



# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form 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”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

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

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	Fax:	(515)281-6625
KATHLEEN K. WEST, Administrative Code Editor	Telephone:	(515)281-3355
STEPHANIE A. HOFF, Deputy Editor	Fax:	(515)281-8157
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The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

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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).

## Schedule for Rule Making 2006

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. 30 '05	Jan. 18 '06	Feb. 7 '06	Feb. 22 '06	Feb. 24 '06	Mar. 15 '06	Apr. 19 '06	July 17 '06
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	Sept. 11
Mar. 10	Mar. 29	Apr. 18	May 3	May 5	May 24	June 28	Sept. 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	Sept. 6	Dec. 4
June 2	June 21	July 11	July 26	July 28	Aug. 16	Sept. 20	Dec. 18
June 16	July 5	July 25	Aug. 9	Aug. 11	Aug. 30	Oct. 4	Jan. 1 '07
***June 28***	July 19	Aug. 8	Aug. 23	***Aug. 23***	Sept. 13	Oct. 18	Jan. 15 '07
July 14	Aug. 2	Aug. 22	Sept. 6	Sept. 8	Sept. 27	Nov. 1	Jan. 29 '07
July 28	Aug. 16	Sept. 5	Sept. 20	Sept. 22	Oct. 11	Nov. 15	Feb. 12 '07
Aug. 11	Aug. 30	Sept. 19	Oct. 4	Oct. 6	Oct. 25	Nov. 29	Feb. 26 '07
***Aug. 23***	Sept. 13	Oct. 3	Oct. 18	Oct. 20	Nov. 8	Dec. 13	Mar. 12 '07
Sept. 8	Sept. 27	Oct. 17	Nov. 1	Nov. 3	Nov. 22	Dec. 27	Mar. 26 '07
Sept. 22	Oct. 11	Oct. 31	Nov. 15	***Nov. 15***	Dec. 6	Jan. 10 '07	Apr. 9 '07
Oct. 6	Oct. 25	Nov. 14	Nov. 29	Dec. 1	Dec. 20	Jan. 24 '07	Apr. 23 '07
Oct. 20	Nov. 8	Nov. 28	Dec. 13	***Dec. 13***	Jan. 3 '07	Feb. 7 '07	May 7 '07
Nov. 3	Nov. 22	Dec. 12	Dec. 27	***Dec. 27***	Jan. 17 '07	Feb. 21 '07	May 21 '07
***Nov. 15***	Dec. 6	Dec. 26	Jan. 10 '07	Jan. 12 '07	Jan 31 '07	Mar. 7 '07	June 4 '07
Dec. 1	Dec. 20	Jan. 9 '07	Jan. 24 '07	Jan. 26 '07	Feb. 14 '07	Mar. 21 '07	June 18 '07
***Dec. 13***	Jan. 3 '07	Jan. 23 '07	Feb. 7 '07	Feb. 9 '07	Feb. 28 '07	Apr. 4 '07	July 2 '07
***Dec. 27***	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
5	Friday, August 11, 2006	August 30, 2006
6	Wednesday, August 23, 2006	September 13, 2006
7	Friday, September 8, 2006	September 27, 2006

**PLEASE NOTE:**

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

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

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

## PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies  
FROM: Kathleen K. West, Iowa Administrative Code Editor  
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 2.0.0, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

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The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, August 8, 2006, at 9 a.m. in Room 22, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

**NOTE: See also Agenda published in the July 19, 2006, Iowa Administrative Bulletin.**

#### **ADMINISTRATIVE SERVICES DEPARTMENT[11]**

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 EMS service program authorization—disciplinary appeals, 132.10(5) Filed **ARC 5264B** ..... 8/2/06

**ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS**

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

**EDITOR’S NOTE: Terms ending April 30, 2007.**

Senator Michael Connolly  
 2600 Renaissance Drive, #3  
 Dubuque, Iowa 52001

Senator Thomas Courtney  
 2200 Summer Street  
 Burlington, Iowa 52601

Senator John P. Kibbie  
 P.O. Box 190  
 Emmetsburg, Iowa 50536

Senator Paul McKinley  
 21884 483rd Lane  
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Senator James Seymour  
 901 White Street  
 Woodbine, Iowa 51579

Joseph A. Royce  
**Legal Counsel**  
 Capitol, Room 116A  
 Des Moines, Iowa 50319  
 Telephone (515)281-3084  
 Fax (515)281-5995

Representative Danny Carroll  
 244 400th Avenue  
 Grinnell, Iowa 50112

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 Governor’s Ex Officio Representative  
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 Des Moines, Iowa 50319

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
<b>ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]</b>		
Definition of "employee," 168.301, 168.302 IAB 7/19/06 <b>ARC 5234B</b>	ICN Conference Room, 2nd Floor 200 E. Grand Ave. Des Moines, Iowa	August 10, 2006 1:30 p.m.
<b>INSURANCE DIVISION[191]</b>		
Conduit derivative transactions, ch 93 IAB 8/2/06 <b>ARC 5279B</b>	Insurance Division 330 Maple Street Des Moines, Iowa	August 23, 2006 10 a.m.
<b>IOWA FINANCE AUTHORITY[265]</b>		
Low-income housing tax credits, 12.3, 12.4 IAB 8/2/06 <b>ARC 5289B</b> (ICN Network)	State Library, Third Floor Miller State Office Building Des Moines, Iowa  (For other hearing locations, see the Authority's Web site at <a href="http://www.ifahome.com">www.ifahome.com</a> )	August 22, 2006 9 to 11 a.m.
<b>LABOR SERVICES DIVISION[875]</b>		
Contractor registration; asbestos removal, 150.1, 150.2, 150.4(8), 150.6(2), 150.11(11), 155.6(10), 155.9(2) IAB 7/19/06 <b>ARC 5253B</b>	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	August 8, 2006 9 a.m. (If requested)
<b>MEDICAL EXAMINERS BOARD[653]</b>		
Physician licensure, fees, 8.4(4), 9.1, 9.2(2), 10.1, 10.3(1), 10.5 IAB 8/2/06 <b>ARC 5265B</b>	Board Office 400 S.W. 8th Street, Suite C Des Moines, Iowa	August 22, 2006 3 p.m.
<b>PROFESSIONAL LICENSURE DIVISION[645]</b>		
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<b>PUBLIC HEALTH DEPARTMENT[641]</b>		
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**PUBLIC SAFETY DEPARTMENT[661]**

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Regional emergency response training center program, 259.301 to 259.305 IAB 7/19/06 <b>ARC 5257B</b> (See also <b>ARC 5256B</b> )	Fire Services Training Bureau 3100 Fire Service Rd. Ames, Iowa	August 17, 2006 10 a.m.
Energy conservation for residential and nonresidential construction, 303.2, 303.3 IAB 7/5/06 <b>ARC 5185B</b>	Fire Marshal Division Conference Rm. Suite N 401 SW Seventh St. Des Moines, Iowa	August 15, 2006 10 a.m.
Peace officers' retirement, accident, and disability system, 400.2, 400.10, ch 401, 402.300 to 402.306 IAB 7/19/06 <b>ARC 5231B</b>	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	August 10, 2006 10 a.m.

**TRANSPORTATION DEPARTMENT[761]**

Consent for the sale of goods and services, rescind ch 26 IAB 7/19/06 <b>ARC 5237B</b>	First Floor North Conference Room 800 Lincoln Way Ames, Iowa	August 10, 2006 10 a.m. (If requested)
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

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

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

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

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]  
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]  
   Agricultural Development Authority[25]  
   Soil Conservation Division[27]  
 ATTORNEY GENERAL[61]  
 AUDITOR OF STATE[81]  
 BEEF INDUSTRY COUNCIL, IOWA[101]  
 BLIND, DEPARTMENT FOR THE[111]  
 CAPITAL INVESTMENT BOARD, IOWA[123]  
 CITIZENS’ AIDE[141]  
 CIVIL RIGHTS COMMISSION[161]  
 COMMERCE DEPARTMENT[181]  
   Alcoholic Beverages Division[185]  
   Banking Division[187]  
   Credit Union Division[189]  
   Insurance Division[191]  
   Professional Licensing and Regulation Division[193]  
     Accountancy Examining Board[193A]  
     Architectural Examining Board[193B]  
     Engineering and Land Surveying Examining Board[193C]  
     Landscape Architectural Examining Board[193D]  
     Real Estate Commission[193E]  
     Real Estate Appraiser Examining Board[193F]  
   Savings and Loan Division[197]  
   Utilities Division[199]  
 CORRECTIONS DEPARTMENT[201]  
   Parole Board[205]  
 CULTURAL AFFAIRS DEPARTMENT[221]  
   Arts Division[222]  
   Historical Division[223]  
 ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]  
   City Development Board[263]  
   Grow Iowa Values Board[264]  
   Iowa Finance Authority[265]  
 EDUCATION DEPARTMENT[281]  
   Educational Examiners Board[282]  
   College Student Aid Commission[283]  
   Higher Education Loan Authority[284]  
   Iowa Advance Funding Authority[285]  
   Libraries and Information Services Division[286]  
   Public Broadcasting Division[288]  
   School Budget Review Committee[289]  
 EGG COUNCIL, IOWA[301]  
 ELDER AFFAIRS DEPARTMENT[321]  
 EMPOWERMENT BOARD, IOWA[349]  
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]  
 EXECUTIVE COUNCIL[361]  
 FAIR BOARD[371]  
 HUMAN INVESTMENT COUNCIL[417]  
 HUMAN RIGHTS DEPARTMENT[421]  
   Community Action Agencies Division[427]  
   Criminal and Juvenile Justice Planning Division[428]  
   Deaf Services Division[429]  
   Persons With Disabilities Division[431]  
   Latino Affairs Division[433]  
   Status of African-Americans, Division on the[434]  
   Status of Women Division[435]  
 HUMAN SERVICES DEPARTMENT[441]

INSPECTIONS AND APPEALS DEPARTMENT[481]  
    Employment Appeal Board[486]  
    Foster Care Review Board[489]  
    Racing and Gaming Commission[491]  
    State Public Defender[493]  
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]  
LAW ENFORCEMENT ACADEMY[501]  
LIVESTOCK HEALTH ADVISORY COUNCIL[521]  
LOTTERY AUTHORITY, IOWA[531]  
MANAGEMENT DEPARTMENT[541]  
    Appeal Board, State[543]  
    City Finance Committee[545]  
    County Finance Committee[547]  
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]  
NATURAL RESOURCES DEPARTMENT[561]  
    Energy and Geological Resources Division[565]  
    Environmental Protection Commission[567]  
    Natural Resource Commission[571]  
    Preserves, State Advisory Board for[575]  
PETROLEUM UNDERGROUND STORAGE TANK FUND  
    BOARD, IOWA COMPREHENSIVE[591]  
PREVENTION OF DISABILITIES POLICY COUNCIL[597]  
PUBLIC DEFENSE DEPARTMENT[601]  
    Homeland Security and Emergency Management Division[605]  
    Military Division[611]  
PUBLIC EMPLOYMENT RELATIONS BOARD[621]  
PUBLIC HEALTH DEPARTMENT[641]  
    Professional Licensure Division[645]  
    Dental Examiners Board[650]  
    Medical Examiners Board[653]  
    Nursing Board[655]  
    Pharmacy Examiners Board[657]  
PUBLIC SAFETY DEPARTMENT[661]  
RECORDS COMMISSION[671]  
REGENTS BOARD[681]  
    Archaeologist[685]  
REVENUE DEPARTMENT[701]  
SECRETARY OF STATE[721]  
SEED CAPITAL CORPORATION, IOWA[727]  
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]  
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]  
TRANSPORTATION DEPARTMENT[761]  
    Railway Finance Authority[765]  
TREASURER OF STATE[781]  
TURKEY MARKETING COUNCIL, IOWA[787]  
UNIFORM STATE LAWS COMMISSION[791]  
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]  
VETERINARY MEDICINE BOARD[811]  
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]  
VOTER REGISTRATION COMMISSION[821]  
WORKFORCE DEVELOPMENT DEPARTMENT[871]  
    Labor Services Division[875]  
    Workers' Compensation Division[876]  
    Workforce Development Board and  
    Workforce Development Center Administration Division[877]

## ARC 5271B

### ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

#### 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 Supplement section 68B.32A as amended by 2006 Iowa Acts, House File 2512, section 2, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 1, “Iowa Ethics and Campaign Disclosure Board,” and Chapter 2, “Public Records and Fair Information Practices,” Iowa Administrative Code.

The proposed amendments reflect statutory amendments enacted by the 2006 General Assembly, remove unnecessary rules, and combine other rules. The proposed amendments also rewrite the current prohibition on the use of information on statements and reports filed with the Board and move the prohibition concerning public records from Chapter 1 to Chapter 2.

The proposed amendments do not contain a waiver provision as they implement statutory mandates.

Any interested party may make written comments on the proposed amendments on or before August 22, 2006. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

These amendments are intended to implement Iowa Code section 68B.32 as amended by 2006 Iowa Acts, House File 2512, section 1, and Iowa Code Supplement section 68B.32A as amended by 2006 Iowa Acts, House File 2512, sections 2, 3, and 4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Rescind rule 351—1.1(68A,68B) and adopt the following **new** rule in lieu thereof:

#### **351—1.1(68A,68B) General agency description.**

**1.1(1)** Board established. The Iowa ethics and campaign disclosure board is established as an independent agency of the executive branch of state government with the authority, powers, and duties set out in Iowa Code chapters 68A and 68B and Iowa Code section 8.7. The board is a “regulatory agency” as defined in Iowa Code section 68B.2(23).

**1.1(2)** Election of officers. On an annual basis at the board’s first meeting after April 30, the members shall elect a chair and vice chair and members may be reelected or elected to a different office.

**1.1(3)** Board meetings. Meetings of the board are held at the call of the chair or at the request of at least four members of the board. The chair sets the time, place, and date of the meetings except when a meeting is requested by at least four members of the board. Meetings shall be held in compliance with the open meeting requirements in Iowa

Code chapter 21. Minutes of meetings are available for viewing via the board’s Web site at [www.iowa.gov/ethics](http://www.iowa.gov/ethics). A person who wishes to be placed on the board agenda shall file an oral or written request with the board’s executive director at least 48 hours prior to the meeting.

**1.1(4)** Voting and procedure. Four board members constitute a quorum for conducting the business of the board. An affirmative vote of four board members is required for a motion to pass. The meetings shall be generally conducted according to rules of parliamentary procedure.

This rule is intended to implement Iowa Code section 68B.32 as amended by 2006 Iowa Acts, House File 2512, section 1, and Iowa Code Supplement section 68B.32A as amended by 2006 Iowa Acts, House File 2512, sections 2, 3, and 4.

ITEM 2. Rescind rule 351—1.4(68B) and adopt the following **new** rule in lieu thereof:

#### **351—1.4(68B) Board code of ethics.**

**1.4(1)** Making monetary and in-kind contributions to the committees of candidates for Iowa public office is prohibited. However, contributions to candidates for federal office are permitted since the board has no jurisdiction over federal candidates.

**1.4(2)** Serving as an officer or member of a candidate’s committee of a candidate for Iowa public office is prohibited, whether the service is volunteer or paid.

**1.4(3)** Making monetary or in-kind contributions to a political committee (PAC) is prohibited. However, contributions to a state party or a county central committee are permitted.

**1.4(4)** Running for or holding elected public office is prohibited. Running for or serving as an officer or member of any committee defined under Iowa Code chapter 68A is prohibited.

**1.4(5)** Public personal endorsement of a candidate or publicly taking a position in support of or opposition to a ballot issue is prohibited. This subrule does not prohibit a member of the board or staff from making a public personal endorsement of a federal candidate or a federal ballot issue since the board has no jurisdiction over federal candidates or federal ballot issues. Members and staff of the board may attend and participate in a presidential caucus.

**1.4(6)** Serving as a delegate to a county or state political party convention is prohibited.

**1.4(7)** Except due to service on the board, members of the board shall not be public officials or public employees.

**1.4(8)** Except due to service on the board, members of the board shall not be registered lobbyists in the state of Iowa.

**1.4(9)** As the board is defined as a “regulatory agency” under Iowa Code section 68B.2(23), members and staff of the board shall comply with the requirements of Iowa Code Supplement section 68B.4 as amended by 2006 Iowa Acts, House File 2593, section 2, and rule 351—6.11(68B) prior to selling or leasing goods or services to individuals, associations, or corporations subject to the board’s regulatory authority.

**1.4(10)** Members and staff of the board shall comply with all of the requirements in Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules adopted by the board.

**1.4(11)** The prohibitions in this rule shall not apply to the spouse or other family members of a board member or employee of the board. However, actions by a spouse or other family member may create a potential conflict of interest on the part of the board member or employee that may necessi-

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

tate recusal from a matter pursuant to Iowa Code section 68B.2A.

This rule is intended to implement Iowa Code section 68B.2A and section 68B.32 as amended by 2006 Iowa Acts, House File 2512, section 1.

ITEM 3. Rescind and reserve rules **351—1.5(22,68B)** through **351—1.7(68B)**.

ITEM 4. Adopt **new** rule 351—2.18(68B) as follows:

**351—2.18(68B) Use of information prohibited.** Pursuant to Iowa Code Supplement section 68B.32A(6) as amended by 2006 Iowa Acts, House File 2512, section 2, the information obtained from statements or reports filed with the board under Iowa Code chapter 68A, Iowa Code chapter 68B, Iowa Code section 8.7, or rules adopted by the board shall not be copied or otherwise used to solicit contributions or for any commercial purpose including soliciting any type of contribution or donation of money or something of monetary value, such as political or charitable contributions.

**2.18(1) Exceptions.** The following uses of information for solicitations are permissible:

a. Information used in newspapers, magazines, books, or other similar communications, so long as the principal purpose of such communications is not to solicit contributions or for other commercial purpose.

b. Solicitations by statutory political committees (state parties and county central committees).

**2.18(2) Sanctions.** Any person violating the provisions of this rule shall be subject to the board's complaint and disciplinary process set out in Iowa Code chapter 68B and the board's rules.

This rule is intended to implement Iowa Code Supplement section 68B.32A(6) as amended by 2006 Iowa Acts, House File 2512, section 2.

## ARC 5270B

### ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

#### 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 Supplement section 68B.32A as amended by 2006 Iowa Acts, House File 2512, section 2, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The proposed amendment corrects a citation to a recently renumbered rule.

The proposed amendment does not contain a waiver provision as no new obligation is being imposed.

Any interested party may make written comments on the proposed amendment on or before August 22, 2006. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite

1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code section 68A.402B.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule 4.21(5) as follows:

**4.21(5)** A committee that files a final disclosure report shall comply with the requirements of subrule 4.54(3) 4.55(5) concerning the filing of a final bank statement.

## ARC 5276B

### ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

#### 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 Supplement section 68B.32A as amended by 2006 Iowa Acts, House File 2512, section 2, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The campaign laws permit a candidate to use campaign funds to purchase tickets to a meal so long as the candidate's sole purpose in attending the event is to enhance the candidacy of any person. The Board's current rule places a \$25 cap on the cost of a ticket for the candidate and another \$25 for one guest. The Board believes this cap is not supported by the wording of the statute and the proposed amendment lifts the cap.

The proposed amendment does not contain a waiver provision as no new obligation is being imposed.

Any interested party may make written comments on the proposed amendment on or before August 22, 2006. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code sections 68A.301, 68A.302, and 68A.303.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind subrule **4.25(1)**, paragraph "h," and adopt the following **new** paragraph in lieu thereof:

h. The purchase of tickets to a meal for the candidate and one guest so long as the attendance at the meal by the candi-

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

date and guest is for the sole purpose of enhancing the candidacy of any person.

## ARC 5278B

### ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

#### 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 Supplement section 68B.32A as amended by 2006 Iowa Acts, House File 2512, section 2, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The proposed amendment reflects current Board policies concerning the resolution of published political material that does not contain a "paid for by" attribution.

The proposed amendment would be subject to the Board's general rules on waivers or variances in 351—Chapter 15.

Any interested party may make written comments on the proposed amendment on or before August 22, 2006. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code section 68A.405 and Iowa Code Supplement section 68B.32A(8) as amended by 2006 Iowa Acts, House File 2512, section 3.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule 351—4.41(68A,68B) as follows:

#### **351—4.41(68A,68B) Apparent violations; remedial action.**

**4.41(1)** Administrative resolution. In an effort to informally resolve apparent violations of the requirement to place a "paid for by" attribution statement, the board may order administrative resolution of the matter. The board may direct the person responsible for placing the original ~~political advertising or political material published political material~~ that did not include the attribution statement to place a correction advertisement notice in a local newspaper that reaches the same or substantially the same portion of the public that received the original ~~political advertising or political material published political material~~. ~~The correction advertisement shall not be placed in the classified section.~~ A person may also resolve a violation of the "paid for by" attribution statement by resending corrected *published political material* to the same portion of the public that received the original *published political material* and by filing a copy of the corrected material with the board.

**4.41(2)** Form of correction advertisement notice. The correction advertisement notice shall be in substantially the following form: "On (date) (describe the type of ~~political advertising or political material published political material~~) was distributed that did not state who paid for it. The (describe the type of ~~political advertising or political material published political material~~) was paid for by (insert name). Paid for by (insert correct attribution as set out in rule 351—4.38(68A,68B))."

**4.41(3)** Board notice. The board shall notify the person who paid for the original ~~political advertising or political material published political material~~ of the requirements of this rule. Notice shall include the direction to place the correction advertisement in a local newspaper that reaches the same or substantially the same portion of the public that received the initial ~~political advertising or political material~~, the appropriate language for the correction advertisement, and the time frame for placing the correction advertisement and submitting a copy of it to the board.

**4.41(4)** Refusal to place correction advertisement notice. If the person who paid for the original ~~political advertising or political material~~ fails to timely file a correction advertisement after board notice to do so, the board may initiate the contested case proceeding process. If after a contested case proceeding it is determined that the person paid for the original ~~political advertising or political material~~ and then failed to comply with the board's directive to place a correction advertisement, the board may impose any of the sanctions in Iowa Code section 68B.32D. *The board may initiate a contested case proceeding and impose discipline against any person who refuses to place a correction notice under this rule.*

This rule is intended to implement Iowa Code Supplement section 68A.405 and Iowa Code Supplement section 68B.32A(8) as amended by 2006 Iowa Acts, House File 2512, section 3.

## ARC 5277B

### ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

#### 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 Supplement section 68B.32A as amended by 2006 Iowa Acts, House File 2512, section 2, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The Board's current rules assess a civil penalty, subject to appeal, against a permanent organization that fails to file Form DR-OTC within ten days of making a contribution in excess of \$750. The proposed amendment establishes a procedure stipulating that, if the contribution is the first that a permanent organization has ever made, a penalty will be assessed if Form DR-OTC is not filed within ten days of notice by the Board. The permanent organization must disclose any subsequent contribution within ten days of making the con-

## ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

tribution; otherwise the permanent organization will be assessed a civil penalty.

