



IOWA ADMINISTRATIVE BULLETIN

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NUMBER 14
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- Filed, Water service excise tax, ch 97 **ARC 4217C** 1580
- Filed, Exemptions primarily benefiting manufacturers and other persons engaged in processing, 211.1, 230.2(1), 230.15 **ARC 4218C** 1585

WORKFORCE DEVELOPMENT DEPARTMENT[871]

- Notice, Federal payment offset of covered unemployment compensation debt, 25.17 **ARC 4199C** 1517

PREFACE

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

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

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

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

JACK EWING, Administrative Code Editor
Publications Editing Office (Administrative Code)

Telephone: (515)281-6048
Telephone: (515)281-3355

Email: Jack.Ewing@legis.iowa.gov
Email: AdminCode@legis.iowa.gov

CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2019

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
16	Friday, January 11, 2019	January 30, 2019
17	Friday, January 25, 2019	February 13, 2019
18	Friday, February 8, 2019	February 27, 2019

PLEASE NOTE:

Rules will not be accepted by the Publications Editing Office after **12 o'clock noon** on the filing deadline unless prior approval has been received from the Administrative Rules Coordinator and the Administrative Code Editor.

†To allow time for review by the Administrative Rules Coordinator prior to the Notice submission deadline, Notices should generally be submitted in RMS four or more working days in advance of the deadline.

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, January 8, 2019, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Agenda published in the December 19, 2018, Iowa Administrative Bulletin.

ARTS DIVISION[222]

CULTURAL AFFAIRS DEPARTMENT[221]“umbrella”

Artsafe and art in state buildings programs, rescind chs 12, 13 Notice **ARC 4197C** 1/2/19

ECONOMIC DEVELOPMENT AUTHORITY[261]

Iowa export trade assistance program, amendments to ch 72 Notice **ARC 4203C** 1/2/19

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]“umbrella”

Review of rules—administration, licensure, professional development, discipline, peer review, surveying, amendments to chs 1, 3 to 5, 7 to 12 Filed **ARC 4206C** 1/2/19

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Air quality, amendments to chs 20, 22, 23, 25 Amended Notice **ARC 4221C** 1/2/19

HUMAN SERVICES DEPARTMENT[441]

State supplementary assistance—assistance standards definition, cost-of-living adjustments,

51.4(1), 51.7, 52.1 Notice **ARC 4219C**, also Filed Emergency **ARC 4220C** 1/2/19

Mental health and disability services regions, amendments to ch 25 Filed **ARC 4207C** 1/2/19

Retrospective Medicaid coverage benefit—residents of nursing facilities, 75.25, 76.13(3)

Filed **ARC 4208C** 1/2/19

Medicaid—health and disability waiver, 83.2 Filed **ARC 4209C** 1/2/19

IOWA FINANCE AUTHORITY[265]

Changes to address of authority, amendments to chs 1, 7, 9, 13, 15 to 18, 22, 30, 31, 37, 44

Notice **ARC 4196C** 1/2/19

Private activity bond allocation, amendments to ch 8 Filed **ARC 4210C** 1/2/19

Wastewater and drinking water treatment financial assistance program, amendments to ch 28

Filed **ARC 4211C** 1/2/19

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

Federal occupational safety and health standards for crane operator training—adoption by

reference, 26.1 Notice **ARC 4198C** 1/2/19

Hoistway lighting and conduit, 71.1, 72.10, 72.13(7), 73.8(8) Filed **ARC 4212C** 1/2/19

MEDICINE BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Training requirements for chronic pain management and end-of-life care for permanent or

special license renewal; definition of “opioid,” 11.1, 11.4(1) Notice **ARC 4204C** 1/2/19

Supervision of physician assistants at remote medical sites, 21.4(6) Filed **ARC 4213C** 1/2/19

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Iowa prescription monitoring program, ch 37 Notice **ARC 4205C** 1/2/19

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Speech pathologists and audiologists—licensure by endorsement, 300.9 Filed **ARC 4214C** 1/2/19

Speech pathologists and audiologists—code of ethics, 304.2(31) Filed **ARC 4215C** 1/2/19

REVENUE DEPARTMENT[701]

Personal transportation service, 26.80 Filed **ARC 4216C** 1/2/19

Delivery sales of alternative nicotine products or vapor products, amendments to ch 82

Notice **ARC 4201C** 1/2/19

Water service excise tax, ch 97 Filed **ARC 4217C** 1/2/19

Local option sales and services tax, 107.1 to 107.17 Notice **ARC 4202C** 1/2/19

Exemptions primarily benefiting manufacturers and other persons engaged in processing, 211.1, 230.2(1), 230.15 <u>Filed</u> ARC 4218C	1/2/19
Sourcing of taxable services, tangible personal property, and specified digital products, amendments to ch 223 <u>Notice</u> ARC 4200C	1/2/19

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Federal payment offset of covered unemployment compensation debt, 25.17 <u>Notice</u> ARC 4199C	1/2/19
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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.

