited. NFPA 101 2000 Edition.
32/33.2.5.23

(f) Standard: Floors.
The facility must have—
W431
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(1) Floors that have a resilient, nonabrasive, and slip-resistant surface.
W432
§483.470(f) (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; and
§483.470(f) (3) Exposed floor surfaces and floor coverings that
W433
promote mobility in areas used by clients,
W434
and promote maintenance of sanitary conditions.
§483.470(g) Standard: Space and Equipment
The facility must–
W435
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(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 subpart and as identified in each client's individual program plan.
Guidance§483.470(g)(1)
Staff and clients must have the space, materials and equipment needed to implement formal and informal active treatment programs.
There must be sufficient space to accommodate group activities, including groups with clients who use wheelchairs.
Recreational supplies, equipment, and materials are available and reflect the interests, physical abilities and chronological age of the clients.
W436
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(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.
Guidance §483.470(g)(2)
The term "furnish" means that the facility is responsible for obtaining or purchasing these items once an assessment has identified the need and is responsible for making any necessary arrangements for the client to receive them. Clients' personal funds should not be used for these items since this is a covered service under the ICF/IID benefit.
The term "maintain in good repair" means that the facility is responsible for ensuring that these items are kept in good working order, and is responsible for any resulting expense that may be incurred.
Programs must be in place, when identified by assessment and determined by the ID team, to teach clients about the use and care for their equipment to the extent of their capabilities.
W437
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(3) Provide adequate clean linen and dirty linen storage areas.
Guidance §483.470(g)(3)
Clean linen must be is separated from dirty linen and stored in a manner which prevents contamination. Linen soiled with bodily fluids must be stored separately and in a manner which protects clients from exposure to possible infectious sources.
A bedroom hamper can be an acceptable dirty linen storage "area" if kept odor free and consistent with the infection control requirements at §483.470(1).
(h) Standard: Emergency plan and procedures.

W438
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(1) The facility must develop and implement detailed written plans and procedures to meet all potential emergencies and disasters such as fire, severe weather, and missing clients.
Guidance §483.470(h)(1)
These plans may include identification of transportation and alternative shelter needs in cases when the facility must be evacuated and may incorporate state-specific emergency preparedness requirements as applicable.
W439
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(2) The facility must communicate, periodically review, make the plan available, and provide training to the staff.
Guidance §483.470(h)(2)
"Periodic review" is a judgment made by the facility based on the circumstances of the facility. If the facility changes its physical plant or if changes external to the facility necessitates a review of the disaster plan, then the facility is responsible for carrying out the review.
Interview staff about where emergency plans and procedures are located and what the facility policy is regarding how often, and under what circumstances the plans and procedures are reviewed and updated.
(i) Standard: Evacuation drills.
(1) The facility must hold evacuation drills
W440
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
at least quarterly for each shift of personnel
Guidance §483.470(i)(1)
Life Safety Code NFPA 101, 2000 Edition (LSC):
Chapter 32/33 code: Clients have to participate in an evacuation drill each shift at least quarterly.
Chapter 18/19 code: There must be an evacuation drill on each shift at least quarterly. This drill is designed to train staff on evacuation procedures.
Review facility records to verify that evacuations drills are held each shift at least once in each 3-month period.
Refer to (S&C 10-26-LSC)
W441
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
and under varied conditions to—
Guidance §483.470(i)(1)
Life Safety Code NFPA 101, 2000 Edition (LSC):
Chapter 32/33: Expects that all clients living in that unit are capable of self-evacuation during an emergency. This self evacuation should be practiced under varying conditions including various times of the day or night and in various weather conditions.
Chapter 18/19: Requires drills which simulate emergency situations which familiarize facility staff with emergency actions they may be required to perform. The general emphasis of these sections of the code is upon training of the staff and not upon providing practice for the client. Drills should be practiced under varying conditions including various times of the day or night and in various weather conditions.
W442
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(i) Ensure that all personnel on all shifts are trained to perform assigned tasks;
Guidance §483.470(i)(1)(i)
For facilities under Chapter 18/19 of the LSC
Staff should be able to verbalize the proper procedures to be followed during emergency drills. Staff training records should document that all staff have received training on emergency drills and evacuations.
W443

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(ii) Ensure that all personnel on all shifts are familiar with the use of the facility's fire protection features; and
Guidance §483.470(i)(1)(ii)
Staff on all shifts are able to express familiarity with the use of fire extinguisher, alarms, and any other safety features in the facility.
W444
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(iii) Evaluate the effectiveness of emergency and disaster plans and procedures.
Guidance §483.470(i)(1)(iii)
See also W448. The plan(s) must be revised as needed and must be based upon analysis completed under W448.
The facility must–
W445
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(i) Actually evacuate clients during at least one drill each year on each shift;
Guidance §483.470(i)(2)(i)
All clients totally evacuate the building at least once per year per shift, regardless of the occupancy chapter under which the building falls.
All facilities, regardless of their size require actual evacuation. "Actually evacuate", as used in this standard, applies to all clients. The drills are conducted not only to rehearse the clients and staff for a fire emergency (see §483.470(i)(2)(v)), but for other disasters such as hurricanes, tornadoes, floods, etc. Such disasters would require the entire occupancy to be evacuated, and, therefore, the actual evacuation must be practiced, as required.
W446
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(ii) Make special provisions for the evacuation of clients with physical disabilities;
Guidance §483.470(i)(2)(ii)
Clients with physical or medical disabilities may require special procedures for evacuation, taking into account equipment or staff that must be maintained for the client's care at all times. The facility's evacuation plan should:

- identify such clients;
- clearly delineate any special evacuation procedures for those clients.

Staff should be familiar with the facility's special evacuation procedures when working with clients who are in need of unique provisions.
W447
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(iii) File a report and evaluation on each evacuation drill;
Guidance §483.470(i)(2)(iii)
There is a written report of each evacuation drill held.
W448
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15) (iv) Investigate all problems with evacuation drills, including accidents,
Guidance §483.470(i)(2)(iv)
The documentation for each evacuation drill includes an analysis of:

- The timeliness of the evacuation;
- Any difficulties observed during the drill;
- Investigates the cause of the difficulties; and
- Develops a plan to ensure the difficulties will not reoccur.

W449
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
and take corrective action; and

Guidance §483.470(i)(2)(iv)
When a problem is identified during the evacuation drill and the facility develops a plan to prevent reoccurrence, there is evidence the facility implemented corrective action and follow-up completed to ensure corrective action was successful.
W450
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(v) 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.
Guidance §483.470(i)(2)(v)
The Life Safety Code NFPA 101, 2000 Edition at 3.3.167 defines safe location as "a location remote or separated from the effects of a fire so that such effects no longer pose a threat."
W451
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(3) Facilities must meet the requirements of paragraph (i)(1) and (2) of this section for any live-in and relief staff they utilize.
Guidance §483.470(i)(3)
In the case of live-in staff, drills must occur quarterly. Typically, live-in staff can be found in facilities that fall under Chapter 32/33 of the LSC code. Drills should be held at varying times of the day and night for clients to practice evacuation including morning, afternoon, evening and the middle of the night.
(j) Standard: Fire protection.
Guidance §483.470(j)
These standards are covered by the Life Safety Code (LSC) survey. The facility must meet the appropriate chapter of the Life Safety Code, 2000 edition.
When surveying an ICF/IID for compliance with the LSC, it is first necessary to determine whether the facility will be surveyed under Health Care (HC) or Board and Care (BC) occupancy.

- If clients receive nursing services, or if the provider elects to use Health Care, the facility should be surveyed as a Health Care Facility under Chapter 18 or 19 of the LSC, as appropriate.
- If clients receive personal care and protective oversight but not continuing nursing services, the facility is to be surveyed under Board and Care and the following three steps should be followed:

1) Determine the size (16 or less = small; 17 or more = large);
2) Determine the Evacuation Difficulty (PROMPT, SLOW, or IMPRACTICAL) using Appendix F of the fire safety evaluation system for board and care facilities (FSES/BC); and
3) Survey the building using one of two methods:
a. The prescriptive requirements of Chapters 32 or 33; or
b. The FSES/BC, Appendix G.

(1) General. Except as otherwise provided in this section—
(i) The facility must meet the applicable provisions of either the Health Care Occupancies Chapters or the Residential Board and Care Occupancies Chapter of the 2000 edition of the Life Safety Code of the National Fire Protection Association. The Director of the Office of the Federal Register has approved the NFPA101®2000 edition of the Life Safety Code, issued January 14, 2000, for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to:
http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any changes in this edition of the Code are incorporated by reference, CMS will publish notice in the Federal Register to announce the changes.
(ii) Chapter 19.3.6.3.2, exception number 2 of the adopted LSC does not apply to a facility.
Guidance §483.470(j)(1)(ii)
Roller latches are prohibited on corridor doors as a latching device.

(2) The State survey agency 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 must have its evacuation capability evaluated in accordance with the Evacuation Difficulty Index of the Fire Safety Evaluation System for Board and Care facilities (FSES/BC).
Guidance §483.470(j)(3)
The evacuation capability of residents is determined using Chapter 6 of NFPA 101A, 2001 edition.
4) If CMS finds that the State has a fire and safety code imposed by State law that adequately protects a facility's clients, CMS may allow the State survey agency to apply the State's fire and safety code instead of the LSC.
5) Beginning March 13, 2006, a facility must be in compliance with Chapter 19.2.9, Emergency Lighting.
Guidance §483.470(j)(5)
Battery powered emergency lighting must last at least 90 minutes.
6) Beginning March 13, 2006, Chapter 19.3.6.3.2, exception number 2 does not apply to a facility.
Guidance §483.470(j)(6)
Roller latches are prohibited on corridor doors as a latching device.
(7) Facilities that meet the LSC definition of a health care occupancy.
(i) After consideration of State survey agency recommendations, CMS may waive, for appropriate periods, specific provisions of the Life Safety Code if the following requirements are met:
Guidance §483.470(j)(7)(i)
Waivers may be granted only to facilities that meet the Life Safety Code definition of a Health Care Occupancy. Waivers are not granted to facilities that met the requirements of a Residential Board and Care Occupancy.
Waivers are recommended by the State Survey Agency and approved by the Regional Office.
(A) The waiver would not adversely affect the health and safety of the clients.
B) Rigid application of specific provisions would result in an unreasonable hardship for the facility.
ii) Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a facility may install alcohol-based hand rub dispensers if—
(A) Use of alcohol-based hand rub dispensers does not conflict with any State or local codes that prohibit or otherwise restrict the placement of alcohol-based hand rub dispensers in health care facilities;
(B) The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;
(C) The dispensers are installed in a manner that adequately protects against inappropriate access;
D) The dispensers are installed in accordance with chapter 18.3.2.7 or chapter 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00–1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004. The Director of the Office of the Federal Register has approved NFPA Temporary Interim Amendment 00–1(101) for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the amendment is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269; and
(E) The dispensers are maintained in accordance with dispenser manufacturer guidelines
(k) Standard: Paint.
The facility must—
W452
§483.470(k)(1) Use lead-free paint inside the facility; and
W453
§483.470(k)(2) Remove or cover interior paint or plaster containing lead so that it is not accessible to clients.
§483.470(l) Standard: Infection Control

W454
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(1) The facility must provide a sanitary environment to avoid sources and transmission of infections.
Guidance §483.470(l)(1)
The facility is clean and staff have eliminated opportunities for cross-contamination of infections. Food is stored, prepared, distributed, and served in a sanitary manner to prevent food borne illness.
W455
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
There must be an active program for the prevention, control, and investigation of infection and communicable diseases.
Guidance §483.470(l)(1)
Facilities maintain an ongoing surveillance program of communicable disease control and investigation of infections and an active training program that ensures the clients served receive adequate prevention of transmission information and skills, according to needs.
The facility's infection control program should include procedures for:

- identification of the extent of infestation or infection;
- protection of clients;
- treatment of clients;
- notification of family or legal guardian;
- reporting to the health department as indicated; and
- continued follow-up to resolution.

Both the Occupational Safety and Health Administration (OSHA) and the CDC have specific requirements regarding human immuno-deficiency virus (HIV), TB, and hepatitis precautions. These requirements should be incorporated into the facility's practices when relevant to the clients residing in the facility. Concerns about OSHA violations should be referred to OSHA.
W456
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(2) The facility must implement successful corrective action in affected problem areas.
W457
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(3) The facility must maintain a record of incidents and corrective actions related to infections.
W458
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
(4) The facility must prohibit employees with symptoms or signs of a communicable disease from direct contact with clients and their food.
Guidance §483.470(l)(4)
The facility should have and implement a policy that clearly delineates those signs and symptoms for which they will restrict staff access to clients or to clients' food.
W459
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480 Condition of participation: Dietetic services
(a) Standard: Food and nutrition services
W460
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(a)(1) Each client must receive a nourishing, well balanced, diet including modified and specially prescribed diets.
Guidance §483.480(a)(1)
"Well balanced diets" are defined as diets that contain a variety of foods from the food groups currently recommended by the Academy of Nutrition and Dietetics (AND).

"Modified and specially-prescribed" diets are defined as diets that are altered in any way to enable the client to eat (e.g. food that is chopped, pureed) or diets that are intended to correct or prevent a nutritional deficiency or health problem.
Refer to W463 and W474 regarding modified and specially prescribed diets.
The following may be indicators of or may lead to compromised nutritional status:

- Unplanned significant weight gain or loss;
- Fever/infection;
- Diarrhea;
- Chronic disease;
- Chewing and Swallowing problems;
- Teeth and gum diseases;
- Excessive use of laxatives;
- Abnormal laboratory values;
- Brittle, dry hair;
- Ridged or spoon shaped nails;
- Dry flaky skin; and
- Unexplained changed in mood such as general fatigue, apathy, irritability, lack of concentration.

If one or more of these indicators are present, determine the facility's response through observation, interview, and record review.
Surveyors should assure the facility is responsive to client food allergies and the potential for adverse food/drug interactions. If surveyors suspects these may exist, investigate further.
Examples of facility responsiveness to allergies and food/drug interactions include, but are not limited to:

- Clients on long term anticonvulsant drug regimens (e.g., phenobarbital, phenytoin, primidone) are periodically monitored per facility policy for decreased serum levels of folic acid and vitamin D;
- Therapeutic doses of nutrients are provided to decrease the likelihood of anemia and prevent decreased bone density, etc.; and
- Fiber and fluids are increased in the diet of clients to decrease the likelihood of constipation.

Guidance §483.470(a)(1)
Clients of grossly different ages, functional levels, and/or social needs should not be housed together unless all of the following documentation support the placement:

- Assessment;
- Client program plan;
- Staff documentation of client response to training programs; and
- QIDP notes.

W461
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(a)(2) A qualified dietitian must be employed either full-time, part-time, or on a consultant basis at the facility's discretion.
Guidance §483.480(a)(2)
The facility employs a registered dietitian either on a part-time, full-time or on a consultant basis.
W462
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(a)(3) If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food services.
Guidance §483.480(a)(3)
Where the facility does not have a full-time qualified dietitian, verify that the director of food services coordinates with a dietitian to assure the nutritional adequacy of meals and snacks.
The food service director coordinates with the part-time or consultant dietitian to develop client meal plans and monitor client nutritional status.
The qualifications of the food service director may be dictated by facility policy or by state law, if applicable.

In small group home settings where the staff and clients plan and prepare meals cooperatively, there may not be a designated food services director. In these cases, the consultant or part-time dietitian would meet with the available home staff to ensure adequacy of menus and diets.

§483.480(a)(4) The client's interdisciplinary team, including a qualified dietitian and physician must prescribe

W463

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.480(a)(4) all modified and special diets

W464

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.480(a)(4) including those used as a part of a program to manage inappropriate client behavior.

Guidance §483.480(a)(4)

Modifying a clients' diet must never be used as punishment.

W465

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

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

Guidance §483.480(a)(5)

This regulation addresses the use of food in shaping positive adaptive behavior. Where clients have specialized nutritional needs, these needs must be taken into consideration.

When food is used as a primary reinforcement of behavior for a client who has a dietary restriction, these foods should be consistent with the foods allowed by the prescribed diet.

Food used as a reinforcement must be part of a behavior plan approved by the IDT and consistent with nutritional parameters for that client. For example, a client with diabetes does not receive concentrated sweets as a reinforcement.

W466

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.480(a)(6) Unless otherwise specified by medical needs, the diet must 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.

Guidance §483.480(a)(6)

For suggested guidelines write to:
U.S. Department of Agriculture
Human Nutrition Information Services
Washington, D.C. 20250
http://fnic.nal.usda.gov

(b) Standard: Meal services

W467

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.480(b)(1) Each client must receive at least three meals daily,

Guidance §483.480(b)(1)

Meal times may be flexible and accommodate a variety of activities (e.g. holiday and weekend activities). Clients should be offered the opportunity of three meals every day, but may be given the choice of not participating in a meal due to their schedule or preference.

For example, a client wakes up late on a Saturday morning and decides to have brunch.

W468

(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.480(b)(1) at regular times comparable to normal mealtimes in the community

Guidance §483.480(b)(1)

Generally, meal times conform to the norms of the community, however the clients' schedules and preferences may result in slight variations. Slight variations are acceptable, but gross variations such as breakfast at 3 am would not be acceptable.

§483.480(b)(1) with –
W469
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(b)(1)(i) Not more than 14 hours between a substantial evening meal and breakfast of the following day,
Guidance §483.480(b)(1)(i)
A "substantial evening meal" is defined as an offering of three or more items at one time, one of which includes a high quality protein such as meat, fish, eggs, or cheese. The meal should represent no less than 20 percent of the day's total nutritional requirements.
W470
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(b)(1)(i) except on weekends and holidays when a nourishing snack is provided at bedtime, 16 hours may lapse between a substantial evening meal and breakfast; and
Guidance §483.480(b)(1)(i)
A "nourishing snack" is an offering of items, single or in combination, from the basic food groups. Snack supplies are available in the facility and are accessible to clients. Interview staff and clients about their access to snacks.
W471
§483.480(b)(1)(ii) Not less than 10 hours between breakfast and the evening meal of the same day, except as provided under paragraph (b)(1)(i).
§483.480(b)(2) Food must be served–
Facility Practices §483.480(b)(2)(i)
Portions served, either by staff or by the individuals themselves, closely match designated serving sizes on menus. Slight variations are not significant enough or frequent enough to affect individual's health.
W472
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(b)(2)(i) In appropriate quantity;
Guidance §483.480(b)(2)(i)
Meal observations verify that portions served, either by staff or by the clients, match the designated serving sizes on menus.
W473
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(b)(2)(ii) At appropriate temperature;
Guidance §483.480(b)(2)(ii)
Hot foods are served hot and cold foods are served cold, according to facility policy specific to the type of food or as desired by the client. The facility follows current state requirements for safe food temperatures.
W474
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(b)(2)(iii) In a form consistent with the developmental level of the client; and
Guidance §483.480(b)(2)(iii)
The term "form", as used in this requirement, refers to food consistency (e.g., pureed, chopped, ground, etc.). Food that is ground, chopped or pureed is based on assessed client need, and only to the extent required.
Food consistency modifications due to an acute medical or dental condition are temporary and; client's food consistency is upgraded at the soonest possible time. Clients with chronic medical or dental conditions are periodically reviewed and at least annually for the possibility of an upgrade in food consistency.
Client assessments must document the justification for modified texture of the client's diet.

W475
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(b)(2)(iv) With appropriate utensils.
Guidance §483.480(b)(2)(iv)
"Appropriate utensils" refers to eating utensils and adaptive eating equipment that enable clients to eat as independently as possible in accordance with their highest functional level.
Commonly used utensils (fork, knife, and spoon) appropriate to the food being consumed are provided to all clients except those using adaptive equipment instead. Clients should be afforded the opportunity to use forks, spoons, and knives as indicated by the food served.
Utensils must be in good condition, clean, allow portion sizes appropriate to the client's prescribed diet and meet the client's needs.
W476
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(b)(3) Food served to clients individually and uneaten must be discarded.
Guidance §483.480(b)(3)
This standard does not apply to food served in family-style dishes, unless the length of time the food is on the table or other considerations (such as clients fingering or drooling in the food) compromise the safety and nutritive value for later consumption of the food.
(c) Standard: Menus
W477
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(c)(1)(i) Be prepared in advance;
Guidance §483.480(c)(1)(i)
The facility should be able to produce a copy of client menus prospectively to verify that meal planning is done in advance.
W478
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(c)(1)(ii) Provide a variety of foods at each meal;
Guidance §483.480(c)(1)(ii)
A "variety" of food at each meal includes offerings from each of the food groups.
W479
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(c)(1)(iii) Be different for the same days of each week and adjusted for seasonal changes; and
Guidance §483.480(c)(1)(iii)
Menus should make use of seasonal foods in order to capitalize on the availability of fresher more vitamin enriched foods.
In certain portions of the country, there may be cultural preferences that influence the frequency with which a food appears on the menu. This is acceptable in the facility if it is acceptable in the community.
W480
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(c)(1)(iv) Include the average portion sizes for menu items.
Guidance §483.480(c)(1)(iv)
Verify the menu lists client portion sizes and observe that the portions served correspond to the clients prescribed diet.
W481
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(c)(2) Menus for food actually served must be kept on file for 30 days.
(d) Standard: Dining areas and service
§483.480(d) The facility must –
W482
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)

§483.480(d)(1) Serve meals for all clients, including persons with ambulation deficits, in dining areas, unless otherwise specified by the interdisciplinary team or a physician;
Guidance §483.480(d)(1)
For purposes of this standard, "dining areas" mean discrete eating areas located outside of bedrooms, established, furnished, and equipped for the purpose of eating meals.
When a client is not eating in a designated dining area, there must be either a medical rationale or this must be an isolated instance when the client has a personal reason to eat in another area, such as a television area to watch his or her favorite program.
Interview with the client should confirm that this is not routine, but is for a particular isolated reason.
W483
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(d)(2) Provide table service for all clients who can and will eat at a table, including clients in wheelchairs;
Guidance §483.480(d)(2)
Clients must have the opportunity to participate in the normal dining experience with their companions in the dining room.
Clients in wheelchairs are included in dining groupings of their peers without physical disabilities.
Clients in wheelchairs eat at the table and not with lap trays/hospital trays unless medically contraindicated.
W484
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(d)(3) Equip areas with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each client;
Guidance §483.480(d)(3)
Clients use adaptive equipment or are being trained to use such equipment when the need is identified in the IPP.
Examples of adaptive equipment that may be needed are:

- Double suction cups or other devices to anchor dishes on a table or tray for clients with major coordination problems;
- Rocking one-handed knife-fork or knife-spoon for a client with the use of only one hand;
- Built-up or extended handles or silverware for those with problems of grasp or range of motion;
- Plate guards or plates with raised rims to provide a surface against which the client with a physical disability can push food onto a fork or a spoon;
- Flexible drinking straws;
- Spoon bent to a 90 degree angle at the bowl or a swivel spoon to assist a client without normal wrist motions; and
- Any other adaptive device deemed by the team as needed by the client to eat more independently.

W485
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(d)(4) Supervise and staff dining rooms adequately
Guidance §483.480(d)(4)
There should be sufficient staff to implement eating programs for clients who require them and to provide necessary intervention and supervision for normalization including normal meal time behavior.
Client mealtime should not be inadequately delayed due to insufficient staff assistance.
W486
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(d)(4) to direct self-help dining procedures,
Guidance §483.480(d)(4)
Staff is present during meal times to monitor clients who are able to eat independently, promoting, supporting, reinforcing and encouraging them to eat in an appropriate and normalized manner (e.g., manners, social behaviors, etc.)

W487
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(d)(4) to assure that each client receives enough food and
Guidance §483.480(d)(4)
Clients can request and receive second helpings unless contraindicated by a prescribed diet.
For clients on restrictive diets that prefer not to be on these diets or seek seconds, the facility resolves the personal choice issues vs. health risks.
W488
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(d)(4) to assure that each client eats in a manner consistent with his or her developmental level; and
Guidance §483.480(d)(4)
The intent of this regulation is to promote the acquisition of skills that lead to greater independence in eating.
Clients should be actively encouraged to eat independently to the extent possible and in accordance with their assessed abilities.
Clients should receive training to develop independent eating skills consistent with their developmental potential as identified through the CFA.
Clients learn skills in accordance with their functional levels. Skills may include:

- Use of utensils;
- Meal preparation;
- Socialization during meals;
- Family style dining; and
- Ordering food in restaurants.

Clients' eating programs are implemented in accordance with their training objectives.
To the maximum extent possible, staff model appropriate mealtime behavior and conversation by sitting at the table with clients, and when possible, eating meals with clients.
W489
(Rev. 135, Issued: 02-27-15, Effective: 04-27-15, Implementation: 04-27-15)
§483.480(d)(5) Ensure that each client eats in an upright position, unless otherwise specified by the interdisciplinary team or a physician.
Guidance §483.480(d)(5)
If a client eats in any position other than an upright position, the physician should document the medical necessity for the position, and/or the IPP should include the program plan to teach the client the physical skill necessary for eating upright.
This applies to all clients, including those fed by nasogastric tube or gastrostomy tube. The IPP should identify the most appropriate position for the client to be positioned during mealtime, in relation to the placement of the food contents.