The proposed amendment is subject to the waiver provision in rule 351—4.60(68B).

Any interested party may make written comments on the proposed amendment on or before August 22, 2006. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code Supplement section 68B.32A(8) as amended by 2006 Iowa Acts, House File 2512, section 3.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind subrule 4.59(8) and adopt the following **new** subrule in lieu thereof:

**4.59(8)** Form DR-OTC assessment. A permanent organization that has not previously made a contribution in excess of \$750 and that fails to file Form DR-OTC within ten days of notice to do so by the board shall be assessed a \$20 civil penalty. A permanent organization that has previously made a contribution in excess of \$750 and that fails to file Form DR-OTC within ten days of the date on which the contribution check is issued shall be assessed a \$20 civil penalty.

**ARC 5268B****ETHICS AND CAMPAIGN  
DISCLOSURE BOARD, IOWA[351]****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 Supplement section 68B.32A as amended by 2006 Iowa Acts, House File 2512, section 2, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 5, “Use of Public Resources for a Political Purpose,” Iowa Administrative Code.

The proposed amendment reflects current Board policy of notifying the regulated community and the public that certain statutes outside of the Board's jurisdiction prohibit persons who hold certain government positions from engaging in political activities. The Board often receives questions or complaints concerning these statutes, and this notification will assist the public and the regulated community.

The proposed amendment does not contain a waiver provision as no new obligation is being imposed.

Any interested party may make written comments on the proposed amendment on or before August 22, 2006. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code section 68A.505.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Adopt **new** rule 351—5.8(68A) as follows:

**351—5.8(68A) Holders of certain government positions prohibited from engaging in political activities.** Several statutes outside of the board's jurisdiction prohibit the holders of certain government positions from being engaged in political activities. The board does not enforce these statutory prohibitions. However, to assist the regulated community and the public, the board will maintain on its Web site at <http://www.state.ia.us/ethics/index.htm> a list of positions that are prohibited from engaging in political activities.

This rule is intended to implement Iowa Code section 68A.505.

**ARC 5269B****ETHICS AND CAMPAIGN  
DISCLOSURE BOARD, IOWA[351]****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 Supplement section 68B.32A as amended by 2006 Iowa Acts, House File 2512, section 2, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 6, “Executive Branch Ethics,” Iowa Administrative Code.

The proposed amendment reflects the statutory amendment enacted by the 2006 General Assembly that adds “lease” to the requirement that an official or employee of a regulatory agency obtain consent prior to selling goods or services subject to the regulatory authority of the official's or employee's agency. The proposed amendment also reflects the Board's policy of permitting a regulatory agency to file a blanket consent to cover a class of sales or leases.

The proposed amendment contains a waiver provision.

Any interested party may make written comments on the proposed amendment on or before August 22, 2006. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code Supplement section 68B.4 as amended by 2006 Iowa Acts, House File 2593, section 2.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

## ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

The following amendment is proposed.

Amend rule 351—6.11(68B) as follows:

**351—6.11(68B) Sales or leases by regulatory agency officials or employees.** An official or employee of a regulatory agency shall not directly or indirectly sell *or lease* any goods or services to individuals, associations, or corporations subject to the regulatory authority of the official's or employee's agency except as provided by Iowa Code Supplement section 68B.4 *as amended by 2006 Iowa Acts, House File 2593, section 2*, and this rule. This prohibition does not apply to sales *or leases* that are part of the official's or employee's state duties.

**6.11(1) Applicability.** Pursuant to Iowa Code Supplement section 68B.4 *as amended by 2006 Iowa Acts, House File 2593, section 2*, the board shall adopt rules specifying the method by which an official or employee of a regulatory agency may obtain consent to sell *or lease* a good or service to an individual, association, or corporation subject to the regulatory authority of the official's or employee's agency. This rule sets out the method of obtaining consent by a regulatory agency official or employee.

**6.11(2)** No change.

**6.11(3) Request for consent.** An official's or employee's request for an agency's consent to the sale *or lease* of goods or services shall comply with all of the following:

a. The request shall be in writing and shall be filed with the official's or employee's agency at least 20 calendar days in advance of the proposed sale *or lease* of any goods or services.

b. The request shall include all of the following:

- (1) The name of the individual, association, or corporation to which the goods or services are to be sold *or leased*;
- (2) The relationship of the individual, association, or corporation to the agency;
- (3) A description of the goods or services;
- (4) The date or dates that the goods or services will be delivered; and
- (5) A statement by the official or employee explaining how the proposed sale *or lease* of the goods or services will not violate the provisions of Iowa Code Supplement section 68B.4 *as amended by 2006 Iowa Acts, House File 2593, section 2*, or create a conflict of interest under Iowa Code section 68B.2A.

**6.11(4) Agency guidelines.** Iowa Code Supplement section 68B.4 *as amended by 2006 Iowa Acts, House File 2593, section 2*, and the guidelines in this subrule shall be the sole legal authorities to be used by an agency in considering the granting of consent. In determining whether to grant consent, the agency shall take the following guidelines into consideration:

a. The official or employee *seeking consent* is not the person with the authority to determine whether consent should be granted.

b. The duties and functions performed by the official or employee seeking consent are not related to the regulatory authority of the agency over the individual, association, or corporation to which the goods or services will be sold *or leased*.

c. The selling *or leasing* of the goods or services does not affect the official's or employee's duties or functions at the agency.

d. The selling *or leasing* of the goods or services will not cause the official or employee to advocate on behalf of the individual, association, or corporation to the agency.

e. The selling *or leasing* of the goods or services does not cause the official or employee to sell *or lease* goods or services to the agency on behalf of the individual, association, or corporation.

f. Selling *or leasing* of the goods or services will not result in a conflict of interest as provided in Iowa Code section 68B.2A.

g. The request complies with the procedural requirements of subrule 6.11(3).

h. A regulatory agency may grant blanket consent for sales *or leases* to classes of individuals, associations, or persons when such blanket consent is consistent with subrule 6.11(4) and the granting of single consents is impractical or impossible to determine.

These guidelines shall be publicized and made known to all personnel throughout the agency.

**6.11(5)** No change.

**6.11(6) Appeal of denial.** An official or employee who receives a denial or conditional consent may file a request with the board for a contested case proceeding pursuant to 351—Chapter 11 for a determination of whether the situation described in the request complies with the requirements of Iowa Code section 68B.2A, Iowa Code Supplement section 68B.4 *as amended by 2006 Iowa Acts, House File 2593, section 2*, and this rule. The final order of the board constitutes final agency action for purposes of seeking judicial review.

**6.11(7) Copy of consent filed with board.** Pursuant to Iowa Code Supplement section 68B.4 *as amended by 2006 Iowa Acts, House File 2593, section 2*, an agency granting consent shall file a copy of the consent with the board within 20 days of consent being granted ~~the granting of consent~~. The board shall treat the consent as a public record. The failure to provide a copy of the consent may result in the imposition of board sanctions against the individual who granted the consent.

**6.11(8)** No change.

This rule is intended to implement Iowa Code Supplement section 68B.4 *as amended by 2006 Iowa Acts, House File 2593, section 2*.

**ARC 5266B**

## ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

### 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 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 6, “Executive Branch Ethics,” Iowa Administrative Code.

The proposed amendment reflects the statutory amendment enacted by the 2006 General Assembly that adds “leases” to the prohibition on a member of the Governor’s Office from selling goods or services to a lobbyist or a person that employs a lobbyist without complying with the proper procedure and obtaining consent. The proposed amendment

## ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

also includes a blanket consent provision to permit the Governor's Office to approve a class of sales or leases.

The proposed amendment contains a waiver provision.

Any interested party may make written comments on the proposed amendment on or before August 22, 2006. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code Supplement section 68B.4B as amended by 2006 Iowa Acts, House File 2593, section 3.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule 351—6.12(68B) as follows:

**351—6.12(68B) Sales or leases by members of the office of the governor.** A permanent full-time member of the office of the governor shall not directly or indirectly sell or lease any goods or services to registered lobbyists before the general assembly or the executive branch or to individuals, associations, or corporations that employ persons who are registered lobbyists before the general assembly or the executive branch except as provided in Iowa Code Supplement section 68B.4B as amended by 2005 Iowa Acts, House File 253, section 4 2006 Iowa Acts, House File 2593, section 3, and this rule. This prohibition does not apply to sales or leases that are part of the member's state duties.

**6.12(1) Request for consent.** A request submitted by a member of the office of the governor for consent to sell or lease goods or services shall comply with all of the following:

a. The request shall be in writing and shall be filed at least 20 calendar days in advance of the proposed sale or lease of any goods or services with the person responsible for hiring or approving the hiring of the member.

b. The request shall include all of the following:

(1) The name of the lobbyist, individual, association, or corporation to which the goods or services are to be sold or leased;

(2) The relationship of the lobbyist, individual, association, or corporation to the office of the governor;

(3) A description of the goods or services;

(4) The date or dates that the goods or services will be delivered; and

(5) A statement by the member explaining how the proposed sale or lease of the goods or services will not violate the provisions of Iowa Code Supplement section 68B.4B as amended by 2005 Iowa Acts, House File 253, section 4 2006 Iowa Acts, House File 2593, section 3, or create a conflict of interest under Iowa Code section 68B.2A.

**6.12(2) Guidelines for granting consent.** In determining whether to grant consent, the person responsible for hiring or approving the hiring of the member shall take the following guidelines into consideration:

a. The duties and functions performed by the member are not related to the authority of the office of the governor over the lobbyist, individual, association, or corporation.

b. The selling or leasing of goods or services by the member to the lobbyist, individual, association, or corporation does not affect the member's duties or functions at the office of the governor.

c. The selling or leasing of any goods or services by the member to a lobbyist, individual, association, or corporation does not include lobbying the office of the governor.

d. The selling or leasing of any goods or services by the member does not cause the member to sell or lease goods or services to the office of the governor on behalf of the lobbyist, individual, association, or corporation.

e. The selling or leasing of the goods or services will not result in a conflict of interest as provided in Iowa Code section 68B.2A.

f. The request complies with the procedural requirements of subrule 6.12(1).

g. A blanket consent may be granted for sales or leases to classes of lobbyists, individuals, associations, or corporations when such blanket consent is consistent with subrule 6.12(2) and the granting of single consents is impractical or impossible to determine.

These guidelines shall be publicized and made known to members of the office of the governor.

**6.12(3) No change.**

**6.12(4) Appeal of denial.** A member who receives a denial may file a request with the board for a contested case proceeding pursuant to 351—Chapter 11 for a determination of whether the situation described in the request complies with the requirements of Iowa Code section 68B.2A, Iowa Code Supplement section 68B.4B as amended by 2005 Iowa Acts, House File 253, section 4 2006 Iowa Acts, House File 2593, section 3, and this rule. The final order of the board constitutes final agency action for purposes of seeking judicial review.

**6.12(5) Copy of consent filed with board.** Pursuant to Iowa Code Supplement section 68B.4B as amended by 2005 Iowa Acts, House File 253, section 4 2006 Iowa Acts, House File 2593, section 3, a copy of the consent granted to a member shall be filed with the board within 20 days of the granting of consent. The board shall treat the consent as a public record. The failure to provide a copy of the consent may result in the imposition of board sanctions against the person who granted the consent.

**6.12(6) No change.**

This rule is intended to implement Iowa Code Supplement section 68B.4B as amended by 2005 Iowa Acts, House File 253, section 4 2006 Iowa Acts, House File 2593, section 3.

**ARC 5267B**

## ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

### 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 Supplement section 68B.32A as amended by 2006 Iowa Acts, House File 2512, section 2, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 9, “Complaint, Investigation, and Resolution Procedures,” Iowa Administrative Code.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

The proposed amendment reflects the statutory amendment by the 2006 General Assembly that directs the Board to impose discipline for violations of Iowa Code Supplement section 8.7.

The proposed amendment does not contain a waiver provision, but penalties imposed for violations of Iowa Code Supplement section 8.7 would be subject to appeal.

Any interested party may make written comments on the proposed amendment on or before August 22, 2006. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code Supplement section 68B.32A(8) as amended by 2006 Iowa Acts, House File 2512, section 3.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule 351—9.3(68B) as follows:

**351—9.3(68B) Grounds for disciplinary action.** The board may impose discipline against a person subject to the board's jurisdiction who commits a violation of Iowa Code Supplement chapter 68A, or Iowa Code chapter 68B, Iowa Code Supplement section 8.7, or rules adopted under either chapter by the board.

*This rule is intended to implement Iowa Code Supplement section 68B.32A(8) as amended by 2006 Iowa Acts, House File 2512, section 3.*

**ARC 5283B**

**HUMAN SERVICES DEPARTMENT[441]**

**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 249A.4, the Department of Human Services proposes to amend Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

This amendment adjusts the premiums assessed for the Medicaid for Employed People With Disabilities (MEPD) coverage group. Iowa Code section 249A.3, subsection 2, paragraph "a," specifies that the maximum premium payable by a person in this group whose income exceeds 150 percent of the federal poverty level shall be based on the average cost to the state for state employees' health insurance. The Iowa State Plan for Medical Assistance, approved by the federal Centers for Medicare and Medicaid Services as a condition of federal funding, provides that the maximum premium shall be equal to 7.5 percent of the person's gross income.

The cost of state employees' health insurance changed effective January 2006; therefore, a corresponding change is being made in the premiums for MEPD. All premium amounts increase by 4.97 percent. This change raises the

current maximum premium amount from \$422 per month to \$443 per month and maintains a sliding premium scale.

Because the federal poverty level has increased at a lower rate than the cost of state employee health insurance, the top of the new premium scale ends at a higher percentage of the federal poverty level. This change is necessary to keep the maximum premium at 7.5 percent of income. The Department has chosen to expand the five highest federal poverty level increments in the premium scale to absorb this change rather than reassign new federal poverty levels throughout the premium scale. Increasing the federal poverty level increments only at the high end of the premium scale could give an advantage to the persons who have a higher income; but in actuality, MEPD members are not in that income range. Most MEPD participants pay premiums at the lower end of the premium scale.

This amendment does not provide for waivers in specific situations because all members should be subject to the same premium collection activity based on similar income tests. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before August 23, 2006. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

This amendment is intended to implement Iowa Code section 249A.3, subsection 2, paragraph "a."

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subparagraph **75.1(39)"b"(1)** as follows:

(1) Premiums shall be assessed as follows:

IF THE INCOME OF THE ELIGIBLE INDIVIDUAL IS ABOVE:	THE MONTHLY PREMIUM IS:
150% of Federal Poverty Level	\$27 \$28
178% of Federal Poverty Level	\$50 \$52
206% of Federal Poverty Level	\$74 \$78
234% of Federal Poverty Level	\$96 \$101
262% of Federal Poverty Level	\$120 \$126
290% of Federal Poverty Level	\$144 \$151
318% of Federal Poverty Level	\$167 \$175
346% of Federal Poverty Level	\$192 \$202
374% of Federal Poverty Level	\$214 \$225
402% of Federal Poverty Level	\$238 \$250
430% of Federal Poverty Level	\$262 \$275
<del>485%</del> 489% of Federal Poverty Level	\$292 \$307
<del>540%</del> 548% of Federal Poverty Level	\$325 \$341
<del>595%</del> 607% of Federal Poverty Level	\$356 \$374
<del>650%</del> 666% of Federal Poverty Level	\$387 \$406
<del>705%</del> 725% of Federal Poverty Level	\$422 \$443

**ARC 5285B****HUMAN SERVICES  
DEPARTMENT[441]****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 249A.4, the Department of Human Services proposes to amend Chapter 76, “Application and Investigation,” Iowa Administrative Code.

The Department proposes to revise subrule 76.12(7) to clarify Medicaid estate recovery policy when a person under the age of 55 enters a nursing facility, an intermediate care facility for the mentally retarded, or a mental health institute. The Department makes a presumption that the person will not return home, which means that the person’s remaining assets at the time of death will be subject to estate recovery. There is a provision for rebutting this presumption or for no estate recovery if the person returns to the community in less than six months.

The subrule as currently written is confusing and redundant. Additionally, the agency named in the rules to make the determination on whether a person in a facility can return home is now included in the Iowa Medicaid Enterprise. That reference and some Iowa Code citations need to be updated. The word “recipient” has been replaced with “member” to denote someone who is eligible for medical assistance to follow the terminology used by the Iowa Medicaid Enterprise.

Any interested person may make written comments on the proposed amendment on or before August 23, 2006. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

This amendment is intended to implement Iowa Code section 249A.5, subsection 2.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Rescind subrule 76.12(7) and insert the following **new** subrule in lieu thereof:

**76.12(7)** Estate recovery. Medical assistance is subject to recovery from the estate of a Medicaid member, the estate of the member’s surviving spouse, or the estate of the member’s surviving child as provided in this subrule. All assets included in the estate of the member, the surviving spouse, or the surviving child are subject to probate for the purposes of medical assistance estate recovery pursuant to Iowa Code section 249A.5(2)“d.” The classification of the debt is defined at Iowa Code section 633.425(7).

a. Definition of estate. For the purpose of this subrule, the “estate” of a Medicaid member, a surviving spouse, or a surviving child shall include all real property, personal property, or any other asset in which the member, spouse, or sur-

living child had any legal title or interest at the time of death, or at the time a child reaches the age of 21, to the extent of that interest. An estate includes, but is not limited to, interest in jointly held property, retained life estates, and interests in trusts.

b. Debt due for member 55 years of age or older. Receipt of medical assistance when a member is 55 years of age or older creates a debt due to the department from the member’s estate upon the member’s death for all medical assistance provided on the member’s behalf on or after July 1, 1994.

c. Debt due for member under the age of 55 in a medical institution.

(1) Receipt of medical assistance creates a debt due to the department from the member’s estate upon the member’s death for all medical assistance provided on the member’s behalf on or after July 1, 1994, when the member:

1. Is under the age of 55; and
2. Is a resident of a nursing facility, an intermediate care facility for the mentally retarded, or a mental health institute; and
3. Cannot reasonably be expected to be discharged and return home.

(2) If the member is discharged from the facility and returns home before staying six consecutive months, no debt will be assessed for medical assistance payments made on the member’s behalf for the time in the institution.

(3) If the member remains in the facility for six consecutive months or longer or dies before staying six consecutive months, the department shall presume that the member cannot or could not reasonably be expected to be discharged and return home and a debt due shall be established. The department shall notify the member of the presumption and the establishment of a debt due.

d. Request for a determination of ability to return home. Upon receipt of a notice of the establishment of a debt due based on the presumption that the member cannot return home, the member or someone acting on the member’s behalf may request that the department determine whether the member can or could reasonably have been expected to return home.

(1) When a written request is made within 30 days of the notice that a debt due will be established, no debt due shall be established until the department has made a decision on the member’s ability to return home. If the determination is that there is or was no ability to return home, a debt due shall be established for all medical assistance as of the date of entry into the institution.

(2) When a written request is made more than 30 days after the notice that a debt due will be established, a debt due will be established for medical assistance provided before the request even if the determination is that the member can or could have returned home.

e. Determination of ability to return home. When the member or someone acting on the member’s behalf requests that the department determine if the member can or could have returned home, the determination shall be made by the Iowa Medicaid enterprise (IME) medical services unit.

(1) The IME medical services unit cannot make a determination until the member has been in an institution at least six months or after the death of the member, whichever is earlier. The IME medical services unit will notify the member or the member’s representative and the department of the determination.

(2) If the determination is that the member can or could return home, the IME medical services unit shall establish the date the return is expected or could have been expected to occur.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) If the determination is that the member cannot or could not return home, a debt due will be established unless the member or the member's representative asks for a reconsideration of the decision. The IME medical services unit will notify the member or the member's representative and the department of the reconsideration decision.

(4) If the reconsideration decision is that the member cannot or could not return home, a debt due will be established against the member unless the decision is appealed pursuant to 441—Chapter 7. The appeal decision will determine the final outcome for the establishment of a debt due and the period when the debt is established.

f. Waiving the collection of the debt.

(1) The department shall waive the collection of the debt created under this subrule from the estate of the member to the extent that collection of the debt would result in either of the following:

1. Reduction in the amount received from the member's estate by a surviving spouse or by a surviving child who is under the age of 21, blind, or permanently and totally disabled at the time of the member's death.

2. Creation of an undue hardship for the person seeking a waiver of estate recovery. Undue hardship exists when total household income is less than 200 percent of the poverty level for a household of the same size, total household resources do not exceed \$10,000, and application of estate recovery would result in deprivation of food, clothing, shelter, or medical care such that life or health would be endangered. For this purpose, "income" and "resources" shall be defined as under the family medical assistance program.

(2) To apply for a waiver of estate recovery due to undue hardship, the person shall provide a written statement and supporting verification to the department within 30 days of the notice of estate recovery pursuant to Iowa Code section 633.425.

(3) The department shall determine whether undue hardship exists on a case-by-case basis. Appeals of adverse decisions regarding an undue hardship determination may be filed in accordance with 441—Chapter 7.

g. Amount waived. If collection of all or part of a debt is waived pursuant to paragraph "e," to the extent that the person received the member's estate, the amount waived shall be a debt due from the following:

(1) The estate of the member's surviving spouse, upon the death of the spouse.

(2) The estate of the member's surviving child who is blind or has a disability, upon the death of the child.

(3) A surviving child who was under 21 years of age at the time of the member's death, when the child reaches the age of 21.

(4) The estate of a surviving child who was under 21 years of age at the time of the member's death, if the child dies before reaching the age of 21.

(5) The hardship waiver recipient, when the hardship no longer exists.

(6) The estate of the recipient of the undue hardship waiver, at the time of death of the hardship waiver recipient.

h. Impact of asset disregard on debt due. The estate of a member who is eligible for medical assistance under 441—subrule 75.5(5) shall not be subject to a claim for medical assistance paid on the member's behalf up to the amount of the assets disregarded by asset disregard. Medical assistance paid on behalf of the member before these conditions shall be recovered from the estate, regardless of the member's having purchased precertified or approved insurance.

i. Interest on debt. Interest shall accrue on a debt due under this subrule at the rate provided pursuant to Iowa Code

section 535.3, beginning six months after the death of a Medicaid member, the surviving spouse, or the surviving child, or upon the child's reaching the age of 21.

j. Reimbursement to county. If a county reimburses the department for medical assistance provided under this subrule and the amount of medical assistance is subsequently repaid through a medical assistance income trust or a medical assistance special needs trust as defined in Iowa Code Supplement chapter 633C, the department shall reimburse the county on a proportionate basis.