Senator Jim Carlin
43 Arlington Road
Sioux City, Iowa 51106

Senator Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Senator Mark Costello
37265 Rains Avenue
Imogene, Iowa 51645

Senator Robert E. Dvorsky
450 Third Avenue, #3
Coralville, Iowa 52241

Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001

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Representative Steven Holt
1430 Third Avenue South
Denison, Iowa 51442

Representative Megan Jones
4470 Highway 71
Sioux Rapids, Iowa 50585

Representative Amy Nielsen
168 Lockmoor Circle
North Liberty, Iowa 52317

Representative Rick Olson
3012 East 31st Court
Des Moines, Iowa 50317

Representative Dawn Pettengill
P.O. Box A
Mount Auburn, Iowa 52313

Sam Langholz
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 18
Des Moines, Iowa 50319
Telephone: (515)281-5211

EDUCATIONAL EXAMINERS BOARD[282]

Code of professional ethics and conduct—violations of contractual obligations, 25.3(5) IAB 12/5/18 ARC 4147C	Room 3 Southwest Grimes State Office Bldg. Des Moines, Iowa	January 2, 2019 1 p.m.
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Suicide prevention, identification of adverse childhood experiences, strategies to mitigate toxic stress response, amendments to ch 14 IAB 12/5/18 ARC 4157C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 8, 2019 9 to 10 a.m.
Use of online learning and telecommunications for instruction by schools, amendments to ch 15 IAB 12/5/18 ARC 4158C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 8, 2019 10 to 11 a.m.
Open enrollment—participation in cocurricular or extracurricular activities, amendments to ch 17 IAB 12/5/18 ARC 4159C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 8, 2019 11 a.m. to 12 noon
Summer college credit program, 22.33 IAB 12/5/18 ARC 4155C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 8, 2019 3 to 4 p.m.
Supplementary weighting, amendments to ch 97 IAB 12/5/18 ARC 4156C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 8, 2019 1 to 2 p.m.
Financial management of categorical funding, amendments to ch 98 IAB 12/5/18 ARC 4160C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 8, 2019 2 to 3 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality, amendments to chs 20, 22, 23, 25 IAB 1/2/19 ARC 4221C	Conference Room 4 East Wallace State Office Bldg. Des Moines, Iowa	January 22, 2019 1 to 2 p.m.
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LABOR SERVICES DIVISION[875]

Federal occupational safety and health standards for crane operator training—adoption by reference, 26.1 IAB 1/2/19 ARC 4198C	150 Des Moines St. Des Moines, Iowa	January 23, 2019 9 a.m. (If requested)
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ASME code cases for regulated objects—adoption by reference, 91.1(2) IAB 12/19/18 ARC 4179C	150 Des Moines St. Des Moines, Iowa	January 9, 2019 9 a.m. (If requested)
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MEDICINE BOARD[653]

Training requirements for chronic pain management and end-of-life care for permanent or special license renewal; definition of “opioid,” 11.1, 11.4(1) IAB 1/2/19 ARC 4204C	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	January 22, 2019 10 to 11 a.m.
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REVENUE DEPARTMENT[701]

Local option sales and services tax, 107.1 to 107.17 IAB 1/2/19 ARC 4202C	Room 430, Fourth Floor Hoover State Office Bldg. Des Moines, Iowa	January 23, 2019 9 to 10 a.m.
Sourcing of taxable services, tangible personal property, and specified digital products, amendments to ch 223 IAB 1/2/19 ARC 4200C	Room 430, Fourth Floor Hoover State Office Bldg. Des Moines, Iowa	January 23, 2019 10 to 11 a.m.

The following list will be updated as changes occur.

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

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

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

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ARC 4197C

ARTS DIVISION[222]

Notice of Intended Action

**Proposing rule making related to fine arts programs
and providing an opportunity for public comment**

The Arts Division hereby proposes to rescind Chapter 12, “Artsafe Program,” and Chapter 13, “Art in State Buildings Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 303.1A.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2017 Iowa Acts, Senate File 516.

Purpose and Summary

This proposed rule making rescinds the Artsafe program, which implemented Iowa Code sections 304A.21 to 304A.29 authorizing the Arts Division to provide State of Iowa indemnification to eligible nonprofit Iowa organizations against loss or damage during the exchange, transportation, or exhibition of eligible art and artifacts. The amendments also rescind the Art in State Buildings program, which implemented Iowa Code sections 304A.8 to 304A.14 requiring state agencies and departments to reserve one-half of 1 percent of the total cost of state construction projects for the acquisition of fine arts in state buildings.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. It removes rules for programs that no longer exist.

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 of Cultural Affairs (DCA) for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the DCA no later than 4:30 p.m. on January 22, 2019. Comments should be directed to:

Chris Kramer
Department of Cultural Affairs
600 East Locust Street
Des Moines, Iowa 50319
Phone: 515.281.3223
Email: chris.kramer@iowa.gov

ARTS DIVISION[222](cont'd)

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

- ITEM 1. Rescind and reserve **222—Chapter 12**.
- ITEM 2. Rescind and reserve **222—Chapter 13**.