** Editor's Note: Verbatim from federal regulations. Neither the Department nor the Iowa Administrative Code editors have changed the content of the guidelines.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/7/17.

ARC 3097C

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 544B.10 and 546.10(8), the Landscape Architectural Examining Board hereby amends Chapter 1, "Description of Organization," Chapter 2, "Examinations and Licensing," and Chapter 4, "Rules of Professional Conduct," Iowa Administrative Code.

These amendments are a result of the five-year rolling review of administrative rules as outlined in Iowa Code section 17A.7(2). A committee of the Board, including Board members and staff, with the assistance of legal counsel, reviewed Chapters 1, 2, and 4 to identify outdated or redundant references, inconsistencies with statutes, and methods of enhancing efficiencies. The amendments update citations and make general updates. The amendments to Chapter 1 update definitions and rescind rules that are in the uniform rules of the Bureau of Professional Licensing and Regulation. The amendments to Chapter 2 update the rules to reflect the current examination and licensing protocols, including an update of the reinstatement and fee process. The amendments to Chapter 4 update the rules of professional conduct and discipline procedures. Throughout the chapters, the word "registration" in the phrase "certificate of registration" is changed to "licensure" as that is the current term used in the Iowa Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2941C** on February 15, 2017. A public hearing was held on March 7, 2017, at 10 a.m. in the Board office, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa. No comments were received from the public. One change from the Notice of Intended Action was made. In rule 193D—2.10(544B,17A), the late renewal fee of $25, which was inadvertently omitted from the Notice, has been added.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

The Board adopted these amendments on April 25, 2017.

After analysis and review of this rule making, the Professional Licensing and Regulation Bureau determined that there will be no impact on jobs and no fiscal impact to the state.

These amendments are intended to implement Iowa Code chapter 544B.

These amendments will become effective July 12, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 193D—1.1(544B,17A) as follows:

193D—1.1(544B,17A) Definitions. As used in these rules, the following definitions of words and terms shall apply:

"Board" means the Iowa landscape architectural examining board.

"CLARB" means the Council of Landscape Architectural Registration Boards.

"Evidence" means any document or record of any kind of drawings, specifications, photographs, diplomas, licensee statements, published data and certified personal statements as may be required as a part of any action on the part of the board. Each item of evidence shall be clearly marked to ensure positive and certain identification. It shall be the entire responsibility of the applicant to satisfy the board as to the sufficiency of the record and the evidence.

"Intern landscape architect" means an individual who is not licensed and has a degree in landscape architecture and is employed under the direct supervision of a professional landscape architect. The initials "I.L.A." should not be used.

"~~Landscape~~ Professional landscape architect" means a person who obtains a license and engages in the practice of landscape architecture under the authority of Iowa Code chapter 544B. For the purpose of these rules, a "professional landscape architect" may be referred to as a "landscape architect~~.~~" and may use the initials "P.L.A."

"~~Landscape~~ Professional landscape architect, retired" means a person who has retired from working as a landscape architect in all states of ~~registration,~~ licensure and who has requested "landscape architect, retired" status on the licensure renewal form~~, and whose request for "landscape architect, retired" status has been approved by the board~~. The retired status would become effective on the first scheduled licensure renewal date. For the purpose of these rules, a "professional landscape architect, retired" may be referred to as a "landscape architect, retired."

"LARE" means the landscape architecture registration examination.

~~*"PLA"* means professional landscape architect.~~

"P.L.A., retired" means the same as "professional landscape architect, retired."

"Practice of landscape architecture" means the ~~rendering~~ performance of professional service or offering to render professional ~~service~~ services to clients, including any one or any combination of the professional services defined in Iowa Code section ~~544B.1 and 193D—subrule 2.2(1)~~ 544B.1(2).

"Years of practical experience" means, for each year of practical experience the applicant has worked performing landscape architectural services, a minimum of 2,080 hours per year.

ITEM 2. Amend rule 193D—1.2(544B,17A), introductory paragraph, as follows:

193D—1.2(544B,17A) Organization and duties. The board consists of five members who are licensed professional landscape architects and two members who are not licensed professional landscape architects and who represent the general public. The board elects annually from its members a chairperson and a vice chairperson. A quorum of the board shall be four members, and all final motions and actions must receive a vote by a majority of ~~a quorum vote~~ the members of the board. The board enforces the provisions of Iowa Code chapter 544B and maintains a roster of all licensed professional landscape architects in the state.

ITEM 3. Amend rule 193D—1.4(544B,17A) as follows:

193D—1.4(544B,17A) Order of business. The chairperson or the ~~chairperson's designee~~ board administrator shall prepare an agenda listing all matters to be discussed at meetings. A copy of this agenda shall be available to each member of the board. ~~Procedures shall be in accordance with Robert's Rules of Order.~~

ITEM 4. Rescind and reserve rules **193D—1.5(22)** to **193D—1.9(252J,261)**.

ITEM 5. Amend rule 193D—1.10(17A) as follows:

193D—1.10(17A) ~~Waivers~~ Interim waivers and variances.

~~**1.10(1)** Persons who wish to seek waivers or variances from board rules should consult the uniform rules for the division of professional licensing and regulation at 193—Chapter 5.~~

~~**1.10(2)**~~ In addition to the provisions of 193—Chapter 5, the following shall apply for interim rulings:

~~*a.*~~ **1.10(1)** The board chairperson, or vice chairperson if the chairperson is not available, may rule on a petition for waiver or variance when it would not be timely to wait for the next regularly scheduled board meeting for a ruling from the board.

~~*b.*~~ **1.10(2)** The executive officer shall, upon receipt of a petition that meets all applicable criteria established in 193—Chapter 5, present the request to the board chairperson or vice chairperson along with all pertinent information regarding established precedent for granting or denying such requests.

~~*c.*~~ **1.10(3)** The chairperson or vice chairperson shall reserve the right to hold an electronic meeting of the board when prior board precedent does not clearly resolve the request, input of the board is deemed required and the practical result of waiting until the next regularly scheduled meeting would be a denial of the request due to timing issues.

~~*d.*~~ **1.10(4)** A waiver report shall be placed on the agenda of the next regularly scheduled board meeting and recorded in the minutes of the meeting.

~~*e.*~~ **1.10(5)** This ~~subrule~~ rule on interim rulings does not apply if the waiver or variance was filed in a contested case.

ITEM 6. Rescind and reserve rules **193D—1.11(544B,17A,272C)** to **193D—1.13(272C)**.

ITEM 7. Amend **193D—Chapter 1**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 544B.3, 544B.5, and 544B.15 ~~and chapters 252J, 261, and 272C~~.

ITEM 8. Rescind and reserve rule **193D—2.1(544B,17A)**.

ITEM 9. Amend rule 193D—2.3(544B,17A) as follows:

193D—2.3(544B,17A) Procedure for processing applications. Each application shall be considered individually by the board. The board authorizes the chairperson to review applications between board meetings. The chairperson will determine if the applications meet the requirements for approval or will need full board review. A personal appearance before the board, if required, shall be at the time and place designated by the board. Failure to supply additional evidence or information within 30 days from

the date of the written request from the board, or failure to appear before the board when an appearance is requested, may be considered cause for disapproval of the application. Unless otherwise provided by law, a request for a rehearing before the board shall be filed with the board in accordance with 193—7.39(543,272C). A judicial review can be filed in accordance with Iowa Code section 17A.19.

ITEM 10. Amend rule 193D—2.7(544B,17A) as follows:

193D—2.7(544B,17A) Certificate of licensure. ~~Applicants will be notified by the board of their eligibility or ineligibility.~~ When an applicant has qualified for licensure under this chapter and has paid the required license fee, the secretary shall enroll the applicant's name in the roster of professional landscape architects and issue to the applicant a certificate of licensure signed by the chairperson and vice chairperson of the board.

~~**2.7(1)** *Payment.* Upon payment of the license fee, the board will issue the certificate of licensure to an eligible professional landscape architect.~~

~~**2.7(2)**~~ **2.7(1)** *License number.* The certificate will indicate the license number of the landscape architect which must appear on the professional landscape architect's seal and on all works signed by the professional landscape architect.

~~**2.7(3)**~~ **2.7(2)** *Certificate.* Only one certificate of licensure shall be issued to a professional landscape architect. The certificate shall be displayed in a conspicuous place at the place of employment.

ITEM 11. Amend rule 193D—2.8(17A,272C,544B) as follows:

193D—2.8(17A,272C,544B) Renewal of certificates of ~~registration~~ licensure. Certificates of ~~registration~~ licensure expire biennially on June 30. In order to maintain authorization to practice in Iowa, a ~~registrant~~ licensee is required to renew the certificate of ~~registration~~ licensure prior to the expiration date. A ~~registrant~~ licensee who fails to renew by the expiration date is not authorized to practice landscape architecture in Iowa until the certificate is reinstated as provided in rule 193D—2.9(544B,17A).

2.8(1) It is the policy of the board to e-mail to each ~~registrant~~ licensee a notice of the pending expiration date at the ~~registrant's~~ licensee's last-known address approximately one month prior to the date the certificate of ~~registration~~ licensure is scheduled to expire. Failure to receive this notice does not relieve the ~~registrant~~ licensee of the responsibility to timely renew the certificate and pay the renewal fee. A ~~registrant~~ licensee should contact the board office if the ~~registrant~~ licensee does not receive a renewal notice prior to the date of expiration.

2.8(2) If grounds exist to deny a timely and sufficient application to renew, the board shall send written notification to the applicant by restricted certified mail, return receipt requested. Grounds may exist to deny an application to renew if, for instance, the ~~registrant~~ licensee failed to satisfy the continuing education as required as a condition for ~~registration~~ licensure. If the basis for denial is pending disciplinary action or disciplinary investigation that is reasonably expected to culminate in disciplinary action, the board shall proceed as provided in 193—Chapter 7. If the basis for denial is not related to a pending or imminent disciplinary action, the applicant may contest the board's decision as provided in 193—subrule 7.40(1).

2.8(3) When a ~~registrant~~ licensee appears to be in violation of mandatory continuing education requirements, the board may, in lieu of proceeding to a contested case hearing on the denial of a renewal application as provided in rule 193—7.40(546,272C), offer ~~a registrant~~ the licensee the opportunity to sign a consent order. While the terms of the consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty between $50 and $250, depending on the severity of the violation; establish deadlines for compliance; and require that the ~~registrant~~ licensee complete hours equal to double the deficiency in addition to the required hours; and may impose additional educational requirements on the ~~registrant~~ licensee. Any additional hours completed in compliance with the consent order cannot again be claimed at the next renewal. The board will address subsequent offenses on a case-by-case basis. A ~~registrant~~ licensee is free to accept or reject the offer. If the offer of settlement is accepted, the ~~registrant~~ licensee will be issued a renewed certificate of

~~registration~~ licensure and will be subject to disciplinary action if the terms of the consent order are not complied with. If the offer of settlement is rejected, the matter will be set for hearing, if timely requested by the ~~registrant~~ licensee pursuant to 193—subrule 7.40(1).

2.8(4) The board may notify ~~registrants~~ licensees whose certificates of ~~registration~~ licensure have expired. The failure of the board to ~~provided~~ provide this courtesy notification or the failure of the ~~registrant~~ licensee to receive the notification shall not extend the date of expiration.

2.8(5) A ~~registrant~~ licensee who continues to practice landscape architecture in Iowa after ~~registration~~ licensure has expired shall be subject to disciplinary action. Such unauthorized activity may also be grounds to deny a ~~registrant's~~ licensee's application for reinstatement.

2.8(6) Licensees shall notify the board within 30 days of any change of address or business connection.

2.8(7) Retired status. A person who held a ~~registration~~ license as a professional landscape architect, who is retired from the practice of landscape architecture in all states of ~~registration~~ licensure, and who has applied for and has been granted retired status from the board may use the title "professional landscape architect, retired" or "~~PLA~~ P.L.A., retired." ~~If the board determines an applicant is eligible, the~~ The retired status would become effective on the first scheduled ~~registration~~ license renewal date. Applicants do not need to reinstate an expired ~~registration~~ license to be eligible for retired status. Applicants may apply for retired status on the renewal forms provided by the board. The board will not provide a refund of biennial ~~registration~~ licensure fees if an application for retired status is granted in a biennium in which the applicant has previously paid the biennial fees for either active or inactive status. Licensees with retired status are exempt from the renewal requirement.

a. Permitted practices. ~~Persons registered~~ A person whose license is in retired status may engage in the practices identified in paragraph 2.8(8)*"c."* Such ~~persons~~ person may also provide services as a technical ~~experts~~ expert before a court, including pre-litigation preparation, discovery, and testimony, on matters directly related to landscape architectural services provided by such ~~persons~~ person prior to registering with the board in retired status.

b. Exemption. A person whose ~~registration~~ license as a landscape architect has been placed on probation, suspended, revoked, or voluntarily surrendered in connection with a disciplinary investigation or proceeding shall not be eligible for retired status unless the board, upon appropriate application, first reinstates the ~~registration~~ license to good standing.

2.8(8) Inactive status. This subrule establishes a procedure under which a person issued a certificate of ~~registration~~ licensure as a landscape architect may apply to the board to register as inactive. ~~Registration~~ Licensure under this subrule is available to a ~~registrant~~ licensee residing within or outside the state of Iowa who is not using the title "landscape architect" while offering services as a landscape architect. A person eligible to register as inactive may, as an alternative to ~~such registration~~ licensure, allow the certificate of ~~registration~~ licensure to lapse. During any period of inactive status, a person shall not engage in the practice of landscape architecture while using the title "landscape architect" or any other title that might imply that the person is offering services as a landscape architect in violation of Iowa Code section 544B.18. The board will continue to maintain a database of persons registered as inactive, including information which is not routinely maintained after a certificate of ~~registration~~ licensure has lapsed through the person's failure to renew. A person who registers as inactive will accordingly receive a renewal notice if the notice is sent by the board, board newsletters, and other mass communications from the board.

a. Affirmation. The renewal application shall contain a statement in which the applicant affirms that the applicant will not engage in the practice of landscape architecture while using the title "landscape architect" in violation of Iowa Code section 544B.18, without first complying with all rules governing reinstatement to active status. A person in inactive status may reinstate to active status at any time pursuant to rule 193D—2.9(544B,17A).

b. Renewal. A person registered as inactive may renew the person's certificate of ~~registration~~ licensure on the biennial schedule described in 193D—2.8(544B,272C,17A). This person shall be exempt from the continuing education requirements and will be charged a reduced renewal fee as

provided in 193D—2.10(544B,17A). An inactive certificate of ~~registration~~ licensure shall lapse if not timely renewed.

c. Permitted practices. A person may, while registered as inactive or retired, perform for a client, business, employer, government body, or other entity those services which may lawfully be provided by a person to whom a certificate of ~~registration~~ licensure has never been issued. For an "inactive" ~~registrant~~ licensee, such services may be performed as long as the person does not in connection with such services use the title "landscape architect" or any other title restricted for use only by landscape architects pursuant to Iowa Code section 544B.18 (with or without additional designations such as "inactive"). Restricted titles may be used only by active landscape architects who are subject to continuing education requirements to ensure that the use of such titles is consistently associated with the maintenance of competency through continuing education. A "professional landscape architect, retired" may use the "professional landscape architect, retired" title; however, the person shall inform anyone to whom the person is providing services that the person once held an active landscape architect license but is no longer actively licensed or permitted to practice landscape architecture.

d. Prohibited practices. A person who, while registered as inactive, engages in any of the practices described in Iowa Code section 544B.18 is subject to disciplinary action.

ITEM 12. Amend rule 193D—2.9(544B,17A) as follows:

193D—2.9(544B,17A) Reinstatement.

~~**2.9(1)** Reinstatement to active status from lapsed status.~~

~~*a.* An individual may reinstate an expired certificate of registration to active status within two years of expiration by:~~

~~(1) Paying the reinstatement fee of $25 per month of expired registration;~~

~~(2) Paying the current renewal fee;~~

~~(3) Providing a written statement outlining the professional activities of the applicant during the period of nonregistration defined as the practice of landscape architecture in Iowa Code section 544B.1; and~~

~~(4) Submitting documented evidence of completion of 12 contact hours of continuing education in health, safety, welfare subjects for each year or portion of a year of expired registration in compliance with requirements in 193D—Chapter 3. The hours reported shall be in addition to the 24 hours in health, safety, welfare subjects which should have been reported on the June 30 renewal date on which the registrant failed to renew. The continuing education hours used for reinstatement to active status may not be used again at the next renewal.~~

~~Out-of-state residents may submit a statement from their resident state's licensing board as documented evidence of compliance with their resident state's mandatory continuing education requirements during the period of nonregistration. The statement shall bear the seal of the licensing board. Out-of-state residents whose resident state has no mandatory continuing education shall comply with the documented evidence requirements outlined in this subrule.~~

~~*b.* An individual may reinstate to active status a certificate of registration which has been expired for more than two years by:~~

~~(1) Paying the reinstatement fee of $25 per month of expired registration up to a maximum of $750;~~

~~(2) Paying the current renewal fee;~~

~~(3) Providing a written statement outlining the professional activities of the applicant during the period of nonregistration defined as the practice of landscape architecture in Iowa Code section 544B.1; and~~

~~(4) Submitting documented evidence of completion of continuing education as determined by the board. The board shall require no more than 48 hours in health, safety, welfare subjects; however, the hours reported shall not have been earned more than four years prior to the date of the application to reinstate to active status.~~

~~Out-of-state residents may submit a statement from their resident state's licensing board as documented evidence of compliance with their resident state's mandatory continuing education requirements during the period of nonregistration. The statement shall bear the seal of the licensing~~

~~board. Out-of-state residents whose resident state has no mandatory continuing education shall comply with the documented evidence requirements outlined in this subrule.~~

~~The board shall review reinstatement applications on a case-by-case basis and may, at its discretion, require that the applicant take the L.A.R.E. as a prerequisite to reinstatement to active status.~~

2.9(1) An individual may reinstate a lapsed certificate of licensure to active status as follows:

a. Pay the current renewal fee;

b. Pay the reinstatement fee of $100 plus $25 per month or partial month of expired licensure up to a maximum of $750. All applicants for reinstatement shall be assessed the $100 reinstatement fee. The $25-per-month fee shall not be assessed if the applicant for reinstatement did not, during the period of lapse, engage in any acts or practices for which an active landscape architect license is required in Iowa. Falsely claiming an exemption from the monthly fee is a ground for discipline; in addition, other grounds for discipline may arise from practicing on a lapsed certificate, license or permit to practice;

c. Provide a written statement outlining the professional activities that the applicant performed in Iowa during the period of nonlicensure. The statement shall include a list of all projects with which the applicant had involvement and shall explain the service provided by the applicant; and

d. Submit documented evidence of completion of continuing education based on the licensee's date of licensure.

(1) A professional landscape architect who holds a license in Iowa for less than 12 months from the date of initial licensure shall not be required to report continuing education on the June 30 renewal on which the applicant failed to renew and 12 continuing education hours for each year or portion of a year of expired licensure up to a maximum of 48 continuing education hours; however, the hours reported shall not have been earned more than four years prior to the date of the application to reinstate to active status.

(2) A professional landscape architect who holds a license in Iowa for more than 12 months, but less than 24 months from the date of initial licensure, shall be required to report 12 contact hours which should have been reported on the June 30 renewal on which the applicant failed to renew and 12 continuing education hours for each year or portion of a year of expired licensure up to a maximum of 48 continuing education hours; however, the hours reported shall not have been earned more than four years prior to the date of the application to reinstate to active status.

(3) A professional landscape architect who holds a license in Iowa for 24 months or more from the date of initial licensure shall be required to report 24 contact hours which should have been reported on the June 30 renewal on which the applicant failed to renew and 12 continuing education hours for each year or portion of a year of expired licensure up to a maximum of 48 continuing education hours; however, the hours reported shall not have been earned more than four years prior to the date of the application to reinstate to active status.

(4) All continuing education hours must be completed in health, safety, and welfare subjects acquired in structured educational activities and be in compliance with requirements in 193D—Chapter 3. The continuing education hours used for reinstatement may not be used again at the next renewal.

(5) Out-of-state residents may submit a statement from their resident state's licensing board as documented evidence of compliance with their resident state's mandatory continuing education requirements during the period of nonlicensure. The statement shall bear the seal of the licensing board. Out-of-state residents whose resident state has no mandatory continuing education shall comply with the documented evidence requirements outlined in this subrule.

~~**2.9(2)** Reinstatement to inactive status from lapsed status. An individual may reinstate a lapsed certificate of registration to inactive status as follows:~~

~~*a.* Reinstatement fees. The individual shall:~~

~~(1) Pay the reinstatement fee of $25 per month of expired registration up to a maximum of $100 if the application for reinstatement is filed on or before June 30, 2009.~~

~~(2) Pay the reinstatement fee of $25 per month of expired registration up to a maximum of $750 if the application for reinstatement is filed on or after July 1, 2009.~~

~~*b.* The individual shall pay the current renewal fee.~~

~~*c.* The individual shall provide a written statement in which the individual affirms that the individual has not engaged in any of the practices in Iowa that are listed in Iowa Code section 544B.18 during the period of lapsed registration.~~

~~**2.9(3)**~~ **2.9(2)** ~~Reinstatement to active status from inactive status or retired status.~~ An individual may reinstate an inactive ~~registration~~ license or retired ~~registration~~ license to an active ~~registration~~ license as follows:

a. The individual shall pay the current active ~~registration~~ licensure fee. If the individual is reinstating to active status at a date that is less than 12 months from the next biennial renewal date, one-half of the current active ~~registration~~ licensure fee shall be paid.

b. The individual shall submit documented evidence of completion of 24 contact hours ~~(16 contact hours in public protection subjects)~~ of continuing education in health, safety, and welfare subjects in compliance with requirements in 193D—Chapter 3. The continuing education hours used for reinstatement to active status may not be used again at the next renewal.

c. Continuing education for subsequent renewals.

(1) At the first biennial renewal date of July 1 that is less than 12 months from the date of the filing of the application to restore the certificate of ~~registration~~ licensure to active status, the individual shall not be required to report continuing education.

(2) At the first biennial renewal date of July 1 that is more than 12 months, but less than 24 months, from the date of the filing of the application to restore the certificate of ~~registration~~ licensure to active status, the individual shall report 12 hours of previously unreported continuing education.

d. Provide a written statement in which the applicant affirms that the applicant has not engaged in any of the practices in Iowa that are listed in Iowa Code section 544B.1(2) during the period of inactive licensure.

~~**2.9(4)**~~ **2.9(3)** An individual shall not be allowed to reinstate to inactive status from retired status.

2.9(4) The board shall review reinstatement applications on a case-by-case basis and may, at its discretion, require that the applicant take the LARE as a prerequisite to reinstatement to active status.

ITEM 13. Amend rule 193D—2.10(544B,17A) as follows:

193D—2.10(544B,17A) Fee schedule. The appropriate ~~examination fee or examination exemption filing~~ fee shall accompany the application. ~~Filing fees are not refundable.~~

~~Examination fee~~	~~not to exceed $1000~~
~~Initial examination filing fee~~	~~$50~~
~~Proctoring fee~~	~~$50~~
Fees for examination subjects shall be paid directly to the testing service selected by CLARB.	
~~Examination exemption~~ Exemption fee	$300
(This certificate of ~~registration~~ licensure is to be effective to the June 30 which is at least 12 months beyond the date of the application.)	
~~Wall certificate fee~~	~~$50~~
Wall certificate replacement fee	$25
Certificate of ~~registration~~ licensure fee	$15/month
(This certificate of ~~registration~~ licensure is to be effective the day of board action until June 30.)	
Biennial ~~registration~~ licensure fee (active)	$350
Biennial ~~registration~~ licensure fee (inactive)	$100
Late renewal fee	$25

(for renewals postmarked on or after July 1 and before July 30)	
~~Reinstatement of lapsed registration~~	~~not to exceed $750~~
~~"Landscape~~ "Professional landscape architect, retired" status	$0 (No fee)
Reinstatement of lapsed licensure to active status	$100 + renewal fee + $25 per month or partial month of lapsed licensure; not to exceed $750
Reinstatement of inactive or retired status to active status	$350
(If less than 12 months from the next biennial renewal, one-half of the current active licensure fee shall be paid.)	

ITEM 14. Amend **193D—Chapter 4**, title, as follows:

RULES OF PROFESSIONAL CONDUCT AND DISCIPLINE PROCEDURES

ITEM 15. Amend paragraph **4.1(5)"c"** as follows:

c. A professional landscape architect shall comply with the ~~registration~~ licensure laws and regulations governing the landscape architect's professional practice in any United States jurisdiction.