**ARC 5284B****HUMAN SERVICES  
DEPARTMENT[441]****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 249A.4, the Department of Human Services proposes to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

These amendments add Medicaid coverage of certain prescription and nonprescription smoking cessation drugs. This coverage change is mandated by 2005 Iowa Acts, chapter 175, section 9, subsection 12. The estimated cost is approximately \$1.46 to \$2.24 million per fiscal year.

The Department considered recommendations by the Drug Utilization Review Commission and the Pharmaceutical and Therapeutics Committee in making the coverage decision. After careful consideration of all the facts, the Department decided to limit the nicotine replacement product coverage to:

- Generic bupropion sustained-release products that are FDA-indicated for smoking cessation; and
- Over-the-counter nicotine replacement patches and gum, with prior authorization.

This decision was based on:

- A comprehensive review of best practices and scientific clinical literature; and
- A rational and cost-effective approach to the addition of a new category of drug coverage.

Nicotine patches and gum will be covered with a prior authorization for members who are 18 years of age or older and have a diagnosis of nicotine dependence and confirmation of enrollment in the Quitline Iowa program for counseling. The maximum allowed duration of therapy will be 12 weeks per 12-month period.

Generic bupropion sustained-release products that are FDA-indicated for smoking cessation, which are not available over the counter, will be available without prior authorization.

These amendments do not provide for waivers in specific situations because they confer a benefit by adding Medicaid coverage of smoking cessation drugs. The Department has an exception to policy procedure that could be pursued if a recipient would feel unduly penalized by this change.

Any interested person may make written comments on the proposed amendments on or before August 23, 2006. Com-

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may also be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code section 249A.4 and 2005 Iowa Acts, chapter 175, section 9, subsection 12.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subparagraph **78.1(2)“a”(2)**, numbered paragraph **“4,”** as follows:

4. Drugs used to promote smoking cessation (*except generic bupropion sustained-release products that are FDA-indicated for smoking cessation*).

ITEM 2. Amend subparagraph **78.1(2)“f”(1)** by adding the following two **new** nonprescription drugs in alphabetical order:

Nicotine gum 2 mg, 4 mg

Nicotine patch 7 mg/day, 14 mg/day and 21 mg/day

**ARC 5282B****HUMAN SERVICES  
DEPARTMENT[441]****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 234.6 and 249A.4 and 2006 Iowa Acts, House File 2780, section 18, the Department of Human Services proposes to amend Chapter 88, “Managed Health Care Providers,” and Chapter 153, “Funding for Local Services,” Iowa Administrative Code.

The General Assembly in 2006 Iowa Acts, House File 2780, division III, mandated that the Department change the administration of the State Payment Program from the current method that uses the Iowa Plan for some members and the Department local offices for others to administration by the county central point of coordination (CPC) administrators. The amendments implement these changes in Chapter 153, Division IV, “State Payment Program for Services to Adults with Mental Illness, Mental Retardation, and Developmental Disabilities,” and in Chapter 88, Division IV, “Iowa Plan for Behavioral Health.”

Currently, all State Payment Program members are assigned to a Department worker and apply through the Department for annual eligibility reviews and other actions. Under these amendments, people seeking State Payment Program services will apply to the county CPC as any county residents would do, and their cases will be reviewed by the county CPC as are those of other county residents. State Payment Program members who have had their mental health services preauthorized and claims paid by Magellan will no longer be

required to use this process. They and those members who had their claims paid by the Department will now have their claims paid by the county CPC as do other county residents.

Under the provisions of 2006 Iowa Acts, House File 2780, division III, section 19, most of the Department's State Payment Program appropriation will be allocated to counties. The Department, in consultation with the Legislative Services Agency, is to develop a methodology for distributing to the counties the funding appropriated for the fiscal year beginning July 1, 2006, for county residents who receive State Payment Program services and other support on and after October 1, 2006.

The Department is to meet with each county before September 1, 2006, to determine the amounts needed for each county to fund state case services and other support for county residents from October 1, 2006, to July 1, 2007, taking into consideration the difference between county reimbursement rates and the capped reimbursement rates paid by the state. If the aggregate of the amounts determined for each county exceeds the base funding amount, the Department shall retain responsibility for the costs of state case services and supports through June 30, 2007.

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

These amendments were also Adopted and Filed Without Notice and are published herein as **ARC 5288B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before August 23, 2006. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code sections 234.6 and 249A.4 and 2006 Iowa Acts, House File 2780, division III.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

**ARC 5261B****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 57, “Residential Care Facilities,” Chapter 58, “Nursing Facilities,” Chapter 62, “Residential Care Facilities for Persons with Mental Illness (RCF/PMI),” Chapter 63, “Resi-

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

dential Care Facilities for the Mentally Retarded,” Chapter 64, “Intermediate Care Facilities for the Mentally Retarded,” and Chapter 65, “Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI),” Iowa Administrative Code.

This proposed rule making removes from the various chapters confusing and inconsistent language concerning death records of residents. The term “death record” is interpreted by many, including the Iowa Department of Public Health, to mean “death certificate.” A death certificate may be completed only by a licensed physician or medical examiner upon the death of an individual. Additionally, language found at paragraph 58.15(2)“j” requires that under certain circumstances a nursing facility obtain a copy of a resident’s death certificate and maintain it in the resident’s medical record.

The Department does not believe it is necessary for a nursing facility to obtain a death certificate for a deceased resident. Rather, notations should be made in the resident’s records indicating the time and date of death of the resident, the circumstances of the resident’s death, such as the resident’s physical condition and vital signs, the disposition of the resident’s body, and the date and time that the resident’s family and physician were notified of the resident’s death. Such notations in the resident’s record are sufficient to document a resident’s death, without requiring that a copy of the death certificate be obtained.

Item 5 corrects an omission from the rules governing intermediate care facilities for the mentally retarded by adding a new rule regarding resident records, including language concerning resident death records. Adoption of the proposed rule would make record requirements in Chapter 64 consistent with those for all regulated long-term care facilities.

The Department has determined that the proposed amendments will have no fiscal impact on any individual or regulated entity. Rather, adoption of the proposed amendments will simplify the record-keeping activities for many regulated entities and eliminate a costly and burdensome requirement. Consistency in the new language will further provide that all regulated long-term care facilities are treated equally and fairly. The proposed amendments do not contain a waiver provision as they confer a benefit to certain regulated facilities and provide consistency to all regulated facilities in the application of the Department’s administrative rules.

The proposed amendments were presented to the State Board of Health for initial review at the Board’s July 12, 2006, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before August 22, 2006. Such written material should be directed to the Director, Iowa Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail may be sent to [david.werning@dia.state.ia.us](mailto:david.werning@dia.state.ia.us).

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135C.14.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **57.16(1)**, paragraph “s,” as follows:

s. ~~In the event of the death of a resident, a death record shall be completed, including the physician’s signature and disposition of the body. A notation shall be made on the resi-~~

~~dent record of the notification of the family In the event of a resident’s death, notations in the resident’s record shall include the date and time of the resident’s death, the circumstances of the resident’s death, the disposition of the resident’s body, and the date and time that the resident’s family and physician were notified of the resident’s death; (III)~~

ITEM 2. Amend subrule **58.15(2)**, paragraph “j,” as follows:

j. ~~Death record. In the event of a resident’s death, notations in the resident’s record shall include the date and time of the resident’s death, circumstances of the resident’s death, the disposition of the resident’s body, and the date and time that the resident’s family and physician were notified of the resident’s death; (III)~~

~~(1) The death record shall include name, age, sex, and race of deceased; date and time of death; physician’s name, address, and signature; immediate cause of death; name and address of relative or legal representative notified of death; name, address, and signature of mortician receiving the body. (III)~~

~~(2) If the physician does not sign the death record, a copy of the death certificate shall be obtained by the facility as soon as it becomes available and made a part of the resident’s medical record retained by the facility; (III)~~

ITEM 3. Amend subrule **62.18(1)**, paragraph “p,” as follows:

p. ~~In the event of the death of a resident, a death record shall be completed, including the physician’s signature and disposition of the body. A notation shall be made on the resident’s record of the notification of family and, as appropriate, the agency of financial responsibility In the event of a resident’s death, notations in the resident’s record shall include the date and time of the resident’s death, the circumstances of the resident’s death, the disposition of the resident’s body, and the date and time that the resident’s family and physician were notified of the resident’s death; (III)~~

ITEM 4. Amend subrule **63.17(1)**, paragraph “s,” as follows:

s. ~~In the event of the death of a resident, a death record shall be completed, including the physician’s signature and disposition of the body. A notation shall be made on the resident’s record of the notification of family and, as appropriate, the agency of financial responsibility In the event of a resident’s death, notations in the resident’s record shall include the date and time of the resident’s death, the circumstances of the resident’s death, the disposition of the resident’s body, and the date and time that the resident’s family and physician were notified of the resident’s death; (III)~~

ITEM 5. Amend 481—Chapter 64 by adding the following **new** rule:

**481—64.18(135C) Records.**

**64.18(1)** Resident record. The licensee shall keep a permanent record about each resident, with all entries current, dated, and signed. (II) The record shall include:

- a. Name and previous address of resident; (III)
- b. Birth date, sex, and marital status of resident; (III)
- c. Church affiliation of resident; (III)
- d. Physician’s name, telephone number, and address; (III)
- e. Dentist’s name, telephone number, and address; (III)
- f. Name, address, and telephone number of resident’s next of kin or legal representative; (III)
- g. Name, address, and telephone number of the person to be notified in case of emergency; (III)
- h. Funeral director’s telephone number and address; (III)

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

i. Pharmacy's name, telephone number and address; (III)

j. Certification by the physician that the resident requires no higher level of care than the facility is licensed to provide; (III)

k. Physician's orders for medication and treatments in writing, which shall be signed by the physician quarterly, and diet orders, which shall be renewed yearly; (III)

l. A notation of the resident's yearly or other visits to physician or other professionals and all consultation reports and progress notes; (III)

m. Documentation describing any change in the resident's condition; (II, III)

n. A notation describing the resident's condition on admission, transfer, and discharge; (III)

o. In the event of a resident's death, notations in the resident's record shall include the date and time of the resident's death, the circumstances of the resident's death, the disposition of the resident's body, and the date and time that the resident's family and physician were notified of the resident's death; (III)

p. A copy of instructions given to the resident, the resident's legal representative, or receiving facility in the event of the resident's discharge or transfer; (III) and

q. Disposition of personal property. (III)

**64.18(2)** Confidentiality of resident records. The facility shall have policies and procedures providing that each resident shall be ensured confidential treatment of all information, including information contained in an automated data bank. The resident's or the resident's legal guardian's written informed consent shall be required for the release of information to persons not otherwise authorized under law to receive it. (II)

A release of information form shall be used which includes to whom the information shall be released, the reason for the release of the information, how the information is to be used, and the period of time for which the release is in effect. A third party not requesting the release shall witness the signing of the release of information form. (II)

a. The facility shall limit access to any resident records to staff and consultants providing professional service to the resident. Information shall be made available to staff only to the extent that the information is relevant to the staff person's responsibilities and duties. (II)

Only those personnel concerned with financial affairs of the residents may have access to the financial information. This paragraph is not meant to preclude access by representatives of state or federal regulatory agencies. (II)

b. The resident, or the resident's legal guardian, shall be entitled to examine all information and shall have the right to secure full copies of the record at reasonable cost upon request, unless the physician or qualified mental health professional determines the disclosure of the record or certain information contained in the record is contraindicated in which case the information will be deleted before the record is made available to the resident. This determination and the reasons for it must be documented in the resident's record by the physician or qualified mental health professional in collaboration with the resident's interdisciplinary team. (II)

**64.18(3)** Incident records. Each facility shall maintain an incident record report and shall have available incident report forms. (II, III)

a. The report of every incident shall be in detail on a printed incident report form. (II, III)

b. The person in charge at the time of the incident shall oversee the preparation of the report and sign the report. (III)

c. The facility shall maintain a copy of the incident report as part of the facility's administrative records and shall make the record available for review. (III)

**64.18(4)** Retention of records. A resident's records shall be retained in the facility for five years following termination of services to the resident even when there is a change of ownership of the facility. (III)

When the facility ceases to operate, the resident's records shall be released to the receiving facility. If no transfer occurs, the records shall be released to the resident's physician. (III)

ITEM 6. Amend subrule **65.20(1)**, paragraph "p," as follows:

~~p. In the event of the death of a resident, a death record shall be completed, including the physician's signature and disposition of the body. A notation shall be made on the resident's record of the notification of family.~~ *In the event of a resident's death, notations in the resident's record shall include the date and time of the resident's death, the circumstances of the resident's death, the disposition of the resident's body, and the date and time that the resident's family and physician were notified of the resident's death;* (III)

**ARC 5260B****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 64, "Intermediate Care Facilities for the Mentally Retarded," Iowa Administrative Code.

The proposed amendment corrects an error in the rule pertaining to contractual services for which facilities may receive reimbursement from the state Medical Assistance Program. The current rule states that facilities shall hold open a resident's bed for at least 18 days per year. The proposed amendment changes the number of days a resident's bed may be held open to at least 30 days per year and further provides that either a physician or a qualified mental retardation professional may authorize a resident's temporary absence from the facility. These changes are consistent with the procedures used by the Medical Assistance Program.

The State Board of Health reviewed the proposed amendment at its July 12, 2006, meeting.

Any interested person may make written suggestions or comments on the proposed amendment on or before August 22, 2006. Such written materials should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail should be sent to [david.werning@dia.state.ia.us](mailto:david.werning@dia.state.ia.us).

This amendment is intended to implement Iowa Code sections 10A.104(5) and 135C.14.

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

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule **64.17(7)**, paragraph "**b**," as follows:

b. If a resident has a temporary absence from a facility for therapeutic reasons as approved by a physician or *qualified mental retardation professional*, the facility shall ask if the resident or responsible party ~~if they wish~~ *wishes that* the bed *be* held open. This *request* shall be documented in the resident's record, including the response. The bed shall be held open at least ~~48~~ *30* days per year, and the facility shall receive payment for the absent periods in accordance with the provisions of the contract. The required holding during temporary absences for therapeutic reasons is limited to ~~48~~ *30* days per year. (II)

**ARC 5280B****INSURANCE DIVISION[191]****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 2004 Iowa Acts, chapter 1104, the Insurance Division hereby gives Notice of Intended Action to rescind Chapter 55, "Iowa Business Opportunity Sales Act," Iowa Administrative Code.

2004 Iowa Acts, chapter 1104, sections 4 to 31, rescinded the Iowa Code chapter 523B registration requirements and transferred administration of the only remaining filing requirement, service of process, from the Insurance Division to the Iowa Secretary of State, effective July 1, 2004.

Any interested person may make written suggestions or comments on this proposed amendment on or before August 22, 2006. Such written materials should be directed to Dennis Britson, Securities and Regulated Industries Bureau, Iowa Insurance Division, 340 Maple Street, Des Moines, Iowa 50319-0066; fax (515)281-3059; E-mail [dennis.britson@iid.state.ia.us](mailto:dennis.britson@iid.state.ia.us). Persons who wish to convey their views orally should contact the Securities and Regulated Industries Bureau at (515)281-4441 or at the Securities and Regulated Industries Bureau offices at 340 Maple Street.

The Division has determined that this amendment will have no fiscal impact and no impact on small business.

No waiver provision is included in this amendment because the procedure is necessitated by the statutory amendments to Iowa Code chapter 523B, which has been recodified as Iowa Code chapter 551A.

This amendment is intended to implement 2004 Iowa Acts, chapter 1104, section 31.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind and reserve **191—Chapter 55**.

**ARC 5279B****INSURANCE DIVISION[191]****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 505.8, the Insurance Division hereby gives Notice of Intended Action to adopt new Chapter 93, "Conduit Derivative Transactions," Iowa Administrative Code.

This new chapter provides standards for aggregated derivative transactions among affiliates in an insurance company holding system, provides standards for conduit derivative transactions between a conduit and external qualified counterparties, and defines which aggregated derivative transactions and conduit derivative transactions are not subject to the notification requirements in Iowa Code section 521A.5(1).

This new chapter does not contain a waiver provision. The Insurance Division has previously adopted a general waiver provision in 191—Chapter 4.

A public hearing will be held at the offices of the Insurance Division at 10 a.m. on August 23, 2006. The Division is located at 330 Maple Street, Des Moines, Iowa 50319. 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 new chapter.

Any person who intends to be in attendance at the public hearing and who requires special accommodations should contact the Division at (515)281-5705.

Any interested person may make written comments on the proposed new chapter on or before August 22, 2006. Written comments may be sent to Kim Cross at the address listed above. Comments may also be submitted via facsimile to (515)281-3059 or electronically to [kim.cross@iid.state.ia.us](mailto:kim.cross@iid.state.ia.us).

These rules are intended to implement Iowa Code sections 511.8(22)"b," 521A.2(1)"c" and 521A.2(3)"d" as amended by 2006 Iowa Acts, Senate File 2364.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Adopt **new** 191—Chapter 93 as follows:

**CHAPTER 93****CONDUIT DERIVATIVE TRANSACTIONS**

**191—93.1(511,521A) Purposes.** The purposes of these rules are to set standards for aggregated derivative transactions among affiliates in an insurance company holding system, to set standards for conduit derivative transactions between a conduit and external qualified counterparties, and to define which aggregated derivative transactions and conduit

## INSURANCE DIVISION[191](cont'd)

derivative transactions are not subject to the provisions of Iowa Code section 521A.5(1)“b,” “c”(3), and “e.”

**191—93.2(511,521A) Definitions.** For purposes of this chapter, the following definitions shall apply:

“Affiliate,” or “affiliate of” a specific person, means a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

“Aggregated derivative transaction” means a derivative transaction entered into between any affiliate within an insurance holding company system and a conduit, which transaction may be aggregated by the conduit with other derivative transactions between the conduit and other affiliates within the insurance holding company system and replicated by the conduit with qualified counterparties. An aggregated derivative transaction does not include an individual derivative transaction between an insurer and a conduit subject to Iowa Code section 521A.5(1)“b.”

“Conduit” means a corporation, limited liability company, partnership or other similar form of business organization within an insurance holding company system which engages in the business of conduit derivative transactions.

“Conduit derivative transaction” means a derivative transaction entered into between a conduit and a qualified counterparty that is not within the conduit’s insurance holding company system and that replicates one or more aggregated derivative transactions.

“Control” means the same as defined in Iowa Code section 521A.1(3).

“Custodian bank” means the same as defined in Iowa Code section 511.8(21)“a”(2).

“Derivative” means an agreement, option, instrument, or any series or combination of agreements, options, or instruments that provides for either of the following:

1. To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu of such delivery or relinquishment; or

2. Which has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

“Derivative” includes options, warrants not attached to another financial instrument, caps, floors, collars, swaps, forwards, futures and any other agreements, options or instruments substantially similar thereto or any series or combination thereof.

“Derivative transaction” means a transaction based upon a derivative.

“Insurance holding company system” means the same as defined in Iowa Code section 521A.1(5).

“Person” means the same as defined in Iowa Code section 521A.1(7).

“Qualified counterparty” means:

1. A qualified exchange;
2. A transaction entered into with, or guaranteed by, a business entity with an investment grade rating by the National Association of Insurance Commissioners (NAIC) Securities and Valuation Office or by a majority of nationally recognized statistical rating organizations (NRSRO), on the NAIC/NRSRO list, that rate the business entity;
3. A qualified foreign exchange; or
4. A derivative instrument issued or written by, or entered into with, the issuer of the underlying interest on which the derivative instrument is based.

“Qualified exchange” means the same as defined in rule 191—49.2(511).

“Qualified foreign exchange” means the same as defined in rule 191—49.2(511).

**191—93.3(511,521A) Provisions not applicable.**

**93.3(1)** Iowa Code section 521A.5(1)“b” shall not be applicable to an aggregated derivative transaction or to a conduit derivative transaction that complies with this chapter.

**93.3(2)** Iowa Code section 521A.5(1)“c”(3) shall not be applicable to an aggregated derivative transaction or to a conduit derivative transaction that complies with this chapter.

**93.3(3)** Iowa Code section 521A.5(1)“e” shall not be applicable to an aggregated derivative transaction or to a conduit derivative transaction that complies with this chapter.

**191—93.4(511,521A) Standards for conduit derivative transactions.**

**93.4(1) Documentation.** The conduit shall maintain documentation and records relating to each conduit derivative transaction that shall include, but not be limited to, documentation setting forth:

- a. The purpose or purposes of the transaction;
- b. The specific derivative instrument used in the transaction;
- c. For over-the-counter derivative instrument transactions, the name of the counterparty and the counterparty exposure amount calculated not less than quarterly; and
- d. For exchange traded derivative instruments, the name of the exchange and the name of the firm that handled the trade.

**93.4(2) Trading requirements.** Each derivative that is the subject of a conduit derivative transaction shall be entered into with a qualified counterparty.

**191—93.5(511,521A) Internal controls.**

**93.5(1)** Before engaging in an aggregated derivative transaction or a conduit derivative transaction, the conduit shall have established written guidelines that shall be used for effecting and maintaining such transactions.

**93.5(2)** The guidelines shall:

- a. Address investment or, if applicable, underwriting objectives, risk constraints, and the factors considered in establishing risk constraints such as credit risk limits;
- b. Address permissible transactions and the relationship of those transactions to the conduit’s operations, such as a precise identification of the risks being hedged by a derivative transaction;
- c. Set forth a credit risk management system for over-the-counter derivative transactions that measures credit risk exposure using the counterparty exposure; and
- d. Require:
  - (1) Compliance with internal control procedures;
  - (2) That the board of directors of the conduit shall approve the guidelines and determine whether the conduit has adequate professional personnel, technical expertise and systems to implement investment practices involving derivatives;
  - (3) That only the board of directors of the conduit or its authorized designee may approve derivative instrument transactions;
  - (4) That the board of directors of the conduit or its designee exercise administrative oversight of trading functions;
  - (5) Periodic reporting of open positions to a responsible officer designated by the board of directors of the conduit; and

## INSURANCE DIVISION[191](cont'd)

(6) That the reports set forth in rule 191—93.6(511, 521A) be filed with the Iowa insurance commissioner as required.

**191—93.6(511,521A) Reporting requirements for conduit derivative transactions.**

**93.6(1)** Reporting frequency. The conduit shall report conduit derivative transaction activities quarterly to the Iowa insurance commissioner.

**93.6(2)** Contents of reports. The conduit shall report conduit derivative transaction activities consistent with Schedule DB reporting requirements as prescribed by the accounting practices and procedures manual of the National Association of Insurance Commissioners.