ARC 4203C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

Proposing rule making related to export trade assistance program and providing an opportunity for public comment

The Economic Development Authority hereby proposes to amend Chapter 72, “Iowa Export Trade Assistance Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 15.106A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 15.108.

Purpose and Summary

These proposed amendments update Chapter 72, Iowa Export Trade Assistance Program (ETAP). The amendments update outdated terms and eliminate references to outdated or unused practices. Some of the updates include changing the terms “Department” to “Authority,” “foreign” to “international,” and “freight” to “shipping.”

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 Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on January 22, 2019. Comments should be directed to:

Jennifer Klein
Economic Development Authority
200 East Grand Avenue
Des Moines, Iowa 50309
Phone: 515.725.3124
Email: jennifer.klein@iowaeda.com

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 261—72.1(78GA,ch197) as follows:

261—72.1(78GA,ch197) Purpose. The purpose of the Iowa export trade assistance program is to promote the development of international trade activities and opportunities for exporters in the state of Iowa through encouraging increased participation in ~~overseas~~ international trade shows and trade missions by providing financial assistance to successful applicants.

ITEM 2. Amend rule 261—72.2(78GA,ch197) as follows:

261—72.2(78GA,ch197) Definitions.

“~~Department Authority~~” means the Iowa ~~department~~ of economic development authority.

“~~Division~~” means the ~~international division~~ of the ~~department~~.

“~~Exporter~~” means a person or business that sells one of the following outside of the United States:

- A manufactured product.
- A value-added product.
- An agricultural product.
- A service.

“~~Sales representative~~” means a contracted representative of an Iowa firm with the authority to consummate a sales transaction.

“~~Trade mission~~” means a mission event led by the ~~Iowa department of economic development authority~~ or designated representative. Qualified trade missions must include each of the following:

- Advanced operational and logistical planning.
- Advanced scheduling of individualized appointments with prequalified prospects interested in participants’ product or service being offered.
- Background information on individual prospects prior to appointments.

Trade missions may also include:

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

- In-depth briefings on market requirements and business practices for the targeted country.
- Interpreter services.
- Development of a trade mission directory prior to the event containing individual company data regarding the Iowa company and the products being offered.
- Technical seminars delivered by the mission participants.

ITEM 3. Amend rule 261—72.3(78GA,ch197) as follows:

261—72.3(78GA,ch197) Eligible applicants. The export trade assistance program is available to Iowa firms either producing or adding value to products, or both, or providing exportable services in the state of Iowa. To be eligible to receive trade assistance, applicants must meet all five of the following criteria:

1. Be an entity employing fewer than 500 individuals, 75 percent or more of whom are employed within the state of Iowa,
2. Exhibit products or services or samples of Iowa manufactured, processed or value-added products or agricultural commodities in conjunction with ~~a foreign~~ an international trade show or trade mission (~~catalog exhibits are permitted if they are used in conjunction with the exhibit of a product or service or in association with the firm's participation in a trade mission~~),
3. Have at least one full-time employee or sales representative ~~attend~~ participate in the trade show or participate in the trade mission,
4. Provide proof of deposit or executed payment agreement for a trade show, or payment of the trade mission participation fee, and
5. Be considered by ~~IDED~~ the authority as compliant with past ETAP contractual agreements.

ITEM 4. Amend rule 261—72.4(78GA,ch197), introductory paragraph, as follows:

261—72.4(78GA,ch197) Eligible reimbursements. The ~~department's~~ authority's reimbursement to approved applicants for assistance shall not exceed 75 percent of eligible expenses. Total reimbursement shall not exceed \$4000 per event. Payments will be made by the ~~department~~ authority on a reimbursement basis upon submission of proper documentation and approval by the ~~department~~ authority of paid receipts received by the ~~division~~ authority. Reimbursement is limited to the following types of expenses:

ITEM 5. Amend paragraphs **72.4(1)“d”** and **“g”** as follows:

- d.* ~~Freight Shipping~~ costs associated with shipment of equipment or exhibit materials to the participant's booth and return.
- g.* Per diem (lodging and meals) for the day immediately before the opening day of the trade show through the day immediately after the closing day of the trade show; per diem is calculated at 50 percent of the rate schedules provided by the U.S. Department of State for travel in ~~foreign~~ international areas; and per diem will be paid for only one sales representative.

ITEM 6. Amend paragraphs **72.4(2)“b”** to **“e”** as follows:

- b.* Per diem (lodging and meals) for each day identified in the official mission itinerary. Per diem is calculated at 50 percent of the rate schedules provided by the U.S. Department of State for travel in ~~foreign~~ international areas and will be paid for only one sales representative.
- c.* ~~Freight Shipping~~ costs associated with shipment of equipment or exhibit materials to the participant's meeting site and return.
- d.* ~~Presentation equipment at the meeting site.~~
- e-d.* Interpreter fees, if not included in the participation fee, and as needed during the trade mission.