ITEM 16. Amend paragraph **4.1(6)"b"** as follows:

b. A professional landscape architect shall not sign or seal drawings, specifications, reports or other professional work for which the landscape architect does not have direct professional knowledge and direct supervisory control; provided, however, that in the case of the portions of professional work prepared by the landscape architect's consultants, ~~registered~~ licensed under this or another professional ~~registration~~ licensure law of this jurisdiction, the professional landscape architect may sign or seal that portion of the professional work if the landscape architect has reviewed that portion, has coordinated its preparation and intends to be responsible for its adequacy.

ITEM 17. Amend paragraph **4.1(6)"d"** as follows:

d. A professional landscape architect shall not engage in conduct involving fraud or wanton disregard of the rights of others. ~~Failure by a licensee to adhere to these rules of conduct shall cause the license to be reviewed by the board and shall, at the discretion of the board, be cause for a reprimand or suspension or revocation of the license.~~

ITEM 18. Amend paragraph **4.1(7)"d"** as follows:

d. Each technical submission to a ~~building official~~ client or any public agency, hereinafter referred to as the official copy, shall contain an information block on its first page or on an attached cover sheet with application of a seal by the professional landscape architect in responsible charge and an information block with application of a seal by each professional consultant contributing to the technical submission. The seal and original signature shall be applied only to a final technical submission. Each official copy of a technical submission shall be stapled, bound or otherwise attached together so as to clearly establish the complete extent of the technical submission. Each information block shall display the seal of the individual responsible for that portion of the technical submission. The area of responsibility for each sealing professional shall be designated in the area provided in the information block, so that responsibility for the entire technical submission is clearly established by the combination of the stated seal responsibilities. The information block shall substantially conform to the sample shown below:

SEAL	I hereby certify that the portion of this technical submission described below was prepared by me or under my direct supervision and responsible charge. I am a duly licensed professional landscape architect under the laws of the state of Iowa. Printed or typed name or secure electronic signature Signature Pages or sheets covered by this seal: License Expires:

ITEM 19. Amend paragraph **4.1(7)"e"** as follows:

e. The information requested in each information block must be typed or legibly printed in permanent ink or digital signature as defined in or governed by Iowa Code chapter 554D on each official copy. An electronic signature as defined in or governed by Iowa Code chapter 554D meets the signature requirements of this rule if it is protected by a security procedure, as defined in Iowa Code section 554D.103(14), such as digital signature technology. It is the licensee's responsibility to ensure, prior to affixing an electronic signature to a landscape architecture document, that security procedures are adequate to (1) verify that the signature is that of a specific person and (2) detect any changes that may be made or attempted after the signature of the specific person is affixed. The seal implies responsibility for the entire technical submission unless the area of responsibility is clearly identified in the information accompanying the seal.

ITEM 20. Amend subrule 4.2(1) as follows:

4.2(1) *Complaints.* Any person may file a complaint with the board charging that a licensee may have committed an act that is in violation of applicable law or rules. The complaint shall be written and signed by the complainant and accompanied with substantial evidence indicating when, where, and how the licensee committed the violation. All complaints filed with the board shall be privileged and held confidential pursuant to Iowa Code section 272C.6(4) by all board members, peer review committee members and staff. A person filing a complaint shall receive immunities in accordance with Iowa Code ~~chapter 272C~~ section 272C.8.

ITEM 21. Amend subrule 4.2(2) as follows:

4.2(2) *Board-instigated complaints.* Upon presentation of evidence by a board member, the board's staff, or other state agency, the board may determine that a complaint should be ~~formulated to charge that~~ opened and an investigation begun to determine if a licensee may have committed an act that is in violation of applicable law or rules. ~~A majority vote of the board approving a written motion stating the charges and containing evidence as to when, where, and how the violation might have occurred shall constitute a complaint to be processed by the complaint procedure.~~

ITEM 22. Amend rule 193D—4.4(544B,272C) as follows:

193D—4.4(544B,272C) Investigation report of complaints.

4.4(1) *Board consideration of report to determine further action.* Upon completion of the investigation, the investigator(s) shall prepare for the board's consideration a report containing the position or defense of the licensee so the board may determine what further action is necessary. The board may:

~~1.~~ *a.* Order the matter be further investigated.

~~2.~~ *b.* Allow the licensee who is the subject of the complaint an opportunity to appear before the designated discipline committee for an informal discussion regarding the circumstances of the alleged violation.

~~3.~~ *c.* Determine there is no probable cause to believe that a violation has occurred and close the case.

~~4.~~ *d.* Determine there is probable cause to believe that a violation has occurred.

4.4(2) *Informal discussion.*

a. An informal discussion is intended to provide a licensee an opportunity to share the licensee's account of a complaint in an informal setting before the board determines whether probable cause exists to initiate a disciplinary proceeding. A licensee is not required to attend an informal discussion. Because disciplinary investigations are confidential, the licensee may not bring other persons to an informal discussion, but licensees may be represented by legal counsel.

b. Unless disqualification is waived by the licensee, board members or staff who personally investigate a disciplinary complaint are disqualified from making decisions or assisting the decision makers at a later formal hearing. Because board members generally rely upon investigators, peer review committees, or expert consultants to conduct investigations, the issue rarely arises. An informal discussion, however, is a form of investigation because it is conducted in a question-and-answer format. In order to preserve the ability of all board members to participate in board decision making and to receive the advice of staff, a licensee who desires to attend an informal discussion must therefore waive the right to seek disqualification of a board member or staff based solely on the board member's or staff's participation in an informal discussion. A licensee would not waive the right to seek disqualification on any other ground. By electing to attend an informal discussion, a licensee accordingly agrees that participating board members or staff are not disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision maker.

c. Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence.

ITEM 23. Amend rule 193D—4.5(544B,272C) as follows:

193D—4.5(544B,272C) Dispensation. The board shall make findings of fact and conclusions of law and may take one or more of the following actions:

1. to 3. No change.

4. Impose civil penalties, the amount of which shall be set at the discretion of the board but shall not exceed $1000. Civil penalties may be imposed for any of the disciplinary violations of Iowa Code section 544B.15 and Iowa Code sections 272C.9(2), ~~and~~ 272C.9(3), and 272C.10, and these rules or for repeated offenses.

5. to 10. No change.

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ARC 3098C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455A.5(6), 481A.38, 481A.39, and 481A.48, the Natural Resource Commission (Commission) hereby amends Chapter 106, "Deer Hunting by Residents," Iowa Administrative Code.

Chapter 106 sets regulations for deer hunting by residents and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of take, and transportation and reporting requirements.

This rule making makes four substantive amendments to the chapter. First, these amendments change 22 county-specific antlerless-deer quotas, half of which are increasing and half of which are decreasing. Although this change will result in a net decrease of 2,425 available deer tags, roughly 10,000 of 2016's deer tags were never claimed, so the reduction is actually less than last year's surplus. The new deer tag total (72,150 compared to last year's 74,575) is being strategically allocated to shift participation either toward or away from areas impacted by communicable diseases, such as epizootic hemorrhagic disease and chronic wasting disease, or where deer population numbers have exceeded social and biological tolerance levels. Counties that sold out of antlerless-deer tags last year and that would benefit from more harvest impact are having tags added to their quotas, while counties that did not sell out last year and would benefit from less impact are having tags reduced. All of these changes are ultimately designed to keep Iowa's white-tailed deer herd as a whole within the population parameters agreed upon in 2009 by the Commission, the Department of Natural Resources, and the Deer Study Advisory Group (DSAG), a consortium of diverse stakeholders created to review, analyze, and make recommendations about Iowa's deer herd.

Second, straight wall cartridge rifles are being added as an approved method of take for the regular gun seasons as well as for youth deer and severely disabled hunts. Approved calibers shall be the same as those set for pistols and revolvers in the Department of Natural Resources' hunting regulation booklet, which is being formally adopted by reference in new paragraph 106.7(3)"e."

Third, the amendments clarify the description of centerfire handguns to reduce confusion regarding the type of handguns legal for use in hunting deer in Iowa.

Finally, holders of a valid permit to carry weapons may now have a handgun on their person while deer hunting. However, only the handguns authorized for use in hunting deer shall be used to hunt and only during the seasons in which handguns are a lawful method of take (which is every season besides the archery season). The latter points are extremely important because there are handguns that may lawfully be carried pursuant to a permit, but which are not approved for deer hunting.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 12, 2017, as **ARC 3013C**. A public hearing was held on May 2, 2017. Forty-three comments were received regarding Chapter 106. The majority of comments, 25 of 43, indicated opposition to the addition of straight wall cartridge rifles as legal firearms. Seven comments indicated support for straight wall cartridge rifle use, and 5 comments indicated support if conditions were placed, such as limiting round capacity (3 comments), elimination of semiautomatic rifles (1 comment), and allowing for additional calibers (1 comment), on the use of rifles. The 5 remaining comments varied from banning party hunting to reducing deer harvest quotas.

Two changes from the Notice of Intended Action were made. Subparagraph 106.7(3)"b"(2) was edited for accuracy. The description of an approved handgun magazine's functionality was incorrect in the Notice; the adjusted language ("a magazine feeding a single chamber…") is accurate. Additionally, "bolt action" was added to the other mechanical features approved handguns must have; its absence in the Notice was an oversight. Under the revised subparagraph, handguns either (i) must have the action of a slide or a bolt action to eject the casing, or (ii) must have a break action capable of holding only one round.

These amendments will likely have a positive impact on private sector jobs in the state. Although antlerless-deer quotas are decreasing as a whole, the reduction is strategically designed to increase hunter participation. The changes to 22 county-specific quotas are expected to result in approximately 1,793 more deer tags sold. Deer hunting in general plays an important role in Iowa's economy, benefiting in particular the following businesses: hunting equipment retailers (weapons, ammunition, clothing, chairs, stands, binoculars, and other supporting equipment); field guides and outfitters; taxidermists; and restaurants, hotels, and gas stations for hunters traveling around the state.

These amendments are intended to implement Iowa Code sections 455A.5(6), 481A.38, and 481A.39 and section 481A.48 as amended by 2017 Iowa Acts, House File 475.

These amendments will become effective July 12, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule 106.6(6) as follows:

106.6(6) *Antlerless-deer-only licenses.* Paid antlerless-deer-only licenses will be available by county for the ~~2016~~ 2017–2018 deer season as follows:

County	Quota	County	Quota	County	Quota
Adair	1025	Floyd	0	Monona	850
Adams	1450	Franklin	0	Monroe	1950
Allamakee	~~2975~~ 3600	Fremont	~~525~~ 400	Montgomery	750
Appanoose	~~2200~~ 1800	Greene	0	Muscatine	775
Audubon	0	Grundy	0	O'Brien	0
Benton	325	Guthrie	1950	Osceola	0
Black Hawk	0	Hamilton	0	Page	750
Boone	~~450~~ 300	Hancock	0	Palo Alto	0
Bremer	650	Hardin	0	Plymouth	0
Buchanan	~~200~~ 300	Harrison	850	Pocahontas	0
Buena Vista	0	Henry	925	Polk	1350
Butler	0	Howard	~~200~~ 350	Pottawattamie	850
Calhoun	0	Humboldt	0	Poweshiek	300
Carroll	0	Ida	0	Ringgold	~~2200~~ 1600
Cass	400	Iowa	450	Sac	0
Cedar	775	Jackson	~~675~~ 825	Scott	200
Cerro Gordo	0	Jasper	775	Shelby	~~225~~ 0
Cherokee	0	Jefferson	1650	Sioux	0
Chickasaw	375	Johnson	850	Story	150
Clarke	2100	Jones	~~525~~ 800	Tama	200
Clay	0	Keokuk	450	Taylor	~~2200~~ 1600
Clayton	~~2775~~ 3400	Kossuth	0	Union	1500
Clinton	400	Lee	1275	Van Buren	~~3800~~ 2000
Crawford	~~150~~ 0	Linn	850	Wapello	1825
Dallas	1875	Louisa	~~775~~ 675	Warren	2200
Davis	~~2800~~ 1600	Lucas	2200	Washington	750
Decatur	2200	Lyon	0	Wayne	2200
Delaware	~~525~~ 800	Madison	~~2100~~ 2350	Webster	0
Des Moines	800	Mahaska	475	Winnebago	0
Dickinson	0	Marion	1650	Winneshiek	~~1975~~ 2275
Dubuque	~~725~~ 825	Marshall	150	Woodbury	~~850~~ 625
Emmet	0	Mills	750	Worth	0
Fayette	~~1500~~ 1800	Mitchell	0	Wright	0

ITEM 2. Amend subrule 106.7(2) as follows:

106.7(2) *Regular gun seasons.* Only 10-, 12-, 16- and 20-gauge shotguns shooting single slugs, and straight wall cartridge rifles, muzzleloaders, and handguns as described more fully in 106.7(3), will be permitted for taking deer during the regular gun seasons.

ITEM 3. Amend subrule 106.7(3) as follows:

106.7(3) *Muzzleloader seasons.* Only muzzleloading rifles and muzzleloading pistols will be permitted for taking deer during the early muzzleloader season. During the late muzzleloader season, deer may be taken with a ~~muzzleloader~~ muzzleloading rifle, muzzleloading pistol, centerfire handgun, crossbow or bow as described in 106.7(1).

a. Muzzleloading rifles are defined as flintlock or percussion cap lock muzzleloaded rifles and muskets of not less than .44 and not larger than .775 caliber, shooting single projectiles only.

b. Centerfire handguns must be .357 caliber or larger shooting ~~straight-walled~~ straight wall cartridges propelling an expanding-type bullet (no full-metal jacket) and complying with all other requirements provided in Iowa Code section 481A.48. ~~Legal handgun calibers are listed on the department of natural resources list of acceptable handgun calibers for hunting deer in Iowa. Revolvers, pistols and black powder handguns must have a 4-inch minimum barrel length. There can be no shoulder stock or long-barrel modifications to handguns.~~ In addition, centerfire handguns must be designed to be shot with one hand using a pistol grip and have either:

(1) A cylinder of several chambers brought successively into line with the barrel and discharged with the same hammer; or

(2) A magazine feeding a single chamber integral with the barrel and using either the action of a slide or a bolt action to eject the casing, or having a break action capable of only holding one round.

c. Muzzleloading ~~handguns~~ pistols must be .44 caliber or larger, shooting single projectiles only.

d. Crossbow means a weapon consisting of a bow mounted transversely on a stock or frame and designed to fire a bolt, arrow, or quarrel by the release of the bow string, which is controlled by a mechanical trigger and a working safety. Crossbows equipped with pistol grips and designed to be fired with one hand are illegal for taking or attempting to take deer. All projectiles used in conjunction with a crossbow for deer hunting must be equipped with a broadhead.

e. Legal handgun calibers for hunting deer in Iowa are listed in the department of natural resources' hunting and trapping regulations booklet published each summer and adopted by reference herein. Centerfire handguns and black powder handguns must have a 4-inch minimum barrel length, and centerfire handguns shall not have any parts that extend beyond the back of the pistol grip. There can be no shoulder stock or long-barrel modifications to any handgun.

ITEM 4. Amend subrule 106.7(6) as follows:

106.7(6) *Prohibited weapons and devices.* The use of dogs, domestic animals, bait, rifles other than muzzleloaded or straight wall cartridge as provided in ~~106.7(5)~~ 106.7(2), 106.7(3) and 106.10(5), handguns except as provided in 106.7(2) and 106.7(3), crossbows except as provided in 106.7(1) and 106.7(3), automobiles, aircraft, or any mechanical conveyance or device, including electronic calls, is prohibited, except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Bait" means grain, fruit, vegetables, nuts, hay, salt, mineral blocks, or any other natural food materials; commercial products containing natural food materials; or by-products of such materials transported to or placed in an area for the intent of attracting wildlife. Bait does not include food placed during normal agricultural activities. "Paraplegic" means an individual with paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord. It shall be unlawful for a person, while hunting deer, to carry or have in possession a rifle except as provided in 106.7(2), 106.7(3) and ~~106.7(5)~~ 106.10(5). ~~It shall be unlawful for a person hunting with a bow license to carry a handgun unless that person also has a valid deer hunting license and an unfilled transportation tag that permits a handgun to be used to take deer.~~ A person in possession of a valid permit to carry weapons may carry a handgun while hunting. However, only the handguns listed in 106.7(3) shall be used to hunt deer and only when a handgun is a lawful method of take.

ITEM 5. Amend subrule 106.10(5) as follows:

106.10(5) *Method of take and other regulations.* Deer may be taken with shotgun, bow, straight wall cartridge rifles, or muzzleloaded rifles as permitted in 571—106.7(481A). All participants must meet the

deer hunters' orange apparel requirement in Iowa Code section 481A.122. All other regulations for obtaining licenses or hunting deer shall apply.

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ARC 3099C

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 2, "Pharmacist Licenses," Iowa Administrative Code.

The amendment decreases the waiting period for retaking the North American Pharmacist Licensure Examination (NAPLEX) from 91 days to 45 days, with a limit of three attempts to pass the NAPLEX within a 12-month period. Due to this decrease in the waiting period, no waivers or exceptions to the 45-day waiting period will be accepted or honored because reducing the waiting period to less than 45 days would pose a threat to the integrity of the NAPLEX. This amendment is the result of program changes implemented by the National Association of Boards of Pharmacy, which maintains and administers the national pharmacist licensure examinations.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the December 7, 2016, Iowa Administrative Bulletin as **ARC 2859C**. The Board received one written comment supporting the amendment. The adopted amendment is identical to the amendment published under Notice.

The amendment was approved during the May 10, 2017, meeting of the Board of Pharmacy.

After analysis and review of this rule making, no substantial impact on jobs has been found. However, reducing the waiting period between failure to pass the NAPLEX and the opportunity to retake the examination may result in faster entry into the practice work force by an applicant for pharmacist licensure.

This amendment is intended to implement Iowa Code sections 147.34 and 147.36.

This amendment will become effective on July 12, 2017.

The following amendment is adopted.

Amend rule 657—2.6(147) as follows:

657—2.6(147) Reexamination applications and fees. A candidate who fails to pass either the NAPLEX or the MPJE, Iowa Edition, once shall be allowed to schedule a time to retake the examination as provided in this rule. To ensure the integrity of the examinations, no waiver or variance of the specified waiting period between reexaminations will be granted.

2.6(1) *NAPLEX.* A candidate who fails to pass the NAPLEX once shall be allowed to schedule a time to retake the examination no less than ~~91~~ 45 days following administration of the failed examination. The candidate may be approved to retake the NAPLEX no more than three times in a 12-month period.

2.6(2) *MPJE, Iowa Edition.* A candidate who fails to pass the MPJE, Iowa Edition, once shall be allowed to schedule a time to retake the examination no less than 30 days following administration of the failed examination.

2.6(3) *Reexamination after two or more attempts.* A candidate who fails to pass either examination following a second or subsequent examination may petition the board for permission to take the examination again. Determination of a candidate's eligibility to take an examination more than two times shall be at the discretion of the board.

2.6(4) *Applications and fees.* Each applicant for reexamination shall file an application on forms provided by the board. ~~Processing fees~~ A processing fee of $36 ~~each~~ will be charged ~~to take~~ for each

NAPLEX or MPJE, Iowa Edition, reexamination and shall be paid to the board as provided in subrule 2.3(1). In addition, candidates will be required to complete the appropriate examination registration application as provided in rule 657—2.2(155A) and to pay to NABP the registration and administration fees for each examination as provided in subrule 2.3(2). All applications, registration forms, and fees shall be submitted as provided in subrules 2.3(2) and 2.3(3).

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ARC 3100C

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 10, "Controlled Substances," and Chapter 100, "Iowa Real-Time Electronic Pseudoephedrine Tracking System," Iowa Administrative Code.

The amendments are the result of a general review of administrative rules pursuant to Iowa Code subsection 17A.7(2), in collaboration with the Governor's Office of Drug Control Policy. These amendments remove references to the pseudoephedrine advisory council, which was repealed by 2013 Iowa Acts, chapter 68, section 2, and allow a pharmacy technician to approve a purchase under the direct supervision of a pharmacist. Also, the amended definition of "dispenser" in Item 3 includes a cross reference to Chapter 13. The Board is in the process of adopting new Chapter 13 regarding telepharmacy practice.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the December 7, 2016, Iowa Administrative Bulletin as **ARC 2858C**. The Board received one written comment supporting the amendments. The adopted amendments are identical to those published under Notice.

The amendments were approved during the May 10, 2017, meeting of the Board of Pharmacy.

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

These amendments are intended to implement Iowa Code sections 124.212, 124.212A, 124.212B, 124.213, and 17A.7(2).

These amendments will become effective on July 12, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 657—10.32(124,155A) as follows:

657—10.32(124,155A) Dispensing products containing ephedrine, pseudoephedrine, or phenylpropanolamine without a prescription. A product containing ephedrine, pseudoephedrine, or phenylpropanolamine, which substance is a Schedule V controlled substance and is not listed in another controlled substance schedule, may be dispensed or administered without a prescription by a pharmacist, pharmacist-intern, or pharmacy technician to a purchaser at retail pursuant to the conditions of this rule.

10.32(1) *Who may dispense.* Dispensing shall be by a licensed Iowa pharmacist, ~~or~~ by a registered pharmacist-intern under the direct supervision of a pharmacist preceptor, or by a registered pharmacy technician under the direct supervision of a pharmacist, except as authorized in 657—Chapter 100. This subrule does not prohibit, after the pharmacist, pharmacist-intern, or pharmacy technician has fulfilled the professional and legal responsibilities set forth in this rule and has authorized the dispensing of the substance, the completion of the actual cash or credit transaction or the delivery of the substance by ~~a nonpharmacist~~ another pharmacy employee.

10.32(2) to **10.32(4)** No change.

10.32(5) *Identification.* The pharmacist, pharmacist-intern, or pharmacy technician shall require every purchaser under this rule to present a current government-issued photo identification, including proof of age when appropriate. The pharmacist, pharmacist-intern, or pharmacy technician shall be responsible for verifying that the name on the identification matches the name provided by the purchaser and that the photo image depicts the purchaser.

10.32(6) *Record.* Purchase records shall be recorded in the real-time electronic pseudoephedrine tracking system (PTS) established and administered by the governor's office of drug control policy pursuant to 657—Chapter 100. If the real-time electronic repository is unavailable for use, the purchase record shall be recorded in an alternate format and submitted to the PTS as provided in 657—subrule 100.3(4).

a. Alternate record contents. The alternate record shall contain the following:

(1) The name, address, and signature of the purchaser.

(2) The name and quantity of the product purchased, including the total milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine contained in the product.

(3) The date and time of the purchase.

(4) The name or unique identification of the pharmacist, ~~or~~ pharmacist-intern, or pharmacy technician who approved the dispensing of the product.

b. and *c.* No change.

10.32(7) No change.

ITEM 2. Amend rule 657—100.1(124) as follows:

657—100.1(124) Purpose and scope. ~~2009~~ Iowa Code ~~Supplement~~ section 124.212B directs the governor's office of drug control policy to establish a real-time electronic repository to monitor and control the sale of Schedule V products that are not listed in another controlled substance schedule and that contain any detectible amount of pseudoephedrine, its salts, or optical isomers, or salts of optical isomers; ephedrine; or phenylpropanolamine. All pharmacies dispensing such products without a prescription shall electronically report all such sales to the repository. The real-time electronic repository shall be under the control of and administered by the governor's office of drug control policy. Both the governor's office of drug control policy and the board of pharmacy are directed to adopt rules relating to the real-time electronic repository and have jointly adopted these rules. These rules establish the pseudoephedrine tracking system (PTS).

ITEM 3. Amend rule 657—100.2(124) as follows:

657—100.2(124) Definitions. As used in this chapter:

"Attempted purchase" means a proposed transaction for the dispensing of a product that is entered by a dispenser into the electronic pseudoephedrine tracking system, which transaction is not completed because the system recommends that the transaction be denied pursuant to the quantity limits established in ~~2009~~ Iowa Code ~~Supplement~~ section 124.213.

"Board" means the board of pharmacy.

~~*"Council"* means the pseudoephedrine advisory council established pursuant to Iowa Code section 124.212C.~~

"Dispenser" means a licensed Iowa pharmacist, ~~or~~ a registered pharmacist-intern under the direct supervision of a pharmacist preceptor, or a registered pharmacy technician under the direct supervision of a pharmacist, except as authorized in 657—Chapter 13.

"Law enforcement officer" means all of the following:

1. State police officer.
2. City or county police officer.
3. Sheriff or deputy sheriff.
4. State or public university safety and security officer.
5. Department of natural resources officer.
6. Certified or full-time peace officer of this or another state.

7. Federal peace officer.
8. Criminal analyst assigned to a law enforcement agency.
9. Probation or parole officer.

"Office" means the governor's office of drug control policy.

"Product" means a Schedule V drug product that is not listed in another controlled substance schedule and that contains any detectible amount of pseudoephedrine, its salts, or optical isomers, or salts of optical isomers; ephedrine; or phenylpropanolamine.