**191—93.7(511,521A) Conduit ownership.** A conduit shall be wholly owned within the insurance holding company system that utilizes the conduit for aggregated derivative transactions and conduit derivative transactions.

These rules are intended to implement Iowa Code sections 511.8(22)“b,” 521A.2(1)“c” and 521A.2(3)“d” as amended by 2006 Iowa Acts, Senate File 2364.

**ARC 5293B****IOWA FINANCE AUTHORITY[265]****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 17A.3(1)“b,” 16.5(15), 16.5(17), 16.91(7), 16.91(8) and 16.93, the Iowa Finance Authority hereby gives Notice of Intended Action to amend Chapter 9, “Title Guaranty Division,” Iowa Administrative Code.

The purpose of these amendments is to establish procedures and requirements for closing protection letters and to establish procedures for suspension of termination of division participants. Rule 265—9.22(16) is added to implement Iowa Code section 16.93, which authorizes the issuance of closing protection letters. Rule 265—9.23(16) is added to allow the division board and, in some cases, the division director, to suspend or terminate a participant’s ability to act as a participating attorney, abstractor, or division closer.

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on August 22, 2006. Comments should be addressed to Mark Thompson, Iowa Finance Authority, 100 East Grand, Suite 250, Des Moines, Iowa 50309. Comments may be faxed to Mark Thompson at (515)242-4957 or E-mailed to [mark\\_thompson@iowa.gov](mailto:mark_thompson@iowa.gov). Persons who wish to comment orally should contact Mark Thompson at (515)242-4990.

Chapter 9 does not provide for waivers, except for the waiver of the requirements imposed by Iowa Code section 16.91(5). Persons seeking waivers from the rules contained in Chapter 9 may petition the Authority for a waiver in the manner set forth under Chapter 18.

These amendments are intended to implement Iowa Code sections 16.5(15), 16.5(17), 16.91(8), and 16.93.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be

available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Adopt the following **new** rule 265—9.22(16):

**265—9.22(16) Closing protection letters.**

**9.22(1)** Definitions. The following words and phrases, when used in this rule and in the program requirements, applications and instructions adopted by the division board pursuant thereto, shall have the meaning set forth below unless inconsistent with the manifest intent or the context of the rules:

“Certificate” means division certificate, including any part or schedule thereof and any endorsements thereto.

“Closing protection letter” means an agreement by the division to indemnify a lender for loss caused by a division closer’s theft of settlement funds or failure to comply with written closing instructions relating to title certificate coverage when agreed to by the division closer.

“Commitment” means division commitment to guarantee title, including any part or schedule thereof and any endorsements thereto.

“Division” means title guaranty division, a division of the Iowa finance authority.

“Division board” means the board of the title guaranty division created pursuant to Iowa Code section 16.2(1).

“Division closer” means a participating attorney or participating abstractor who is currently authorized by the division to close division commitments under protection of a closing protection letter.

“Division closing” means a settlement in which a division closer is appointed to finalize a real estate transaction in accordance with general and specific instructions prior to disbursement of the loan proceeds and for which a closing protection letter is issued.

“Division escrow disbursement trust account” or “division trust account” means, in conjunction with division closings, escrows, settlements, and title indemnities, any checking account utilized for the purpose of handling:

1. Deposits including, but not limited to, the acceptance of incoming funds from the lender or borrower or both; and
2. Disbursements including, but not limited to, sellers’ proceeds, mortgage payoffs, expenses of sale, and professional fees.

“Form” or “forms” means printed instruments used in guaranteeing title to Iowa real estate that, when completed and executed, create contractual obligations or rights affecting the division.

“Participant” means a participating attorney or participating abstractor in good standing with the division.

**9.22(2)** Issuance of closing protection letters. Division closers may be authorized to receive a closing protection letter when:

- a. The division board has approved a closing protection letter program, recommended by the division, which may be revised from time to time by the division upon approval of the division board.
- b. A division closer has completed division forms and procedures training.
- c. The division director has approved the participant’s application.
- d. A division commitment is issued by the closer utilizing the procedures as set forth in the division manual, instructions and forms.

## IOWA FINANCE AUTHORITY[265](cont'd)

**9.22(3)** Effective date of program. A participant may apply to the division to act as a division closer and be authorized to receive closing protection letters for acts or omissions by the closer occurring on or after November 1, 2006.

**9.22(4)** Application. Application for designation of division closer status shall be on forms provided by the division, and all requested information shall be provided on or with the application form. The division may consider an application withdrawn if it does not contain all of the information required and the information is not submitted to the division within 30 days after the division requests the information. The application shall be accompanied by a fee to be set by the division board.

**9.22(5)** The division board may adopt program guidelines and application requirements such as indemnity agreements, criminal background checks, and insurance requirements.

**9.22(6)** Authority of division closer.

a. A division closer is authorized to conduct division closings and issue commitments and certificates only for the purposes and in the manner set forth in the closer's participating agreement, the Code of Iowa, these rules, manuals, requirements and any other written or oral instructions given by the division and in no other manner whatsoever. The authority of the division closer under the preceding sentence is not exclusive and is subject to the rights of the authority, the division and other division closers or participants of the division to transact the business of guaranteeing titles to real estate in Iowa and is further subject to the right of the division to appoint other division closers and participants.

b. A division closer shall obtain the written authorization of the division's legal staff prior to issuing a commitment or certificate which exceeds such amounts as the division board may set from time to time by resolution. If any authorization required under this rule is not obtained through the act or omission of the division closer, the division closer shall be strictly liable to the division for any loss or damage resulting from issuance of the commitment or certificate.

c. Only the duly authorized division closer may execute commitments, certificates, escrow instructions, settlement statements and any other documentation relating to a title guaranty division closing.

**9.22(7)** Division trust accounts. The division board shall approve procedures and requirements for the maintenance of division trust accounts. Division closers shall comply with the rules and requirements set by the division board with respect to the procedures, format, and style for maintaining the division trust accounts. The division board may require the division closer to provide an irrevocable letter of direction to the institution at which each division trust account is established, authorizing the division to review and audit the institutions' records of such account at any such time that the division, in its discretion, deems necessary.

**9.22(8)** Division forms. The division will provide division forms to a division closer for use in conducting division closings and issuing division commitments, certificates, and endorsements. A division closer shall not change preprinted portions of the division forms without the division's prior written authorization. A division closer shall not use a form supplied by another person or entity to bind the division, or otherwise bind the division to liability with a form, other writing or representation not supplied or authorized by the division, and any attempt to do so shall be ineffective.

**9.22(9)** Title/closing files. A division closer shall maintain files in such a manner that information pertaining to closings and issuance of division commitments, certificates, and endorsements is readily available to the division. A division

closer shall maintain title files and the title portion of client files for a period of ten years after the effective date of the certificate(s).

**9.22(10)** Training. The division director may require a division closer and the division closer staff to attend training sessions or continuing education seminars as deemed necessary by the division director in order to ensure compliance with division procedures.

**9.22(11)** Office audits.

a. In accordance with subrule 9.12(2), the division may, with or without notice to a division closer, audit the division closer at the division closer's office. This audit may include a review of the division closer's division trust account(s) and closing procedures, including verification of the division closer's compliance with division rules, participation agreements, manuals, and any other written or oral instructions given by the division.

b. The division may, with or without notice, audit the division closer's division trust account(s).

c. Procedures for audits shall be conducted pursuant to standards and procedures approved by the division board.

ITEM 2. Adopt the following new rule 265—9.23(16):

**265—9.23(16) Procedure for suspension or termination of participant.**

**9.23(1)** Grounds for suspension or termination. A participant's status as participating attorney, participating abstractor or division closer may be terminated or suspended, or the participant may be reprimanded for conduct that, in the opinion of the division director, is detrimental to the division's welfare, reputation or efficient operation including, but not limited to, the following:

a. Negligent or intentional omission of an act within a division transaction on the part of the participant or participant staff that gives rise to actual or potential monetary loss or other damage to the division.

b. Any felony conviction or any conviction involving theft of funds or fraud of any type by the participant or participant staff.

c. Any cause that would constitute a ground for revocation or suspension of a participating attorney's license to practice law in any state in which the participating attorney is licensed; the participating attorney's ceasing to be licensed in the full-time practice of law in Iowa; or the participating attorney's ceasing to be engaged in the full-time practice of law.

d. Failure to timely record conveyance or mortgage documents.

e. Failure to follow division rules, training manuals, instructions or division decisions or any other performance requirements as may be determined and set forth from time to time by the division including, but not limited to:

(1) Failure to follow procedures set forth by division rules and training manuals, or other instructions regarding waiving or clearing of title exceptions.

(2) Charging unauthorized division fees.

(3) Failure to cooperate with the division in the investigation and resolution of claims under commitments or certificates issued by the division.

(4) Failure to timely surrender forms and certificates under the division director's invocation of paragraph 9.6(2)"f" and subrule 9.22(6).

(5) Providing an abstract, title opinion, commitment, certificate or closing on property in which the participant or staff has a direct or indirect interest or liability, without receiving prior written approval from the division.

## IOWA FINANCE AUTHORITY[265](cont'd)

(6) Failure of the division closer to follow closing instructions including, but not limited to, failure to thoroughly and competently issue commitments or certificates in a timely manner as directed by the proposed guaranteed and otherwise in compliance with division requirements.

**9.23(2) Investigation and action.** The division director may cause an investigation to be made of complaints relative to the performance of a participant that alleges facts indicating the existence of one or more of the grounds specified in subrule 9.23(1). If the division director concludes that one or more of the grounds specified in subrule 9.23(1) are applicable to a participant, after giving written notice of the violations alleged and of the sanctions recommended, the division director shall have the authority to initiate a review before the division board to temporarily suspend, indefinitely suspend, or terminate the participant's privileges under this chapter including, but not limited to, providing of abstracts and title opinions for division use, issuance of commitments and certificates, and the right to receive closing protection letters for division closings.

**9.23(3) Right to review.**

a. Except as provided in subrule 9.23(5), suspension or termination of any participant's privileges under this chapter including, but not limited to, providing abstracts and title opinions for division use, issuance of commitments and certificates, and the right to receive closing protection letters for division closings, shall not be made effective by the division director until the participant has had an opportunity to examine the written allegations against the participant and to present a defense in a meeting before the division board.

b. The participant may present additional evidence, including the testimony of witnesses, to refute the allegations presented by the division director.

c. If the participant does not make a personal appearance before the division board regarding the written allegations and recommended sanctions, the division board may proceed to make a decision based on the allegations and the supporting information submitted with said allegations.

**9.23(4) Review by division board.** The division board, upon an affirmative vote of a majority of the appointed members, may:

a. Make a finding in favor of the participant and direct the return of unused forms to the applicant, if unused forms had previously been surrendered to the division under subrule 9.23(5).

b. Reprimand and censure the participant.

c. Temporarily suspend the participant's status as a participating attorney, participating abstractor or division closer including, but not limited to, the right to provide abstracts and title opinions for division use, the right to issue commitments and certificates, and the right to receive closing protection letters for division closings.

d. Indefinitely suspend the participant's status as a participating attorney, participating abstractor or division closer including, but not limited to, the right to provide abstracts and title opinions for division use, the right to issue commitments and certificates, and the right to receive closing protection letters for division closings.

e. Impose such other limitations deemed appropriate, either alone or in conjunction with sanctions under paragraph 9.23(4) "a," "b," "c" or "d" including, but not limited to, the right of a participant to provide abstracts and title opinions for division use, to issue commitments and certificates, and to receive closing protection letters for division closings.

f. Permanently terminate the participant's status as a participating attorney, participating abstractor or division

closer including, but not limited to, the right to provide abstracts and title opinions for division use, the right to issue commitments and certificates, and the right to receive closing protection letters for division closings.

**9.23(5) Immediate suspension.** The division director may determine that in light of the seriousness of the allegations contained in the written notice, it would be in the best interest of the division to suspend a participant at any stage, commencing with the investigation and concluding with the division board meeting. In such case, the division director may cause demand to be made upon the participant for surrender of any and all unissued title guaranty forms in the participant's possession, and the participant shall surrender them immediately upon demand.

**9.23(6)** The decision of the division board shall be final agency action.

## ARC 5289B

### IOWA FINANCE AUTHORITY[265]

#### 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 17A.3(1) "b" and 16.5(17), the Iowa Finance Authority proposes to amend Chapter 12, "Low-Income Housing Tax Credits," Iowa Administrative Code.

The purpose of these amendments is to update and replace the current compliance manual for all low-income housing tax credit projects monitored by the Authority for compliance with IRC Section 42. The compliance manual is incorporated by reference in rule 12.3(16).

The compliance manual is a reference guide for compliance monitoring of the Low-Income Housing Tax Credit Program. Copies of the compliance manual are available upon request from the Authority and are available electronically on the Authority's Web site at [www.ifahome.com](http://www.ifahome.com). It is the Authority's intent to incorporate the new compliance manual by reference consistent with Iowa Code chapter 17A and 265—subrules 17.4(2) and 17.12(2).

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority's general rules concerning waivers.

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on August 22, 2006. Comments may be addressed to Tim Waddell, Tax Credit Manager, Iowa Finance Authority, 100 East Grand Avenue, Suite 250, Des Moines, Iowa 50309. Comments may also be faxed to Tim Waddell at (515)242-4957 or E-mailed to [tim.waddell@ifa.state.ia.us](mailto:tim.waddell@ifa.state.ia.us).

The Authority will hold a public hearing on August 22, 2006, to receive public comments on these amendments. The public hearing will be held from 9 to 11 a.m. at the Iowa State Library, Ola Babcock Miller Building, 3rd Floor, East 12th and Grand Avenue, Des Moines, Iowa, telephone (515)281-4316; public participation will also be available via the Iowa Communications Network (ICN) from remote locations to be announced no later than August 1, 2006, via the Authority's Web site ([www.ifahome.com](http://www.ifahome.com)).

## IOWA FINANCE AUTHORITY[265](cont'd)

The Authority anticipates that it may make changes to the compliance manual based on comments received from the public.

These amendments are intended to implement Iowa Code sections 16.52, 17A.12, and 17A.16 and IRC Section 42.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 265—12.3(16) as follows:

**265—12.3(16) Compliance manual.** The compliance manual for all low-income housing tax credit projects monitored by the authority for compliance with IRC Section 42, effective ~~December 6, 2000~~ *November 1, 2006*, is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

ITEM 2. Amend rule 265—12.4(16) as follows:

**265—12.4(16) Location of copies of the manual.** The compliance manual can be reviewed and copied in its entirety on the authority's Web site at <http://www.ifahome.com>. Copies of the compliance manual shall be deposited with the administrative rules coordinator and at the state law library. The compliance manual incorporates by reference IRC Section 42 and the regulations in effect as of ~~December 6, 2000~~ *November 1, 2006*. Additionally, the compliance manual incorporates by reference Iowa Code section 16.52. These documents are available from the state law library, and links to these statutes, regulations and rules are on the authority's Web site. Copies are available from the authority upon request at ~~no charge cost~~.

## ARC 5292B

## IOWA FINANCE AUTHORITY[265]

## 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 17A.3(1)“b,” 16.5(15), 16.5(17), and 16.183, the Iowa Finance Authority hereby gives Notice of Intended Action to amend Chapter 21, “Home and Community-Based Services Revolving Loan Program,” Iowa Administrative Code.

The purpose of these amendments is to implement Iowa Code section 16.183 as amended by 2006 Iowa Acts, House File 2734, section 34, which adds health and wellness, health screening, and nutritional assessments to the specific community-based services whose development and expansion the Authority shall seek to assist. The proposed amendments reflect that directive and set forth certain criteria that must be met by projects in order to be eligible for assistance under the Home and Community-Based Services Revolving Loan Program with respect to each of the added program areas.

Chapter 21 does not provide for waivers. Persons seeking waivers from the rules contained in Chapter 21 may petition

the Authority for a waiver in the manner set forth under Chapter 18.

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on August 22, 2006. Comments should be addressed to Mark Thompson, Iowa Finance Authority, 100 East Grand, Suite 250, Des Moines, Iowa 50309. Comments may be faxed to Mark Thompson at (515)242-4957 or E-mailed to [mark.thompson@iowa.gov](mailto:mark.thompson@iowa.gov). Persons who wish to comment orally should contact Mark Thompson at (515)242-4990.

These amendments are intended to implement Iowa Code section 16.5(17) and section 16.183 as amended by 2006 Iowa Acts, House File 2734, section 34.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 265—21.1(16) as follows:

**265—21.1(16) Purpose.** Through its home and community-based services revolving loan program (program), the authority seeks to assist in the development and expansion of specific community-based services (adult day services, respite services, ~~and~~ *congregate meals, health and wellness, health screening, and nutritional assessments*) that will allow older persons of low income to remain in their homes. This chapter implements 2004 Iowa Acts, ~~Senate File 2298, section 171, which adds Iowa Code section 16.183 to the authority's enabling statute~~ *Iowa Code section 16.183 as amended by 2006 Iowa Acts, House File 2734, section 34*, and furthers the goals specified in Iowa Code section 231.3.

ITEM 2. Amend rule 265—21.3(16) as follows:

**265—21.3(16) Intent of the authority.** It is the authority's intent to allow maximum discretion and flexibility to be used by those applying for assistance under this program, and to allow discretion and flexibility to be used by the authority in its analysis and awarding of assistance under this program. It is the position of the authority that such discretion and flexibility are essential to structuring transactions that will serve to develop and expand facilities and infrastructure that provide adult day services, respite services, ~~and~~ *congregate meals, and programming space for health and wellness, health screening, and nutritional assessments* that address the needs of persons with low incomes in a manner that best serves the citizens of the state.

ITEM 3. Amend subrule 21.5(1) by adding **new** paragraphs “d” through “f” and relettering existing paragraphs “d” through “g” as “g” through “j” as follows:

d. *In the case of programming space for health and wellness, the program must:*

(1) *Adopt research-based practices to prevent disease and improve overall wellness, resulting in measurable outcomes for participants;*

(2) *Provide educational opportunities on disease prevention, physical activity, and nutritional choices; and*

(3) *Establish a service fee that is affordable to those with incomes at or below 40 percent of AMI for the county in which the property is located, or agree to adjust fees based on a person's ability to pay.*

e. *In the case of programming space for health screening, the program must:*

## IOWA FINANCE AUTHORITY[265](cont'd)

(1) Use a licensed health care professional to provide screening and assessment services within the limits of the professional's license;

(2) Provide services to underserved people in the community; and

(3) Establish a service fee that is affordable to those with incomes at or below 40 percent of AMI for the county in which the property is located, or agree to adjust fees based on a person's ability to pay.

f. In the case of programming space for nutritional assessments, the program must:

(1) Use a registered dietitian to provide assessment and counseling services;

(2) Establish a service fee that is affordable to those with incomes at or below 40 percent of AMI for the county in which the property is located, or agree to adjust fees based on a person's ability to pay; and

(3) Accept third-party reimbursement for nutritional counseling, including one or both of the following:

1. Medicaid 1915(c) waiver(s) and meet the standards set forth in human services department rules in 441—Chapters 77 and 78;

2. The Older Americans Act, 42 U.S.C. § 3001 et seq., and meet the standards set forth in elder affairs department rules in 321—Chapter 7.

¶ g. A demonstrated market need for the project must exist and the project must be in a good location, both as determined by the authority in its sole discretion.

¶ h. Assistance provided under this program must enable the project to maintain financial feasibility and affordability for at least the term of the loan.

¶ i. Maintenance and debt service reserve funds must be adequately funded, as determined by the authority in its sole discretion.

¶ j. Programs shall comply with all applicable federal, state and local laws and rules related to the specified service or services offered by the sponsor.

ITEM 4. Amend **265—Chapter 21**, implementation clause, as follows:

These rules are intended to implement Iowa Code section 16.5(17) and 2004 Iowa Acts, Senate File 2298, section 171 and section 16.183 as amended by 2006 Iowa Acts, House File 2734, section 34.

## ARC 5265B

### MEDICAL EXAMINERS BOARD[653]

#### 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 147.76 and 272C.3, the Board of Medical Examiners hereby proposes to amend Chapter 8, “Fees,” Chapter 9, “Permanent Physician Licensure,” and Chapter 10, “Resident, Special and Temporary Physician Licensure,” Iowa Administrative Code.

The proposed amendments address which physicians need an Iowa medical license to practice in Iowa and which ones do not. The definition of “incidentally called into this state in consultation with a physician and surgeon licensed in this state” is clarified.

Rules concerning the current two types of temporary licenses (i.e., those for urgent need and those for educational purposes) are eliminated and supplanted with rules that allow temporary licenses for more reasons, i.e., for Board-approved activities set forth in the proposed amendments. The Board will have more discretion in granting temporary licenses. An expert physician who comes into Iowa to demonstrate to or proctor physicians who are learning procedures will be required to have a temporary Iowa license if any hands-on patient care is or could be involved or if the expert physician guides an Iowa physician in how to perform patient care when a patient is involved. The fee for a temporary license is reduced to encourage physicians who should have a temporary Iowa license to obtain one.

Board-approved activities, eligibility for a temporary license, the application review process and the temporary license application cycle are described for M.D.s and D.O.s who do or do not have a medical license in another United States jurisdiction. The process is simplified for those who have a license in good standing in another United States jurisdiction. A license will no longer be required for a visiting resident physician enrolled in an out-of-state resident training program if the visiting resident physician holds a resident or permanent medical license in good standing in the home state of the resident training program, provides medical care in Iowa as a part of the resident training program, and is under the supervision of an Iowa-licensed physician. If the visiting resident physician does not hold a medical license in good standing in the home state of the resident training program, a resident or permanent physician license in Iowa is required for the visiting resident to provide medical care in Iowa. A physician participating in further medical education in Iowa will not be required to have an Iowa license to provide patient care as long as the physician is under the supervision of the Iowa-licensed physician. A camp physician who serves without remuneration other than for expenses is exempt from paying temporary licensure fees.

The Board approved the proposed amendments to Chapters 8, 9 and 10 during its regularly held meeting on June 22, 2006.

Any interested person may present written comments on these proposed amendments not later than 4:30 p.m. on August 22, 2006. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686, or sent by E-mail to [ann.mowery@iowa.gov](mailto:ann.mowery@iowa.gov).

There will be a public hearing on August 22, 2006, at 3 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners' office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapters 147, 148, 150, 150A, and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 8.4(4) as follows:

## MEDICAL EXAMINERS BOARD[653](cont'd)

**8.4(4)** Fees for temporary physician licensure. For *provisions for temporary physician licensure*, see 653—Chapter 10, “Resident, Special and Temporary Physician Licensure.” The following fees apply to temporary physician licensure.

- a. Application for a temporary physician license, \$200 \$100 plus the fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.
- b. Renewal of a temporary physician license, \$100 \$50.