ITEM 7. Amend rule 261—72.5(78GA,ch197) as follows:

261—72.5(78GA,ch197) Applications for assistance. The application for assistance shall be available on the authority's website. To ~~access~~ qualify for the export trade assistance program, the applicant shall:

- 72.5(1)** Complete the export trade assistance program's application form and ~~return~~ submit it to the ~~division~~ authority prior to trade event participation. Successful applicants will be required to enter into a contract for reimbursement with the ~~department~~ authority prior to trade event participation.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

72.5(2) Exhibit products or services or samples of Iowa products in conjunction with a ~~foreign~~ an international trade show or trade mission (~~catalog exhibits are permitted if they are used in conjunction with the exhibit of a product or service or in association with the firm's participation in a trade mission~~).

72.5(3) Have in attendance at the trade show or trade mission at least one full-time employee or sales representative of the applicant.

72.5(4) Pay all expenses related to participation in the trade event and submit eligible, documented expenses for reimbursement from the ~~department~~ for eligible, documented expenses authority.

72.5(5) Complete the final report form and ~~return~~ submit it to the ~~division~~ authority before final reimbursement can be made.

ITEM 8. Amend rule 261—72.6(78GA,ch197) as follows:

261—72.6(78GA,ch197) Selection process. Applications will be reviewed in the order received by the ~~division~~ authority. Successful applicants will be funded on a first-come, first-served basis to the extent funds are available. When all funds have been committed, applications shall be held in the order they are received. In the event that committed funds are subsequently available, the applications shall be processed in the order they were received for events that have not yet occurred.

ITEM 9. Amend rule 261—72.7(78GA,ch197) as follows:

261—72.7(78GA,ch197) Limitations. A participant in the export trade assistance program shall not utilize the program's benefits more than three times during the state's fiscal year. Participants shall not utilize export trade assistance program funds ~~for participation in the same trade show during two consecutive state fiscal years, or~~ for participation in the same trade show more than two times. Participants shall not utilize export trade assistance program funds for participation in multiple trade shows in the same country during the same state fiscal year.

ITEM 10. Amend rule 261—72.8(78GA,ch197) as follows:

261—72.8(78GA,ch197) Forms. The following forms are available from the ~~department~~ authority and will be used by the ~~department~~ authority in the administration of the export trade assistance program:

1. ETAP application form,
2. ETAP final report (claim) form,
3. Reimbursement Grant agreement.

ARC 4221C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Amended Notice of Intended Action

Proposing rule making related to air quality and providing an opportunity for public comment

The Notice of Intended Action published in the Iowa Administrative Bulletin on December 19, 2018, as **ARC 4178C**, proposes to amend Chapter 20, "Scope of Title—Definitions," Chapter 22, "Controlling Pollution," Chapter 23, "Emission Standards for Contaminants," and Chapter 25, "Measurement of Emissions," Iowa Administrative Code. In order to receive oral comments concerning **ARC 4178C**, the Environmental Protection Commission (Commission) hereby gives notice of a change to the public hearing date and the public comment deadline previously indicated in **ARC 4178C**, as follows:

Public Hearing

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

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

January 22, 2019
1 to 2 p.m.

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

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

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 22, 2019. Comments should be directed to:

Christine Paulson
Department of Natural Resources
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: christine.paulson@dnr.iowa.gov

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 455B.133.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 455B.133.

Purpose and Summary

The purposes of this rule making are identical to the purposes stated in **ARC 4178C** and are to:

1. Reduce the cost of government while providing streamlined services to the public and regulated community.
2. Update rules to provide regulatory certainty and flexibility. The proposed amendments implement a portion of the Department of Natural Resources' (Department's) five-year review of rules plan to accomplish the requirements of Iowa Code section 17A.7(2).
3. Offer uniform rules by making changes that match federal regulations and eliminate inconsistencies between federal regulations and state administrative rules. By adopting federal updates into state administrative rules, the Commission is ensuring that Iowa's air quality rules are no more stringent than federal regulations. Additionally, the updates allow the Department, rather than the U.S. Environmental Protection Agency (EPA), to be the primary agency to implement the air quality requirements in Iowa, thereby allowing the Department to provide compliance assistance and outreach to affected facilities.

Items 1 and 6 propose to amend the definition of "EPA reference method" to adopt the technical corrections that EPA made to continuous methods for measuring air pollutant emissions. The corrections were published on August 7, 2017, in the Federal Register and codified in 40 Code of Federal Regulations (CFR) Part 60, Appendix B. **Item 15** also proposes to adopt these federal updates into the methods and procedures established in Chapter 25 for continuous monitoring systems. Adopting EPA's updates ensures that state reference methods match current federal reference methods and are no more stringent than the federal methods.

Item 2 proposes to add a cross reference to the rules for nonattainment areas specified in Chapter 31 of the Commission's rules.

Items 3, 4, 5, 7, 9, 10 and 11 update the location and mailing address for the Department's Air Quality Bureau.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Item 8 proposes to establish electronic submittal of the annual emissions inventories required under the Title V operating permit program. To simplify the reporting requirements for industry, increase reporting efficiency and reduce cost to the state, the Commission is proposing to require the use of electronic reporting for all Title V facilities, beginning with reports due to the Department by March 31, 2019.