"Pseudoephedrine tracking system" or *"PTS"* means the real-time electronic repository established to monitor and control the sale of products and administered by the governor's office of drug control policy.

"Purchaser" means an individual 18 years of age or older who purchases or attempts to purchase a product.

ITEM 4. Amend rule 657—100.3(124) as follows:

657—100.3(124) Electronic pseudoephedrine tracking system (PTS). Unless granted an exemption by the office pursuant to these rules, all pharmacies dispensing products as defined in rule 657—100.2(124) without a prescription are required to participate in the PTS pursuant to ~~2009~~ Iowa Code ~~Supplement~~ section 124.212B. ~~The office has established a council to provide input and advise the office regarding the implementation, maintenance, and administration of the PTS. The council also assists the office in developing guidelines to ensure patient confidentiality and the integrity of the relationship established by the patient and the patient's health care provider.~~

100.3(1) *Reporting elements.* The record of a completed purchase or attempted purchase of a product without a prescription shall contain the following:

a. to *e.* No change.

f. The name or unique identification of the pharmacist, ~~or~~ pharmacist-intern, or pharmacy technician who approved the dispensing of the product.

100.3(2) No change.

100.3(3) *Denial of transactions and overrides.*

a. No change.

b. The PTS shall provide an override feature for use by a dispenser to allow completion of the sale. For security purposes and to ensure the integrity of the PTS, use of the override feature shall be restricted to authorized dispensers and may not be delegated to a pharmacy technician trainee or a pharmacy support person. A dispenser utilizing the override feature shall document the reason that, in the professional judgment of the dispenser, it is necessary to override the recommendation of the PTS to deny the transaction.

100.3(4) No change.

ITEM 5. Amend subrule 100.4(4) as follows:

100.4(4) *Patients.* A patient may request and receive information regarding products reported to have been purchased by the patient.

a. A patient may submit a signed, written request for records of the patient's purchases and attempted purchases during a specified period of time. The request shall identify the patient by name, including any aliases used by the patient, and shall include the patient's date of birth and gender. The request shall also include any address where the patient resided during the time period of the request and the patient's current address and daytime telephone number. A patient may personally deliver the request to the PTS administrator or authorized staff member of the office located at ~~Wallace State Office Building, 502 E. 9th Street, First Floor~~ Oran Pape State Office Building, 215 East 7th Street, Fifth Floor, Des Moines, Iowa 50319. The patient shall be required to present current government-issued photo identification at the time of delivery of the request. A copy of the patient's identification shall be maintained in the records of the PTS.

b. No change.

PHARMACY BOARD[657](cont'd)

ITEM 6. Amend rule 657—100.5(124) as follows:

657—100.5(124) Violations. Violations of provisions of these rules or ~~2009~~ Iowa Code ~~Supplement~~ section 124.212A, 124.212B, or 124.213 may subject the violator to criminal prosecution.

ITEM 7. Amend **657—Chapter 100**, implementation sentence, as follows:

These rules are intended to implement ~~2009~~ Iowa Code ~~Supplement~~ sections 124.212, 124.212A, 124.212B, and 124.213.

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ARC 3101C

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 11, "Drugs in Emergency Medical Service Programs," Iowa Administrative Code.

The amendments are the result of a general review of administrative rules pursuant to Iowa Code section 17A.7(2). These amendments update language to be consistent with current Iowa Code provisions and reorganize the chapter to provide clarity. These amendments require any entity, regardless of location, whose controlled substances are stored or handled at any primary program site of an emergency medical service program that services Iowa residents to obtain and maintain an Iowa Controlled Substances Act registration at the primary program site location.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2904C** on January 18, 2017.

The Board received two comments regarding this rule making. The comments did not express opposition to the rule making, but rather sought clarification to the identified rules. As a result, a minor addition was made to rule 657—11.8(124,147A,155A) relating to the employee identification log to clarify that the log must be maintained at the primary program site.

Requests for waiver or variance of the discretionary provisions of Board rules will be considered pursuant to 657—Chapter 34.

The Board adopted these amendments on May 10, 2017.

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

These amendments are intended to implement Iowa Code chapter 147A and sections 124.301, 155A.13, and 17A.7(2).

These amendments will become effective July 12, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 657—11.1(124,147A,155A) as follows:

657—11.1(124,147A,155A) Definitions. For the purpose of this chapter, the following definitions shall apply:

"Adulterated" means any drug or device that consists in whole or in part of any filthy, putrid, or decomposed substance.

"Ambulance service" means any privately or publicly owned service program that utilizes ambulances, including air transport vehicles, in order to provide patient transportation and emergency medical services.

"Authorized prescriber" means any provider who has prescriptive authority in the state of Iowa.

"Board" means the board of pharmacy.

"Bureau" means the Iowa department of public health, bureau of emergency ~~medical~~ and trauma services ~~(EMS)~~ (BETS).

"Controlled substance" means any drug that is identified in Schedules I through V of Iowa Code chapter 124, the Iowa uniform controlled substances Act.

"CSA registration" means a registration issued by the board pursuant to Iowa Code chapter 124, the Iowa uniform controlled substances Act.

"DEA" means the U.S. Department of Justice, Drug Enforcement Administration.

"DEA registration" means a registration issued by the DEA pursuant to 21 CFR Part 1301.

"Department" means the Iowa department of public health.

"Drug" means a substance as defined in Iowa Code section 155A.3(13) but does not include nonmedicated intravenous solutions such as saline.

"Emergency medical care provider" means an emergency medical care provider as defined in 641—131.1(147A).

"Emergency medical services" or *"EMS"* means an integrated medical care delivery system to provide emergency and nonemergency medical care ~~at the scene or during out-of-hospital patient transportation in an ambulance~~.

"Emergency medical technician" or *"EMT"* means any emergency medical technician or EMT as defined in 641—131.1(147A).

"Medical direction" means direction, advice, or orders provided, in accordance with written parameters and protocols, to emergency medical care personnel by a medical director, supervising physician, or physician designee.

"Medical director" means any physician licensed under Iowa Code chapter 148, 150, or 150A who shall be responsible for overall medical direction of the service program and who has completed a medical director workshop, sponsored by the department, within one year of assuming duties.

"Medical director-based" means that ownership of the drugs maintained in and used by the service program remains with the medical director.

"Patient care report" ~~or *"PCR"*~~ means a computerized or written report that documents the assessment and management of the patient by the emergency medical care provider ~~in the out-of-hospital setting~~.

"Pharmacy-based" means that ownership of the drugs maintained in and used by the service program remains with the pharmacy.

"Physician" means any individual licensed under Iowa Code chapter 148, 150, or 150A.

"Physician assistant" or *"PA"* means any individual licensed under Iowa Code chapter 148C.

~~*"Physician designee"* means any registered nurse licensed under Iowa Code chapter 152, or any physician assistant licensed under Iowa Code chapter 148C and approved by the board of physician assistant examiners. The physician designee acts as an intermediary for a supervising physician, in accordance with written policies and protocols, in directing the care provided by emergency medical care providers.~~

"Primary program site" means the physical location from which the service program is operated and at which stock supplies of prescription drugs may be maintained and distributed to a program vehicle and a program substation.

"Program substation" means the physical location from which a service program is operated as a branch or extension of a primary program site, at which an emergency kit or supply of prescription drugs is maintained, and at which a stock supply of prescription drugs is not maintained.

"Protocols" means written direction and orders, consistent with the department's standard of care, that are to be followed by an emergency medical care provider in emergency and nonemergency situations. Protocols shall be approved by the service program's medical director and shall address the care of both adult and pediatric patients.

"Responsible individual" ~~or *"RI,"* as this term relates to prescription drugs in a medical director-based service, means the medical director for the service. In a pharmacy-based service, "responsible individual" means the pharmacist in charge of the pharmacy~~ means the individual who maintains legal responsibility of the prescription drugs and devices. "Responsible individual" includes the medical director in a medical director-based service program or the pharmacist in charge in a pharmacy-based service program.

"Service" or *"service program"* means any medical care ambulance service or nontransport service that has received authorization from the department.

"Service director" means the individual who is responsible for the operation and administration of a service program.

"Supervising physician" means any physician licensed under Iowa Code chapter 148, 150, or 150A who supervises and is responsible for medical direction of emergency medical care personnel when such personnel are providing emergency medical care.

ITEM 2. Amend rule 657—11.2(124,147A,155A) as follows:

657—11.2(124,147A,155A) Responsibility. ~~Pursuant to rules of the bureau, each~~ Each service program shall appoint a service director at the primary program site and shall have a responsible individual who is responsible for ensuring that the management of all prescription drugs complies with federal and state laws and regulations. In service programs that maintain both a pharmacy-based service program agreement and a medical director-based service program agreement, the responsible individual for each service program agreement shall be responsible for ensuring the management of drugs under that individual's ownership. If more than one pharmacy enters into an agreement with a pharmacy-based service program, the pharmacist in charge at each pharmacy is responsible for the rules and laws pertaining to the specific prescription drugs, including controlled substances, that each pharmacy provides to the service program.

~~**11.2(1)** *Pharmacy-based.* In a pharmacy-based service program, the pharmacist in charge shall be responsible for ensuring that the management of all prescription drugs complies with federal and state laws and regulations. The pharmacist in charge shall not serve as the service director.~~

~~**11.2(2)** *Medical director-based.* In a medical director-based service program, the medical director shall be responsible for ensuring that the management of all prescription drugs complies with federal and state laws and regulations.~~

~~**11.2(3)** *Combination pharmacy-based and medical director-based.* If both pharmacy-based and medical director-based programs are in effect, the pharmacist in charge of the pharmacy and the medical director shall be responsible for management of the drugs owned by the pharmacy and by the medical director, respectively.~~

ITEM 3. Renumber rules **657—11.3(124,147A,155A)** and **657—11.4(124,147A,155A)** as **657—11.4(124,147A,155A)** and **657—11.5(124,147A,155A)**.

ITEM 4. Adopt the following **new** rule 657—11.3(124,147A,155A):

657—11.3(124,147A,155A) Registration required. In any service program which intends to provide services in or into Iowa that include the administration of controlled substances, the responsible individual shall ensure that each primary program site, regardless of location, is registered with the board pursuant to this rule. The current registration certificate shall be available at the primary program site for inspection and copying by the board, its representative, or any other authorized individual.

11.3(1) *Medical director-based service program.* In a medical director-based service program, CSA and DEA registrations shall be obtained for each primary program site. CSA and DEA registrations shall be obtained prior to procurement of any controlled substances for use in the service program. Separate registrations for program substations shall not be required. In a medical director-based service program, the CSA and DEA registrations shall be issued in the name of the service program, shall secondarily name the medical director, and shall be issued for the address of the service program's primary program site.

11.3(2) *Pharmacy-based service program.* In a pharmacy-based service program, the CSA registration shall be issued in the name of the service program and shall secondarily name the provider pharmacy. The CSA registration shall be issued for the address of the service program's primary program site and shall identify the pharmacist in charge of the provider pharmacy as the individual responsible for the controlled substances at the service program.

11.3(3) *Combination pharmacy-based and medical director-based service program.* In a service program that is a combination of pharmacy-based and medical director-based and both the pharmacy and medical director provide controlled substances, each provider of controlled substances shall maintain a CSA registration with the board as provided by this rule. A medical director-based program shall also maintain a federal DEA registration as provided by this rule.

11.3(4) *Change of address of registered primary program site.* A registrant may apply to change the address of the registered primary program site by submitting a written request as provided in 657—subrule 10.11(2). The board and the DEA shall be notified in writing prior to a change of address of a registered primary program site.

11.3(5) *Discontinuation of medical director in a medical director-based service program.* If a medical director intends to terminate a written agreement with a service program pursuant to rule 657—11.5(124,147A,155A), the medical director shall provide written notification to the board at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309, pursuant to 657—subrule 10.11(6), to cancel the registration, including the effective date of the termination of the agreement. The registration certificate shall be returned to the board no later than ten days following the effective date of the termination of the agreement.

ITEM 5. Amend renumbered rule 657—11.4(124,147A,155A) as follows:

657—11.4(124,147A,155A) Written agreement. A signed, written ~~formal~~ agreement for the service program shall be maintained at the primary program site and be available for inspection and copying by the board, ~~or~~ its representative, or any other authorized individual.

11.4(1) *Pharmacy-based service programs.* An Iowa-licensed pharmacy may enter into an agreement with a service program located in the state. The agreement with the service program shall establish that the service program is operating as an extension of the pharmacy with respect to the prescription drugs the pharmacy provides to the service program. The agreement shall be signed by the pharmacist in charge and the service director at the primary program site. A copy of this agreement shall be maintained at both the pharmacy and the primary program site while the agreement is in effect. Nothing in this rule prohibits more than one pharmacy from entering into an agreement with a service program provided that each pharmacy complies with all rules and regulations for a pharmacy-based service program, including maintenance of all required records specific to each pharmacy's drugs.

11.4(2) *Medical director-based service programs.* ~~A service program shall maintain a formal written agreement with a medical director that is signed by the medical director and the service director.~~ An Iowa-licensed physician may enter into an agreement with a service program located in the state. The agreement shall be signed by the medical director and the service director and be maintained at the primary program site while the agreement is in effect. ~~The medical director of the service program shall maintain a CSA registration and a DEA registration at the primary program site as required by rule 657—11.6(124,147A,155A).~~ The agreement shall include an attestation that the medical director agrees to abide by these rules.

ITEM 6. Amend renumbered rule 657—11.5(124,147A,155A) as follows:

657—11.5(124,147A,155A) Termination of ~~services~~ agreement. ~~EMS services~~ A written agreement may be terminated at the discretion of either the ~~EMS~~ service program or the party or parties responsible for providing drugs to the ~~EMS~~ service program. Written notification of such termination shall be provided to the other party at least 30 days prior to termination of ~~services~~ the agreement. ~~Transfer of ownership of controlled substances shall be in compliance with rule 657—10.11(124).~~

11.5(1) *Pharmacy-based service programs.* Immediately upon discontinuation of ~~services~~ a written agreement, all controlled substances shall be jointly inventoried by the pharmacist in charge of the pharmacy that owns the drugs and the service director or their respective designees. A record of this inventory shall be maintained at the pharmacy for two years from the date of the inventory and shall be available for inspection and copying by the board, its representative, or any other authorized

individual. All drugs and devices that are the property of the pharmacy shall be immediately returned to the pharmacy.

11.5(2) *Medical director-based service programs.* Immediately upon discontinuation of ~~services~~ a written agreement, all controlled substances shall be jointly inventoried by the medical director and the service director or their respective designees. A record of this inventory shall be maintained by the medical director for two years from the date of the inventory and shall be available for inspection and copying by the board, ~~the board's~~ its representative, or ~~another~~ any other authorized individual. All drugs and devices that are the property of the medical director shall be immediately returned to the medical director.

11.5(3) *Transfer of ownership.* If drugs in a service program are to be maintained under the ownership of a new pharmacy or medical director, such transfer of ownership shall be in compliance with 657—Chapter 10, 657—Chapter 17, and federal laws and regulations. Pursuant to rule 657—10.34(124,155A), the transfer of Schedule II controlled substances shall require an executed DEA Form 222.

ITEM 7. Rescind and reserve rule **657—11.6(124,147A,155A)**.

ITEM 8. Amend rule 657—11.8(124,147A,155A) as follows:

657—11.8(124,147A,155A) Identification.

~~**11.8(1)**~~ A log of employees who have access to prescription drugs and to records regarding procurement, storage, and administration of prescription drugs at the service program shall be maintained for two years and be available for inspection and copying by the board, ~~or~~ its representative, or any other authorized individual. This log shall include ~~the employees'~~ each employee's printed ~~names~~ name and ~~signatures~~ signature, printed and signed initials or other unique identification used in service program records, and the ~~employees' levels~~ employee's level of certification. A service program may maintain an electronic record of employee identification, including the employee's name, signature, unique identification used in the service program records, and level of certification. Such log shall be maintained at the primary program site for at least two years from the date of the employee's last date of employment with the service program and shall be available for inspection and copying by the board, its representative, or any other authorized individual.

~~**11.8(2)** Policies and procedures shall be developed, implemented, and adhered to that identify at least the following:~~

~~*a.* Who has access to drugs.~~

~~*b.* Who has authority to administer drugs.~~

~~*c.* Who has authority to order, receive, and distribute prescription drugs and devices.~~

ITEM 9. Amend rule 657—11.10(124,147A,155A) as follows:

657—11.10(124,147A,155A) Ownership of prescription drugs. All prescription drugs obtained for use in a service program shall be owned either by a pharmacy or by the medical director of the service program.

11.10(1) *Pharmacy-based service programs.* If the drugs are owned by ~~the~~ a pharmacy or more than one pharmacy pursuant to these rules, the service program shall be considered a pharmacy-based service program and shall comply with these rules as they pertain to a pharmacy-based service program.

11.10(2) *Medical director-based service programs.* If the drugs are owned by the medical director, the service program shall be considered a medical director-based service program and shall comply with these rules as they pertain to a medical director-based service program.

11.10(3) *Combination pharmacy-based and medical director-based service programs.* If the service program has entered into both pharmacy-based and medical director-based service program agreements, both the pharmacy and the medical director shall retain separate ownership of the prescription drugs supplied and shall comply with these rules as applicable. The primary program site shall maintain a list that identifies which prescription drugs are owned and supplied by each responsible individual.

11.10(4) *Transfer of ownership.* Any transfer of ownership of prescription drugs and devices in a service program shall be in compliance with 657—Chapter 10, 657—Chapter 17, and federal laws and regulations.

ITEM 10. Amend rule 657—11.11(124,147A,155A) as follows:

657—11.11(124,147A,155A) Policies and procedures.

11.11(1) ~~Each service program shall, jointly with the~~ The service director, the medical director, and the responsible individual~~,~~ shall develop, implement, and adhere to written policies and procedures for the operation and management of the service program with respect to prescription drugs and devices in accordance with these rules. These policies and procedures shall be available for inspection and copying by the board, ~~the board's~~ its representative, or ~~another~~ any other authorized individual. The policies and procedures shall be periodically reviewed by the responsible individual, the medical director, and the service director and shall identify the frequency of the review. Documentation of the review shall be maintained.

11.11(2) The policies and procedures shall address, at a minimum, the following:

a. Storage of drugs at the primary program site and any program substations, including appropriate temperature ~~and humidity~~ controls ~~and security~~, temperature monitoring and response when drugs are exposed to extreme temperatures pursuant to rule 657—11.13(124,147A,155A).

b. Storage of drugs at the primary program site and any program substations, including adequate security to prevent diversion and unauthorized access to drugs and records pursuant to rule 657—11.13(124,147A,155A).

~~*b.*~~ *c.* Protocols for administration of drugs pursuant to rule 657—11.14(124,147A,155A).

~~*c.*~~ *d.* Administration of drugs outside the parameters of written protocols pursuant to rule 657—11.15(124,147A,155A).

~~*d. Record retention and format including:*~~

~~(1) Ownership of drugs.~~

~~(2) Ordering of drugs and devices.~~

~~(3) Receipt of drugs and devices.~~

~~(4) Distribution or administration of drugs and devices.~~

~~(5) Inspections of the primary program site, program substations, and drug supplies.~~

~~(6) Inventories of controlled substances.~~

~~(7) Wastage resulting from the administration of a partial dose or supply of a drug.~~

~~(8) Drug or device returns.~~

e. Service program personnel matters including, but not limited to:

(1) Access to prescription drugs and records, identifying level of access based upon employee certification level and scope of practice.

(2) Authority to administer drugs based upon employee certification level and scope of practice.

(3) Authority to order, receive, and distribute prescription drugs and devices.

(4) Initial training and periodic review of the medication policies and procedures.

(5) Identification of registered nurses not employed by the service program who are authorized by the medical director pursuant to Iowa Code section 147A.12 and pursuant to rules of the board of nursing to provide emergency care under the service program's protocol.

~~*e.*~~ *f.* Process for the return of drugs pursuant to rule 657—11.22(124,147A,155A).

~~*f.*~~ *g.* Out-of-date and adulterated drugs pursuant to rule 657—11.23(124,147A,155A).

~~*g.*~~ *h.* Drug and device recalls pursuant to rule 657—11.24(124,147A,155A).

i. Monthly inspections pursuant to rule 657—11.20(124,147A,155A).

j. Record retention as described in rule 657—11.34(124,147A,155A) and other applicable rules of the board.

ITEM 11. Amend rule 657—11.13(124,147A,155A) as follows:

657—11.13(124,147A,155A) Storage. Prescription drugs at primary program sites and program substations shall be stored in designated secure areas that are clean and free of debris, where temperature ~~and humidity are~~ is appropriately controlled, and in a manner to protect identity and integrity.

11.13(1) *Temperature.* ~~All drugs~~ Each drug shall be stored ~~at~~ within the ~~proper~~ temperature range required in the manufacturer labeling. The service program shall utilize a method to provide continuous temperature control or monitoring, such as a temperature indicator, which at a minimum identifies when the drugs have been exposed to extreme temperatures. The service program shall regularly, but at least weekly, verify and document verification that the drugs have not been exposed to extreme temperatures. Drugs that are subjected to extreme temperatures shall not be administered to patients and shall be ~~immediately removed from usable stock~~ quarantined and returned to the responsible individual for disposition. Extreme temperatures shall be defined as excessive heat greater than 40 degrees Celsius (104 degrees Fahrenheit) and, if the product requires protection from freezing temperatures, excessive cold less than -10 degrees Celsius (13 degrees Fahrenheit). ~~Disposal~~ Disposition of unusable drugs shall be in compliance with rule 657—11.32(124,147A,155A).

11.13(2) *Security.* The security of prescription drugs, records for such drugs, and patient records is the responsibility of the responsible individual and shall provide for the effective control against theft of, diversion of, or unauthorized access to drugs and records. ~~Policies and procedures for the security of prescription drugs shall provide for the effective control against theft of, diversion of, or unauthorized access to prescription drugs, records for such drugs, and patient records. These policies and procedures shall indicate who has access to prescription drugs.~~ Policies shall identify procedures that will utilize or require the signature of two service employees for each disbursement to ensure accountability for controlled substances.

ITEM 12. Amend rule 657—11.14(124,147A,155A) as follows:

657—11.14(124,147A,155A) Protocols. Every service program shall utilize department protocols as the standard of care. The service program medical director may ~~make changes to the department protocols~~ authorize an alternative protocol provided the ~~changes~~ directives are within the EMS provider's scope of practice ~~and~~, are within acceptable medical practice, and have been filed with the department. Prescription drugs shall be administered pursuant only to a written protocol or oral order by an authorized prescriber. ~~Records~~ A copy of the current ~~protocols~~ protocol shall be provided to and maintained by the responsible individual, ~~and~~ the service director, the primary program site and each program substation and shall be available for inspection and copying by the board, its representative, or any other authorized individual.

ITEM 13. Amend rule 657—11.15(124,147A,155A) as follows:

657—11.15(124,147A,155A) Administration of drugs beyond the limits of ~~the~~ a written protocol. Drugs~~, excluding Schedule II controlled substances in a pharmacy-based service, as provided in rule 657—11.16(124,147A,155A),~~ may be administered beyond the limits of ~~the~~ a written ~~protocols~~ protocol provided that medical direction from an authorized prescriber has been obtained prior to administration. The authorization shall be recorded in the patient care report documenting the identity of the authorizing prescriber. If an agent of the authorized prescriber relayed the order, the identity of the prescriber's agent, including the agent's first and last names and title, shall also be recorded. The administration of a Schedule II controlled substance in a pharmacy-based service program shall be documented pursuant to rule 657—11.16(124,147A,155A).

ITEM 14. Amend rule 657—11.16(124,147A,155A) as follows:

657—11.16(124,147A,155A) Administration of Schedule II controlled substances—pharmacy-based service program. In a pharmacy-based service program, Schedule II controlled substances may be administered to patients under the care of a service program,

including administration beyond the limits of a protocol when authorized pursuant to rule 657—11.15(124,147A,155A), provided that a signed order is delivered by the authorized prescriber to the pharmacy within seven days of the date administration was authorized. The signed order shall contain all of the prescription information required pursuant to Iowa Code section 155A.27. The patient care report may be accepted as the required signed order if the patient care report includes the required prescription information, including an original signature of the authorizing prescriber.

ITEM 15. Amend rule 657—11.20(124,147A,155A) as follows:

657—11.20(124,147A,155A) Prescription drugs in ~~EMS~~ service programs. Prescription drugs maintained by a service program shall be owned by an Iowa-licensed pharmacy or the service program's medical director.