ITEM 2. Amend rule **653—9.1(147,148,150,150A)** by rescinding the definition of “incidentally called into this state in consultation with a physician and surgeon licensed in this state” and inserting the following **new** definition in lieu thereof:

“Incidentally called into this state in consultation with a physician and surgeon licensed in this state” as set forth in Iowa Code section 148.2(5) means all of the following shall be true:

1. The consulting physician shall be involved in the care of patients in Iowa only at the request of an Iowa-licensed physician.
2. The consulting physician has a license in good standing in another United States jurisdiction.
3. The consulting physician provides expertise and acts in an advisory capacity to an Iowa-licensed physician. The consulting physician may examine the patient and advise an Iowa-licensed physician as to the care that should be provided, but the consulting physician may not personally perform procedures, write orders, or prescribe for the patient.
4. The consulting physician practices in Iowa for a period not greater than 10 consecutive days and not more than 20 total days in any calendar year. Any portion of a day counts as one day.
5. The Iowa-licensed physician requesting the consultation retains the primary responsibility for the management of the patient’s care.

ITEM 3. Amend subrule 9.2(2) as follows:

**9.2(2)** Licensure not required. The following persons are not required to obtain a license to practice in Iowa:

- a. to c. No change.
- d. Physicians and surgeons who hold a current, active license in good standing in another United States jurisdiction and who come to Iowa to participate in ~~continuing~~ further medical education may participate in patient care under the request *and supervision* of the *patient’s* Iowa-licensed physician in charge of the ~~continuing education program~~ *education*. The Iowa-licensed physician shall retain the primary responsibility for management of ~~patients’~~ *the patient’s* care.
- e. and f. No change.
- g. *Physicians and surgeons who come to Iowa to observe patient care and who do not provide or direct hands-on patient care.*
- h. *Visiting resident physicians who come to Iowa to practice as part of their resident training program if under the supervision of an Iowa-licensed physician. An Iowa physician license is not required of a physician in training if the physician has a resident or permanent license in good standing in the home state of the resident training program. An Iowa temporary license is required of a physician in training if the physician does not hold a resident or permanent physician license in good standing in the home state of the resident training program (see rule 653—10.5(147,148,150,150A)).*

ITEM 4. Amend rule **653—10.1(147,148,150,150A)** as follows:

Add the following **new** definition in alphabetical order:

“Board-approved activity” means one of the following activities:

1. Covering for an Iowa-licensed physician who unexpectedly is unavailable to provide medical care to the physician’s patients;
2. Demonstrating or proctoring that involves providing hands-on patient care to patients in Iowa;
3. Conducting a procedure on a patient in Iowa when the consultant’s expertise in the procedure is greater than that of the Iowa-licensed physician who requested the procedure;
4. Providing medical care to patients in Iowa, if the physician is enrolled in an out-of-state resident training program and does not hold a resident or permanent license in the home state of the resident training program;
5. Serving as a camp physician;
6. Participating as a learner in a program of further medical education that allows hands-on patient care when the physician does not currently hold a license in good standing in any United States jurisdiction; or
7. Any other activity approved by the board.

Rescind the definition of “incidentally called into this state in consultation with a physician and surgeon licensed in this state” and insert the following **new** definition in lieu thereof:

“Incidentally called into this state in consultation with a physician and surgeon licensed in this state” as set forth in Iowa Code section 148.2(5) means all of the following shall be true:

1. The consulting physician shall be involved in the care of patients in Iowa only at the request of an Iowa-licensed physician.
2. The consulting physician has a license in good standing in another United States jurisdiction.
3. The consulting physician provides expertise and acts in an advisory capacity to an Iowa-licensed physician. The consulting physician may examine the patient and advise an Iowa-licensed physician as to the care that should be provided, but the consulting physician may not personally perform procedures, write orders, or prescribe for the patient.
4. The consulting physician practices in Iowa for a period not greater than 10 consecutive days and not more than 20 total days in any calendar year. Any portion of a day counts as one day.
5. The Iowa-licensed physician requesting the consultation retains the primary responsibility for the management of the patient’s care.

ITEM 5. Amend subrule **10.3(1)**, paragraph “**b**,” as follows:

- b. An Iowa resident physician license or an Iowa permanent physician license is required of any resident physician *enrolled in an Iowa resident training program and practicing in Iowa*. A physician in a resident training program who has previously held a permanent license in Iowa or the equivalent in any United States jurisdiction shall be required to have an active permanent physician license in Iowa.

ITEM 6. Amend subrule **10.3(1)** by rescinding paragraph “**f**” and adopting the following **new** paragraph in lieu thereof:

- f. A visiting resident physician may come into Iowa to practice as a part of the physician’s resident training program if the physician is under the supervision of an Iowa-licensed physician. An Iowa physician license is not required of a physician in training if the physician has a resident or permanent license in good standing in the home state of the resident training program. An Iowa temporary physician license is

## MEDICAL EXAMINERS BOARD[653](cont'd)

required of a physician in training if the physician does not hold a resident or permanent physician license in good standing in the home state of the resident training program (see rule 653—10.5(147,148,150,150A)).

ITEM 7. Amend rule 653—10.5(147,148,150,150A), introductory paragraph, as follows:

**653—10.5(147,148,150,150A) Temporary licensure.** The board may issue a temporary license authorizing a licensee *physician to practice short term participate in a board-approved activity* in Iowa ~~to fulfill an urgent need or educational purposes~~. Temporary licensure is granted on a case-by-case basis *and depends upon the applicant's education and training, experience and licensure status elsewhere and upon the intended use of the temporary license.*

ITEM 8. Rescind subrules **10.5(1)** and **10.5(2)** and adopt **new** subrules 10.5(1) to 10.5(8) as follows:

**10.5(1)** General provisions.

a. The temporary license to practice is intended for a physician to participate in a board-approved activity, as defined in rule 653—10.1(147,148,150,150A), in Iowa that is short-term. Temporary licensure is not intended to be a way for a physician to practice before a permanent license is granted. Temporary licensure is not intended for locum tenens.

b. The board may issue a temporary license authorizing the physician to practice in a board-approved activity. The license may be restricted to the board-approved activity, location(s) or time period of up to one year.

(1) A physician who is granted a temporary license for a board-approved activity may qualify for renewal of that license if the physician needs an extension of the license for the original purpose or to pursue more than one board-approved activity within a year.

(2) A physician who wishes to continue in a board-approved activity in Iowa for short intervals beyond one year is eligible for a temporary license each year after reapplying and qualifying on an annual basis.

c. A physician incidentally called into this state in consultation with a physician and surgeon licensed in this state, as defined in rule 653—10.1(147,148,150,150A), is not required to obtain a temporary license in Iowa.

d. A physician who seeks to practice in Iowa and does not qualify for a temporary license may be eligible for permanent licensure under 653—Chapter 9.

e. The board may take disciplinary action on a temporary license if the licensee has practiced outside the scope of the temporary license or for any of the grounds for which licensure may be revoked or suspended as specified in Iowa Code sections 147.55, 148.6, and 272C.10 and 653—Chapter 23. Contested case proceedings shall be governed by the provisions of 653—Chapter 25.

f. A physician who holds a temporary license shall notify the board of any change in address within three days of making an address change.

g. A physician who holds a temporary license shall notify the board of any change in name within one month of making the name change. Notification requires a notarized copy of a marriage license or a notarized copy of court documents.

h. The file of a physician who holds a temporary license shall be closed and labeled “deceased” when the board receives a copy of the physician’s death certificate.

**10.5(2)** Eligibility for a temporary license. To be eligible for a temporary license, an applicant shall meet all of the following requirements:

a. Fulfill the requirements specified in subrules 10.5(3) and 10.5(4);

b. Be at least 21 years of age;

c. Hold a medical degree from an educational institution approved by the board (if the applicant is an international medical graduate, the educational institution must be listed in the International Medical Education Directory);

d. Hold a current active, unrestricted license to practice medicine issued by any jurisdiction;

e. Be fluent in the English language;

f. Present a letter justifying the need for temporary licensure from the organization or individual seeking the applicant’s participation in a board-approved activity.

**10.5(3)** Requirements for a temporary license. To apply for a temporary license, an applicant shall complete the requirements in paragraphs “a” and “b”:

a. Pay a nonrefundable application fee of \$100 plus the fee identified in 653—subrule 8.4(7) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI). A physician who is serving as a camp physician and who is not receiving payment other than expenses shall be exempt from the license application fee and the fee for the criminal history background check.

b. Complete and submit forms provided by the board, including required credentials, documents, and a sworn statement by the applicant attesting to the truth of all information provided by the applicant.

**10.5(4)** Application. The application shall require the following information:

a. The applicant’s name, date and place of birth, home address, mailing address and principal business address;

b. A photograph of the applicant suitable for positive identification;

c. A statement listing every jurisdiction in which the applicant is or has been authorized to practice, including the applicant’s license number and date of issuance of the license;

d. A chronology accounting for all time periods from the date the applicant entered medical school to the date of the application;

e. A statement by the applicant that discloses and explains any warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical or professional regulatory authority, an educational institution, training or research program, or health facility in any jurisdiction;

f. A statement of the applicant’s physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in practice and provide patients with safe and healthful care;

g. A statement disclosing and explaining the applicant’s involvement in civil litigation related to practice in any jurisdiction. Copies of the legal documents may be requested if needed during the review process;

h. A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant, filed in any jurisdiction, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;

i. A statement from the applicant that justifies the need for a temporary license, including where the applicant intends to practice and the type of practice involved;

j. A letter from the Iowa organization or individual seeking the applicant’s services that explains the need for the applicant’s participation in the board-approved activity in

## MEDICAL EXAMINERS BOARD[653](cont'd)

Iowa, the time period involved, the scope of practice, and the exact location and facilities where the board-approved activity will occur;

k. For an international medical graduate who does not hold a license in good standing in any United States jurisdiction, a statement, which shall be submitted by the Iowa organization or individual offering the board-approved activity, identifying who the applicant's immediate supervisor will be;

l. For an international medical graduate who does not hold a license in good standing in any United States jurisdiction:

(1) Verification, which shall be submitted from the licensing authority of the country in which the physician is licensed, that the physician has a license in good standing;

(2) Evidence of fluency in the English language;

m. For a resident physician who does not hold a current, active resident or permanent license in the home state of the resident training program, a statement, which shall be submitted by the resident director or individual offering the board-approved activity, identifying who the applicant's immediate supervisor will be.

**10.5(5)** Standard application review process for a temporary license. The standard review process shall be utilized to review each application for a temporary license, except that the process identified in subrule 10.5(6) shall be used for any international medical graduate who does not currently hold a license in good standing in any United States jurisdiction or for any physician who seeks temporary licensure for an activity not listed in paragraphs "1" through "6" of the definition of "board-approved activity" in rule 653—10.1(147,148,150,150A). The standard application review process is as follows:

a. An application shall be considered open from the date the application form and the nonrefundable fees are received in the board office.

b. After reviewing each application, staff shall notify the applicant or designee about how to resolve any problems identified by the reviewer.

c. If the final review indicates no questions or concerns regarding the applicant's qualifications for temporary licensure or the need for a temporary licensee, staff may administratively grant a temporary license to the applicant for a specific activity, location(s) or specified duration based on the nature of the board-approved activity. The license shall not be granted for a period longer than one year.

d. If the final review indicates questions or concerns that cannot be remedied by continued communication with the applicant, the executive director, the director of licensure and administration, and the director of legal affairs shall determine if the questions or concerns indicate any uncertainty about the applicant's current qualifications for temporary licensure or the organization's or requesting individual's need for a licensee with a temporary license.

(1) If there is no current concern, staff shall administratively grant a temporary license.

(2) If any concern exists, the application shall be referred to the committee.

e. Staff shall refer to the committee for review matters that include, but are not limited to, falsification of information on the application, criminal record, malpractice, substance abuse, competency, physical or mental illness, educational disciplinary history, or questionable need on the part of the organization.

f. If the committee is able to eliminate questions or concerns without dissension from staff or a committee member,

the committee may direct staff to administratively grant a temporary license for a specific activity, location(s) or specified duration based on the nature of the board-approved activity.

g. If the committee is not able to eliminate questions or concerns without dissension from staff or a committee member, the committee shall recommend that the board:

(1) Grant a temporary license for a specific activity, location(s) or specified duration based on the nature of the board-approved activity;

(2) Grant a temporary license under certain terms and conditions or with certain restrictions;

(3) Deny a temporary license; or

(4) Request that the applicant withdraw the temporary licensure application.

h. The board shall consider applications and recommendations from the committee and shall:

(1) Grant a temporary license for a specific activity, location(s) or specified duration based on the nature of the board-approved activity;

(2) Grant a temporary license under certain terms and conditions or with certain restrictions;

(3) Request that the applicant withdraw the temporary licensure application. The request shall not imply that the applicant is ineligible for permanent licensure if that application process is pursued; or

(4) Deny a temporary license. The board may deny a temporary license for any grounds on which the board may discipline a license or for lack of need for a physician's services by the organization or individual. The procedure for appealing a license denial is set forth in 653—9.15(147,148,150,150A).

**10.5(6)** Application review process for applicants with certain exceptions. This application process shall be used to review applications submitted by an international medical graduate who does not currently hold a license in good standing in any United States jurisdiction or by a physician seeking temporary licensure for an activity not listed in paragraphs "1" through "6" of the definition of "board-approved activity" in rule 653—10.1(147,148,150,150A). Following is the application review process for applicants with exceptions:

a. An application shall be considered open from the date the application form and the nonrefundable fees are received in the board office.

b. After reviewing each application, staff shall notify the applicant or designee about how to resolve any problems identified by the reviewer.

c. If the final review indicates no questions or concerns regarding the applicant's qualifications for temporary licensure or the need for a temporary license, staff shall submit the application to the committee for review and recommendation to the board about whether to grant a temporary license to the physician and whether the license should be granted for a specific activity, location(s) or specified duration based on the nature of the board-approved activity.

d. The board shall consider applications and recommendations from the committee and shall:

(1) Grant a temporary license for a specific activity, location(s) or specified duration based on the nature of the board-approved activity;

(2) Grant a temporary license under certain terms and conditions or with certain restrictions;

(3) Request that the applicant withdraw the temporary licensure application. The request shall not imply that the applicant is ineligible for permanent licensure if that application process is pursued; or

## MEDICAL EXAMINERS BOARD[653](cont'd)

(4) Deny a temporary license. The board may deny a temporary license for any grounds on which the board may discipline a license or for lack of need for a physician's services by the organization or individual. The procedure for appealing a license denial is set forth in 653—9.15(147,148,150,150A).

**10.5(7)** Temporary license application cycle. If the applicant does not submit all materials within 90 days of the board office's last documented request for further information, the application shall be considered inactive. The board office shall notify the applicant of this change in status. An applicant whose application is inactive must reapply and submit new nonrefundable fees and a new application, documents and credentials if the applicant wishes to pursue temporary licensure.

**10.5(8)** Renewal of a temporary license.

a. When the temporary license is granted, the board shall inform the licensee that the license may be renewed within the year, if the same need for a temporary license continues. The board shall not send a notice of renewal.

b. To apply for renewal of a temporary license, the licensee shall submit the following:

- (1) A request for renewal;
- (2) The renewal fee of \$50; and
- (3) Written justification for the renewal from the organization or individual seeking the applicant.

Failure of the licensee to renew a license by the expiration date shall cause the license to become inactive. The individual shall not practice in Iowa until securing a permanent medical license or until becoming eligible for a second temporary license.

## ARC 5262B

### NURSING BOARD[655]

#### 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 17A.3 and 147.76, the Board of Nursing hereby gives Notice of Intended Action to amend Chapter 4, "Discipline," Iowa Administrative Code.

These amendments change wording to clarify the respondent's obligation to initiate proceedings for license reinstatement and clarify the process for notice of proceedings.

Any interested person may make written comments or suggestions on or before August 22, 2006. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. Persons who wish to convey their views orally should contact the Executive Director at (515)281-3256 or in the Board office at 400 S.W. 8th Street by appointment.

These amendments are intended to implement Iowa Code chapters 17A, 147, 152, and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 4.11(2) to read as follows:

**4.11(2)** ~~Proceedings for reinstatement shall be initiated by the respondent by making application for licensure reinstatement with the board.~~ *The respondent shall initiate proceedings for licensure reinstatement by making application to the board.* The application shall be docketed in the original case in which the license was revoked, suspended or voluntarily surrendered and shall be subject to the same rules of procedure as other contested cases before the board. The person filing the application for reinstatement shall immediately serve a copy upon the attorney for the state of Iowa and shall in the same manner serve any additional documents filed in connection with the application.

ITEM 2. Amend subrule 4.16(2) to read as follows:

**4.16(2)** Notification shall be in writing delivered either by personal service as in civil actions or by *restricted* certified mail with return receipt requested. ~~When the licensee service cannot be located~~ *accomplished in such a manner:*

a. An affidavit shall be prepared outlining the measures taken to attempt service and shall become a part of the file when a notice cannot be delivered by personal service or certified mail, return receipt requested.

b. Notice of hearing shall be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the licensee. The newspaper will be selected by the executive director or a designee. The first notice of hearing shall be published at least 30 days prior to the scheduled hearing.

ITEM 3. Amend subrule 4.31(3) to read as follows:

**4.31(3)** Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 4.36(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit ~~or~~ *from* a person with personal knowledge of each such fact attached to the motion.

## ARC 5281B

### PROFESSIONAL LICENSURE DIVISION[645]

#### 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 147.76, the Board of Examiners for Nursing Home Administrators hereby gives Notice of Intended Action to amend Chapter 141, "Licensure of Nursing Home Administrators," Iowa Administrative Code.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

The proposed amendment provides that someone who has applied for an Iowa license and who is licensed and has been practicing in another state for the past two years prior to applying for licensure in Iowa may be issued an Iowa license, if the person has a minimum of a bachelor's degree and no discipline-related issues.

Any interested person may make written comments on the proposed amendment no later than August 22, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on August 22, 2006, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 155 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule **645—141.7(155)**, numbered paragraphs “**3**” and “**4**,” as follows:

3. ~~Provides official copies of the academic transcripts sent directly from the school to the board office~~ *Provides evidence of a minimum of a bachelor's degree from a college or university accredited by the United States Department of Education. An official copy of the academic transcript denoting date of graduation and the degree conferred shall be sent directly from the school to the board office;*

4. ~~Shows evidence of licensure requirements similar to those required in Iowa~~ *Provides evidence of an active license as a nursing home administrator for at least two years just prior to application, or meets the qualifications outlined in rule 141.4(155).*

**ARC 5259B****PUBLIC HEALTH  
DEPARTMENT[641]****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)<sup>a,b</sup>.

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 136B.1, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 43, “Minimum Requirements for Radon Testing and Analysis,” and Chapter 44, “Minimum Requirements for Radon Mitigation,” Iowa Administrative Code.

The following paragraphs itemize the proposed changes:

Item 1 adds definitions for new terms used elsewhere in these chapters.

Item 2 changes the work experience requirement for a radon measurement specialist from three years to two years because the Department has determined that two years of work experience is sufficient.

Item 3 deletes a requirement for training and examination that is required in another rule and replaces the requirement with specific information about instruments acceptable for measuring radon and the calibration requirement for the instruments.

Item 4 changes the requirements for a laboratory because the Radon/Radon Progeny Measurement Proficiency Program is now operated by the National Environmental Health Association and the National Radon Safety Board. Item 4 also adds a specific requirement that all EPA and Department protocols and guidelines for measuring radon be followed.

Item 5 removes from subrule 43.3(5) language referring to the application. This language is added to 43.4(1).

Item 6 specifies the requirements for applicants in order to clarify the application process.

Item 7 corrects a cross reference and adds language specifying the continuing education information to be submitted with the application.

Item 8 removes the fee requirement for examinations, corrects cross references, removes references to mitigation because that subject is addressed in Chapter 44, and adds a provision for revocation of certification once the certification has been expired 30 days.

Item 9 adopts new terms for disciplinary actions.

Item 10 amends the language for the initial training requirement and changes the continuing education requirement from six hours every year to eight hours every two years.

Item 11 removes an item from the list of exemptions in 641—43.8(136B).

Item 12 clarifies language relating to purpose and scope of Chapter 44.

Item 13 amends one definition for clarification and adopts definitions for new terms used elsewhere in these chapters.

Item 14 amends training and examination requirements in subrule 44.3(2) and deletes obsolete language.

Item 15 amends requirements for continued credentialing by adding compliance with EPA and ASTM standards and adding a clarification regarding those standards.

Item 16 amends language in 44.3(5) and changes from 48 to 24 hours the time by which postmitigation test procedures must begin.

Item 17 corrects a cross reference.

Item 18 clarifies language pertaining to the credential renewal process.

Item 19 clarifies the credential renewal process by adopting additional language and correcting a cross reference.

Item 20 removes the fee requirement for examinations, adds language relating to returned checks and late fees and revocation of a certification once the certification has been expired for 30 days, and specifies where to send applications.

Item 21 adds and clarifies language concerning the revocation of credentials.

Item 22 changes the continuing education requirement from six hours every year to eight hours every two years.

Item 23 corrects a cross reference.

These rules are subject to waiver pursuant to the Department's exemption provision contained in 641—38.3(136C). For this reason, the Department has not provided a specific provision for waiver of these particular rules.

Any interested person may make written suggestions or comments on these proposed amendments by 4:30 p.m. on August 22, 2006. Such written materials should be directed to Donald A. Flater, Chief, Bureau of Radiological Health,

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Iowa Department of Public Health, Lucas State Office Building, Fifth Floor, 321 East 12th Street, Des Moines, Iowa 50319; fax (515)281-4529; or E-mail [dflater@idph.state.ia.us](mailto:dflater@idph.state.ia.us).

A public hearing will be held on August 22, 2006, at 8:30 a.m. in Conference Room 517, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views 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.

Any person who plans to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact the Department to advise of specific needs.

These amendments are intended to implement Iowa Code chapter 136B.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **641—43.2(136B)** by adding the following **new** definitions in alphabetical order:

“NEHA” means the National Environmental Health Association.

“NRSB” means the National Radon Safety Board.

ITEM 2. Amend subrule **43.3(2)**, paragraph “**b**,” as follows:

b. Possess ~~three~~ *two* years of relevant professional work experience. Relevant postsecondary education may be substituted for professional work experience. Relevant postsecondary education includes a college curriculum in architecture, engineering, building construction or the physical sciences. Relevant professional work experience includes house testing/evaluation for the presence of radon, design and installation of heating, ventilation and air-conditioning systems, design or construction of buildings, or ~~closely~~ related activities approved by the department of public health;

ITEM 3. Amend subrule **43.3(2)** by rescinding paragraphs “**c**” and “**d**” and adopting the following **new** paragraph “**c**” in lieu thereof:

c. Use detection devices approved by EPA and the department to measure radon. The detection device must be obtained from an Iowa certified radon measurement laboratory. When a portable electronic detection device is used, the device must be calibrated on at least an annual basis by the manufacturer, or by persons acceptable to the department. The records of calibration must be maintained for review by the department or agents of the department.