Facilities required to obtain Title V permits are required to annually report their actual air pollution emissions. "Title V facilities" are those that are permitted to emit over 100 tons of air pollution annually (or significant levels of specified hazardous air pollutants). There are currently 289 Title V facilities in Iowa, including electric generating utilities, grain-processing facilities, manufacturing plants, and others.

The Department has since 2002 offered an electronic submission system for reporting air pollution emissions. In 2015, SLEIS (the State and Local Emissions Inventory System) was introduced, offering a significantly more streamlined method for reporting. This year, 82 percent of Title V facilities submitted their inventories on SLEIS, the current e-submittal system for emissions inventories. Annually, the Department provides in-person emissions inventory and SLEIS user training at several locations in the state. Online training tutorials also are available on demand on the Department's website.

Item 12 amends subrule 23.1(2) to adopt by reference new and revised New Source Performance Standards (NSPS).

The Commission proposes to adopt the federal NSPS for sewage sludge incineration (SSI) units. The federal regulation was published in the Federal Register on March 21, 2011, and applies to SSI units for which construction or reconstruction commenced after October 14, 2010, or for which modification commenced after September 21, 2011. Since its publication, the SSI NSPS has been subject to reconsideration petitions and litigation. The Commission is proposing adoption of these federal amendments because EPA's reconsiderations and the litigation of the federal standards have recently been resolved. At this time, no facilities in Iowa are affected by this NSPS. A facility that constructs a new SSI unit, or an existing facility that modifies its SSI unit, could become subject to this NSPS in the future. (See Item 14 for a related amendment.)

The amendment in Item 12 also adopts the changes EPA made to the NSPS test methods, as explained in the description above for Items 1, 6 and 15. The amendments to the NSPS are adopted by reference through revision of the adoption date specified in the introductory paragraph of subrule 23.1(2).

Item 13 amends subrule 23.1(4) to adopt federal amendments to the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) for source categories, as described below. The federal amendments are adopted by reference through revision of the adoption date specified in the introductory paragraph of subrule 23.1(4). The text in parentheses in each section heading below indicates the applicable subpart in 40 CFR Part 63 and the corresponding paragraph in subrule 23.1(4).

Phosphoric Acid Manufacturing and Phosphate Fertilizer Production (Subpart AA; paragraph "aa")

Updates to this NESHAP were published in the Federal Register on September 28, 2017. In response to petitions for reconsideration from stakeholders, EPA extended some compliance dates for affected sources and clarified one option and added a new option for monitoring requirements. At this time, no facilities in Iowa are affected by this NESHAP. New facilities, or existing facilities that change their production lines, could become subject to this NESHAP in the future.

Offsite Waste and Recovery Operations (Subpart DD; paragraph "ad")

The amendment adopts changes to the standards for offsite waste and recovery operations published in the Federal Register on January 29, 2018. EPA's final amendments address petitions for reconsideration regarding requirements for continuous monitoring of pressure relief devices (PRDs) on containers. EPA's action removes the additional monitoring requirements for PRDs on containers because EPA determined that the requirements were unnecessary. At this time, no facilities in Iowa are affected by this NESHAP. New facilities, or existing facilities that change their production lines, could become subject to this NESHAP in the future.

Chemical Recovery Combustion Sources at Kraft, Soda, Sulfitic, and Stand-Alone Semicemical Pulp Mills (Subpart MM; paragraph "am")

EPA's rule amendments published in the Federal Register on October 11, 2017, include reducing the opacity (visible emissions) monitoring allowance for recovery furnaces and for lime kilns, adding

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

electronic reporting requirements for semiannual compliance reports, updating monitoring and testing requirements, and requiring periodic stack testing and electronic reporting of stack test results. At this time, no facilities in Iowa are affected by this NESHAP. New facilities, or existing facilities that change their production lines, could become subject to this NESHAP in the future.

Portland Cement Manufacturing (Subpart LLL; paragraph “bl”)

EPA’s amendments to this NESHAP were published in the Federal Register on July 25, 2018, and August 3, 2018, and reflect corrections and clarifications of the rule requirements and provisions. EPA states that the amendments result in improved monitoring, compliance, and implementation of the rule. This NESHAP affects three facilities in Iowa (one facility is currently idled).

Wool Fiberglass Manufacturing (Subpart NNN; paragraph “bn”)

Amendments to this NESHAP were published in the Federal Register on December 26, 2017. EPA revised the federal standard to require affected facilities to conduct additional monitoring and record-keeping activities. In addition, affected facilities with flame attenuation lines will need to demonstrate compliance with new emission standards. EPA provided existing affected facilities a three-year period in which to comply with new NESHAP requirements. At this time, no facilities in Iowa are affected by this NESHAP. New facilities, or existing facilities that change their production lines, could become subject to this NESHAP in the future.