11.20(1) *Pharmacy-based service programs.* The pharmacist in charge, the medical director, and the service director shall jointly develop, consistent with the service program's protocol, a list of drugs to be maintained for administration by the service program. The pharmacy shall maintain ~~an accurate~~ a current list of all prescription drugs including controlled substances that the pharmacy maintains at the primary program site and at any program substation.

a. Replenishment. The responsible individual, the service director, or designee may request that replenishment supplies of drugs be maintained at the primary program site provided that the pharmacy has been supplied with administration records justifying the order. Records of the administration of Schedule III, IV, and V controlled substances and noncontrolled prescription drugs provided to and maintained at the pharmacy shall include, at a minimum: the patient's name; the name, strength, dosage form, and quantity of the drug administered; and the date ~~administered~~ of administration. Records of the administration of Schedule II controlled substances provided to and maintained at the pharmacy shall consist of a written prescription including all of the prescription information required pursuant to Iowa Code section 155A.27 or ~~a copy of~~ the patient care ~~record~~ report if the patient care ~~record~~ report includes the required prescription information, including an original signature of the authorizing prescriber. ~~The~~ A pharmacist shall ~~approve~~ verify the accuracy of every drug ~~taken from the pharmacy's dispensing stock prior to the transfer of the drug~~ to be disbursed to the primary program site. Documentation of this verification shall be maintained within the pharmacy records.

b. Replenishment using automated medication distribution system (AMDS). A pharmacy utilizing ~~a decentralized~~ an automated medication distribution system (AMDS) ~~pursuant to 657—Chapter 9~~ may authorize replenishment of the service program's drug supplies from the AMDS provided that a pharmacist verifies the drugs stocked in the AMDS component before the drugs are removed from the pharmacy. Service program personnel authorized to remove drugs from the AMDS for restocking the service program's supplies shall be assigned a unique identification and access code for the purpose of accessing the AMDS. Access by authorized service program personnel shall be restricted to specific drug products authorized for use by the service program. A pharmacist shall, within 72 hours, ~~verify~~ review the access of and removal of drugs from the AMDS by service program personnel and shall maintain documentation of that ~~verification~~ review within the pharmacy records.

c. Inspections. The pharmacist in charge shall ensure the completion of a monthly inspection of all prescription drugs maintained by the pharmacy at the primary program site and any program substation. Inspection shall include the removal of outdated or adulterated drugs. All drugs removed from ~~administration~~ service program stock shall be returned to the pharmacy. Records of inspection shall be maintained for two years from the date of the inspection at the pharmacy. The pharmacist in charge may delegate the ~~conduct~~ completion of the monthly inspection to another pharmacist, a pharmacist-intern, a certified pharmacy technician, or ~~the service director~~ another designee of the pharmacist in charge.

11.20(2) *Medical director-based service programs.* The medical director and the service director shall jointly develop, consistent with the service program's protocol, a list of drugs to be maintained for administration by the service program. The medical director shall maintain ~~an accurate~~ a current list of all prescription drugs including controlled substances that the medical director maintains at the primary

program site and at any program substation. ~~EMS personnel shall have authority to handle prescription drugs and devices pursuant to their scope of practice as defined by the bureau.~~

a. Replenishment. All drugs procured for administration in a medical director-based service program shall be obtained from an Iowa-licensed wholesaler, ~~a~~ pharmacy, or ~~an~~ authorized prescriber.

b. Inspections. The medical director shall ensure the completion of a monthly inspection of all prescription drugs maintained by the medical director at the primary program site and any program substation. Inspection shall include the removal of outdated or adulterated drugs. Records of inspection shall be maintained for two years from the date of the inspection at the primary program site or the program substation. The medical director ~~or service director~~ may ~~designate EMS personnel to conduct~~ delegate the completion of the required inspections to the service director or other designee.

ITEM 16. Amend rule 657—11.22(124,147A,155A) as follows:

657—11.22(124,147A,155A) Return of drugs. Drugs that have been removed from ~~administration~~ service program stock shall be returned to the responsible individual. In a pharmacy-based service program, drugs returned from the service program to the ~~base~~ pharmacy may be used by the pharmacy for subsequent dispensing or administration provided the drugs are not outdated or adulterated. Records of the return of prescription drugs shall be maintained by the responsible individual for two years from the date of the return.

ITEM 17. Amend rule 657—11.23(124,147A,155A) as follows:

657—11.23(124,147A,155A) Out-of-date drugs or devices. Any drug or device bearing an expiration date shall not be administered beyond the expiration date of the drug or device. Outdated drugs or devices shall be removed from ~~administration~~ service program stock and quarantined until such drugs or devices are ~~properly disposed of or, if the service program is a pharmacy-based service,~~ returned to the ~~base pharmacy~~ responsible individual for disposition. ~~Outdated drugs are the property of the responsible individual and shall be disposed of appropriately. Outdated controlled substances shall be disposed of pursuant to rule 657—11.32(124,147A,155A).~~

ITEM 18. Amend rule 657—11.24(124,147A,155A) as follows:

657—11.24(124,147A,155A) Product recall. ~~All~~ Each service ~~programs~~ program shall have a ~~system~~ procedure for removal from ~~administration~~ service program stock all ~~prescription~~ drugs or devices subject to a product recall. The ~~system~~ procedure shall include action appropriate to the direction or requirements of the recall.

ITEM 19. Amend rule 657—11.26(124,147A,155A) as follows:

657—11.26(124,147A,155A) Controlled substances records.

11.26(1) *Records maintained.* Every inventory or other record required to be maintained under this chapter, 657—Chapter 10, or Iowa Code chapter 124 shall be maintained at the primary program site or the program substation and by the pharmacy if the service program is pharmacy-based. All required records shall be available for inspection and copying by the board, ~~or~~ its representative, or any other authorized individual for at least two years from the date of such record. Controlled substances records shall be maintained in a readily retrievable manner. Schedule II controlled substances records shall be maintained separately from all other records of the registrant.

11.26(2) *Receipt and disbursement records in medical director-based service programs.* Any pharmacy or other authorized registrant that provides controlled substances for a medical director-based service program shall provide to the service program a record of the disbursement and maintain ~~records~~ a record of ~~receipt and~~ the disbursement ~~that~~ pursuant to rule 657—10.34(124,155A). The service program shall retain the record on which an authorized individual shall sign and record the actual date of receipt. The record shall include the following:

a. to *e.* No change.

ITEM 20. Amend rule 657—11.27(124,147A,155A) as follows:

657—11.27(124,147A,155A) Ordering Schedule II controlled substances—medical director-based service programs. Except as otherwise provided by 657—subrule 10.34(7) and under federal law, a DEA Form 222, preprinted with the address of the primary program site, is required to be maintained at the primary program site for the acquisition of each supply of a Schedule II controlled substance. The order form shall be executed only by the medical director named on the order form or by an authorized signer designated pursuant to a properly executed power of attorney. A DEA Form 222 shall be dated and signed as of the date the order is submitted for filling. A medical director or authorized signer shall not pre-sign a DEA Form 222 for subsequent completion. All Schedule II order forms shall be maintained at the primary program site and shall be available for inspection and copying by the board, ~~or~~ its representative, or any other authorized individual for a period of two years from the date of the record.

ITEM 21. Amend rule 657—11.29(124,147A,155A) as follows:

657—11.29(124,147A,155A) Schedule II controlled substances perpetual inventory. Each service program located in Iowa that administers Schedule II controlled substances shall maintain a perpetual inventory for all Schedule II controlled substances pursuant to the requirements of this rule. All records relating to the perpetual inventory shall be maintained at the primary program site and shall be available for inspection and copying by the board, ~~or~~ its representative, or any other authorized individual for a period of two years from the date of the record.

11.29(1) *Record.* The perpetual inventory record may be maintained in a ~~manual~~ hard-copy or ~~an~~ electronic record format. Any electronic record shall provide for hard-copy printout of all transactions recorded in the perpetual inventory record for any specified period of time and shall state the current inventory quantities of each drug at the time the record is printed. ~~An electronic~~ A record entry, once recorded, shall not be changed; any adjustments or corrections shall require entry of a separate record as provided in subrule 11.29(3).

11.29(2) *Information included.* The perpetual inventory record shall identify all receipts and disbursements of Schedule II controlled substances by drug name or by National Drug Code (NDC), including each patient administration, wastage, and return of a drug to the responsible individual~~, and disposal of a drug~~. The record of receipt shall also identify the source of the drug, the strength and dosage form, the quantity, the date of receipt, and the name or unique identification of the individual verifying receipt of the drug. The disbursement record shall identify where or to whom the drug is disbursed or administered, the strength and dosage form, the quantity, the date of disbursement or administration, and the name or unique identification of the individual responsible for the disbursement. Receipts and disbursements shall be recorded in the perpetual inventory as soon as practicable but no later than 24 hours after the receipt, disbursement, or administration.

11.29(3) *Adjustments or corrections to the record.* Any adjustments or corrections made to the perpetual inventory shall include the identity of the person making the adjustment or correction and the reason for the adjustment or correction.

11.29(4) *Reconciliation.* The pharmacist in charge or designee in a pharmacy-based service program, or the medical director or designee in a medical director-based service program, shall be responsible for reconciling the ~~physical~~ perpetual inventory record of all Schedule II controlled substances with the ~~perpetual~~ physical inventory ~~balance on a periodic basis but no less frequently than~~ at least monthly. Any discrepancy shall be reported within 24 hours of the discovery to the ~~medical director and to the pharmacist in charge if the service program is a pharmacy-based program~~ responsible individual for investigation.

ITEM 22. Amend rule 657—11.30(124,147A,155A) as follows:

657—11.30(124,147A,155A) Controlled substances annual inventory. An accurate inventory shall be taken annually of all controlled substances maintained at the primary program site and program substations. Controlled substances in a pharmacy-based service program shall be included in the

pharmacy's annual controlled substances inventory. The inventory record shall identify the drug name or National Drug Code (NDC) and the exact quantity under the control of the service program including drugs in replenishment stock and quarantined stock. The inventory record shall contain the date and time the inventory was taken and the printed name and signature of the individual or individuals responsible for the inventory record. Records of the inventory shall be maintained pursuant to rule 657—11.34(124,147A,155A).

ITEM 23. Amend rule 657—11.32(124,147A,155A) as follows:

657—11.32(124,147A,155A) ~~Destruction or disposal~~ Disposition of controlled substances. ~~Disposal or destruction~~ Disposition of controlled substances shall be pursuant to the requirements of this rule, ~~and~~ rule 657—11.29(124,147A,155A), 657—Chapter 10, and federal regulations. Records shall be maintained at the primary program site and, if the service program is ~~a~~ pharmacy-based ~~service~~, records shall be maintained at the pharmacy.

11.32(1) *Outdated, adulterated, or unwanted supply.* ~~EMS personnel shall not destroy any controlled~~ Controlled substances shall not be destroyed except as provided in subrule 11.32(2). Any drug that requires ~~disposal or destruction~~ disposition shall be ~~removed from administration stock and~~ quarantined until the drug can be returned to the responsible individual. The responsible individual shall ~~dispose of or destroy~~ ensure the proper disposition of controlled substances according to the following procedures:

a. and *b.* No change.

11.32(2) *Administration wastage.* Except as otherwise specifically provided by federal or state law or rules of the board, the unused portion of a controlled substance resulting from administration to a patient may be destroyed or otherwise disposed of by the administering ~~EMS~~ service program personnel, the medical director, or a pharmacist. Any wastage of a controlled substance shall be conducted in the presence of a responsible adult witness who is ~~a member of the EMS team~~ an authorized service program employee, a member of the professional or technician pharmacy staff, or a licensed health care professional. A written or electronic record of controlled substance wastage shall be ~~made~~ created and maintained at the primary program site and, if the service program is ~~a~~ pharmacy-based ~~service~~, at the pharmacy, for a minimum of two years following the ~~destruction or other disposal~~ disposition. The record shall include the signatures or other unique identification of the witness and of the individual destroying or otherwise disposing of the wastage of the controlled substance and shall identify the following:

a. to *d.* No change.

e. ~~The~~ If either individual involved in the wastage is not identified in the service program identification log, the legibly printed first and last names and title of the ~~person wasting the unused portions of the controlled substance and of the qualified witness~~ individual.

ITEM 24. Amend rule 657—11.33(124,147A,155A) as follows:

657—11.33(124,147A,155A) Report of loss or theft of controlled substance. Upon suspicion of any loss or theft of a controlled substance, the service director shall immediately notify the responsible individual. The responsible individual shall ~~notify the DEA pursuant to rule 657—10.16(124) and federal regulations~~ provide notice and reporting as required in rule 657—10.16(124). ~~The responsible individual shall report in writing, on forms provided by the board or as directed by the board, any theft or significant loss of any controlled substance. The report shall be submitted to the board office within two weeks of the discovery of the theft or loss. A copy of the report shall be maintained at the primary program site and, if the program is a pharmacy-based service, at the pharmacy.~~

ITEM 25. Amend rule 657—11.34(124,147A,155A) as follows:

657—11.34(124,147A,155A) Records. If a service program includes a primary program site and one or more program substations, ~~the records of the service program~~ each record shall identify the ~~primary program site and each program substation~~ specific location to which it applies. Records regarding service program substation activities, including drug supply and administration records, may be maintained at

the primary program site but shall clearly identify the program substation to which the records apply. All records regarding prescription drugs and devices in a service program shall be maintained for two years from the date of the activity or record and be available for inspection and copying by the board, ~~or~~ its representative, or any other authorized individual.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/7/17.

ARC 3102C

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 124.554, the Board of Pharmacy and the Prescription Monitoring Program Advisory Council hereby amend Chapter 37, "Iowa Prescription Monitoring Program," Iowa Administrative Code.

The amendments are the result of a review of the chapter pursuant to the requirements of Iowa Code subsection 17A.7(2). The amendments also are intended to implement Iowa Code changes passed by the Legislature in 2016 Iowa Acts, chapter 1052 (Senate File 2102).

Amendments include:

- New definitions for "electronic health record system," "electronic pharmacy information system," "electronic system," and "health information exchange" and clarifying amendments to the definitions of "health care professional," "PMP administrator," and "practitioner's agent";
- Clarifications regarding exemption from reporting dispensed prescriptions to the Prescription Monitoring Program (PMP) and the procedures for requesting exemption;
- Clarification of the required data elements and procedures for submission by a pharmacy of records of dispensed prescriptions or of reports which state that no qualifying prescriptions were dispensed during a reporting period;
- Clarifications regarding the PMP records and information that is deemed confidential;
- An increase in the number of agents that a practitioner may authorize to access the PMP on behalf of the practitioner and the procedures for registration of a practitioner's agent, removal of alternate procedures relating to a practitioner without Internet access, and reference to and clarification of the procedures for a patient to obtain a copy of the patient's prescription history;
- Clarifications of the procedures for a regulatory agency or board, a law enforcement agency, and researchers to request information from the Iowa PMP, including provisions regarding charging a fee for the preparation and release of PMP information and reports;
- New provisions relating to the establishment of facility users and the integration of PMP access into electronic health record, health information exchange and e-pharmacy systems, including contract and agreement requirements for such integration; and
- Correction of rule references and the implementation clause.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the January 18, 2017, Iowa Administrative Bulletin as **ARC 2905C**. The Board received no written comments regarding the proposed amendments. The adopted amendments are identical to those published under Notice.

The amendments were approved during the May 10, 2017, meeting of the Board of Pharmacy.

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

These amendments are intended to implement Iowa Code sections 124.550 to 124.558.

These amendments will become effective on July 12, 2017.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definitions in rule **657—37.2(124)**:

"Electronic health record system" or *"EHRS"* means a real-time, patient-centered health record system that makes patient health information and other health care tools and resources readily and securely available to authorized providers in a digital format capable of being shared with other providers across one or more health care organizations or facilities.

"Electronic pharmacy information system" or *"e-pharmacy system"* means a real-time electronic patient prescription record system that includes, at a minimum, patient profiles and prescription dispensing information and that may enable shared access to included information by multiple pharmacies, such as a chain of pharmacies using the same e-pharmacy system.

"Electronic system" means an electronic health record system, an electronic pharmacy information system, or a health information exchange. "Electronic systems" refers to a combination of two or more of these types of systems.

"Health information exchange" or *"HIE"* means a system that allows health care professionals to appropriately access and securely share a patient's vital medical information and records as that electronic information is instantly updated and simultaneously available to each of the health care professionals across organizations, often within a region, community, or health care system.

ITEM 2. Amend the following definitions in rule **657—37.2(124)**:

"DEA number" means the registration number issued to an individual or pharmacy by the U.S. Department of Justice, Drug Enforcement Administration (DEA) authorizing the individual or pharmacy to engage in the prescribing, dispensing, distributing, or procuring of a controlled substance.

"Health care professional" means a person who, by education, training, certification, or licensure, is qualified to provide and is engaged in providing health care to patients. "Health care professional" does not include clerical or administrative staff. "Health care professional," other than a licensed prescriber or pharmacist, may include, but is not limited to, a certified pharmacy technician or a registered technician trainee, a nurse, ~~or~~ a certified medical assistant, or ~~supervised trainee such as~~ a pharmacist-intern ~~or student, a medical student, or a nursing student~~.

"PMP administrator" means the board staff person or persons designated to manage and administer the PMP under the direction and oversight of the board and the council.

"Practitioner's agent" means a health care professional who is employed by or under the direct supervision of a ~~health care~~ PMP-registered practitioner and who is authorized by the practitioner to access PMP information as provided in subrule 37.4(1).

ITEM 3. Amend rule 657—37.3(124) as follows:

657—37.3(124) Requirements for the PMP. Each dispenser, unless identified as exempt from reporting and who has applied for and been granted an exemption from reporting to the PMP pursuant to subrule 37.3(1), shall submit to the PMP administrator either a record of each reportable prescription dispensed during a reporting period or a zero report pursuant to subrule 37.3(5), as appropriate. A dispenser located outside the state of Iowa, unless identified as exempt from reporting and who has applied for and been granted an exemption from reporting to the PMP pursuant to subrule 37.3(1), shall submit to the PMP administrator either a record of each reportable prescription dispensed during a reporting period to a patient located in Iowa or a zero report pursuant to subrule 37.3(5), as appropriate.

37.3(1) *Exemptions.* The dispensing of a controlled substance as described in this subrule shall not be considered a reportable prescription. A dispenser engaged in the distribution of controlled substances solely pursuant to one or more of the practices identified in ~~paragraphs~~ paragraph 37.3(1)*"a,"* ~~or~~ 37.3(1)*"b,"* ~~shall so notify the PMP administrator and shall be exempt~~ or 37.3(1)*"c,"* or that is not registered to handle controlled substances as described in paragraph 37.3(1)*"d,"* may apply for an exemption from reporting to the PMP. A dispenser claiming exemption pursuant to this subrule shall certify to the board, on a form provided by the board, the basis for exemption from reporting to the PMP. The PMP administrator is hereby authorized to approve or deny the pharmacy's request for exemption from reporting to the PMP.

a. and *b.* No change.

c. A nonresident pharmacy that does not distribute controlled substances to patients located in Iowa shall not be required to report to the PMP. A nonresident pharmacy claiming exemption from reporting pursuant to this paragraph shall certify to the board that the nonresident pharmacy does not dispense controlled substances to patients located in Iowa.

d. A licensed pharmacy that does not handle controlled substances and that is not registered to handle controlled substances with the federal DEA shall not be required to report to the PMP. A pharmacy claiming exemption from reporting pursuant to this paragraph shall certify to the board that the pharmacy does not dispense controlled substances.

~~*c.*~~ *e.* A prescriber or other authorized person who administers or dispenses a controlled substance, including samples of a controlled substance, for the purposes of outpatient care shall not be required to report such administration or dispensing. A prescriber shall not be required to submit a form or notification claiming exemption from reporting to the PMP. This exception shall not apply to a pharmacist who administers a controlled substance, as directed by the prescriber, pursuant to a prescription.

~~*d.*~~ *f.* A wholesale distributor of a controlled substance shall not be required to report the wholesale distribution of such a substance. A wholesale distributor shall not be required to submit a form or notification claiming exemption from reporting to the PMP.

37.3(2) *Data elements.* The information submitted for each prescription shall include, at a minimum, the following items:

a. Dispenser DEA number.
b. Date the prescription is filled.
c. Prescription number.
d. Indication as to whether the prescription is new or a refill.
e. NDC number for the drug dispensed.
f. Quantity of the drug dispensed.
g. Number of days of drug therapy provided by the drug as dispensed.
h. Patient ~~name~~ first and last names.
i. Patient address including street address, city, state, and ZIP code.
j. Patient date of birth.
k. Patient gender.
l. Prescriber DEA number.
m. Date the prescription was issued by the prescriber.
n. Method of payment ~~as either third-party payer or patient cash payment~~.

37.3(3) *Reporting periods.* A record of each reportable prescription dispensed shall be submitted by each dispenser at least weekly. Records may be submitted with greater frequency than required by this subrule. Records of reportable prescriptions dispensed between Sunday and Saturday each week shall be submitted no later than the following Wednesday. However, a pharmacy that is currently submitting prescription dispensing records to another state's PMP on an alternative weekly reporting schedule may request authority to submit records to the Iowa PMP pursuant to that established schedule. The request shall be submitted in writing via e-mail, fax, or regular mail to the PMP administrator. The request shall identify the pharmacy by name, address, and Iowa pharmacy license number and shall define the alternative reporting period and the reason for the requested alternative reporting period. The PMP administrator is hereby authorized to ~~accept~~ approve or deny the pharmacy's alternative weekly reporting schedule.

37.3(4) *Transmission methods.* Prescription information shall be transmitted using one of the following methods:

a. Data upload to a reporting Web site via a secure Internet connection or by utilizing the secure FTP procedure. The PMP administrator or designee will provide dispensers with initial secure login and password information. Dispensers will be required to register on the reporting Web site prior to initial data upload.

b. Electronic media including CD-ROM, DVD, or diskette, accompanied by a transmittal form identifying the dispenser submitting the electronic media, the number of prescription records included on the media, and the individual submitting the media as directed by the PMP administrator or designee.

c. If a dispenser does not have an automated record-keeping system capable of producing an electronic report as provided in this rule, the dispenser may submit prescription information on the industry standard universal claim form. The dispenser may complete and submit the claim form on the reporting Web site or, if the dispenser does not have Internet access, the completed paper claim form may be submitted as directed by the PMP administrator or designee.

d. Chain pharmacies and pharmacies under shared ownership may submit combined data transmissions on behalf of all facilities by utilizing the secure FTP procedure. Combined data transmissions shall identify the specific pharmacy that dispensed each individual prescription record included in the combined data transmission.

37.3(5) *Zero reports.* If a dispenser has not been identified as exempt from reporting to the PMP and the dispenser did not dispense any reportable prescriptions during a reporting period, the dispenser shall submit a zero report via the established reporting Web site or secure FTP procedure. ~~If such a dispenser does not have Internet access, the dispenser shall notify the PMP administrator via mail or facsimile transmission that the dispenser did not dispense any reportable prescriptions during the reporting period.~~ The schedule identified in subrule 37.3(3) shall determine timely submission of zero reports.

ITEM 4. Amend rule 657—37.4(124) as follows:

657—37.4(124) Access to database information. All information contained in the PMP database, including prescription information submitted for inclusion in the PMP database, communications or notifications to PMP users and dispensers via the database, and records of requests for PMP information, shall be privileged and strictly confidential and not subject to public or open records laws. The board, council, and PMP administrator shall maintain procedures to ensure the privacy and confidentiality of patients, prescribers, dispensers, practitioners, practitioners' agents, and patient information collected, recorded, transmitted, and maintained in the PMP database and to ensure that program information is not disclosed to persons except as provided in this rule.

37.4(1) *Prescribers and pharmacists.* A health care practitioner authorized to prescribe or dispense controlled substances may obtain PMP information regarding the practitioner's patient, or a patient seeking treatment from the practitioner, for the purpose of providing patient health care. A practitioner may authorize no more than ~~three~~ six health care professionals to act as the practitioner's agents for the purpose of requesting PMP information regarding a practitioner's patients. A practitioner's agent shall be licensed, registered, certified, or otherwise credentialed as a health care professional in a manner that permits verification of the health care professional's credentials.

a. Prior to being granted access to PMP information, a practitioner or a practitioner's agent shall submit an individual request for registration and program access. The PMP administrator shall take reasonable steps to verify the identity of a practitioner or practitioner's agent and to verify a practitioner's or practitioner's agent's credentials prior to providing a practitioner or practitioner's agent with a secure login and initial password.

(1) A practitioner ~~or a practitioner's agent with Internet access may~~ shall register via a secure Web site established by the board for that purpose. ~~A practitioner without Internet access shall submit a written registration request on a form provided by the PMP administrator. A practitioner without Internet access shall not authorize a~~

(2) A practitioner's agent ~~to~~ shall register for ~~or to~~ access to PMP information on behalf of the supervising practitioner by completing and submitting a hard-copy registration form, provided by the board, that requires the signatures of both the supervising practitioner and the practitioner's agent. ~~The PMP administrator shall take reasonable steps to verify the identity of a practitioner or practitioner's agent and to verify a practitioner's credentials prior to providing a practitioner or practitioner's agent with a secure login and initial password.~~

b. Each practitioner or practitioner's agent registered to access PMP information shall securely maintain and use the login and password assigned to the individual practitioner or practitioner's agent. Except in an emergency when the patient would be placed in greater jeopardy by restricting PMP information access to the practitioner or practitioner's agent, a registered practitioner shall not share the practitioner's secure login and password information and shall not delegate PMP information access to

another health care practitioner or to an unregistered agent. A registered practitioner's agent shall not delegate PMP information access to another individual.