ITEM 4. Rescind subrule 43.3(3) and adopt the following **new** subrule in lieu thereof:

**43.3(3)** Individual qualifications for radon measurement laboratory. No business may be certified as a radon measurement laboratory unless the business:

a. Is successfully enrolled with either the NEHA or NRSB Radon/Radon Progeny Measurement Proficiency Program (RMPP), and

b. Follows all applicable EPA and department protocols and guidelines.

ITEM 5. Amend subrule **43.3(5)** as follows:

Rescind paragraphs “**b**” and “**c**” and reletter paragraph “**d**” as “**b**.”

Amend relettered paragraph “**b**” as follows:

b. The certified person shall remain in compliance with the Act and this chapter. ~~Any changes in the information provided in the original application including changes in certified personnel shall be reported in writing to the department of public health within ten working days of the change.~~

ITEM 6. Amend subrule 43.4(1) as follows:

**43.4(1)** An application for certification or renewal of certification as a radon measurement specialist or a radon measurement laboratory shall be filed on a form prescribed by the department and shall contain complete and accurate information. ~~The applications shall be accompanied by reports, plans, advertising, and records requested by the department.~~

a. An application for a radon measurement specialist must include:

(1) Proof of successful completion of a department-approved training course on radon/radon progeny measurements. A certificate of attendance is required.

(2) Proof of successful completion of an examination approved by this department. A letter from NEHA or NRSB showing a passing score for the radon measurement specialist examination fulfills this requirement.

(3) Proof of two years of postsecondary education in architecture, natural science, engineering, or a related discipline. A college transcript must be included to fulfill this requirement or a detailed resume evidencing two years of relevant professional work experience, such as conducting professional home inspections; or the design and installation of heating, ventilation and air-conditioning systems; or the design or construction of buildings; or related activities approved by the department; or a combination of professional work experience and postsecondary education.

(4) A quality assurance/quality control (QA/QC) plan for all measurement devices and equipment. If laboratory devices are used, the names and addresses of the Iowa certified radon measurement laboratories must be included. If a continuous radon monitor is used, the name of the manufacturer, model, and picture of the monitor must be included. The manufacturer of any device used must have EPA or other national agency approval which indicates the device has been approved for measuring radon. Only measurement devices from Iowa certified radon measurement laboratories or a continuous radon monitor that has been satisfactorily calibrated and approved by the Iowa radon program are allowed for use in performing radon measurements.

(5) Standard operating procedures (SOPs). Procedures must include information concerning the placement and pickup of devices used, who performs the tests, and what measures will be used to ensure all tests are in conformance with EPA protocols and procedures.

(6) A signed statement that the individual will follow all EPA radon measurement guidelines and protocols.

(7) A signed statement that the individual will submit radon test results every 30 days to the Iowa radon program within the department. The radon test results may be submitted on a form, a diskette, or through E-mail in a manner that is approved by the department.

(8) A signed statement that the individual will keep all records for a minimum of five years after the radon test is completed.

(9) A copy of the confidentiality waiver that reports results to the customer as outlined in Iowa Code section 136B.2.

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(10) A signed statement that the individual will submit to the department within 14 working days any changes in the original application and that the individual will acquire at least eight hours of continuing education credits every two years before certification is renewed.

(11) The fee specified in 43.4(6).

b. An application for a radon measurement laboratory must include:

(1) Proof of successful participation in the NEHA or NRSB Radon/Radon Progeny Measurement Proficiency Program.

(2) A quality assurance plan and quality control procedures for all measurements and equipment.

(3) A signed statement that all EPA, NEHA and NRSB and any department measurement guidelines and protocols will be followed.

(4) Name(s) and address(es) of any retail operation(s) selling the laboratory's testing service(s) within Iowa.

(5) A signed statement that all changes in the original application will be submitted to the department within 14 working days.

(6) The fee specified in 43.4(6).

ITEM 7. Amend subrule 43.4(5) as follows:

**43.4(5)** Renewal of an annual certification must contain all the information requested in the notice of renewal for certification along with the fee specified in 641—subrule ~~38.8(9)~~ 43.4(6). The application to renew credentials must also include a signed and dated continuing education form and a copy of a course certificate which indicates the name of the individual receiving continuing education, the amount of continuing education the individual has received, and the date the continuing education course was given.

ITEM 8. Amend subrule 43.4(6) as follows:

**43.4(6)** Radon certification fees. Any person wishing to become certified as a radon measurement specialist or as a radon measurement laboratory is required to pay fees sufficient to defray the cost of administering this chapter. Fees which must be submitted are as follows:

a. No change.

b. ~~Examination fee. Each person taking the EPA radon proficiency examination shall pay a fee of \$125. The fee must be submitted prior to testing.~~

c. Annual certification fee.

(1) and (2) No change.

d. Each person wishing to give reciprocal recognition of credentials from another jurisdiction must pay the appropriate fees in 43.4(6) ~~“a,” “b,” or “c.”~~

e. Returned check and late fees. Persons who fail to pay required fees to the department are subject to the following penalty(ies):

(1) \$15 for each insufficient funds check submitted for payment of radon testing ~~or mitigation~~ fees.

(2) \$25 per month for failure to pay annual radon testing ~~or mitigation~~ certification fees starting after the annual renewal ~~month~~ date or date of expiration.

f. If payment is not received and the certification has been expired 30 days, certification will be revoked immediately. In order to regain certification, the person must reapply and pay the appropriate fees as outlined in this subrule.

ITEM 9. Amend rule 641—43.5(136B) as follows:

**641—43.5(136B) Revocation of certification.**

**43.5(1)** The department will consider revoking or suspending any certification, in whole or in part, for:

1 a. Any misstatement in the application or in any supplementary statement;

2 b. Any condition revealed by the application, supplementary statement, report, record, or other evidence, which would warrant the department's refusal to grant a certification on an original application;

3 c. Any violation or failure to observe any of the applicable terms or provisions of certification, the public health law, or any other applicable rule, regulation, code or order;

4 d. Being discontinued or removed from the E.P.A.'s NEHA or NRSB Radon/Radon Progeny Measurement Proficiency Program.;

e. Not fully cooperating with the department or its agents when field evaluations are being conducted;

f. Not attending a scheduled meeting or inspection set up by the department or its agents, when the certified person was previously notified and agreed to the time and location of the inspection;

g. Not submitting radon test data as required in 641—43.6(136B).

**43.5(2)** The department may deny, suspend, revoke, modify the certification of a person, impose a civil penalty, or refer the case to the office of the county attorney for possible criminal penalties pursuant to Iowa Code chapter 136B, or any combination thereof, when it finds that a certified person or a person who is not certified has committed any of the following acts:

a. Failing to submit required information or notifications in a timely manner;

b. Failing to maintain the required records;

c. Falsifying approval records, qualifications, or other information or documentation related to licensing approval;

d. Failing to comply with the training standards and requirements in 43.3(2);

e. Submitting in the application for approval or reapproval false or misleading statements which the department relied upon in approving the application;

f. Failing to comply with federal, state, or local statutes and regulations, including the requirements of this chapter;

g. Knowingly making misleading, deceptive, untrue, or fraudulent representations involving radon, or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established;

h. Using untruthful or improbable statements in advertisements. Use of these statements includes, but is not limited to, the presentation of information to the public by training programs that is false, deceptive, or misleading, or that is promoted through fraud or misrepresentation;

i. Falsifying reports and records required by this chapter;

j. Accepting any fee by fraud or misrepresentation;

k. Revocation, suspension, or other disciplinary action taken by a certification or licensing authority of this state, another state, territory, or country; or failure by the firm or individual to report such action in writing within 30 days of the final action by such certification or licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board;

l. Failing to comply with the terms of a department order or the terms of a settlement agreement or consent order;

m. Representation by a firm or individual that the firm or individual is certified when the certification has been suspended or revoked or has not been renewed;

PUBLIC HEALTH DEPARTMENT[641](cont'd)

n. *Failing to respond within 30 days of receipt of communication from the department that was sent by registered or certified mail;*

o. *Engaging in any conduct that subverts or attempts to subvert a department investigation;*

p. *Failing to comply with a subpoena issued by the department or failing to cooperate with a department investigation; or*

q. *Failing to pay costs assessed in any disciplinary action.*

ITEM 10. Amend rule 641—43.7(136B) as follows:

**641—43.7(136B) Training and continuing education programs.** Each person conducting radon-related activities shall complete a radon *measurement* training program approved by the department. ~~to ensure that the applicant and all employees have had initial training and the All certified person will individuals must participate in a continuing education program consisting every other year that consists of a minimum of six eight hours of department-approved courses or seminars on either radon testing measurement or mitigation or both each year.~~

ITEM 11. Amend rule **641—43.8(136B)** by rescinding numbered paragraph “3” and renumbering numbered paragraphs “4” and “5” as “3” and “4,” respectively.

ITEM 12. Amend rule 641—44.1(136B) as follows:

**641—44.1(136B) Purpose and scope.** This chapter establishes requirements for the credentialing of radon mitigation specialists. All persons performing abatement for radon or radon progeny in buildings, other than ~~those buildings~~ which ~~they the persons~~ occupy or ~~those they~~ are constructing for their own occupancy, must be credentialed in accordance with the provisions of this chapter. ~~Certified Credentialed~~ mitigation specialists are responsible for ensuring that all radon mitigation systems for which they are responsible are installed following ~~acceptable~~ guidelines *that are provided in this chapter.*

ITEM 13. Amend rule **641—44.2(136B)** as follows:

Amend the following definition:

“~~Mitigation~~ *Passive mitigation* system” means any system or materials installed for the purpose of reducing radon or radon progeny concentrations *without the use of an in-line fan.*

Add the following **new** definitions in alphabetical order:

“Active mitigation system” means any system or materials installed as an active part of a ventilation system used for the purpose of reducing radon or radon progeny concentrations by means of an in-line fan.

“ASTMI E2121” means the American Society for Testing Materials International E2121, Standard Practice for Radon Mitigation Systems in Existing Low-Rise Residential Buildings.

“pCi/L” means a measurement of radon in picocuries per liter.

“RMS” means EPA Radon Mitigation Standards.

ITEM 14. Amend subrule **44.3(2)**, paragraph “c,” as follows:

c. Have successfully completed ~~the EPA’s Radon Contractors Proficiency Program.~~ *a combined radon measurement/mitigation course approved by the department and a radon mitigation examination approved by the department.*

ITEM 15. Amend subrule **44.3(4)** by adopting **new** paragraph “c” as follows:

c. The credentialed person shall comply with department standards and all the requirements as stated in EPA’s Radon Mitigation Standards (RMS) EPA 402-R-93-078, October 1993 (Revised April 1994) and ASTM E2121 (NOTE: EPA has incorporated E2121 by reference and retained EPA’s Radon Mitigation Standards (RMS) in effect until at least 2007), and must comply with EPA’s Radon Mitigation Standards (RMS) EPA 402-R-93-078, October 1993 (Revised April 1994) and ASTM E2121, which states that all “shoulds” are “shalls” according to department standards.

ITEM 16. Amend subrule **44.3(5)**, paragraphs “a,” “c,” and “d,” as follows:

a. ~~Cooperate~~ *Fully cooperate* with the department or its agents when ~~conducting~~ field evaluations *are conducted.*

c. Not disclose to any other person, except to the department or its agents, the addressee or owner of a nonpublic building, the radon levels present in the building or abatement measures needed or performed, unless the building owner waives this right of confidentiality in writing.

d. Ensure that each building is tested for radon levels before and after mitigation work is performed. Such tests shall be of sufficient type, duration and consistency, and *shall be* performed at such times and *under such* ventilation conditions as to allow for comparison of before and after mitigation radon levels. Premitigation and postmitigation radon tests shall be performed independently by a measurement specialist or technician who is not employed by the same firm as the mitigation specialist performing the mitigation. Postmitigation radon tests shall be started no sooner than ~~two days~~ *one day* after mitigation *is completed.* This requirement is not binding if the building owner waives the procedure, on a form prescribed by the department, before the mitigation process has started.

ITEM 17. Amend subrule 44.4(1) as follows:

**44.4(1)** An application for credentialing or renewal of credentials as a radon mitigation specialist shall be filed on a form prescribed by the department, shall contain complete and accurate information and *shall* be accompanied by the appropriate fees as outlined in ~~641—subrule 38.8(10)~~ **44.4(6).**

ITEM 18. Amend subrule 44.4(4) as follows:

**44.4(4)** A credential will be valid for one year following the date of issuance. No radon abatement covered by this chapter can be commenced after the expiration of the term of credentialing unless an application for renewal has been received by the department within 30 days of the notice of expiration *and the renewal application is deemed complete and acceptable by the department.* All radon mitigation work commenced prior to expiration of credentialing must be completed within 30 days of the expiration date if renewal is not accomplished. If the application is rejected, no radon abatement may be conducted by that applicant in the state of Iowa if a financial arrangement is involved.

ITEM 19. Amend subrule 44.4(5) as follows:

**44.4(5)** An application to renew credentials must ~~contain the general information form~~ *be on a form approved by the department and must include the number of mitigation systems installed for the renewal period* and any changes in the initial credentialing application, along with the fee specified in ~~641—subrule 38.8(10)~~ **44.4(6).**

ITEM 20. Amend subrule 44.4(6) as follows:

Amend the introductory paragraph as follows:

**44.4(6)** Radon mitigation credentialing. Any person wishing to become credentialed as a radon mitigation spe-

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

cialist shall be required to pay fees sufficient to defray the cost of administering this chapter. ~~Fees which must be submitted are as follows:~~

Amend paragraph "b" as follows:

b. Annual credentialing fee.

(4) Each individual requesting credentialing must:

~~1. (1) Pay an initial fee of \$150 which is refundable if credentialing is not completed.~~

~~2. (2) Pay annually a renewal fee of \$150 or \$40 per mitigation system installed (as defined in 641—44.2(136B)) costing more than \$200, whichever is greater. With each renewal, a credentialed person must submit legal documentation of the number of mitigation systems installed the previous credentialing year. This number will be used to calculate the renewal fee.~~

~~(2) Each person wishing to receive reciprocal recognition of credentialing from another jurisdiction must pay the appropriate fees as outlined in 44.4(6), paragraphs "a" and "b."~~

Rescind paragraph "c" and adopt the following **new** paragraphs "c" to "e":

c. Returned check and late fees.

(1) Persons who fail to pay required fees to the department are subject to the following penalty(ies):

1. \$15 for each insufficient funds check submitted for payment of radon mitigation fees.

2. \$25 per month for failure to pay annual radon mitigation credentialing fees starting after the annual renewal date or date of expiration.

(2) If payment is not received and the certification has been expired 30 days, certification will be revoked immediately. In order to regain certification, the individual must reapply and pay the appropriate fees as outlined in this subrule.

d. Applications for initial and renewal credentialing must be submitted along with the appropriate fees specified in this subrule to the Division of Environmental Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. The fee must be in the form of a check or money order made payable to the Iowa Department of Public Health and must include on the check or money order an indication of the purpose of the fee (i.e., radon mitigation credentialing).

e. Each person wishing to receive reciprocal recognition of credentialing from another jurisdiction must pay the appropriate fees as outlined in this subrule.

ITEM 21. Amend rule 641—44.5(136B) as follows:

**641—44.5(136B) Revocation of credentialing.** The department will follow the procedures set forth in Iowa Code chapter 17A when revoking or suspending any credentials, in whole or in part ~~for~~. *The department may deny, suspend, revoke, or modify the credentials of a person, or may impose a civil penalty or may refer the case to the office of the county attorney for possible criminal penalties pursuant to Iowa Code chapter 136B when it finds that a credentialed person or a person who is not credentialed has committed any of the following acts:*

1. Any material misstatement in the application or in any supplementary statement.

2. Any material misstatement in the renewal application or supplementary statement received upon renewal.

3. Any condition revealed by an inspection of the applicant, the application, supplementary statement, report, record, or other evidence, which would warrant refusal by the department's agents or employees ~~refusal~~ to grant a credentialing on an original application.

4. *Falsifying approval records, qualifications, or other information or documentation related to licensing approval.*

5. Any violation or failure to observe any of the applicable terms or provisions of credentialing, the public health law, or any other applicable rule, *radon testing rule, ordinance, regulation, code or order.*

~~4. Being discontinued or removed from the Environmental Protection Agency's Radon Contractors Proficiency Program.~~

~~5. Receiving compensation for ineffective radon remediation.~~

6. *Not completing the installation of a radon mitigation system within 30 days of the start date or date contracted to start.*

7. *Failing to submit a complete and accurate renewal application form before the end of the renewal period which includes the fee specified in subrule 44.4(6).*

8. *Failing to correct any violation of EPA, ASTM, or department rules that was found during a previous inspection or any violation found on an initial inspection which, as determined by the department, jeopardizes the safety of the building or other occupants.*

9. *Accepting compensation for installing ineffective radon remedies or for not dropping radon levels below 4 pCi/L in the area or level of the building where a radon mitigation system was installed.*

10. *Accepting compensation for installing active or non-active radon mitigation systems that are not acceptable to the department or that do not comply with the requirements of this chapter.*

11. *Failing to fully cooperate with the department or its agents when field evaluations are conducted.*

12. *Failing to attend a scheduled meeting or inspection set up by the department or its agents, when the person holding the credentials was previously notified and agreed to the time and location of the inspection.*

13. *Failing to submit required information or notifications in a timely manner.*

14. *Failing to maintain the required records in 641—44.6(136B), and in EPA's Radon Mitigation Standards (RMS) EPA 402-R-93-078, October 1993 (Revised April 1994), and ASTM E2121 (NOTE: EPA has incorporated E2121 by reference and retained EPA's Radon Mitigation Standards (RMS) in effect until at least 2007).*

15. *Failing to comply with the training standards and requirements in 641—44.7(136B).*

16. *Failing to comply with federal, state, or local statutes and regulations, including the requirements of this chapter.*

17. *Knowingly making misleading, deceptive, untrue, or fraudulent representations involving radon, or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.*

18. *Using untruthful or improbable statements in advertisements. Use of these statements includes, but is not limited to, the presentation of information to the public by training programs that is false, deceptive, or misleading or that is promoted through fraud or misrepresentation.*

19. *Falsifying reports and records required by this chapter.*

20. *Accepting any fee by fraud or misrepresentation.*

21. *Revocation, suspension, or other disciplinary action taken by a certification or licensing authority of this state, another state, territory, or country; or failure by the firm or individual to report such action in writing within 30 days of the final action by such certification or licensing authority. A stay by an appellate court shall not negate this requirement;*

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*however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the record.*

*22. Failing to comply with the terms of a department order or the terms of a settlement agreement or consent order.*

*23. Representation by a firm or individual that the firm or individual is credentialed when the credential has been suspended or revoked or has not been renewed.*

*24. Failing to respond within 30 days of receipt of communication from the department or an agent of the department that was sent by registered or certified mail.*

*25. Engaging in any conduct that subverts or attempts to subvert a department investigation.*

*26. Failing to comply with a subpoena issued by the department or failure to cooperate with a department investigation.*

*27. Failing to pay costs assessed in any disciplinary action.*

ITEM 22. Amend rule 641—44.7(136B) as follows:

**641—44.7(136B) Continuing education.** All credentialed individuals must participate in a continuing education program ~~each every other year consisting that consists~~ of a minimum of ~~six~~ *eight* hours of department-approved courses or seminars on radon mitigation *or measurement*.

ITEM 23. Amend rule 641—44.9(136B) as follows:

**641—44.9(136B) Enforcement.** A credentialed individual who mitigates for radon or radon progeny in the state of Iowa must meet the requirements of ~~641—~~~~Chapter 38 to~~ *Chapter 44*.

## NOTICE—USURY

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

August 1, 2005 — August 31, 2005	6.00%
September 1, 2005 — September 30, 2005	6.25%
October 1, 2005 — October 31, 2005	6.00%
November 1, 2005 — November 30, 2005	6.25%
December 1, 2005 — December 31, 2005	6.50%
January 1, 2006 — January 31, 2006	6.50%
February 1, 2006 — February 28, 2006	6.50%
March 1, 2006 — March 31, 2006	6.50%
April 1, 2006 — April 30, 2006	6.50%
May 1, 2006 — May 31, 2006	6.75%
June 1, 2006 — June 30, 2006	7.00%
July 1, 2006 — July 31, 2006	7.00%
August 1, 2006 — August 31, 2006	7.25%

## ARC 5290B

## IOWA FINANCE AUTHORITY[265]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.3(1)(b) and 16.5(17); 2005 Iowa Acts, chapter 161; 2005 Iowa Acts, chapter 115, section 37; and 2006 Iowa Acts, House File 2080, the Iowa Finance Authority hereby adopts new Chapter 27, "Military Service Member Home Ownership Assistance Program," Iowa Administrative Code.

The purpose of these rules is to implement a program to help eligible members of the armed forces of the United States to purchase qualified homes in Iowa through matching grants. In 2005, the Legislature enacted 2005 Iowa Acts, chapter 161, and 2005 Iowa Acts, chapter 115, section 37, appropriating funds to the Iowa Finance Authority for a Military Service Member Home Ownership Assistance Program. In 2006, the Legislature passed 2006 Iowa Acts, House File 2080, appropriating additional funds and continuing the program.

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority's general rules concerning waivers.

Pursuant to Iowa Code section 17A.4(2), the Authority finds that notice and public participation are impracticable and contrary to the public interest in that 2006 Iowa Acts, House File 2080, which, being deemed of immediate importance, took effect immediately upon enactment, directs the authority to continue its existing home ownership assistance program which was commenced and operated pursuant to 2005 Iowa Acts, chapter 161, and 2005 Iowa Acts, chapter 115, section 37. These rules merely codify that existing assistance program.

The Authority finds that these rules confer a benefit on the persons affected, eligible members of the armed forces, in that they ease and speed the administration of an important state grant program benefiting those members of the armed forces, and should be implemented as soon as feasible in order to facilitate the award of grants under the program. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these rules is waived.

The Authority adopted these rules on July 12, 2006.

These rules became effective July 14, 2006, upon filing with the Administrative Rules Coordinator.

These rules are intended to implement Iowa Code section 16.5(17); 2005 Iowa Acts, chapter 161; 2005 Iowa Acts, chapter 115, section 37; and 2006 Iowa Acts, House File 2080.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following **new** chapter is adopted.