Item 14 proposes to adopt by reference the federal Emission Guidelines for existing SSI units. EPA’s Emission Guidelines provide “model rules” that states may adopt by reference in setting the requirements for existing sources. When a state does not have an approved State Plan by EPA’s specified deadline, EPA promulgates a Federal Plan for affected facilities in 40 CFR Part 62 with rules essentially identical to the model rules. EPA’s Federal Plan for existing SSI is set forth in 40 CFR Part 62.

Concurrent with the NSPS for SSI units described above in Item 12, EPA published the Emission Guidelines for SSI units in the Federal Register on March 21, 2011. The standards apply to SSI units for which construction or reconstruction commenced on or before October 14, 2010. As with the NSPS, the Emission Guidelines have been subject to reconsideration petitions and litigation since publication. The Commission is proposing adoption of the federal regulations for existing SSI units because EPA’s reconsiderations and the litigation of the federal standards have recently been resolved. One facility in Iowa is currently affected by these amendments.

As with the NSPS and NESHAP, the Commission adopts EPA’s Emission Guidelines by reference so that the requirements are no more or less stringent than federal requirements. In this case, the Commission is proposing to adopt EPA’s Federal Plan for SSI units (rather than the model rules for states) because the one facility affected by the Emission Guidelines is already complying with the Federal Plan, as set forth in 40 CFR Part 62, Subpart LLL. Adoption of the provisions in Subpart LLL will provide regulatory certainty and continuity for the affected facility.

Fiscal Impact, Jobs Impact, Waivers

Statements related to the fiscal impact, jobs impact, and waiver of this rule making may be found in the preamble of **ARC 4178C**.

Review by Administrative Rules Review Committee

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

ARC 4219C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action****Proposing rule making related to state supplementary assistance and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 51, "Eligibility," and Chapter 52, "Payment," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 249A.4; 20 CFR §§416.2095 and 416.2096; and 2017 Iowa Acts, House File 653, sections 53 and 70.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4; 20 CFR §§416.2095 and 416.2096; and 2017 Iowa Acts, House File 653, sections 53 and 70.

Purpose and Summary

These proposed amendments strike the specific assistance standard amounts for State Supplementary Assistance and amend the assistance standards definition to include the legal citation to pass along cost-of-living adjustments (COLAs) in accordance with 20 CFR §§416.2095 and 416.2096. COLA changes are effective January 1 each year.

Fiscal Impact

The residential care facility (RCF) and family-life home personal needs allowances are increasing by \$4 per month from \$99 to \$103 per month. The base personal needs allowance (PNA) is increased due to the 2.8 percent COLA this year along with an increase in the average monthly Medicaid copayment per client per month for RCF recipients. (The average Medicaid copayment per client per month is added to the base PNA to determine the final monthly PNA.) The average copayment per client per month for RCF recipients for August 2017 through July 2018 was \$1.71. This is an increase of \$0.81 from last year's average of \$0.90. For family-life home recipients, the \$17 increase in the payment to the family-life home is offset by the \$4 increase in the personal needs deduction and a \$21 increase in the supplemental security income (SSI) payment. The recipient will pay up to \$17 more due to the \$21 increase in income and a \$4 increase in the personal needs allowance. For RCF assistance recipients, the maximum total payment to the facility will increase up to \$20.77 per month per recipient [(\$31.27 – \$30.60) × 31 days]. RCF costs are shared by the state and the RCF recipient. Any potential increased costs to the state are expected to be more than offset by declining RCF caseloads in SFY 2019 and SFY 2020. For recipients of dependent-person assistance, the maximum monthly payment is increasing by \$11, from \$387 to \$398. Each dependent-person assistance recipient will receive up to an \$11 increase, resulting in an anticipated increase in state expenditures. However, this increase will be offset by the declining number of anticipated recipients, and most recipients do not qualify for the maximum payment.

Jobs Impact

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

Waivers

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 22, 2019. Comments should be directed to:

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

Public Hearing

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

Review by Administrative Rules Review Committee

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

Emergency Rule Making Adopted by Reference

This proposed rule making is also published herein as an Adopted and Filed Emergency rule making (see **ARC 4220C**, IAB 1/2/19). The purpose of this Notice of Intended Action is to solicit public comment on that emergency rule making, whose subject matter is hereby adopted by reference.

ARC 4196C

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

Proposing rule making related to changes to address of authority and providing an opportunity for public comment

The Iowa Finance Authority hereby proposes to amend Chapter 1, “General,” Chapter 7, “Contested Cases,” Chapter 9, “Title Guaranty Division,” Chapter 13, “Public Records and Fair Information Practices,” Chapter 15, “Purchasing,” Chapter 16, “Declaratory Orders,” Chapter 17, “Procedure for Rule Making,” Chapter 18, “Waivers and Variances from Administrative Rules,” Chapter 22, “Iowa Aftercare Services Rent Subsidy Program,” Chapter 30, “Qualified Midwestern Disaster Area Bond Allocation,” Chapter 31, “Council on Homelessness,” Chapter 37, “Recovery Zone Bond Allocation,” and Chapter 44, “Iowa Agricultural Development Division,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 16.5.