~~*b.*~~ *c.* A practitioner or practitioner's agent ~~with Internet access~~ may submit a request for PMP information via a secure Web site established by the board for that purpose. The requested information shall be provided to the requesting practitioner or practitioner's agent in a format established by the board and shall be delivered via the secure Web site.

~~*c. A practitioner without Internet access may submit to the PMP administrator a written request for PMP information via mail or facsimile transmission. The written request shall be in a format established by the board and shall be signed by the requesting practitioner. Prior to processing a written request for PMP information, the PMP administrator shall take reasonable steps to verify the request, which may include but not be limited to a telephone call to the practitioner at a telephone number known to be the number for the practitioner's practice.*~~

d. No change.

e. A practitioner or practitioner's agent shall not provide the patient with a copy of a report generated by the PMP. A patient may receive a report of the patient's own prescription history pursuant to subrule 37.4(4).

37.4(2) *Regulatory agencies and boards.* Professional licensing boards and regulatory agencies that supervise or regulate a health care ~~practitioner~~ professional or that provide payment for health care services shall be able to access information from the PMP database only pursuant to an order, subpoena, or other means of legal compulsion relating to a specific investigation of a specific individual and supported by a determination of probable cause. The board may charge a fee for the preparation and release of PMP information and reports as provided in rule 657—37.5(124).

a. Prior to accepting and processing a request for PMP database information from the director or director's designee of a licensing board or other authorized regulatory agency, the director or director's designee shall complete and submit a hard-copy registration form, provided by the board, that requires the signatures of both the director and the director's designee, as appropriate. The PMP administrator shall take reasonable steps to verify the identity of the director or director's designee prior to providing a director or director's designee with a secure login and initial password.

~~*a.*~~ *b.* A director of a licensing board with jurisdiction over a ~~practitioner~~ health care professional, or the director's designee, who seeks access to PMP information for an investigation shall submit to the PMP administrator in a format established by the board a written request via mail, e-mail, facsimile, or personal delivery. The request shall be signed by the director or the director's designee and shall be accompanied by an order, subpoena, or other form of legal compulsion establishing that the request is supported by a determination of probable cause.

~~*b.*~~ *c.* A director of a regulatory agency with jurisdiction over a ~~practitioner~~ health care professional or with jurisdiction over a person receiving health care services pursuant to one or more programs provided by the agency, or the director's designee, who seeks access to PMP information for an investigation shall submit to the PMP administrator in a format established by the board a written request via mail, facsimile, e-mail, or personal delivery. The request shall be signed by the director or the director's designee and shall be accompanied by an order, subpoena, or other form of legal compulsion establishing that the request is supported by a determination of probable cause.

d. The requested information shall be provided to the requesting director or director's designee in a format established by the board and shall be delivered via the secure Web site or by an alternate delivery method determined by the PMP administrator to be appropriate.

37.4(3) *Law enforcement agencies.* Local, state, and federal law enforcement or prosecutorial officials engaged in the administration, investigation, or enforcement of any state or federal law relating to controlled substances shall be able to access information from the PMP database by order, subpoena, or other means of legal compulsion relating to a specific investigation of a specific individual and supported by a determination of probable cause. The board may charge a fee for the preparation and release of PMP information and reports as provided in rule 657—37.5(124).

a. Prior to accepting and processing a request for PMP database information from a law enforcement officer, the officer shall complete and submit a hard-copy registration form, provided by

the board, that requires the signatures of both the officer and the officer's direct superior. The PMP administrator shall take reasonable steps to verify the identity of the officer and the officer's direct superior prior to providing the officer with a secure login and initial password.

b. A law enforcement officer shall submit to the PMP administrator in a format established by the board a written request via mail, e-mail, facsimile, or personal delivery. The request shall be signed by the requesting officer or the officer's superior. The request shall be accompanied by an order, subpoena, or warrant issued by a court or legal authority that requires a determination of probable cause and shall be processed by the PMP administrator.

c. A report identifying PMP information relating to the specific individual identified by the order, subpoena, or warrant ~~may~~ shall be delivered to the law enforcement officer via ~~mail or alternate secure delivery~~ the secure Web site or by an alternate delivery method determined by the PMP administrator to be appropriate.

37.4(4) *Patients.* A patient or the patient's agent may request and receive PMP information regarding prescriptions reported to have been dispensed to the patient.

a. A patient may submit a signed, written request for records of the patient's prescriptions dispensed during a specified period of time. The board shall provide the patient with a request ~~shall identify~~ form requiring identification of the patient by name, including any aliases used by the patient, and ~~shall include~~ the patient's date of birth and gender. The request form shall also ~~include~~ require any address where the patient resided during the time period of the request and the patient's current address and daytime telephone number. A patient may personally deliver the completed request to the PMP administrator or ~~authorized staff member~~ designee at the offices of the board located at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. The patient will be required to present current government-issued photo identification at the time of delivery of the request. A copy of the patient's identification and request shall be maintained in the records of the PMP.

b. and *c.* No change.

d. A report prepared pursuant to this subrule shall be delivered to the patient or the patient's agent, as appropriate, by personal delivery or via mail or alternate secure delivery.

37.4(5) *Court orders and subpoenas.* The PMP administrator shall provide PMP information in response to court orders and county attorney or other subpoenas issued by a court upon a determination of probable cause. The board may charge a fee for the preparation and release of PMP information and reports as provided in rule 657—37.5(124).

37.4(6) *Statistical data.* The PMP administrator~~, following review and approval by the patients rights committee,~~ or designee may provide summary, statistical, or aggregate data to public or private entities for statistical, public research, public policy, or educational purposes. Prior to the release of any such data, the PMP administrator or designee shall remove any personal identifying information or verify that any personal identifying information that could be used to identify an individual patient, prescriber, dispenser, practitioner, or other person who is ~~the subject of~~ identified in the PMP information or data has been removed from the PMP information or data. The board may charge a fee for the preparation and release of statistical data as provided in rule 657—37.5(124).

37.4(7) *PMP administrator access.* Other than statistical data as described in subrule 37.4(6) and technical, error, and administrative function reports and information needed by PMP support staff to determine that records are received and maintained in good order or to review or resolve issues of reported or suspected erroneous data as provided in rule 657—37.7(124), any other reports concerning the information received from dispensers shall only be prepared at the direction of the board, the council, or the PMP administrator. The board and the council may compile statistical reports from PMP information for use in determining the advisability of continuing the PMP and for use in preparing required reports to the governor and the legislature. The reports shall not include information that would identify any patient, prescriber, dispenser, practitioner, practitioner's agent, or other person who is ~~the subject of~~ identified in the PMP information or data.

37.4(8) *Electronic health and pharmacy information systems.* The board may contract with electronic health record systems, health information exchanges, and electronic pharmacy information systems to securely integrate into those electronic systems access to patient prescription histories and

other PMP information available to authorized practitioners and practitioners' agents. Institutional users may be established to identify the facilities and contracted electronic systems and to facilitate secure access by the prescribing practitioners and pharmacists authorized to access PMP information by and through the electronic systems.

a. EHRS, HIE, and e-pharmacy system integration contracts or agreements shall ensure protection of confidential information contained in and received from the PMP.

b. EHRS, HIE, and e-pharmacy system integration contracts or agreements shall restrict access to PMP information to authorized practitioners and practitioner agents as provided by these rules except that individual user registration with the PMP may not be required if the identity of the specific individual receiving or requesting information from the PMP, including a record of the patient whose record is requested, is logged and maintained in an alternate record and is available to the PMP administrator upon request.

c. PMP and electronic system integration may require a separate contract or agreement with a third-party interface or translation service provider to facilitate integration of the PMP into the electronic system. The contract with the service provider shall provide that translation, transmission, or other data integration services provided under the contract are accomplished via a secure encrypted channel that ensures the confidentiality of all information exchanged between the PMP and the electronic system.

ITEM 5. Amend rule 657—37.5(124) as follows:

657—37.5(124) Fees. The board may charge a fee and recover costs incurred for the provision of PMP information, including statistical data, except that no fees or costs shall be assessed to a dispenser for reporting to the PMP or to a practitioner or practitioner's agent for querying the PMP regarding a practitioner's patient. Any fees or costs assessed by the board shall be considered repayment receipts as defined in Iowa Code section 8.2.

ITEM 6. Amend subrule 37.9(1) as follows:

37.9(1) *Confidentiality.* A pharmacy, pharmacist, practitioner, or practitioner's agent who knowingly fails to comply with the confidentiality provisions of the law or these rules or who delegates PMP information access to another individual, except as provided in paragraph ~~37.4(1)"a,"~~ 37.4(1)*"b,"* is subject to disciplinary action by the appropriate professional licensing board. The PMP administrator or a member of the program staff who knowingly fails to comply with the confidentiality provisions of the law or these rules is subject to disciplinary action by the board. In addition to any disciplinary action or sanctions imposed by a professional licensing board, a pharmacy, pharmacist, practitioner, practitioner's agent, PMP administrator, or member of the PMP program staff who knowingly accesses, uses, or discloses program information in violation of Iowa law or these rules is subject to criminal prosecution as provided in ~~2011~~ Iowa Code ~~Supplement~~ section 124.558.

ITEM 7. Amend **657—Chapter 37**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~124.551, 124.552, and 124.554 to 124.557 and 2011 Iowa Code Supplement sections 124.553 and~~ 124.550 to 124.558.

[Filed 5/15/17, effective 7/12/17]
[Published 6/7/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/7/17.

ARC 3103C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 136C.3, the Department of Public Health hereby amends Chapter 41, "Safety Requirements for the Use of Radiation Machines and Certain Uses of Radioactive Materials," Iowa Administrative Code.

The rules are being amended to allow operators to use handheld X-ray equipment without facilities' needing to obtain a waiver from the Department. Current rules in Chapter 41 prohibit the use of X-ray equipment that is held by the operator during exposures. Over the past few years, manufacturers have developed X-ray equipment specifically designed to be held by the operator during exposures. Over time, the safety of these devices has been confirmed, and industry interest has increased. The Department has been issuing waivers to facilities to allow for the use of this equipment. These amendments remove restrictive language to allow for the use of handheld devices for intraoral radiography only and place into rule operating requirements specific to the X-ray equipment. The operating requirements are currently required as conditions of the waiver. These amendments were drafted with input from the Iowa Dental Association.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2901C** on January 18, 2017.

Seven comments were received from the Iowa Dental Association; all have been considered, and several suggestions have been incorporated as follows. In Item 4, the second bullet in numbered paragraph 41.1(7)"c"(5)"2" was amended to make the operator distance requirements consistent throughout the chapter. Numbered paragraph 41.1(7)"c"(5)"3" in Item 4 was also amended to remove the operator requirement of wearing a protective apron. Paragraph 41.1(7)"i" in Item 6 was amended to define the lead equivalency of the protective apron, add language to clarify digital radiography image receptors, change the word "possible" to "practicable," and add clarifying language regarding storage of the radiography unit. Throughout the amendments, the word "unit" was changed to "equipment," which is more accurate terminology to describe the handheld dental radiography machine.

The State Board of Health adopted these amendments on May 10, 2017.

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

These amendments are intended to implement Iowa Code chapter 136C.

These amendments will become effective July 12, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule **41.1(2)**, definition of "X-ray equipment," as follows:

"X-ray equipment" means an X-ray system, subsystem, or component thereof. Types of X-ray equipment are as follows:

a."Mobile X-ray equipment" means X-ray equipment mounted on a permanent base with wheels or casters for moving while completely assembled.

b."Portable X-ray equipment" means X-ray equipment designed to be hand-carried but used with a tripod or other stabilization mechanism so the operator is not holding the equipment during exposure.

c."Stationary X-ray equipment" means X-ray equipment which is installed in a fixed location.

d."Handheld X-ray equipment" means X-ray equipment designed by the manufacturer to be handheld by the operator during the exposure. X-ray equipment designed without a backscatter shield is prohibited.

ITEM 2. Amend subparagraph **41.1(3)"a"(9)** as follows:

(9) Procedures and auxiliary equipment designed to minimize patient and personnel exposure commensurate with the needed diagnostic information shall be utilized.

1. The speed of film or screen and film combinations shall be the fastest speed consistent with the diagnostic objective of the examinations. Film cassettes without intensifying screens shall not be used for any routine diagnostic radiological imaging, with the exception of veterinary radiography and standard film packets for ~~intra-oral~~ intraoral use in dental radiography.

2. The radiation exposure to the patient shall be the minimum exposure required to produce images of good diagnostic quality.

3. Portable or mobile X-ray equipment shall be used only for examinations, excluding intraoral dental imaging, where it is impractical to transfer the patient(s) to a stationary X-ray installation. Handheld mobile X-ray equipment may be used for routine intraoral dental imaging in place of stationary equipment. Handheld X-ray equipment shall be used only for intraoral dental radiography.

4. X-ray systems subject to 41.1(6) shall not be utilized in procedures where the source to human patient distance is less than 30 centimeters.

5. If grids are used between the patient and the image receptor to decrease scatter to the film and improve contrast, the grid shall:

- Be positioned properly, i.e., tube side facing the correct direction, and the grid centered to the central ray;
- If the grid is of the focused type, be at the proper focal distance for the SIDs being used.

ITEM 3. Amend subrule 41.1(7), introductory paragraph, as follows:

41.1(7) *Intraoral dental radiographic systems.* In addition to the provisions of 41.1(3) and 41.1(4), the requirements of 41.1(7) apply to X-ray equipment and associated facilities used for dental radiography. Requirements for extraoral dental radiographic systems are covered in 41.1(6). Only systems meeting the requirements of 41.1(7) shall be used. Additional requirements specific to handheld dental X-ray equipment are outlined in 41.1(7)*"i."*

ITEM 4. Amend subparagraph **41.1(7)"c"(5)** as follows:

(5) Each X-ray exposure switch shall be located in such a way as to meet the following requirements:

1. Stationary X-ray systems shall be required to have the X-ray exposure switch located in a protected area or have an exposure switch cord of sufficient length to permit the operator to activate the ~~unit~~ equipment while in a protected area, e.g., corridor outside the operatory. The procedures required under 41.1(3)*"a"*(4) must instruct the operator to remain in the protected area during the entire exposure.

2. Mobile and portable X-ray systems which are:

- Used for greater than one week in the same location, i.e., a room or suite, shall meet the requirements of 41.1(7)*"c"*(5)"1."
- Used for greater than one hour and less than one week at the same location, i.e., a room or suite, shall meet the requirements of the above paragraph or be provided with a 6.5 foot (1.98 m) high protective barrier or means to allow the operator to be at least ~~9~~ 6 feet (~~2.7~~ 1.8 meters) from the tube housing assembly while making exposure.

3. Portable ~~or hand-held~~ dental X-ray systems designed with a backscatter shield may be used without ~~the~~ an additional protective barrier, but ~~the operator must wear a protective apron. The~~ the operator must stand directly behind the ~~unit~~ equipment to allow the shield to function as designed.

ITEM 5. Amend subparagraph **41.1(7)"h"(2)** as follows:

(2) The tube housing and the PID for stationary or mobile systems shall not be ~~hand-held~~ held by the operator during an exposure.

ITEM 6. Amend paragraph **41.1(7)"i"** as follows:

i. ~~Portable or hand-held~~ Handheld dental X-ray systems. ~~Portable or hand-held dental X-ray systems designed with a backscatter shield shall:~~ Only equipment specifically designed by the manufacturer to be held by the operator for intraoral dental X-ray exposures is allowed to be operated pursuant to this subrule.

~~(1) Be used only where it is impractical to us a portable dental system;~~

~~(2) Be used as the manufacturer indicates;~~

~~(3) Not be used with the backscatter shield removed, if applicable; and~~

~~(4) Be exempted from 41.1(4)*"g."*~~

(1) Operators shall be specifically trained to operate the equipment. Records of training shall be kept at the facility until the operator is no longer an employee or until the equipment is removed from the facility.

(2) Protective aprons of not less than 0.25 millimeter lead equivalent shall be provided for operators to wear while operating the equipment.

(3) Dosimetry shall be provided for operators who are expected to exceed 10 percent of the annual occupational dose limit as outlined in 641—40.84(136C).

(4) Operators shall operate the equipment according to the manufacturer's instructions.

(5) The image receptor used must be digital radiography (DR), computed radiography (CR), or intraoral film with a speed class designated as "E/F" or a film with a faster speed designation than "F" or "E/F."

(6) No individual except the equipment operator may be within a radius of at least 6 feet from the patient during exposures.

(7) The equipment shall not be operated unless the backscatter shield is in place as designed by the manufacturer.

(8) The equipment shall not be operated in hallways, waiting rooms, or other areas where access for individuals of the general public cannot be controlled.

(9) The equipment shall be held without any motion during a patient examination. If the operator has difficulty in holding the equipment stationary, the operator shall use a tube stand. The equipment shall be operated on a tube stand whenever practicable to avoid unnecessary motion and retakes.

(10) When not in use, the equipment shall be stored in a manner that would prevent inadvertent exposures or use by unauthorized individuals.

[Filed 5/10/17, effective 7/12/17]
[Published 6/7/17]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/7/17.

ARC 3104C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.105A, the Department of Public Health hereby amends Chapter 70, "Lead-Based Paint Activities," Iowa Administrative Code.

The primary purpose of these amendments is to change the certification period from the current annual renewal cycle to a more efficient three-year certification cycle. Additionally, the Department is transitioning to a new database in mid-2017. The new database will be more efficient for office staff and is Web-based so that individuals and firms can apply for and renew their certifications online. These amendments are needed to make that transition into the new database.

The concept of these substantive changes was posed to the lead professionals and their associated firms via a survey. The results were overwhelmingly in favor of these changes. Nearly 85 percent of respondents indicated that they were in favor of having certification available online. Over 71 percent of respondents indicated that they were in favor of the move to a three-year cycle, and 17 percent indicated that they had no opinion on the three-year cycle.

The other amendments are minor or intended to clean up the chapter. They include a minor definition change for high-efficiency particulate air (HEPA) vacuums, clarifying that the Department no longer provides curriculums to training providers, and the elimination of a reporting requirement that was never implemented due to budget and staff considerations.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2969C** on March 15, 2017. A public hearing was held on April 4, 2017, in the Lucas State Office Building, Des Moines, Iowa. No comments were received at the public hearing. The Department received ten e-mails regarding the proposed amendments. Five were supportive of the changes, especially the online certification cycle. Four were supportive and had simple questions about the changes. One retired practitioner wanted more program updates to be considered. These amendments are identical to those published under Notice of Intended Action.

The State Board of Health adopted these amendments on May 10, 2017.

The relative cost for certification will remain the same at $60 per year. However, individuals will pay for three years of certification at the beginning of the cycle, so they will be charged $180. Therefore, there is no fiscal impact expected with these amendments.

Iowa is authorized by the U.S. Environmental Protection Agency to implement these rules in Iowa. Iowa's rules are not subject to waiver because the federal rules are not subject to waiver.

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

These amendments are intended to implement Iowa Code section 135.105A.

These amendments will become effective July 12, 2017.

The following amendments are adopted.

ITEM 1. Amend rule **641—70.2(135)**, definitions of "HEPA vacuum" and "Lead professional," as follows:

"HEPA vacuum" means a vacuum cleaner which has been designed, operated, and maintained with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particles of 0.3 microns with 99.97 percent efficiency. The vacuum cleaner must be designed, operated, and maintained so that all of the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it. ~~A vacuum must have sufficient suction to capture the dust that must be collected. A vacuum that complies with ANSI/IESO Standard 4310-2009 for Portable High Efficiency Air Filtration Device Field Testing and Validation Standard as a Class 3, 4, or 5 device is considered a HEPA vacuum~~ HEPA vacuums must be operated and maintained in accordance with the manufacturer's instructions.

"Lead professional" means a person who conducts lead abatement, renovation, lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, visual risk assessments, clearance testing after lead abatement, clearance testing after renovation, paint testing, or clearance testing after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR Part 35.

ITEM 2. Amend rule 641—70.3(135) as follows:

641—70.3(135) Lead professional certification. A person or a firm shall not conduct lead abatement, renovation, clearance testing after lead abatement, lead-free inspections, lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, visual risk assessments, clearance testing after renovation, or interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR Part 35 unless the person or firm has been certified by the department in the appropriate discipline. ~~Beginning April 22, 2010, a person or firm shall not conduct renovation unless the person or firm has been certified by the department in the appropriate discipline.~~ However, persons who perform these activities within residential dwellings that they own are not required to be certified, unless the residential dwelling is occupied by a person other than the owner or a member of the owner's immediate family while these activities are being performed. In addition, elevated blood lead (EBL) inspections shall be conducted only by certified elevated blood lead (EBL) inspector/risk assessors employed by or under contract with a certified elevated blood lead (EBL) inspection agency. In addition, persons who perform renovation under the supervision of a certified lead-safe renovator, certified lead abatement contractor, or certified lead abatement worker and who have completed on-the-job training are not required to be certified. However, on-the-job training does not meet the training requirement for work conducted pursuant to 24 CFR Part 35. Lead professionals and firms shall not state that they have been certified by the state of Iowa unless they have met the requirements of 641—70.5(135) and been issued a current certificate by the department. Elevated blood lead (EBL) inspection agencies must be certified by the department. Elevated blood lead (EBL) inspection agencies shall not state that they have been certified by the state of Iowa unless they have met the requirements of 641—70.5(135) and been issued a current certificate by the department.

ITEM 3. Amend rule 641—70.4(135), introductory paragraph, as follows:

641—70.4(135) Course approval and standards. All lead professional training courses for initial certification and refresher training must be approved by the department. Training programs shall not state that they have been approved by the state of Iowa unless they have met the requirements of 641—70.4(135) and been ~~issued a letter of approval~~ approved by the department. ~~Lead-safe work~~

~~practices training programs that were approved by the department prior to January 13, 2010, must reapply for approval.~~

ITEM 4. Amend paragraphs **70.4(1)"g," "h"** and **"s"** as follows:

g. The course test shall be developed in accordance with the test blueprint submitted with the course approval application. ~~Training programs may use course tests developed by the department.~~

h. The training program shall issue unique course completion certificates to each ~~individual~~ student who passes the course. The course completion certificate shall be issued in color. The course completion certificate shall include:

(1) The ~~name and address of the individual, a photograph of the individual, and a unique identification number~~ first name, last name and middle initial of the student.

(2) The address of the student.

(3) A photograph of the student, and a unique identification number.

~~(2)~~ (4) The name of the particular course that the ~~individual~~ student completed and the course length in hours.

~~(3)~~ (5) Dates of course completion and test passage.

~~(4)~~ (6) The name, address, and telephone number of the training program.

~~(5)~~ (7) The signature of the training manager.

s. A training program shall ~~provide the following information to the department electronically in a format specified by the department within 30 days of the conclusion of an approved course for~~ roster each student who has taken the approved course into a database specified by the department. All students shall be rostered into the department database within 20 days of conclusion of an approved course. Rostering shall include:

(1) Name~~,~~ and address~~, and social security number~~.

(2) Course completion certificate number.

(3) Test score.

(4) The photograph of each student as taken by the training program ~~shall be submitted as a joint photographic experts group (JPEG) file with a size of at least two inches by two inches and a minimum resolution of 300 pixels per inch~~ in a format specified by the department.

ITEM 5. Amend subrule 70.4(2) as follows:

70.4(2) If a training program desires approval of a course by the department, the training program shall apply to the department for approval ~~of the course~~ at least 90 days before the initial offering of the course ~~if the training program will use materials developed by the training program. If the training program will use materials developed by the department, the training program shall apply to the department for approval of the course at least 30 days before the initial offering of the course~~. The department may allow courses to be offered sooner if the department completes the approval in less than ~~30~~ 90 days. The application shall include:

a. Training program name, contact person, address, e-mail address, and telephone number.

b. Course ~~dates and times~~ for which approval is sought.

c. Course ~~location~~ locations, including a description of the facilities and equipment to be used for lecture and hands-on training.

d. Course agenda, including approximate times allotted to each training segment.

e. A copy of each reference material, text, student ~~and~~ manual, instructor ~~manuals~~ manual, and audio-visual material used in the course. ~~These materials may also be provided by the department.~~

f. The name(s) and qualifications of the training manager, principal instructor(s), and guest instructor(s). The following documents shall be submitted as evidence that training managers and principal instructors have the education, work experience, training requirements, or demonstrated experience required by subrule 70.4(1):

(1) Official transcripts or diplomas as evidence of meeting the education requirements.

(2) Résumés, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

(3) Certificates from lead-specific training courses, as evidence of meeting the training requirements.

g. A copy of the course test blueprint. ~~The course test may also be provided by the department.~~

h. A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.

i. Maximum class size.

j. A copy of the quality control plan for the course.

k. A nonrefundable fee of $200.