## CHAPTER 27

## MILITARY SERVICE MEMBER

## HOME OWNERSHIP ASSISTANCE PROGRAM

**265—27.1(16) Purpose.** The purpose of the military service member home ownership assistance program is to help eligible members of the armed forces of the United States to purchase qualified homes in Iowa through matching grants.

**265—27.2(16) Definitions.** As used in this chapter, unless the context otherwise requires:

"Eligible service member" means a resident of this state who, at the time of applying for a grant under the program, has served on active duty in a Title 10, United States Code, active federal military service status for at least 90 days cumulative, other than training, during the period beginning September 11, 2001, and ending June 30, 2007, as a member of the national guard, reserve, or regular component of the armed forces of the United States.

"Eligible service member's contribution" means cash applied toward the purchase of a qualified home by an eligible service member. Gifts of cash from a parent or grandparent or from a legal guardian and cash grants to the eligible service member may be counted as all or part of the eligible service member's contribution; however, gifts from other sources, contingent grants, proceeds of loans, and in-kind gifts may not be counted.

"Participating lender" means a lender approved for participation in the authority's first home loan program. The authority maintains a list of participating lenders on its Web site: [www.ifahome.com](http://www.ifahome.com).

"Program" means the military service member home ownership assistance program authorized by 2005 Iowa Acts, chapter 161.

"Qualified home" means a home that is located in the state of Iowa, that is purchased by an eligible service member as the service member's primary residence on or after March 10, 2005, and that falls into one of the following categories:

1. Single-family residence, including "stick-built" homes, modular homes, or manufactured homes, provided the home is attached to a permanent foundation and is taxed as real estate;
2. Condominium;
3. Townhome;
4. Duplex, if one of the units will be the primary residence of the service member.

The following categories of property shall not constitute a qualified home:

- Multifamily properties;
- Commercial or nonresidential property;
- Farmland or other investment property;
- Recreational vehicles, mobile homes, or trailers not attached to a permanent foundation.

"Status documentation" means written documentation of the applicant's status with the armed forces of the United States, typically a copy of a valid DD Form 214, four months of leave and earnings statements, a statement of wartime service, or other documentation satisfactory to the Iowa National Guard.

**265—27.3(16) Application procedure and determination of eligibility.**

**27.3(1)** Financed home purchases. In the case of the purchase of a qualified home that is to be financed, the eligible service member must apply for a grant under the program through a participating lender. To apply, the eligible service member shall provide a participating lender with status documentation, complete a loan application as required by the participating lender, and assist the participating lender in completing a grant application on a form approved by the authority stating the amount of the grant being requested. The participating lender shall then transmit copies of the loan application, the status documentation, and the grant application to the authority.

**27.3(2)** Cash home purchases. In the case of a cash purchase of a qualified home, the eligible service member shall

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provide status documentation, a completed grant application form, a copy of the real estate sales contract, and a settlement statement for the purchase directly to the authority stating the amount of the grant being requested. The grant application form may be obtained from the authority upon request.

**27.3(3)** Referral of status documentation to Iowa National Guard. Upon receipt of the completed grant application, the authority shall promptly submit the status documentation to headquarters, Iowa National Guard, for verification that the applicant's duty status is consistent with the definition of "eligible service member." The Iowa National Guard shall be the final authority as to whether an applicant's duty status is consistent with the definition of "eligible service member."

**265—27.4(16) Grant award.** Grants awarded hereunder shall be a dollar-for-dollar match of the eligible service member's contribution toward the purchase price of a qualified home, up to a maximum of \$5,000. All proceeds of such grants must be applied to the purchase of a qualified home. Any grant proceeds which are not so used must be returned to the authority.

**27.4(1)** Financed home purchases. In the case of a financed purchase of a qualified home, upon confirmation of the applicant's duty status by the Iowa National Guard and provided that the information submitted on the grant application form complies with the requirements of this chapter, the authority shall notify the participating lender that the grant application has been approved.

a. Preclosing grants. In cases where the grant is approved prior to the closing of the purchase of the qualified home, the participating lender shall advance funds at closing in an amount equal to the amount of the grant on behalf of the eligible service member to be applied toward closing costs or the down payment. The participating lender shall then submit to the authority a copy of the HUD-1 Settlement Statement and a copy of the deed conveying title to the qualified home for reimbursement for the amount of the grant.

b. Postclosing grants. In cases where the grant is approved subsequent to closing of the purchase of the qualified home, the proceeds of the grant shall be paid directly to the

participating lender to be applied toward the balance due on the loan.

**27.4(2)** Cash home purchases. In the case of a cash purchase of a qualified home, upon confirmation of the applicant's duty status by the Iowa National Guard and provided that the information submitted on the grant application form complies with the requirements of this chapter, the authority shall remit the grant proceeds directly to the eligible service member upon proof that the purchase of the qualified home has closed.

**265—27.5(16) Income and purchase price.** There are no income or purchase price limits, and grants awarded under the program may be used in conjunction with other assistance available through FHA, VA, USDA or IFA if the eligible service member qualifies for those programs.

**265—27.6(16) Grant restrictions and limitations.** All grants under the program are subject to funding availability. Grants will be awarded in the order in which completed grant applications are received. Grants awarded pursuant to the program are personal to their recipients and may not be assigned. Only one grant shall be awarded per home purchase. An eligible service member shall receive only one grant award under the program.

**265—27.7(16) Surviving spouses of deceased eligible service members.** In the event an eligible service member is deceased, the surviving spouse of the eligible service member shall be treated as an eligible service member and shall be eligible for a grant under the program, subject to the program's other eligibility requirements.

These rules are intended to implement Iowa Code section 16.5(17); 2005 Iowa Acts, chapter 161; 2005 Iowa Acts, chapter 115, section 37; and 2006 Iowa Acts, House File 2080.

[Filed Emergency 7/14/06, effective 7/14/06]

[Published 8/2/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/2/06.

**ARC 5258B****ADMINISTRATIVE SERVICES  
DEPARTMENT[11]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 8A.104, the Department of Administrative Services hereby amends Chapter 105, "Procurement of Goods and Services of General Use," Iowa Administrative Code.

These amendments describe the methods state agencies will use to acquire goods and services of general use. The amendments do not make substantive changes to state policy for competitive procurement methods, standard contract requirements, agency guidelines, or vendor responsibilities and rights.

The waiver process set forth in 11—Chapter 9 applies to any request for waiver from these rules.

Notice of Intended Action was published in the June 7, 2006, Iowa Administrative Bulletin as **ARC 5137B**. The adopted amendments are identical to those published under Notice.

The Department accepted public comments on the proposed amendments until 4:30 p.m. on June 27, 2006. A public hearing was held on June 27, 2006, at 10 a.m. in the Hoover State Office Building, Level A, Conference Room 4, Des Moines, Iowa, at which time no interested parties participated.

These amendments will become effective September 6, 2006.

These amendments are intended to implement Iowa Code section 8A.311.

The following amendments are adopted.

ITEM 1. Amend subrule 105.15(1) as follows:

**105.15(1)** Agency direct purchasing—*basic level*. An agency may procure non-master agreement goods up to \$5,000 per transaction in a competitive manner. Three or more informal quotes shall be obtained, unless quotes are not reasonably available or unless the item is purchased from a targeted small business. The agency shall document the quotes, or circumstances resulting in fewer than three quotes, in an electronic file attached to the order or in another format.

ITEM 2. Amend subrule 105.15(2) as follows:

**105.15(2)** ~~Targeted small business—procurement up to \$5,000. Agencies may purchase directly from a vendor without competition if the vendor is a certified targeted small business and the purchase does not exceed \$5,000. Agency direct purchasing—advanced level. An agency certified by the director or designee as a "procurement center of excellence" may procure non-master agreement goods up to \$50,000 per transaction in a competitive manner. To be certified, agency personnel engaged in the purchase of goods must complete enhanced procurement training established by the director or designee. Agency personnel must complete training within a two-year period in order for the agency to be certified.~~

ITEM 3. Adopt new paragraph **105.15(5)"e"** as follows:

e. The director or designee may revoke an agency's delegated authority if the agency fails to maintain "procurement center of excellence" certification or uses the authority to

procure goods or services already available on a master agreement.

[Filed 7/14/06, effective 9/6/06]

[Published 8/2/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/2/06.

**ARC 5275B****ETHICS AND CAMPAIGN  
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code Supplement section 68B.32A as amended by 2006 Iowa Acts, House File 2512, section 2, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendment clarifies the requirement concerning a candidate who has filed a statement of organization for one office and then exceeds the financial activity threshold for a new office. The amendment requires the candidate either to file an amended statement of organization reflecting the information for the new office sought or to organize and register a new committee.

The amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on April 26, 2006, as **ARC 5058B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on July 12, 2006.

This amendment is intended to implement Iowa Code section 68A.201.

This amendment will become effective on September 6, 2006.

The following amendment is adopted.

Amend subrule 4.6(2) as follows:

**4.6(2)** New office sought. A candidate who filed a statement of organization for one office but eventually seeks another office may file an amended statement of organization to reflect the change in office sought in lieu of dissolving the old committee and organizing a new committee. *A candidate who has filed a statement of organization for one office and then exceeds the financial activity threshold as set forth in Iowa Code section 68A.102(5) for a new office shall, within ten days of exceeding the threshold, file either an amended statement of organization disclosing information for the new office sought or organize and register a new committee.*

[Filed 7/13/06, effective 9/6/06]

[Published 8/2/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/2/06.

**ARC 5273B****ETHICS AND CAMPAIGN  
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code Supplement section 68B.32A as amended by 2006 Iowa Acts, House File 2512, section 2, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

Under Iowa Code section 68A.201, a "committee" is deemed to exist at the time the committee files a statement of organization or exceeds \$750 in financial activities, whichever occurs sooner. The law also requires a committee to file a statement of organization within ten days of exceeding the \$750 threshold. Iowa Code section 68A.402 requires every "committee" to file disclosure reports on specified dates. The amendment clarifies that a disclosure report must be filed if the report due date falls within the ten-day period, even if the committee has not yet filed the statement of organization.

The amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on April 26, 2006, as **ARC 5057B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on July 12, 2006.

This amendment is intended to implement Iowa Code sections 68A.201 and 68A.402.

This amendment will become effective on September 6, 2006.

The following amendment is adopted.

Amend subrule 4.7(1) as follows:

**4.7(1)** Disclosure reporting required. Every committee that has filed a statement of organization under Iowa Code Supplement section 68A.201 and rule 351—4.1(68A,68B) *or has exceeded the financial activity threshold set out in Iowa Code section 68A.102(5) or (18) prior to the cutoff date for reporting campaign transactions shall file a campaign disclosure report summary page (Form DR-2) and any appropriate disclosure reporting schedules or shall file a voluntary committee statement as provided in rule 351—4.11(68A,68B) pursuant to Iowa Code section 68A.402. Either the disclosure reporting information or the voluntary committee statement shall be filed on or before the due dates required under Iowa Code Supplement section 68A.402 and rule 351—4.9(68A,68B).*

[Filed 7/13/06, effective 9/6/06]

[Published 8/2/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/2/06.

**ARC 5272B****ETHICS AND CAMPAIGN  
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code Supplement section 68B.32A as amended by 2006 Iowa Acts, House File

2512, section 2, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

Iowa Code section 68A.503 prohibits the use of resources belonging to a financial institution, insurance company, or corporation to advocate for or against candidates except under certain circumstances. Current rule 4.48(68A,68B) provides an additional exception for "occasional, isolated, or incidental" use of corporate facilities. The Board does not believe the rule is supported by the statute and does not cite the rule in administrative decisions. The amendment rescinds the rule.

The amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on April 26, 2006, as **ARC 5060B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on July 12, 2006.

This amendment is intended to implement Iowa Code section 68A.503.

This amendment will become effective on September 6, 2006.

The following amendment is adopted.

Rescind and reserve rule **351—4.48(68A,68B)**.

[Filed 7/13/06, effective 9/6/06]

[Published 8/2/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/2/06.

**ARC 5274B****ETHICS AND CAMPAIGN  
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code Supplement section 68B.32A as amended by 2006 Iowa Acts, House File 2512, section 2, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

Current subrule 4.52(2) requires, in part, a corporation that cosponsors a fundraising mailing with the corporation's political committee (PAC) to submit to the Board a copy of the fundraising letter. The corporation is also required to submit a copy of the solicitation letter each January with its PAC report. The Board has not been enforcing these requirements in the rule. The amendment rescinds those portions of the rule.

The amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on April 26, 2006, as **ARC 5059B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on July 12, 2006.

This amendment is intended to implement Iowa Code section 68A.503.

This amendment will become effective on September 6, 2006.

The following amendment is adopted.

Rescind subrule 4.52(2) and adopt the following **new** subrule in lieu thereof:

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

**4.52(2)** Electronic transfer of deposits. A corporation, financial institution, or insurance company may receive and deposit checks that include both dues and PAC contributions. Contributions for the PAC shall be transferred as soon as possible into the PAC checking account and all disclosure, record-keeping, and record-retention requirements of Iowa Code chapter 68A shall be followed.

[Filed 7/13/06, effective 9/6/06]  
[Published 8/2/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/2/06.

## ARC 5287B

### HUMAN SERVICES DEPARTMENT[441]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 2005 Iowa Acts, chapter 175, section 6(5), the Department of Human Services amends Chapter 75, "Conditions of Eligibility," and Chapter 81, "Nursing Facilities," Iowa Administrative Code.

These amendments bring Iowa Medicaid rules into compliance with the provisions of Sections 6011 through 6016 of the Deficit Reduction Act of 2005, which was signed in February 2006. The amendments relate to Medicaid eligibility for people receiving various types of long-term care services.

When one spouse enters a medical facility and the other remains in the community, the Department makes an attribution of the couple's financial resources to allocate the amount of resources to be protected for the community spouse. If the couple believes that the amount of protected resources will not generate enough income for the community spouse, the couple can appeal the attribution decision. The amendment to subrule 75.5(3) changes the way income is considered for the appeal decision on whether to protect a higher amount of resources.

Previously, only the income of the community spouse was considered. The amendment provides that the income that the institutionalized spouse has available to give to the community spouse will also be considered. Therefore, the amount of resources protected for the community spouse will be less likely to increase on appeal, and a couple who is affected by this provision will need to spend more of their total resources in order to qualify for Medicaid.

New rule 441—75.6(249A) provides that certain entrance fees that a person paid on admission to a continuing care retirement community or to a life care community will be considered a resource available to that person for purposes of determining the person's Medicaid eligibility and the amount of benefits. (In Iowa, continuing care retirement communities are regulated by the Commissioner of Insurance under Iowa Code chapter 523D. "Continuing care" is defined as housing furnished together with supportive services and nursing, medical, and other health-related services pursuant to a life-long or time-limited contract in consideration of an entrance fee.)

New rule 441—75.15(249A) provides that an equity interest in a home that exceeds \$500,000 will cause ineligibility for Medicaid payment of long-term care services unless the applicant's spouse or minor, blind, or disabled child is resid-

ing in the home. The equity limit will be increased for inflation beginning in 2011.

Amendments to rule 441—75.23(249A) impose additional requirements related to the transfer of assets for less than fair market value. Previous rules required looking back 60 months for transfers from trusts; other transfers were examined only for the past 36 months. The amendments increase the period for looking back at all transfers of assets to 60 months.

The penalty for asset transfers is changed to begin on the later of the first of the month in which the assets were transferred (current policy) or the date the person is otherwise eligible for Medicaid long-term care payment. Thus, people will no longer be able to make transfers and then wait to apply for Medicaid when the penalty period has expired. Partial months of penalty will no longer be rounded down or dropped.

The amendments also provide that funds used to purchase annuities, loans, mortgages, promissory notes, or life estates in others' homes will automatically be treated as funds transferred for less than fair market value unless the conditions specified in the rule are met. Iowa currently examines these transfers for their fair market value but does not impose additional conditions. Language on qualifying for a hardship exemption to the penalty is clarified.

These amendments do not provide for waivers in specified situations because the Deficit Reduction Act of 2005 does not provide for waivers. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

These amendments were previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on June 7, 2006, as **ARC 5134B**. Notice of Intended Action to solicit comments on that submission was published in the Iowa Administrative Bulletin on the same date as **ARC 5133B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those Adopted and Filed Emergency and published under Notice of Intended Action.

The Council on Human Services adopted these amendments on July 12, 2006.

These amendments are intended to implement Iowa Code section 249A.4 and the Deficit Reduction Act of 2005.

These amendments shall become effective September 6, 2006, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [75.5(3), 75.6, 75.13(2), 75.15, 75.23(1), 75.23(2), 75.23(5), 75.23(9) to 75.23(11), 81.13(6)] is being omitted. These amendments are identical to those published under Notice as **ARC 5133B** and Adopted and Filed Emergency as **ARC 5134B**, IAB 6/7/06.

[Filed 7/14/06, effective 9/6/06]  
[Published 8/2/06]

[For replacement pages for IAC, see IAC Supplement 8/2/06.]

**ARC 5288B****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code sections 234.6 and 249A.4 and 2006 Iowa Acts, House File 2780, section 18, the Department of Human Services amends Chapter 88, "Managed Health Care Providers," and Chapter 153, "Funding for Local Services," Iowa Administrative Code.

The General Assembly in 2006 Iowa Acts, House File 2780, division III, mandated that the Department change the administration of the State Payment Program from the current method that uses the Iowa Plan for some members and the Department local offices for others to administration by the county central point of coordination (CPC) administrators. The amendments implement these changes in Chapter 153, Division IV, "State Payment Program for Services to Adults with Mental Illness, Mental Retardation, and Developmental Disabilities," and in Chapter 88, Division IV, "Iowa Plan for Behavioral Health."

Currently, all State Payment Program members are assigned to a Department worker and apply through the Department for annual eligibility reviews and other actions. Under these amendments, people seeking State Payment Program services will apply to the county CPC as any county residents would do, and their cases will be reviewed by the county CPC as are those of other county residents. State Payment Program members who have had their mental health services preauthorized and claims paid by Magellan will no longer be required to use this process. They and those members who had their claims paid by the Department will now have their claims paid by the county CPC as do other county residents.

Under the provisions of 2006 Iowa Acts, House File 2780, division III, section 19, most of the Department's State Payment Program appropriation will be allocated to counties. The Department, in consultation with the Legislative Services Agency, is to develop a methodology for distributing to the counties the funding appropriated for the fiscal year beginning July 1, 2006, for county residents who receive State Payment Program services and other support on and after October 1, 2006.

The Department is to meet with each county before September 1, 2006, to determine the amounts needed for each county to fund state case services and other support for county residents from October 1, 2006, to July 1, 2007, taking into consideration the difference between county reimbursement rates and the capped reimbursement rates paid by the state. If the aggregate of the amounts determined for each county exceeds the base funding amount, the Department shall retain responsibility for the costs of state case services and supports through June 30, 2007.

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

The Council on Human Services adopted these amendments on July 12, 2006.

The Department finds that notice and public participation are impracticable. 2006 Iowa Acts, House File 2780, section 18, requires these amendments to be effective October 1, 2006. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

These amendments are also published herein under Notice of Intended Action as **ARC 5282B** to allow for public comment.

These amendments are intended to implement Iowa Code sections 234.6 and 249A.4 and 2006 Iowa Acts, House File 2780, division III.

These amendments shall become effective October 1, 2006.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend rule **441—88.61(249A)** as follows:

Amend the definitions of "accredited," "appeal," "clinical decision review," "enrollment area," and "member" as follows:

"Accredited" shall mean an entity approved by the division of mental health and ~~developmental disabilities~~ *disability services* of the department to provide mental health services.

"Appeal" shall mean the process defined in 441—Chapter 7 by which a Medicaid beneficiary or other recipient of services through the department member, or the recipient's member's designee, may request review of a certain decision made by the department or the contractor.

"Clinical decision review" shall mean the process by which enrollees, members, and participating and nonparticipating providers may request a review by the contractor of a decision made by an employee of the contractor regarding the prior authorization, denial, or payment for services.

"Enrollment area" shall mean the geographical area in which the enrollees and members that are assigned by the department to the contractor reside.

"Member" shall ~~be mean~~ mean a person determined eligible for the state payment program by the division of mental health and developmental disabilities and designated by that division for inclusion in the Iowa Plan Medicaid.

Rescind the definitions of "beneficiary" and "state payment program."

Amend the definitions of "capitation rate," "contractor," "coverage group," "enrollee," and "enrollment" by striking the words "beneficiary" and "beneficiaries" and inserting the word "member" or "members" in lieu thereof.

ITEM 2. Amend paragraph **88.62(1)"a"** and subrules **88.63(2)**, **88.63(5)**, **88.63(6)**, **88.71(2)**, and **88.72(2)** by striking the words "beneficiary" and "beneficiaries" and inserting the word "member" or "members" in lieu thereof.

ITEM 3. Amend subrule 88.63(3) as follows:

**88.63(3)** Others to be served. ~~The department shall include persons in the state payment program in the Iowa Plan.~~ The department may include other recipients of mental health and substance abuse services in the Iowa Plan. The department shall specify in the contract the services, persons to be served, and reimbursement methodology when other recipients are included.

ITEM 4. Amend subrule 88.68(2) as follows:

**88.68(2)** Appeal to department. Enrollees and members may appeal clinical care decisions in accordance with the appeal process available to all persons receiving Medicaid-funded services as set forth in 441—Chapter 7 if the enrollee or member is not satisfied with the final decision rendered by

## HUMAN SERVICES DEPARTMENT[441](cont'd)

the contractor through the contractor's clinical decision review process.

ITEM 5. Amend rule ~~441—153.51(234)~~ as follows:

Amend the definitions of "application date," "division," "division administrator," "provider," and "resident" as follows:

"Application date" means the date a signed Form 470-0604, ~~State Payment Program Eligibility Determination~~, *central point of coordination application* is received in the county office *division*. See subrule 153.53(4).

"Division" means the division of mental health and ~~developmental disabilities~~ *disability services* of the department of human services.

"Division administrator" means the administrator of the division of mental health and ~~developmental disabilities~~ *disability services* of the department.

"Provider" means an Iowa provider of mental health, mental retardation, or ~~developmental disability services~~ who ~~that~~ has a valid purchase of service contract for the service or a valid special mental health mental retardation county contract agreement with the division for the service, or is a participating provider with the Iowa Plan for services to Iowa Plan members. ~~The special mental health mental retardation county contract agreement is established via Form 470-3336, State Payment Program Provider Enrollment Information, pursuant to the provider's contract with a county to provide services under a county management plan.~~

"Resident," for purposes of this division, means a person who is present in the state and who has ~~the intent to remain established an ongoing presence with the declared, good-faith intention of living in Iowa indefinitely permanently or for an indefinite period.~~

Adopt the following ~~new~~ definitions in alphabetical order:

"Adult" means a person who is 18 years of age or older and is a United States citizen or a qualified alien as defined in 8 U.S.C. §1641.