IOWA FINANCE AUTHORITY[265](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 16.5.

Purpose and Summary

The purpose of the proposed amendments is to update the Authority's address throughout its administrative rules.

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 Authority for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on January 22, 2019. Comments should be directed to:

Mark Thompson
Iowa Finance Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.725.4937
Email: mark.thompson@iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 1.3(1) as follows:

1.3(1) Location. The main office of the authority is located at ~~2015 Grand Avenue~~ 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50312 50315. Office hours for the authority are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

IOWA FINANCE AUTHORITY[265](cont'd)

The title guaranty division (division) of the authority is located at ~~2015 Grand Avenue~~ 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50312 50315. Office hours for the division are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Additional information concerning the division can be found in Chapter 9 of the authority's administrative rules (265—Chapter 9).

The authority's ~~Web site~~ website address is www.iowafinanceauthority.gov, and its telephone and facsimile numbers are: (515)725-4900 (general); 1-800-432-7230 (toll-free); 1-800-618-4718 (TTY); and (515)725-4901 (facsimile).

ITEM 2. Amend subrule 7.12(3) as follows:

7.12(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Executive Director, Iowa Finance Authority, ~~2015 Grand Avenue, Des Moines, Iowa 50312~~ at the address set forth in rule 265—1.3(16). All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the authority.

ITEM 3. Amend subrule 7.12(4) as follows:

7.12(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the Iowa Finance Authority, ~~2015 Grand Avenue, Des Moines, Iowa 50312~~ at its office located at the address set forth in rule 265—1.3(16), delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

ITEM 4. Amend subrule 9.4(1) as follows:

9.4(1) Location. The office of the division is located at ~~2015 Grand Avenue, Des Moines, Iowa 50312~~ the address set forth in rule 265—1.3(16). Office hours are 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The division's ~~Web site~~ website address is www.iowatitleguaranty.gov, and the division's telephone and facsimile numbers are as follows: (515)725-4900 (general telephone number); 1-800-432-7230 (toll-free telephone number); and (515)725-4901 (facsimile). The division's ~~e-mail~~ email address is titleguaranty@iowa.gov. Inquiries, submissions, applications and other requests for information may be directed to the division at the address set forth herein. Requests may be made personally or by telephone, fax, mail or ~~e-mail~~ email.

ITEM 5. Amend subrule 13.3(1) as follows:

13.3(1) Location of record. A request for access to a record should be directed to the office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to Iowa Finance Authority, ~~2015 Grand Avenue, Des Moines, Iowa 50312~~ at the address set forth in rule 265—1.3(16). The Iowa finance authority will forward the request to the appropriate person.

ITEM 6. Amend rule 265—15.15(16) as follows:

265—15.15(16) Vendor appeals. Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the authority may appeal the decision by filing a written notice of appeal before the Iowa Finance Authority Board, ~~2015 Grand Avenue, Des Moines, Iowa 50312~~, at the address set forth in rule 265—1.3(16) within three days of the date of the award, exclusive of Saturdays, Sundays, and state legal holidays. The notice of appeal must actually be received at ~~this~~ that address within the time frame specified to be considered timely. The notice of appeal shall state the grounds upon which the vendor challenges the authority's award. Following receipt of a notice of appeal which has been timely filed, the board shall notify the aggrieved vendor and the vendor who received the contract award of the procedures to be followed in the appeal. The board may appoint a designee to proceed with the appeal on its behalf.

ITEM 7. Amend rule 265—16.1(17A), introductory paragraph, as follows:

265—16.1(17A) Petition for declaratory order. Any person may file a petition with the authority for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the authority, at ~~Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa~~

IOWA FINANCE AUTHORITY[265](cont'd)

~~50312~~ the address set forth in rule 265—1.3(16). A petition is deemed filed when it is received by ~~that office~~ the authority. The authority shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the authority an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ITEM 8. Amend subrule 16.3(3), introductory paragraph, as follows:

16.3(3) A petition for intervention shall be filed at Iowa Finance Authority, ~~2015 Grand Avenue, Des Moines, Iowa 50312~~ at the address set forth in rule 265—1.3(16). Such a petition is deemed filed when it is received by ~~that office~~ the authority. The authority will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ITEM 9. Amend rule 265—16.5(17A) as follows:

265—16.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Executive Director, ~~of the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312~~ at the address set forth in rule 265—1.3(16).

ITEM 10. Amend subrule 16.6(2) as follows:

16.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Iowa Finance Authority, ~~2015 Grand Avenue, Des Moines, Iowa 50312~~ at the address set forth in rule 265—1.3(16). Petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the authority.

ITEM 11. Amend subrule 17.5(1) as follows:

17.5(1) Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the Executive Director, ~~of the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312~~ at the address set forth in rule 265—1.3(16), or the person designated in the Notice of Intended Action.

ITEM 12. Amend subrule 17.5(5) as follows:

17.5(5) Accessibility. The authority shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the Executive Director, ~~of the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312~~ at the address set forth in rule 265—1.3(16), telephone number (515)725-4900, in advance to arrange access or other needed services.