ITEM 6. Amend paragraphs **70.4(3)"d," "z"** and **"aa"** as follows:

d. Lead-based paint inspection methods, including selection of rooms and components for sampling or testing to determine if a property is free of lead-based paint as specified in the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (~~1995~~ (2012), U.S. Department of Housing and Urban Development), and methods to determine if lead-based paint hazards are present in a property.*

z. The instructor shall provide an introduction of the online certification system used by the department. The instructor shall advise each student ~~with instructions and forms~~ on the procedures needed to apply to the department for certification and provide information ~~provided by the department regarding~~ to each student on the procedures needed for taking the state certification examination. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.

aa. All of the course materials ~~including instructions, applications, and forms~~ must be provided ~~on paper~~ to each student. The materials may be provided electronically unless an individual student requests that the materials be provided ~~electronically~~ on paper.

ITEM 7. Amend paragraphs **70.4(4)"o"** and **"p"** as follows:

o. The instructor shall provide an introduction of the online certification system used by the department. The instructor shall advise each student ~~with instructions and forms~~ on the procedures needed to apply to the department for certification and provide information ~~provided by the department regarding~~ to each student on the procedures needed for taking the state certification examination. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.

p. All of the course materials ~~including instructions, applications, and forms~~ must be provided ~~on paper~~ to each student. The materials may be provided electronically unless an individual student requests that the materials be provided ~~electronically~~ on paper.

ITEM 8. Amend paragraphs **70.4(8)"w"** and **"x"** as follows:

w. The instructor shall provide an introduction of the online certification system used by the department. The instructor shall advise each student ~~with instructions and forms~~ on the procedures needed to apply to the department for certification and provide information ~~provided by the department regarding~~ to each student on the procedures needed for taking the state certification examination. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.

x. All of the course materials ~~including instructions, applications, and forms~~ must be provided ~~on paper~~ to each student. The materials may be provided electronically unless an individual student requests that the materials be provided ~~electronically~~ on paper.

ITEM 9. Amend paragraphs **70.4(9)"i"** and **"j"** as follows:

i. The instructor shall provide an introduction of the online certification system used by the department. The instructor shall advise each student ~~with instructions and forms~~ on the procedures needed to apply to the department for certification and ~~with~~ provide information ~~provided by the department regarding~~ to each student on the procedures needed for taking the state certification examination. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.

j. All of the course materials ~~including instructions, applications, and forms~~ must be provided ~~on paper~~ to each student. The materials may be provided electronically unless an individual student requests that the materials be provided ~~electronically~~ on paper.

ITEM 10. Amend paragraphs **70.4(10)"r"** and **"s"** as follows:

r. The instructor shall provide an introduction of the online certification system used by the department. The instructor shall advise each student ~~with instructions and forms~~ on the procedures needed to apply to the department for certification and provide information to each student on the procedures needed for taking the state certification examination. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.

s. All of the course materials ~~including instructions, applications, and forms~~ must be provided ~~on paper~~ to each student. The materials may be provided electronically unless an individual student requests that the materials be provided ~~electronically~~ on paper.

ITEM 11. Amend paragraphs **70.4(11)"s"** and **"t"** as follows:

s. The instructor shall provide an introduction of the online certification system used by the department. The instructor shall advise each student ~~with instructions and forms~~ on the procedures needed to apply to the department for certification and provide information to each student on the procedures needed for taking the state certification examination. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.

t. All of the course materials ~~including instructions, applications, and forms~~ must be provided ~~on paper~~ to each student. The materials may be provided electronically unless an individual student requests that the materials be provided ~~electronically~~ on paper.

ITEM 12. Amend paragraphs **70.4(12)"ab"** and **"ac"** as follows:

ab. The instructor shall provide an introduction of the online certification system used by the department. The instructor shall advise each student ~~with instructions and forms~~ on the procedures needed to apply to the department for certification and ~~with~~ provide information ~~provided by the department regarding~~ to each student on the procedures needed for taking the state certification examination. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.

ac. All of the course materials ~~including instructions, applications, and forms~~ must be provided ~~on paper~~ to each student. The materials may be provided electronically unless an individual student requests that the materials be provided ~~electronically~~ on paper.

ITEM 13. Amend paragraphs **70.4(13)"h"** and **"i"** as follows:

h. The instructor shall provide an introduction of the online certification system used by the department. The instructor shall advise each student ~~with instructions and forms~~ on the procedures needed to apply to the department for certification and provide information ~~provided by the department regarding~~ to each student on the procedures needed for taking the state certification examination. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.

i. All of the course materials ~~including instructions, applications, and forms~~ must be provided ~~on paper~~ to each student. The materials may be provided electronically unless an individual student requests that the materials be provided ~~electronically~~ on paper.

ITEM 14. Amend paragraphs **70.4(14)"o"** and **"p"** as follows:

o. The instructor shall provide an introduction of the online certification system used by the department. The instructor shall advise each student ~~with instructions and forms~~ on the procedures needed to apply to the department for certification and provide information ~~provided by the department regarding~~ to each student on the procedures needed for taking the state certification examination. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.

p. All of the course materials ~~including instructions, applications, and forms~~ must be provided ~~on paper~~ to each student. The materials may be provided electronically unless an individual student requests that the materials be provided ~~electronically~~ on paper.

ITEM 15. Amend paragraphs **70.4(15)"l"** and **"m"** as follows:

l. The instructor shall provide an introduction of the online certification system used by the department. The instructor shall advise each student ~~with instructions and forms~~ on the procedures needed to apply to the department for certification and provide information to each student on the

procedures needed for taking the state certification examination. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.

m. All of the course materials ~~including instructions, applications, and forms~~ must be provided ~~on paper~~ to each student. The materials may be provided electronically unless an individual student requests that the materials be provided ~~electronically~~ on paper.

ITEM 16. Amend subrule 70.4(16) as follows:

70.4(16) To be approved for refresher training of sampling technicians, lead abatement contractors, lead abatement workers, and project designers, a course must be at least 8 training hours. To be approved for refresher training of lead inspector/risk assessors and elevated blood lead (EBL) inspector/risk assessors who completed an approved 24-hour training course, a course must be at least 8 training hours to meet the recertification requirements of subrule 70.5(3). To be approved for refresher training of lead inspector/risk assessors and elevated blood lead (EBL) inspector/risk assessors to meet the recertification requirements of subrule 70.5(6), a course must be at least 16 training hours. To be approved for refresher training of lead-safe renovators, a course must be at least 4 hours and must include a hands-on component. All refresher training courses shall cover at least the following topics:

a. A review of the curriculum topics of the initial certification course for the appropriate discipline as listed in subrules 70.4(3) to 70.4(15).

b. An overview of current safety practices relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

c. Current laws and regulations relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

d. Current technologies relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

e. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course. The student may take the course test no more than three times within six months of completing the course. If an individual does not pass the course test within six months of completing the course, the individual must retake the appropriate approved course.

f. All of the course materials ~~including instructions, applications, and forms~~ must be provided ~~on paper~~ to each student. The materials may be provided electronically unless an individual student requests that the materials be provided ~~electronically~~ on paper.

ITEM 17. Amend subrule 70.4(17), introductory paragraph, as follows:

70.4(17) Approvals of training courses shall expire three years after the date of issuance. The training manager shall submit the following at least ~~90~~ 30 days prior to the expiration date for a course to be reapproved:

ITEM 18. Amend rule 641—70.5(135), introductory paragraph, as follows:

641—70.5(135) Certification, interim certification, and recertification. The department shall issue certifications and recertifications for a three-year time period. All applications for certification or recertification may be made to the department electronically in a format specified by the department or may be made to the department using a paper application supplied by the department.

ITEM 19. Amend subrule 70.5(1), introductory paragraph, as follows:

70.5(1) A person wishing to become a certified lead professional shall ~~apply on forms supplied by the department. The applicant must submit~~ provide the following information:

ITEM 20. Amend paragraph **70.5(1)"g"** as follows:

g. A ~~$60~~ $180 nonrefundable fee.

ITEM 21. Rescind paragraph **70.5(1)"i."**

ITEM 22. Amend subrule 70.5(5) as follows:

70.5(5) All agencies that perform or offer to perform elevated blood lead (EBL) inspections must be ~~certified~~ approved by the department. An agency wishing to become ~~a certified~~ an approved elevated blood lead (EBL) inspection agency shall apply ~~on forms supplied~~ in a format specified by the department. The agency must submit:

a. A completed application form.

b. Documentation that the agency has the authority to require the repair of lead hazards identified through an elevated blood lead (EBL) inspection.

c. Documentation that the agency employs or has contracted with a certified elevated blood lead (EBL) inspector/risk assessor to provide environmental case management of all elevated blood lead (EBL) children in the agency's service area, including follow-up to ensure that lead-based paint hazards identified as a result of elevated blood lead (EBL) inspections are corrected, and that lead-based paint activities will be conducted only by appropriately certified lead professionals. In addition, the agency must document that the agency and its employees or contractors will follow the work practice standards in 641—70.6(135) for conducting lead-based paint activities.

d. A statement that the ~~certified~~ approved elevated blood lead (EBL) inspection agency will maintain all records required by subrule ~~70.6(10)~~ 70.6(12).

ITEM 23. Amend subrule 70.5(6) as follows:

70.5(6) Individuals ~~certified~~ applying for recertification as lead professionals must ~~be recertified each year. To be recertified, lead professionals must~~ submit the following:

a. A completed application form.

b. A ~~$60~~ $180 nonrefundable fee.

c. ~~Every three years, a~~ A certificate showing that the applicant has successfully completed an approved refresher training course for the appropriate discipline. The ~~initial~~ refresher training course must be completed no more than three years ~~after the date on which the applicant completed an approved training program~~ prior to the date of the application for recertification.

~~*d.* If a certified individual taking a refresher training course is also an approved instructor for that particular refresher training course and has access to the testing materials, the certified individual must take a refresher training course test supplied by the department in lieu of the normal refresher training course test.~~

ITEM 24. Amend subrule 70.5(8) as follows:

70.5(8) Reciprocity. Each applicant for certification who is certified in any of the disciplines specified in this rule in another state may request reciprocal certification. The department shall evaluate the requirements for certification to determine that the requirements for certification in such other state are as protective of health and the environment as the requirements for certification in Iowa. For all disciplines except lead-safe renovator and lead abatement worker, if the department determines that the requirements for certification in such other state are as protective of health and the environment as the requirements for certification in Iowa, the applicant may be certified after passing a proctored test covering Iowa-specific lead information with a score of at least 80 percent. For a lead-safe renovator and lead abatement worker, if the department determines that the requirements for certification in such other state are as protective of health and the environment as the requirements for certification in Iowa, the applicant may be certified after signing a statement indicating that the applicant has read and understands Iowa-specific lead information provided by the department. Each applicant for certification pursuant to this subrule shall submit the appropriate application accompanied by the fee for each discipline as specified in 641—70.5(135).

ITEM 25. Amend subparagraph **70.6(1)"a"(7)** as follows:

(7) A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall prepare a written report for each residential dwelling or child-occupied facility where a lead-free inspection is completed. No later than three weeks after the receipt of laboratory results, the

certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall send a copy of the report to the property owner and to the person requesting the lead-free inspection, if different. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall maintain a copy of each written report for no less than three years. The report shall include, at least:

1. A statement that the inspection was conducted to determine whether the residential dwelling is free of lead-based paint;
2. Date of inspection;
3. Address of building;
4. Date of construction;
5. Apartment numbers (if applicable);
6. The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;
7. Name, signature, and certification number of each certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor conducting the inspection;
8. Name and certification number of the certified firm(s) conducting the inspection;
9. Name, address, and telephone number of each laboratory conducting an analysis of collected samples;
10. Each testing method and sampling procedure employed for paint analysis, including quality control data and, if used, the manufacturer, serial number, software, and operating mode of any X-ray fluorescence (XRF) device;
11. XRF readings taken for calibration and calculations to demonstrate that the XRF is properly calibrated at each required calibration;
12. Specific locations by room of each painted component tested for the presence of lead-based paint and the results for each component expressed in terms appropriate to the sampling method used;
13. The results of retesting of 10 surfaces, calculations to determine the retest tolerance limit, and the determination of whether the inspection meets the retest tolerance limit;
14. If the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor determines that the residential dwelling is free of lead-based paint, the report shall contain the following statement:

"The results of this inspection indicate that no lead in amounts greater than or equal to 1.0 mg/cm^2 in paint was found on any building components, using the inspection protocol in Chapter 7 of the ~~HUD~~ Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing ~~(1997)~~ ((2012), U.S. Department of Housing and Urban Development). Therefore, this residential dwelling qualifies for the exemption in 24 CFR Part 35 and 40 CFR Part 745 for target housing being leased that is free of lead-based paint, as defined in the rule. However, some painted surfaces may contain levels of lead below 1.0 mg/cm^2, which could create lead dust or lead-contaminated soil hazards if the paint is turned into dust by abrasion, scraping, or sanding. This report should be kept by the owner and all future owners for the life of the residential dwelling. Per the disclosure requirements of 24 CFR Part 35 and 40 CFR Part 745, prospective buyers are entitled to all available inspection reports should the property be resold.";

15. If any lead-based paint is identified, a description of the location, type, and severity of identified lead-based paint hazards, including the classification of each tested surface as to whether it is a lead-based paint hazard, and any other potential lead hazards, including bare soil in the dripline of a home where lead-based paint is identified on exterior components or lead-based paint previously existed on exterior components, but has been removed, enclosed, or encapsulated;
16. A description of interim controls and lead abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure;
17. Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745;

18. Information regarding Iowa's prerenovation notification requirements found in 641—Chapter 69; and information regarding Iowa's regulations for renovation, remodeling and repainting found in 641—Chapter 70; and

19. The report shall contain the following statement:

"~~The location and nature of this inspection are required to be reported to the Iowa Department of Public Health for tracking purposes.~~ The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by a lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135)."

ITEM 26. Amend subparagraph **70.6(1)"b"(12)** as follows:

(12) A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall prepare a written report for each residential dwelling or child-occupied facility inspected. No later than three weeks after the receipt of laboratory results, the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall send a copy of the report to the property owner and to the person requesting the inspection, if different. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall maintain a copy of each written report for no less than three years. The inspection report shall include, at least:

1. Date of each inspection;
2. Address of each building in the multifamily housing;
3. Date of construction for each building in the multifamily housing;
4. A list of the apartments and common areas in each building in the multifamily housing;
5. The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;
6. A statement that the inspection was conducted to determine that lead-based paint is not present;
7. The name of the Iowa-certified inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor who randomly selected the residential dwellings and common areas for testing;
8. The number of residential dwellings and common areas that were selected for testing, how these numbers were determined, and a list of the residential dwellings and common areas that were selected for testing;
9. Name, signature, and certification number of each certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor conducting the inspection;
10. Name and certification number of the certified firm(s) conducting the inspection;
11. Name, address, and telephone number of each laboratory conducting an analysis of collected samples;
12. Each testing method and sampling procedure employed for paint analysis, including quality control data and, if used, the manufacturer, serial number, software, and operating mode of any X-ray fluorescence (XRF) analyzer;
13. XRF readings taken for calibration and calculations to demonstrate that the XRF is properly calibrated at each required calibration;
14. Specific locations by room of each painted component tested for the presence of lead-based paint and by residential dwelling or common area and the results for each component expressed in terms appropriate to the sampling method used;
15. Component aggregations and the determination of whether lead-based paint is present by component type;
16. The results of retesting of 10 surfaces, calculations to determine the retest tolerance limit, and the determination of whether the inspection meets the retest tolerance limit;
17. If the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor determines that the multifamily housing is free of lead-based paint, the report shall contain the following statement:

"The results of this inspection indicate that no lead in amounts greater than or equal to 1.0 mg/cm^2 in paint was found on any building components, using the inspection protocol in Chapter 7 of the ~~HUD~~ Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing ~~(1997)~~ ((2012), U.S. Department of Housing and Urban Development). Therefore, this multifamily housing qualifies for the exemption in 24 CFR Part 35 and 40 CFR Part 745 for target housing being leased that is free of lead-based paint, as defined in the rule. However, some painted surfaces may contain levels of lead below 1.0 mg/cm^2, which could create lead dust or lead-contaminated soil hazards if the paint is turned into dust by abrasion, scraping, or sanding. This report should be kept by the owner and all future owners for the life of the multifamily housing. Per the disclosure requirements of 24 CFR Part 35 and 40 CFR Part 745, prospective buyers are entitled to all available inspection reports should the property be resold.";

18. If any lead-based paint is identified, a description of the location, type, and severity of identified lead-based paint hazards, including the classification of each tested surface as to whether it is a lead-based paint hazard, and any other potential lead hazards, including bare soil in the dripline of a home where lead-based paint is identified on exterior components or lead-based paint previously existed on exterior components, but has been removed, enclosed, or encapsulated;

19. A description of interim controls and lead abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure;

20. Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745;

21. Information regarding Iowa's prerenovation notification requirements found in 641—Chapter 69~~;~~ and information regarding Iowa's regulations for renovation found in 641—Chapter 70; and

22. The report shall contain the following statement:

"~~The location and nature of this inspection are required to be reported to the Iowa Department of Public Health for tracking purposes.~~ The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by a lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135)."

ITEM 27. Amend subparagraph **70.6(2)"d"(18)** as follows:

(18) The report shall contain the following statement:

"~~The location and nature of this inspection are required to be reported to the Iowa Department of Public Health for tracking purposes.~~ The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by a lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135)."

ITEM 28. Amend subparagraph **70.6(3)"d"(18)** as follows:

(18) The report shall contain the following statement:

"~~The location and nature of this inspection are required to be reported to the Iowa Department of Public Health for tracking purposes.~~ The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by an elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135)."

ITEM 29. Amend subparagraph **70.6(4)"m"(20)** as follows:

(20) The report shall contain the following statement:

"~~The location and nature of this inspection are required to be reported to the Iowa Department of Public Health for tracking purposes.~~ The Iowa Department of Public Health may review this report

for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by a lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135)."

ITEM 30. Amend subparagraph **70.6(5)"l"(22)** as follows:

(22) The report shall contain the following statement:

"~~The location and nature of this inspection are required to be reported to the Iowa Department of Public Health for tracking purposes.~~ The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by a lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135)."

ITEM 31. Amend subparagraph **70.6(7)"c"(14)** as follows:

(14) The report shall contain the following statement:

"~~The location and nature of this inspection are required to be reported to the Iowa Department of Public Health for tracking purposes.~~ The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by a sampling technician, lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135)."

ITEM 32. Amend subparagraph **70.6(8)"d"(3)** as follows:

(3) The following information on the renovation or interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR Part 35 for which clearance testing was performed:

1. The start and completion dates of the renovation, interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation.

2. The name and address of each firm or organization conducting the renovation, interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation and the name of each supervisor assigned.

3. A detailed written description of the renovation, interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation, including the methods used, locations of exterior surfaces, interior rooms, common areas, and components where the hazard reduction activity occurred.

4. If interim control of soil hazards was conducted, a detailed description of the location(s) of the interim controls and the method(s) used.

5. Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745.

6. Information regarding Iowa's prerenovation notification requirements found in 641—Chapter 69; and information regarding Iowa's regulations for renovation found in 641—Chapter 70.

7. The report shall contain the following statement:

"~~The location and nature of this inspection are required to be reported to the Iowa Department of Public Health for tracking purposes.~~ The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by a sampling technician, lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135)."

ITEM 33. Amend subparagraph **70.6(9)"c"(18)** as follows:

(18) The report shall contain the following statement:

"~~The location and nature of this inspection are required to be reported to the Iowa Department of Public Health for tracking purposes.~~ The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by a lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135)."

ITEM 34. Amend subparagraph **70.6(10)"n"(16)** as follows:

(16) The report shall contain the following statement:

"~~The location and nature of this inspection are required to be reported to the Iowa Department of Public Health for tracking purposes.~~ The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by a sampling technician, lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135)."

ITEM 35. Rescind and reserve subrule **70.6(16)**.

ITEM 36. Amend rule 641—70.7(135) as follows:

641—70.7(135) Firms. All firms that perform or offer to perform lead-based paint activities must be certified by the department. Firms shall employ only appropriately certified employees to conduct lead-based paint activities, and the firm and its employees shall follow the work practice standards in 641—70.6(135) for conducting lead-based paint activities. A firm must employ at least one certified individual in order to receive or maintain firm certification. ~~Beginning April 22, 2010, firms that perform or offer to perform renovation must be certified by the department.~~

70.7(1) A firm wishing to be certified shall apply ~~on forms supplied by~~ to the department electronically in a format specified by the department or may apply using a paper application supplied by the department. The firm must submit:

a. A completed application ~~form~~.

b. Documentation that the firm will employ only appropriately certified lead professionals to perform lead-based paint activities. In addition, the firm must document that the agency and its employees or contractors will follow the work practice standards in 641—70.6(135) for conducting lead-based paint activities.

c. The certified firm must maintain all records required by 641—70.6(135), with the exception of elevated blood lead (EBL) inspection reports, for three years. Certified firms that are also certified as elevated blood lead (EBL) inspection agencies must maintain elevated blood lead (EBL) inspection reports for at least 10 years.

70.7(2) Firms must be recertified ~~each year~~ every three years. To be recertified, the firm must submit the following:

a. A completed application ~~form~~.

b. Documentation that the firm will employ only appropriately certified lead professionals to perform lead-based paint activities. In addition, the firm must document that the firm and its employees or contractors will follow the work practice standards in 641—70.6(135) for conducting lead-based paint activities.

ITEM 37. Amend paragraph **70.10(1)"d"** as follows:

d. Obtaining or attempting to obtain certification through fraudulent representation.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/7/17.

ARC 3105C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.181, the Department of Public Health hereby amends Chapter 107, "Board-Certified Behavior Analyst and Board-Certified Assistant Behavior Analyst (BCBA/BCaBA) Grants Program," Iowa Administrative Code.

Chapter 107 was recently established to implement the board-certified behavior analyst and board-certified assistant behavior analyst grants program. This amendment corrects language that limited the awarding of the grant due to an inflexible limit on contract length. This amendment will positively impact the execution of the program. Regarding contracts, the Department will continue to follow the requirements for competitive selection contained in 641—Chapter 176 in awarding the program grant funds.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2970C** on March 15, 2017. No public comment was received. This amendment is identical to the one published under Notice of Intended Action.

The State Board of Health adopted this amendment on May 10, 2017.

After analysis and review of this rule making, it is projected that this amendment will positively impact board-certified behavior analyst and board-certified assistant behavior analyst employment opportunities in Iowa.

This amendment is intended to implement Iowa Code section 135.181.

This amendment will become effective July 12, 2017.

The following amendment is adopted.

Amend subrule 107.7(1) as follows:

107.7(1) An applicant shall complete and submit an application to the program in the manner specified by the department. An applicant, if awarded a grant, shall enter into a contract with the department ~~for up to a four-year period~~. The department shall follow requirements for competitive selection contained in 641—Chapter 176 in awarding these funds.

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ARC 3106C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147A.27, the Department of Public Health hereby amends Chapter 136, "Trauma Registry," Iowa Administrative Code.

The rules in Chapter 136 describe the trauma registry procedures and policies. The amendments and associated reasons for those amendments are as follows:

1. The version of the Iowa Trauma Patient Data Dictionary ("data dictionary") adopted by reference in this rule is updated because the data dictionary was completely revised. The data dictionary had not been updated since 2005. The data dictionary was modified to comply with national standards and to be a support document for the current registry system and transitioned to use of ICD-10 codes.
2. The incorporation by reference of the Iowa EMS Patient Registry Data Dictionary is removed. This reference is being moved to an EMS-specific administrative rule.
3. Reporting requirements for EMS services are removed. These requirements are being moved to an EMS-specific administrative rule.

4. Hospitals are required to submit data electronically and may no longer provide written submissions. Utilization of electronic means to report data has significantly improved since the rule was last updated. These amendments require electronic reporting of data instead of allowing for written reports. There have been updates to national data recommendations through the National Trauma Data Bank (NTDB). These amendments will assist hospitals that elect to report data to the NTDB.

5. Hospitals are required to submit/enter 80 percent of trauma cases to the registry within 60 days of a patient's discharge and 100 percent of cases within 120 days of a patient's discharge or next scheduled data upload. This update is consistent with national reporting standards.

6. The offenses and penalties rule is amended to reference rule 641—134.3(147A). This change reduces duplication within the administrative rules.

The Department coordinated with the Trauma System Advisory Council (TSAC), the TSAC data management subcommittee, the Iowa Hospital Association's Iowa Trauma Coordinators group, and Iowa trauma coordinators and trauma registrars to update the data dictionary. The updates to the data dictionary and associated administrative rule have been occurring over the past year. The TSAC voted to approve the data dictionary and associated administrative rule at the November 1, 2016, meeting.