"Completed application" means a CPC application that includes all of the information necessary to verify the applicant's financial and diagnostic eligibility and to determine the applicant's county of legal settlement or lack thereof.

"County of residence" means the county in Iowa where, at the time an adult applies for or receives services, the adult is living and has established an ongoing presence with the declared, good-faith intention of living permanently or for an indefinite period. The county of residence of an adult who is a homeless person is the county where the adult usually sleeps.

"Homeless person" means a person who lacks a fixed, regular, and adequate nighttime residence and who has a primary nighttime residence that is one of the following:

1. A supervised publicly or privately operated shelter designed to provide temporary living accommodations.
2. An institution that provides a temporary residence for persons intended to be institutionalized.
3. A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Rescind the definitions of "department's service worker" and "Iowa Plan."

ITEM 6. Amend subrule 153.52(1) as follows:

Amend the introductory paragraph as follows:

**153.52(1)** Eligibility criteria. Meet the eligibility criteria established in the approved county management plan for the county ~~where the applicant resides, except that no person ap-~~

~~plying for services on or after July 1, 2004, shall be approved whose: of residence.~~

Rescind paragraphs "a" and "b."

ITEM 7. Amend rule 441—153.53(234) as follows:

**441—153.53(234) Application procedure.**

**153.53(1)** Application by ~~service worker~~ *CPC*. It shall be the responsibility of the department's ~~service workers~~ *county CPC or the CPC's official designee* to make application ~~apply~~ for the state payment program for any person ~~they serve residing in that county~~ who may be eligible.

a. An application for a person awaiting discharge from a state mental health institute or state ~~hospital school~~ *resource center* shall be initiated by the ~~institution's facility's~~ social worker and forwarded to the ~~department's service worker~~ *county CPC* for completion.

b. Applications shall be made only with the knowledge and consent of the person or the person's legal or personal representative. ~~An applicant residing in a county with an approved county management plan, with the consent of that county's central point of coordination, may be required to make application through the central point of coordination process.~~

**153.53(2)** Eligibility for services. An applicant shall be determined eligible based on the eligibility guidelines contained in the approved county management plan for the ~~applicant's county where the applicant resides of residence.~~ ~~When an application is filed on or after July 1, 2004, the applicant shall also meet the requirements in subrule 153.52(1).~~ ~~The department's service worker is responsible for the decision made on eligibility.~~

a. A person eligible for the state payment program as of June 30, 1996, shall remain eligible as long as the eligibility requirements in effect on June 30, 1996, are met. ~~If a county becomes responsible for a new resident whose costs were not included in the payment negotiation between the county and the division, the county shall supply the resident's application and service needs to the department for an eligibility verification and identification of funding availability.~~

b. The department may institute a waiting list for applicants residing in a county that institutes a waiting list for services funded through the county mental health, mental retardation and developmental disabilities services fund.

**153.53(3)** Application requirements. Applications shall be ~~made on Form 470-0604, State Payment Program Eligibility Determination, and shall include~~ *submitted to the state payment program manager at DHS Division of Mental Health and Disability Services, 1305 E. Walnut Street, Des Moines, Iowa 50319-0114. The application shall include:*

(1)-a a. A copy of the ~~applicant's case plan~~ *CPC's service authorization for the applicant;*

(2)-a b. A copy of a study or report signed by a licensed physician, psychiatrist, psychologist, licensed social worker, or licensed master social worker which establishes a diagnosis of mental illness, mental retardation, or developmental disability ~~in accordance with Iowa law~~ *completed standard CPC application form, the last part of which must be a properly completed legal settlement worksheet;*

(3) c. *Information necessary for the state payment program manager to complete Form 470-0555, Services Reporting System, completed except for item 41 and the last two digits of item 40 which is required for payment processing;* and

(4)-~~additional~~ d. *Additional narrative as necessary* as follows:

## HUMAN SERVICES DEPARTMENT[441](cont'd)

a.—A statement explaining why it is believed the applicant does not have legal settlement in Iowa and the place where it is thought the applicant does or may have it.

b. (1) A history of the custody or guardianship of the applicant, if custody or guardianship has ever been with someone other than the natural parents.

c.—A description of the applicant's family and the applicant's relationships with family members and significant others and the attempts made to seek services for the applicant near these people or the reason for not doing so.

d. (2) An explanation of the applicant's financial status, including Title XIX, Medicare, veteran and social security status and other entitlements.

e. (3) A statement verifying that the services requested are in the approved county management plan of the applicant's county of residence and would be funded by the county for the applicant if the applicant had legal settlement in the county.

f.—A statement that the provider identified either (1) has a valid purchase of service agreement for the services requested, or (2) has a valid special mental health mental retardation county contract agreement for the service established by Form 470-3336, State Payment Provider Enrollment Information. If the provider does not have one of these agreements, Form 470-3336 completed by the provider and a copy of the provider's agreement with a county under an approved county management plan which specifies the unit of service and the unit rate paid by the county in which the provider is located shall be included with the application materials submitted to central office.

g.—A statement that the provider is a participating provider with the Iowa Plan when the applicant's diagnosis is mental illness or chronic mental illness.

**153.53(4)** Application date. The date of application is the date a signed Form 470-0604, State Payment Program Eligibility Determination, is all materials described in subrule 153.53(3) are received in the department's county office division. The application date from a completed and signed Form 470-0615, Application for Social Services, or a completed and signed central point of coordination (CPC) application form, may be transferred, as the effective date, to Form 470-0604 470-0555, State Payment Program Eligibility Determination Services Reporting System, when:

a. the The CPC application received by the department's county office division contains a legal settlement worksheet completed in accordance with provisions of Iowa Code chapter 252 and other applicable laws and rulings of courts; and

b. the The CPC application is received in the department's county office division within 60 ten working days of the CPC application date.

**153.53(5)** Application submission. The application shall be completed by the department's service worker CPC or the CPC's official designee and submitted with materials required by subrule 153.53(3) to the division within 30 ten working days of the date the department's county office CPC or the CPC's official designee receives a completed and signed Form 470-0604, or a signed Form 470-0615, or a signed CPC application form containing a legal settlement worksheet completed in accordance with provisions of Iowa Code chapter 252 and other applicable laws and rulings of courts.

ITEM 8. Amend rule 441—153.54(234) as follows:

**441—153.54(234) Eligible services.** Services eligible for reimbursement pursuant to this division of the rules are the

services defined in the approved county management plan of the applicant's county of residence.

A person receiving a service under the state payment program as of June 30, 1996, which is not in the approved county management plan shall continue to remain eligible for that service as long as the eligibility requirements in effect on June 30, 1996, are met.

ITEM 9. Amend rule 441—153.55(234) as follows:

Amend subrule **153.55(1)** by rescinding paragraphs "b" and "c" and amending the introductory paragraph and paragraph "a" as follows:

**153.55(1)** Purchased services.

a. Social casework as defined in rule 441—131.1(234) or service management will may be provided by the department, or with agreement, through a county central point of coordination process, during the period for which services are paid. Regardless of who provides the social casework, the department has final responsibility for any decisions that may be subject to appeal. The state payment program provides payment for mental illness, mental retardation and developmental disabilities local services to members as follows.

a b. For members with a primary diagnosis of mental retardation or developmental disability, payment Payment will be provided to the county to pay for services as long as the person member is eligible and the following criteria are met:

(1) The provider has member is actively and routinely receiving a valid purchase of service agreement for the service pursuant to 441—Chapter 150, or the division has accepted the provider for a special mental health mental retardation county contract agreement that requires funding from the state payment program. Some examples include supported community living services received daily, ongoing therapy received at least monthly, or medication management received at least every three months. Services received less often than quarterly are not considered routine services; the applicant should be enrolled for the month in which the service occurs and disenrolled (closed) immediately thereafter.

(2) The service is provided under the approved county management plan of the member's county of residence, and payment for the service for other residents would be made from the county mental health, mental retardation and developmental disabilities services fund.

(3) The service is provided or paid for by the member's county of residence to persons who have legal settlement there.

(4) Service providers shall access the other payment systems for which the member is eligible prior to before billing the state payment program.

Amend subrule 153.55(2) as follows:

**153.55(2)** Excluded costs. The following costs are excluded from payment by the state payment program:

a.—The costs for a member's maintenance (room and board), medical services and other needs when the person is eligible for Medicaid, social security or state supplementary assistance. The state payment program pays only the net service cost of a residential service. This paragraph does not apply to rent subsidy or rent assistance services.

b. Services received prior to before the effective date.

c. The cost of local services which that the member is eligible to have funded by private sources or by other state or federal programs or funds such as medical assistance program services or services provided in a state institution.

d.—Service costs which are the responsibility of the Iowa Plan contractor. The Iowa Plan contractor shall cover all services which the state payment program would fund for the

## HUMAN SERVICES DEPARTMENT[441](cont'd)

member if the member were not the responsibility of the Iowa Plan. For members funded through the Iowa Plan, the services covered by the Iowa Plan are services in full, and payment made by the Iowa Plan for the services is payment in full. The Iowa Plan contractor's denial of payment for a service which is a state responsibility shall not create a payment responsibility for the county.

e. ~~Funeral and embalming, burial or cremation costs.~~

ITEM 10. Amend subrules 153.56(1) and 153.56(2) as follows:

**153.56(1)** Certification by ~~central office~~ *the department*. Following receipt of a completed Form 470-0604 *CPC application form* and required accompanying documentation specified in subrule 153.53(3), ~~central office~~ *division* staff of the department shall complete the determination of eligibility as follows:

a. ~~Iowa counties, other states and counties, agencies, institutions, professional persons and other sources shall be contacted as necessary, and court records and other documents shall be reviewed as necessary to determine the applicant's eligibility for benefits.~~

b. The applicant's legal settlement status shall be ascertained in accordance with Iowa Code sections 252.16 and 252.17 and with other applicable laws, rulings of courts and opinions of the Iowa attorney general.

c. The applicant's eligibility for the state payment program shall be certified to ~~the department's county office and, when applicable, the central point of coordination and the Iowa Plan contractor on Form 470-0604~~ within 30 *ten working* days of receipt in ~~central office~~ *the division* of the completed application and all verifications specified in subrule 153.53(3).

**153.56(2)** Notification of applicant.

a. Following certification by ~~central office~~ *the division*, the ~~department's service worker~~ *CPC or the CPC's official designee* shall notify the applicant of the decision in accordance with ~~department~~ *CPC* requirements and procedures.

b. Notifications of service changes and terminations for members with a ~~primary diagnosis of mental retardation or developmental disability~~ are the responsibility of the ~~department's county office~~ *CPC or the CPC's official designee* using the ~~department's~~ *CPC's* notice of decision in accordance with ~~department~~ *CPC* requirements and procedures.

e. ~~Notifications of service changes and terminations for members with mental illness or chronic mental illness are the responsibility of the Iowa Plan contractor and shall include notification to the department's service worker for the member.~~

ITEM 11. Rescind rule 441—153.57(234) and adopt the following new rule in lieu thereof:

**441—153.57(234) Program administration.**

**153.57(1)** CPC responsibilities.

a. Financial participation on the part of the member shall be governed by the financial participation provisions of the approved county management plan of the member's county of residence.

b. The CPC or the CPC's official designee shall submit monthly reports on each member's services expenditures to the division's state payment program manager. The report shall be submitted electronically and shall include the following data for each member:

- (1) The member's name.
- (2) The member's state identification number.
- (3) The member's ZIP code.
- (4) The member's county of residence.

(5) The CPC identification.

(6) The provider's tax identification number.

(7) The provider's name.

(8) The chart of accounts code of each service paid, listed by provider.

(9) The number of units paid (if applicable).

(10) The month and year when the member received the service.

(11) The dollar amount paid.

c. The CPC or the CPC's official designee shall cooperate in furnishing the division's state payment program manager with any information the CPC has that is necessary to determine an applicant's initial need or a member's continued need for funding through the state payment program.

d. The CPC or the CPC's official designee shall notify the department within ten working days of any change in a member's circumstances that would affect the member's eligibility or the member's cost of services, such as a discontinued service, a move out of county, acquired legal settlement, increased income, lack of current address, or death.

e. If a county receives the prospective payment for a member for a quarter but within that quarter that member moves to a new county, then the county that received the payment is responsible to:

(1) Pay the new county for that member's services for the balance of that quarter; and

(2) Notify the state payment program manager of the member's move. If the state payment program manager is notified by the fifteenth day of the last month in the quarter, then prospective payment for that member will be made to the new county for the next quarter, and the previous county of residence is relieved of payment responsibility for that member.

f. The CPC may not cause the discharge of a member receiving residential services without first giving 30 calendar days' notice to the member and to the residential provider. The county shall continue to fund the residential service until the member actually moves or until the 30 days' notice period expires, whichever occurs first.

**153.57(2)** Department responsibilities. As sponsoring agency, the department shall be responsible for:

a. Enrolling members as necessary to produce payment to the counties, including:

(1) Maintaining member information on the Services Reporting System for payment;

(2) Entering demographic data and other changes of which the CPCs notify the department; and

(3) Closing Services Reporting System files on members who are not actively receiving services.

b. Generating and reconciling quarterly payments to the counties.

c. Receiving and auditing reports of member activity and expenditures from the counties.

**153.57(3)** Payment to CPCs. The following policies shall govern payment to CPCs for services furnished to members:

a. Three weeks before the end of each quarter, the state payment program manager shall send each county CPC a list of the members having residence in that county and considered active.

(1) The CPC shall respond to the state payment program manager within five working days of the receipt of notification whether the CPC agrees with this list or requests changes to the list.

(2) The next quarter's prospective payment will be made based upon this list. If the department receives no response

## HUMAN SERVICES DEPARTMENT[441](cont'd)

from the county within five working days, no payment will be made for the listed members.

b. Moneys that the CPC received but did not expend, according to the report required by paragraph 153.57(1)“b,” shall be deducted from the county’s payment for the next quarter.

ITEM 12. Amend rule 441—153.58(234) as follows:

**441—153.58(234) Reduction, denial or termination of benefits.** The member’s state payment program benefits may be denied, terminated or reduced according to the provisions of the approved county management plan of the member’s county of residence.

~~An Iowa Plan member’s state payment program benefits may be denied, terminated or reduced according to the provisions of the Iowa Plan. The department shall at all times retain control over eligibility determination. The Iowa Plan contractor shall communicate with the department at least quarterly regarding the member’s status and services.~~

**153.58(1)** A member’s state payment program benefits shall be terminated on the date the member acquires legal settlement in a county of the state or the date the member ceases to be a resident of Iowa as defined in this chapter.

**153.58(2)** The department’s service worker in the county office ~~CPC or the CPC’s official designee~~ is responsible for:

a. ~~completing~~ *Completing* notices of decision to the member and sending copies to the state payment program manager and, where applicable, the Iowa Plan contractor regarding service changes and terminations; and

b. *Sending the notices of decision to the member and to the state payment program manager.*

ITEM 13. Rescind rule 441—153.59(234) and adopt the following **new** rule in lieu thereof:

**441—153.59(234) Appeals.**

**153.59(1)** Decisions regarding eligibility of any applicant and decisions adversely affecting applicants or members who are not eligible may be appealed pursuant to 441—Chapter 7.

**153.59(2)** Decisions (other than eligibility) adversely affecting applicants or members shall be appealed pursuant to the county CPC’s appeal provisions.

ITEM 14. Amend the implementation clause following **441—Chapter 153, Division IV**, as follows:

These rules are intended to implement Iowa Code section 234.6(6) and 2006 Iowa Acts, House File 2780, division III.

[Filed Without Notice 7/14/06, effective 10/1/06]

[Published 8/2/06]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/2/06.

## ARC 5286B

### HUMAN SERVICES DEPARTMENT[441]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 92, “Iowa-Care,” Iowa Administrative Code.

These amendments:

- Allow IowaCare members to pay their premiums in cash at the Broadlawns Medical Center. Broadlawns has requested this procedure so that members do not have to pay the cost of a money order to mail in the payment. Broadlawns will transport the payments to the Department’s agent by armored car.

- Require a written statement for a hardship based on a partial premium payment. The federal Centers for Medicare and Medicaid Services has ruled that the Department’s current policy of considering submission of a partial payment as a request for hardship exemption is not acceptable. A member must attest to the inability to pay the premium in order for the Department to exempt the member from paying the remainder of the premium.

These amendments also reflect the Department’s interpretation of current rules by clarifying that:

- A person who is not able to meet the spenddown for Medically Needy coverage shall be treated as a person who is not eligible for Medicaid and, therefore, may be eligible for IowaCare coverage; and

- A person who is disqualified for Medicaid due to excess resources is not eligible for IowaCare.

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

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on June 7, 2006, as **ARC 5153B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on July 12, 2006.

These amendments are intended to implement Iowa Code Supplement chapter 249J.

These amendments shall become effective on October 1, 2006.

The following amendments are adopted.

ITEM 1. Amend rule 441—92.2(249A,81GA,ch167) as follows:

Amend subrule **92.2(1)**, paragraph “a,” subparagraph (1), as follows:

(1) Are not eligible for medical assistance under 441—subrules 75.1(1) through 75.1(40), *including persons unable to meet spenddown under 441—subrule 75.1(35)*; and

Amend subrule 92.2(3) as follows:

**92.2(3)** Other disqualification. A person who has been disqualified ~~for~~ from Medicaid for reasons other than excess income, *excess resources*, or lack of categorical eligibility is not eligible for IowaCare benefits.

ITEM 2. Amend rule 441—92.7(249A,81GA,ch167) as follows:

Amend subrule **92.7(2)**, paragraph “a,” as follows:

a. Method of payment. Members shall submit premium payments to the following address: Iowa Medicaid Enterprise Revenue Collection Unit, P.O. Box 10391, Des Moines, Iowa 50306-0391. *Members may also submit premium payments to the Broadlawns Medical Center or other designated office that makes arrangements for armored delivery of the payments to the department’s agent for receiving payments.*

HUMAN SERVICES DEPARTMENT[441](cont'd)

Amend subrule **92.7(3)**, paragraph “**a**,” as follows:

a. A partial payment *submitted with a written statement indicating that full payment of the monthly premium will be a financial hardship that is postmarked or received on or before the end of the month for which the premium is due* shall be considered a request for a hardship exemption. The exemption shall be granted for the balance owed for that month.

[Filed 7/14/06, effective 10/1/06]

[Published 8/2/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/2/06.

## ARC 5291B

### IOWA FINANCE AUTHORITY[265]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(17) and 2006 Iowa Acts, House File 2797, section 45, the Iowa Finance Authority hereby rescinds Chapter 15, “Housing Assistance Fund (HAF),” Iowa Administrative Code.

This amendment rescinds Chapter 15 of the Authority's rules due to the fact that, pursuant to 2006 Iowa Acts, House File 2797, section 45, all assets held in the housing assistance fund are transferred to the housing trust fund created pursuant to Iowa Code section 16.181, effectively terminating the HAF program and rendering the rules of Chapter 15 unnecessary.

Notice of Intended Action was published in the May 24, 2006, Iowa Administrative Bulletin as **ARC 5123B**. The Authority received no public comments during the public comment period. No changes to the text of the noticed amendment were made.

The Authority adopted this amendment on July 12, 2006.

This amendment will become effective on September 6, 2006.

This amendment is intended to implement Iowa Code sections 16.5(17) and 16.181 and 2006 Iowa Acts, House File 2797, section 45.

The following amendment is adopted.

Rescind and reserve **265—Chapter 15**.

[Filed 7/14/06, effective 9/6/06]

[Published 8/2/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/2/06.

## ARC 5263B

### PUBLIC HEALTH DEPARTMENT[641]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby amends Chapter 131, “Emergency Medical Services Provider Education/Training/Certification,” Iowa Administrative Code.

The rules in Chapter 131 describe the standards for the education, training, and certification of emergency medical providers and establish a standard of conduct for training programs, students, and providers. Following is a description of the amendments to Chapter 131.

Item 1 removes a reference to the Iowa Law Enforcement Academy from the definition of “training program.” Rules concerning Iowa law enforcement emergency care providers are contained in 641—Chapter 139.

Item 2 clarifies the emergency medical care provider student registration requirements to reflect current use of the Web-based system registry program.

Item 3 removes the requirement that students be cleared by the Bureau of Emergency Medical Services prior to beginning the clinical portion of their training. The Bureau will continue to approve individuals for certification, but students may begin clinical or field training when approved by their training program and the clinical or field site.

Items 4 and 5 increase opportunities for continuing education by providing that courses approved by the Continuing Education Coordinating Board for Emergency Medical Services or held at an accredited college or university may be counted toward emergency medical care provider certification renewal.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 24, 2006, as **ARC 5113B**. No public comments were received. These amendments are identical to those published under Notice.

The State Board of Health adopted these amendments on July 12, 2006.

These amendments are intended to implement Iowa Code chapter 147A.

These amendments will become effective on September 6, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [131.1, 131.4(1)“a,” “b” and “g,” 131.4(6)“a” and “c”] is being omitted. These amendments are identical to those published under Notice as **ARC 5113B**, IAB 5/24/06.

[Filed 7/12/06, effective 9/6/06]

[Published 8/2/06]

[For replacement pages for IAC, see IAC Supplement 8/2/06.]

## ARC 5264B

### PUBLIC HEALTH DEPARTMENT[641]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby amends Chapter 132, “Emergency Medical Services—Service Program Authorization,” Iowa Administrative Code.

The rules in Chapter 132 describe the standards for the transport and nontransport services that provide emergency medical care. This amendment makes the disciplinary appeals process consistent with other rules of the Bureau of Emergency Medical Services by requiring appeals to be submitted within 20 days rather than 30.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 24, 2006, as **ARC 5114B**. No public comments were received. This amendment is identical to that published under Notice.

The State Board of Health adopted this amendment on July 12, 2006.

This amendment is intended to implement Iowa Code chapter 147A.

This amendment will become effective on September 6, 2006.

The following amendment is adopted.

Amend subrule 132.10(5) as follows:

**132.10(5)** Any requests for appeal concerning the denial, citation and warning, probation, suspension or revocation of service program authorization or renewal shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 30 20 days of the receipt of the department's notice. The address is: Iowa Department of Public Health, Bureau of Emergency Medical

Services, Lucas State Office Building, Des Moines, Iowa 50319-0075. If such a request is made within the 30 20-day time period, the notice shall be deemed to be suspended. 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. After the hearing, or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the denial, citation and warning, probation, suspension or revocation. If no request for appeal is received within the 30 20-day time period, the department's notice of denial, probation, suspension or revocation shall become the department's final agency action.

[Filed 7/12/06, effective 9/6/06]

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