

CORRECTIONS DEPARTMENT[201]

Adopted and Filed

Rule making related to community-based corrections and OWI programs

The Corrections Department hereby amends Chapter 40, “Community-Based Corrections Administration,” and Chapter 47, “OWI Programs,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 904.108 and 905.7.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 904.513 and 905.8.

Purpose and Summary

The amendments to Chapter 40 change the time frame from two years to five years for the Department review of a district community-based correctional program. This rule making provides for follow-up on areas designated as needing improvement based on corrective action plans, which may be conducted at any time during the five-year interim. This will allow the Department to do a more thorough review and follow-up on the district’s community-based correctional program corrective action plan. The amendments to Chapter 47 make a conforming change to align the Department’s rules with the Iowa Code regarding placement for operating while intoxicated (OWI) violators sentenced to the custody of the Department but awaiting placement in a community residential substance abuse program. The Iowa Code requires OWI violators to be placed in a prison substance abuse program within 60 days of admission or as soon as practical, unlike the current administrative rule language, which uses the date of sentencing.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 26, 2020, as **ARC 5145C**. A public hearing was held on September 15, 2020, at 11 a.m. at the Jessie Parker Building, 510 East 12th Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received.

This rule making is not identical to the published Notice. During the Board of Corrections meeting on October 2, 2020, the Board voted to add the words “or as soon as practical” to Item 8 to reflect Iowa Code section 904.513.

Adoption of Rule Making

This rule making was adopted by the Department on October 2, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 201—Chapter 7.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on December 9, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend rule **201—40.1(905)**, definitions of “Ongoing site visits” and “Team review,” as follows:

“*Ongoing site visits*” ~~shall mean~~ means any visit by the deputy director, the deputy director's designee or representatives of the office of the state auditor which shall be to assure continuing compliance with the Code of Iowa and the Iowa Administrative Code or to follow up on areas designated as needing improvement based on corrective action plans from the previous accreditation review period, and which may be conducted at any time during the ~~two-year~~ five-year interim following the most recent team review.

“*Team review*” ~~shall mean~~ means a biennial five-year review of overall program, policies and procedures for compliance with the Code of Iowa and the Iowa Administrative Code by one or more persons designated by the deputy director.

ITEM 2. Amend subrule 40.2(2) as follows:

40.2(2) The deputy director shall conduct or assign staff the responsibility to conduct the ~~biennial~~ five-year team review for accreditation purposes.

ITEM 3. Amend subrule 40.2(3) as follows:

40.2(3) The deputy director shall make or assign staff to make ongoing site ~~reviews~~ visits during the ~~two-year~~ five-year interim following the most recent team review in order to follow up on areas designated as needing improvement based on corrective action plans from the previous accreditation review period.

ITEM 4. Amend subrule 40.2(4) as follows:

40.2(4) The ~~biennial~~ five-year team review shall include a complete review of the following:

a. and b. No change.

c. Programs mandated by the Code of Iowa and any special programs approved by the department of corrections. Programs shall comply with program-specific standards developed and approved by the department of corrections with collaborative input from the judicial districts and other affected stakeholders, i.e., domestic abuse, and sex offender treatment, ~~and intensive supervision program~~.

d. No change.

e. Any regular or special evaluations of the services provided by the district department.

The ~~biennial~~ five-year team review shall be conducted as provided in the “accreditation standards for community-based corrections” and any program-specific standards, which shall be open for public inspection at the offices of the department of corrections. A proposed draft of these standards will be made available to the districts 180 days prior to the ~~biennial~~ five-year team review. The accreditation

and program-specific final standards, and any changes in the standards, shall be made available to the district departments at least 90 days before the ~~biennial~~ five-year team review.

ITEM 5. Amend subrule 40.2(5) as follows:

40.2(5) The results of any ~~biennial~~ five-year team review will be reported to the deputy director, who shall review the results, and when a district is in adequate compliance with the Code of Iowa, the Iowa Administrative Code and the accreditation standards, the deputy director shall issue a certificate of accreditation for the following ~~two~~ five years. When a district is not in adequate compliance as provided in the accreditation standards, the deputy director will notify the chairperson of the district board and the district director of the specific deficiencies and allowable time frames for correcting the deficiencies. At the end of the period of time for bringing the deficiencies into compliance, the deputy director shall award a certificate of accreditation or shall notify the district board and proceed as provided in Iowa Code section 905.9.

ITEM 6. Amend subrule 40.2(6) as follows:

40.2(6) The ongoing site review shall include periodic assessments of the district departments and its programs as set out in 40.2(4) and shall be designed to provide evidence of continuing compliance. If at any time during the ~~two-year~~ five-year period, following the most recent team reviews, the deputy director, through information gathered in ongoing site reviews, concludes that the district department is no longer in adequate compliance may conduct or order an interim team review. If in the team review the evidence indicates serious noncompliance, the deputy director may proceed as provided in 40.2(5).

ITEM 7. Amend subrule 47.1(4) as follows:

47.1(4) All facilities and programs operated pursuant to this chapter shall be reviewed for approval by the department of corrections initially and ~~biennially~~ every five years thereafter. A district department which fails to maintain compliance with this chapter shall be subject to the provisions of Iowa Code section 905.9.

ITEM 8. Amend subrule 47.2(3) as follows:

47.2(3) Priority for placement in the treatment program shall be based on the date of ~~sentence~~ institution admission or as soon as practical unless an exception is made by the department of corrections or district department for special circumstances.

[Filed 10/14/20, effective 12/9/20]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/4/20.