During the February 10, 2017, Administrative Rules Review Committee meeting, members requested clarification on several aspects of this rule making. The following addresses the identified questions and concerns:

1. A draft 2014 version of the data dictionary was posted to the Department Web site but was not properly labeled as a draft. This draft created confusion for committee members. The 2005 data dictionary and the proposed 2017 data dictionary are now posted in the following location: https://idph.iowa.gov/BETS/Trauma/data-registry.

2. Social security number was removed from the registry and data dictionary and is no longer an element for data reporting.

3. Language in 136.2(4)"a" was updated to specify what data are considered confidential.

4. Language in 136.2(6)"c" was updated with a reference to 641—Chapter 178. Chapter 178, "Variances and Waivers of Public Health Administrative Rules," defines the conditions for and process by which the director may provide a waiver.

5. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) language was reviewed. The language is accurate and consistent with the application of HIPAA for hospitals and the Department. HIPAA allows a covered entity to disclose protected health information to public health authorities for public health activities (Section 164.512). HIPAA defines a public health authority as "an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate," (Section 164.501). The Department has such a mandate and, therefore, is a public health authority under HIPAA. The Department, in conjunction with the Iowa Attorney General's Office, has reviewed its programs and determined that protected health information being received by the Department from covered entities in Iowa is disclosed for public health activities. The disclosure of such information to the Department is, therefore, unaffected by HIPAA and should continue in accordance with past practices.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2902C** on January 18, 2017. No public comments were received. These amendments were modified slightly from those published under Notice as noted in the preamble.

The State Board of Health adopted these amendments on May 10, 2017.

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

These amendments are intended to implement Iowa Code section 147A.26.

These amendments will become effective on July 12, 2017.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definition of "Cases" in rule **641—136.1(147A)**:

"Cases" means trauma patients that meet the trauma registry inclusion criteria.

ITEM 2. Amend rule **641—136.1(147A)**, definitions of "ICD9," "Reportable patient data," "Trauma care facility," and "Trauma patient," as follows:

"~~ICD9~~ ICD10" means International Classification of Diseases, ~~9th~~ 10th Revision, Clinical Modification (ICD-10-CM).

"Reportable patient data" means data elements and definitions determined by the department and adopted by reference to be reported to the trauma registry ~~or reported to a trauma care facility~~ on trauma patients meeting the inclusion criteria.

"Trauma care facility" means a hospital or emergency care facility which provides trauma care and has been verified by the department as having ~~Resource (Level I)~~ Level I, ~~Regional (Level II)~~ Level II, ~~Area (Level III)~~ Level III or ~~Community (Level IV)~~ Level IV care capabilities and has been issued a certificate of verification pursuant to Iowa Code section ~~147A.23, subsection 2, paragraph *"c."*~~ 147A.23(2)*"c."*

"Trauma patient" means a victim of an external cause of injury that results in major or minor tissue damage or destruction caused by intentional or unintentional exposure to thermal, mechanical, electrical or chemical energy, or by the absence of heat or oxygen ~~(ICD9 Codes E800.0 - E999.9)~~.

ITEM 3. Rescind the definition of "Service program" in rule **641—136.1(147A)**.

ITEM 4. Amend rule 641—136.2(147A) as follows:

641—136.2(147A) Trauma registry.

136.2(1) Adoption by reference.

a. "Iowa Trauma Patient Data Dictionary" (~~July 2005~~ January 2017) is incorporated by reference for inclusion criteria and reportable patient data to be reported to the trauma registry ~~or reported to a trauma care facility~~. For any differences which may occur between the adopted reference and this chapter, the administrative rules shall prevail.

b. "Iowa Trauma Patient Data Dictionary" is available through the Iowa Department of Public Health, Bureau of Emergency ~~Medical~~ and Trauma Services (BETS), Lucas State Office Building, Des Moines, Iowa 50319-0075, or the ~~bureau of EMS~~ BETS Web site (~~www.idph.state.ia.us/ems~~ http://idph.iowa.gov/BETS).

~~*c.* "Iowa EMS Patient Registry Data Dictionary" (August 2007) is incorporated by reference for inclusion criteria and reportable patient data to be reported to the department. For any differences which may occur between the adopted reference and this chapter, the administrative rules shall prevail.~~

~~*d.* "Iowa EMS Patient Registry Data Dictionary" is available through the Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075, or bureau of EMS Web site (www.idph.state.ia.us/ems).~~

136.2(2) A ~~verified~~ trauma care facility shall report data as follows:

a. ~~Submit~~ Trauma care facilities shall submit reportable patient data identified in 136.2(1) ~~via electronic transfer or in writing~~ electronically to the department. Data shall be submitted in a format approved by the department.

b. ~~Submit reportable patient data identified in 136.2(1) to the department for each calendar quarter. Reportable patient data shall be submitted no later than 90 days after the end of the quarter~~ Trauma care facilities that enter required trauma data elements identified in 136.2(1) directly into the state registry shall, at a minimum, enter 80 percent of cases within 60 days of a patient's discharge. Within 120 days of a patient's discharge, 100 percent of cases shall be entered into the registry.

c. ~~Submit reportable patient data identified in 136.2(1) to the receiving trauma care facility upon delivery of the injured patient. Data shall be submitted in a format approved by the department~~ Trauma care facilities that submit required trauma data elements identified in 136.2(1) via upload shall, at a minimum, submit 80 percent of cases discharged within the previous 60 days of the first business day of every even-numbered calendar month. Within 120 days of a patient's discharge or next scheduled data upload, 100 percent of cases shall be entered into the registry.

~~**136.2(3)** A service program shall:~~

~~*a.* Submit reportable patient data identified in 136.2(1) via electronic transfer. Data shall be submitted in a format approved by the department.~~

~~*b.* Submit reportable patient data identified in 136.2(1) to the department for each calendar quarter. Reportable patient data shall be submitted no later than 90 days after the end of the quarter.~~

~~*c.* Submit reportable patient data identified in 136.2(1) to the receiving trauma care facility upon delivery of the injured patient. Data shall be submitted in a format approved by the department.~~

~~**136.2(4)**~~ **136.2(3)** Reportable patient data compilations. The department shall prepare compilations for release or dissemination on ~~all~~ reportable patient data entered into the trauma registry during the reporting period. The compilations shall include, but not be limited to, trends and patient care outcomes for local, regional and statewide evaluations. The compilations shall be made available to all providers submitting reportable patient data to the registry.

~~**136.2(5)**~~ **136.2(4)** Access and release of reportable patient data and information.

a. The data collected by the trauma registry and furnished to the department pursuant to this ~~section~~ rule are confidential records of the condition, diagnosis, care, or treatment of patients or former patients, including outpatients, pursuant to Iowa Code section 22.7. The compilations prepared for release or dissemination from the data collected are not confidential under Iowa Code section ~~22.7, subsection 2~~ 22.7(2). However, information which individually identifies patients shall not be disclosed and state and federal law regarding patient confidentiality shall apply.

b. The department may approve requests for reportable patient data for special studies and analysis provided:

(1) The request has been reviewed and approved by the department with respect to the scientific merit and confidentiality safeguards; and

(2) The department has given administrative approval for the proposal.

(3) The confidentiality of patients and trauma care facilities is protected pursuant to Iowa Code ~~section~~ sections 22.7 and 147A.24.

c. The department may require those requesting the data to pay any or all of the reasonable costs associated with furnishing the reportable patient data.

~~**136.2(6)**~~ **136.2(5)** Data collection methods. To the extent possible, activities under this ~~section~~ rule shall be coordinated with other health data collection methods.

~~**136.2(7)**~~ **136.2(6)** Quality assurance.

a. For the purpose of ensuring the completeness and quality of reportable patient data, the department or authorized representative may examine all or part of the patient's medical records as necessary to verify or clarify all reportable patient data submitted by a trauma care facility ~~or a service program~~.

b. Review of a patient's medical record by the department shall be scheduled in advance with the trauma care facility ~~or service program~~ and completed in a timely manner.

c. The director, pursuant to ~~rule~~ 641—Chapter 178, may grant a variance from the requirements of rules adopted under this chapter for ~~any hospital, emergency care facility, or service program provided that the variance is related to undue hardships in complying with this chapter or the rules adopted pursuant to this chapter~~ a trauma care facility that meets the requirements of this chapter.

ITEM 5. Amend rule 641—136.3(147A) as follows:

641—136.3(147A) Offenses and penalties. All complaints, offenses and penalties will be addressed pursuant to rule 641—134.3(147A).

~~**136.3(1)** The department may deny verification as a trauma care facility or deny authorization as a service program or may give a citation and warning, place on probation, suspend, or revoke existing trauma care facility verification or service program authorization if the department finds reason to believe that the facility or service program has not been or will not be operated in compliance with Iowa Code section 147A.26 and these administrative rules. The denial, citation and warning, period of probation, suspension, or revocation shall be effected and may be appealed in accordance with the requirements of Iowa Code section 17A.12.~~

136.3(2) All complaints regarding the operation of a trauma care facility or service program or those purporting to be or operating as the same, shall be reported to the department. The address is: Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

136.3(3) Complaints and the investigative process shall be treated as confidential to the extent they are protected by Iowa Code section 22.7.

136.3(4) Complaint investigations may result in the department's issuance of a notice of denial, citation and warning, probation, suspension or revocation.

136.3(5) Notice of denial, citation and warning, probation, suspension or revocation shall be effected in accordance with the requirements of Iowa Code section 17A.12. Notice to the alleged violator of denial, citation and warning, probation, suspension, or revocation shall be served by certified mail, return receipt requested, or by personal service.

136.3(6) Any request for a hearing concerning the denial, citation and warning, probation, suspension or revocation shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice to take action. The address is: Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075. If the request is made within the 20-day time period, the notice to take action shall be deemed to be suspended pending the hearing. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, citation and warning, probation, suspension or revocation has been or will be removed. If no request for a hearing is received within the 20-day time period, the department's notice of denial, citation and warning, probation, suspension or revocation shall become the department's final agency action.

136.3(7) Upon receipt of a request for hearing, the request shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

136.3(8) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

136.3(9) When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken.

136.3(10) Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

136.3(11) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

a. All pleadings, motions, and rules.

b. All evidence received or considered and all other submissions by recording or transcript.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections and rulings on them.

e. All proposed findings and exceptions.

f. The proposed decision and order of the administrative law judge.

136.3(12) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or personal service.

136.3(13) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The

~~aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.~~

~~**136.3(14)** Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.~~

~~**136.3(15)** The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.~~

~~**136.3(16)** Final decisions of the department relating to disciplinary proceedings may be transmitted to the appropriate professional associations, news media or employer.~~

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ARC 3107C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue hereby amends Chapter 71, "Assessment Practices and Equalization," Iowa Administrative Code.

This amendment clarifies that for owner-occupied commercial property, the assessor may not consider data relating to the business operations of the owner.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2990C** on March 29, 2017.

The Department received public comments on this rule making. The Department made no changes based on the public comments. The Iowa City Assessor was concerned that taxpayers could use the amendment to argue that assessors may not use information to determine whether a valuable going concern was occupying the real estate and requested an amendment to the rule clarifying that point. A citizen of Urbandale, Catherine Creighton, suggested that the amendment created ambiguity regarding the determination of a valuable going concern and that it would make assessors' jobs more difficult.

This amendment is identical to that published under Notice of Intended Action.

Any person who believes that the application of the discretionary provisions of this amendment would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

The Department adopted this amendment on May 15, 2017.

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

This amendment is intended to implement Iowa Code section 441.21.

This amendment will become effective July 12, 2017.

The following amendment is adopted.

Amend rule 701—71.5(421,428,441), introductory paragraph, as follows:

701—71.5(421,428,441) Valuation of commercial real estate. Commercial real estate shall be assessed at its actual value as defined in Iowa Code section 441.21. In determining the actual value of commercial real estate, city and county assessors shall use the appraisal manual issued by the department of revenue pursuant to Iowa Code section 421.17(18) as well as a locally conducted assessment/sales ratio study, an analysis of sales of comparable properties, and any other relevant data available. In cases involving the valuation of owner-occupied commercial property, the data relating to the financial performance of the

owner or the owner's business, including but not limited to its sales, revenue, expenses, or profits, shall not be considered relevant in determining the property's actual value.

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ARC 3108C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 321.383, the Iowa Department of Transportation, on May 10, 2017, adopted amendments to Chapter 405, "Salvage," and Chapter 450, "Motor Vehicle Equipment," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the March 29, 2017, Iowa Administrative Bulletin as **ARC 2989C**.

The amendments to subrule 405.8(3) and paragraph 405.15(1)"e" comply with 2016 Iowa Acts, chapter 1098, sections 31 and 32, which amended Iowa Code sections 321.24(5) and 321.52(4)"c." The amendment to subrule 405.8(3) adds a second exception to stipulate that an owner who surrenders a foreign salvage title and obtains a salvage theft examination pursuant to Iowa Code section 321.52(4)"b" within 30 days of the date the owner was assigned the foreign salvage title is not required to first obtain an Iowa salvage title. The amendment to paragraph 405.15(1)"e" strikes the language concerning the fee amount and distribution of the fee and adds a new sentence stating that the owner or owner's representative shall electronically make payment for the salvage theft examination at the time the examination is scheduled and that the fees collected shall be distributed in accordance with Iowa Code section 321.52(4)"c."

The amendment to rule 761—450.6(321) complies with 2016 Iowa Acts, chapter 1023, section 1, which amended Iowa Code section 321.383(1) to allow implements of husbandry that are not self-propelled to be towed in tandem when capable of being towed. Also, language related to equipment standards concerning lighting and turn signals was updated to reflect the changes made in Iowa Code section 321.383(1).

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code sections 321.24, 321.52 and 321.383.

These amendments will become effective July 12, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule 405.8(3) as follows:

405.8(3) *Converting foreign salvage title to Iowa title.* If the prior title for a vehicle is a foreign title indicating that the vehicle is salvage, a regular Iowa title shall not be issued for the vehicle unless an Iowa salvage title is first issued. After an Iowa salvage title is issued for the vehicle, a regular Iowa title may be obtained pursuant to rule 761—405.7(321).

EXCEPTION 1: As provided in subrule 405.3(3), a licensed new motor vehicle dealer or an authorized vehicle recycler is not required to obtain an Iowa salvage title upon assignment of a foreign salvage title to the dealer or recycler, provided a vacant reassignment space is available on the title.

EXCEPTION 2: As provided in Iowa Code section 321.24(5), an owner who surrenders a foreign salvage title and obtains a salvage theft examination pursuant to Iowa Code section 321.52(4)*"b"* within 30 days of the date the owner was assigned the foreign salvage title is not required to first obtain an Iowa salvage title.

ITEM 2. Amend paragraph **405.15(1)"e"** as follows:

e. ~~A $30 fee paid by check or money order made payable to the agency conducting the salvage theft examination shall be collected. The agency shall retain $20 and forward $10 to the office of vehicle services at the Des Moines address. The department shall deposit the $10 into the funds specified by law.~~ The owner or owner's representative shall electronically make payment for the salvage theft examination at the time the examination is scheduled, and the fee collected shall be distributed in accordance with Iowa Code section 321.52(4)*"c."*

ITEM 3. Amend subrule 450.4(1) as follows:

450.4(1) *Application.* As outlined in rule 761—400.16(~~32~~ 321), the applicant shall submit the required application forms and exhibits to the county treasurer. The vehicle and ownership documents shall be examined by the department. If the department determines that the motor vehicle complies with this rule, that the integral parts and components have been identified as to ownership, and that the application forms have been completed properly, the department shall assign an identification number to the vehicle and certify that the motor vehicle is eligible for titling and registration. If the frame specified on an application for a specially constructed or reconstructed motorcycle or motorized bicycle is designated "not for highway use," the application shall not be approved. The exchange of compatible body parts does not constitute a specially constructed or reconstructed motorcycle or motorized bicycle. The removal, addition, or substitution of a reconstructed motorcycle or motorized bicycle part modifies the vehicle's external appearance so that it does not reflect the original make or manufacturer model. EXEMPTION: The conversion of a manufactured motorcycle from two wheels to three-wheel operation by the addition or substitution of a bolt-on conversion kit shall not constitute a reconstructed motorcycle.

ITEM 4. Amend rule 761—450.6(321) as follows:

761—450.6(321) Safety requirements for the movement of implements of husbandry on a roadway. The following standards are minimum safety requirements for the movement of implements of husbandry on a roadway.

450.6(1) *Towing standard.* No power unit operated by a retail seller or manufacturer shall tow more than one implement of husbandry, except those implements of husbandry that are not self-propelled and are capable of being towed in tandem, from the manufacturer to the retail seller, from the retail seller to the farm purchaser, or from the manufacturer to the farm purchaser.

450.6(2) *Equipment standards.*

a. and *b.* No change.

c. Lighting. The towing or towed vehicle, the rearmost implement of husbandry being towed in tandem, or a self-propelled implement of husbandry shall be equipped with at least one rear taillight which exhibits a red light plainly visible from a distance of 500 feet to the rear. The rear taillight equipment standard may be met by the use and installation of a temporary rear taillight. If an implement of husbandry is being towed by a vehicle which is equipped with brake lights, the towed unit must also have brake lights, constructed and located on the implement of husbandry so as to give a signal of intention to stop. The light shall be red or yellow in color. The signal shall be plainly visible in normal sunlight and at night from a distance of 100 feet to the rear and may be met by the use and installation of a temporary light.

d. Turn signal. The towing or towed vehicle, the rearmost implement of husbandry being towed in tandem, or a self-propelled implement of husbandry shall be equipped with a turn-signal device that operates in conjunction with or separately from the rear taillight. The signal shall be plainly visible and understandable from a distance of 100 feet to the rear. The turn-signal device equipment standard may be met by the use and installation of a temporary turn-signal device.

e. to *g.* No change.

This rule is intended to implement Iowa Code section 321.383.

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ARC 3116C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Pursuant to the authority of Iowa Code section 96.11, the Director of Workforce Development hereby amends Chapter 22, "Employer Records and Reports," and Chapter 24, "Claims and Benefits," Iowa Administrative Code.

These amendments update, clarify and simplify the procedures by which claimants and employers interact with Iowa Workforce Development.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 12, 2017, as **ARC 3028C**. No comments were received. The Notice was on the Administrative Rules Review Committee agenda on May 3, 2017. No questions or comments were received during this public meeting. This Adopted and Filed rule making differs from the Notice of Intended Action. The proposed amendments to rules 871—22.3(96) and 871—22.16(96), to paragraphs 24.2(1)"e" and "g" and to paragraph 25.7(6)"c" were not adopted by the Department; amendments to those rules and paragraphs may be proposed in a future rule making.

This rule making does not have a fiscal impact on the State of Iowa.

Waiver provisions pursuant to Iowa Code section 17A.4(2) are not applicable.

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

These amendments implement Iowa Code chapter 96.

These amendments will become effective July 12, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule 22.1(3) as follows:

22.1(3) Such payroll records may be preserved by the employer in ~~microfilm form~~ an electronic format, provided the employer~~:~~ is willing to provide access to such records as may be required by the department.

~~*a.* Keeps a microfilm viewer available, and~~

~~*b.* Is willing to transcribe any information that may be required by the department.~~

ITEM 2. Amend subrule 24.1(21) as follows:

24.1(21) *Benefit year, individual.* The benefit year is a period of 365 days (366 in a leap year) beginning with and including the starting date of the benefit year. The starting date of the benefit year is always on Sunday and is ~~usually~~ the Sunday of the current week in which the claimant first files a valid claim unless the claim is backdated as allowed under ~~subrule 24.2(1),~~ paragraph ~~*"h."*~~ 24.2(1)*"h."*

ITEM 3. Amend paragraph **24.2(1)"h"** as follows:

h. Effective starting date for the benefit year.

(1) Filing for benefits shall be effective as of Sunday of the current calendar week in which, subsequent to the individual's separation from work, an individual ~~reports in person at a workforce development center and registers for work in accordance with paragraph *"a"* of this rule~~ files a claim for benefits.

(2) The claim may be backdated prior to the first day of the calendar week in which the claimant does report and file a claim for the following reasons:

~~Backdated prior to the week in which the individual reported if the individual presents to the department sufficient grounds to justify or excuse the delay;~~

~~There is scheduled filing in the following week because of a mass layoff;~~

1. The failure of the department to recognize the expiration of the claimant's previous benefit year;

~~The individual is given incorrect advice by a workforce development employee;~~

2. The claimant filed an interstate claim against another state which has been determined as ineligible~~;~~.

~~Failure on the part of the employer to comply with the provisions of the law or of these rules;~~

~~Coercion or intimidation exercised by the employer to prevent the prompt filing of such claim;~~

~~Failure of the department to discharge its responsibilities promptly in connection with such claim, the department shall extend the period during which such claim may be filed to a date which shall be not less than one week after the individual has received appropriate notice of potential rights to benefits, provided, that no such claim may be filed after the 13 weeks subsequent to the end of the benefit year during which the week of unemployment occurred. In the event continuous jurisdiction is exercised under the provisions of the law, the department may, in its discretion, extend the period during which claims, with respect to week of unemployment affected by such redetermination, may be filed.~~

(3) When the benefit year expires on any day but Saturday, the effective date of the new claim is the Sunday of the current week in which the claim is filed even though it may overlap into the old benefit year up to six days. However, backdating shall not be allowed at the change of a calendar quarter if the backdating would cause an overlap of the same quarter in two base periods. When the overlap situation occurs, the effective date of the new claim may be postdated up to six days. If the claimant has benefits remaining on the old claim, the claimant may be eligible for benefits for that period by extending the old benefit year up to six days.

ITEM 4. Amend subrule 24.17(1) as follows:

24.17(1) Employer notice specified vacation or holiday pay only. The Form 65-5317, Notice of Claim, the Form 62-2048, Request for Federal Wage and Separation Information, and the Form 62-2049, Request for Wage and Separation Information on Federal Employment Additional Claim, which are returned by the employer for the purpose of notification of vacation pay, shall be used as notification to the department that vacation pay is applicable. The Forms 65-5317, 62-2048, and ~~the~~ 62-2049 received in the administrative office shall be routed to the appropriate office for the following action:

a. Upon receipt of the vacation information, the unemployment insurance representative shall ~~immediately issue the appropriate decision concerning the vacation pay to the employer and to the claimant. The unemployment insurance representative shall then check the current status of the claim on the computer record to ascertain if any weeks have been reported.~~ compare the amount of vacation reported by the employer with the computer record. If the computer record shows any discrepancies with the vacation information provided by the employer that would affect the claimant's eligibility for unemployment insurance benefits for any week claimed, the claimant shall be afforded the opportunity to present facts and evidence, which may include an informational fact-finding interview scheduled by the department. The unemployment insurance representative may afford the employer the opportunity to present additional facts and evidence after ascertaining such from the claimant. If the employer is afforded such an opportunity to provide additional facts and evidence, the unemployment insurance representative shall also afford the claimant the opportunity to present additional facts and evidence.

b. ~~The representative shall compare the amount of vacation reported by the employer with the computer record. If the computer record shows any discrepancies, the representative shall initiate immediate action to set up an overpayment or underpayment as appropriate.~~ After affording the claimant an opportunity to present facts and evidence regarding the receipt of vacation pay, and potentially affording the employer and the claimant an opportunity to provide additional facts and evidence, the representative shall consider all information submitted by the interested parties and issue to the employer and the claimant the appropriate decision concerning the vacation pay. The unemployment insurance representative shall then check the current status of the claim on the computer record to ascertain if any weeks have been reported.

c. If the computer record shows that the claimant has not reported or claimed for some or all of the weeks indicated for the vacation period, the unemployment insurance representative shall take no further action on the weeks not claimed.

d. The claimant shall be instructed to only report vacation pay applicable to the first week. The claimant shall also be instructed that vacation pay designated by the employer in excess of one week may result in an overpayment of benefits.

ITEM 5. Amend subrule 24.19(2) as follows:

24.19(2) Each interested party will be afforded the opportunity to have ~~an in-person~~ a fact-finding interview by telephone regarding matters which are scheduled for a hearing. ~~However, when it is impractical for the department to conduct an in-person fact-finding, the fact-finding may be conducted in whole or in part by telephone at the discretion of the department.~~ An interested party may request an in-person fact-finding interview as a reasonable accommodation under the federal Americans with Disabilities Act of 1990, as amended, or the Iowa Civil Rights Act of 1965, as amended. The department shall reserve the right to call any interested party in for an in-person fact-finding interview.

ITEM 6. Amend subrule 24.35(3) as follows:

24.35(3) Delivery by mail. Any notice, report form, determination, decision, or other document mailed by the division shall be considered as having been given to the addressee to whom it is directed on the date it is mailed to the addressee's last known address. The date mailed shall be presumed to be the date of the document, unless otherwise indicated by the facts.

ITEM 7. Adopt the following **new** subrule 24.35(4):

24.35(4) Electronic delivery. Any notice, report form, determination, decision, or other document sent by the division via the U.S. Department of Labor state information data exchange system shall be considered as having been given to the party to whom it is directed on the date it is submitted on the system. The date submitted shall be presumed to be the date of the document, unless otherwise indicated by the facts.

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