ITEM 13. Amend subrule 17.6(2), introductory paragraph, as follows:

17.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the authority's small business impact list by making a written application ~~addressed to the Executive Director, of the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312~~ at the address set forth in rule 265—1.3(16). The application for registration shall state:

ITEM 14. Amend subrule 17.11(1) as follows:

17.11(1) General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the authority shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Executive Director, ~~of the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312~~ at the address set forth in rule 265—1.3(16). The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

IOWA FINANCE AUTHORITY[265](cont'd)

ITEM 15. Amend subrule 18.5(2) as follows:

18.5(2) Other. If the petition does not relate to a pending contested case, the petition may be submitted to the attention of the executive director of the Iowa Finance Authority, ~~2015 Grand Avenue, Des Moines, Iowa 50312~~ at the address set forth in rule 265—1.3(16).

ITEM 16. Amend ~~265—Chapter 18~~, Exhibit A, paragraph “3,” as follows:

3. All petitions for waiver or variance must be submitted in writing to the attention of the executive director of the Iowa Finance Authority, ~~2015 Grand Avenue, Des Moines, Iowa 50312~~ at the address set forth in rule 265—1.3(16). If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

ITEM 17. Amend subrule 22.14(1) as follows:

22.14(1) An applicant whose application has been timely filed may appeal the authority’s decision by filing a written notice of appeal within 14 days of the decision before the Iowa Finance Authority, ~~2015 Grand Avenue, Des Moines, Iowa 50312~~ at the address set forth in rule 265—1.3(16). The notice of appeal must actually be received at ~~the above~~ that address within the time frame specified in order to be considered timely.

ITEM 18. Amend rule 265—30.2(16) as follows:

265—30.2(16) Forms. Information and forms necessary for compliance with provisions of the law are available upon request from the Iowa Finance Authority, ~~2015 Grand Avenue, Des Moines, Iowa 50312~~ at the address set forth in rule 265—1.3(16). The telephone number of the authority is (515)725-4900. Information and forms are also available at www.iowafinanceauthority.gov.

ITEM 19. Amend subrule 31.1(1) as follows:

31.1(1) Location. The main office of the council is located at ~~2015 Grand Avenue, Des Moines, Iowa 50312~~, the offices of the Iowa Finance Authority, located at the address set forth in rule 265—1.3(16). Office hours for the council shall be 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Written requests may be submitted to the council at this address. Information about the council is available at this ~~Web-site~~ website address: http://www.iowafinanceauthority.gov. The council’s telephone numbers are: (515)725-4900 (general); 1-800-432-7230 (toll-free); 1-800-618-4718 (TTY); and (515)725-4901 (facsimile).

ITEM 20. Amend rule 265—37.2(16) as follows:

265—37.2(16) Forms. Information and forms necessary for compliance with provisions of the law are available upon request from the Iowa Finance Authority, ~~2015 Grand Avenue, Des Moines, Iowa 50312~~ at the address set forth in rule 265—1.3(16). The telephone number of the authority is (515)725-4900. Information and forms are also available at www.iowafinanceauthority.gov.

ITEM 21. Amend subrule 44.1(3) as follows:

44.1(3) Location where public may submit requests for assistance or obtain information. Requests for assistance or information should be directed to the Iowa Finance Authority, ~~2015 Grand Avenue, Des Moines, Iowa 50312~~ at the address set forth in rule 265—1.3(16); telephone (515)725-4900. Requests may be made personally, by telephone, U.S. mail or any other medium available, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Special arrangements for accessibility to the authority at other times will be provided as needed.

ARC 4198C**LABOR SERVICES DIVISION[875]****Notice of Intended Action****Proposing rule making related to OSHA standard for crane operator training
and providing an opportunity for public comment**

The Labor Commissioner hereby proposes to amend Chapter 26, “Construction Safety and Health Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 88.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 88.

Purpose and Summary

This proposed amendment would make Iowa’s occupational safety and health administration standard for crane operator training match the corresponding federal standard.

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 Commissioner for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 5.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Commissioner no later than 4:30 p.m. on January 23, 2019. Comments should be directed to:

Kathleen Uehling
Division of Labor Services
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Email: kathleen.uehling@iwd.iowa.gov

Public Hearing

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

January 23, 2019
9 a.m.

150 Des Moines Street
Des Moines, Iowa

LABOR SERVICES DIVISION[875](cont'd)

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

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend rule **875—26.1(88)** by inserting the following at the end thereof:
83 Fed. Reg. 56244 (November 9, 2018)

ARC 4204C

MEDICINE BOARD[653]

Notice of Intended Action

Proposing rule making related to training requirements for permanent or special license renewal and providing an opportunity for public comment

The Board of Medicine hereby proposes to amend Chapter 11, "Continuing Education and Training Requirements," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 272C and 2018 Iowa Acts, House File 2377.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 272C.

Purpose and Summary

This proposed rule making amends Chapter 11 to add a definition of "opioid" and changes the training requirements for chronic pain management and end-of-life care for permanent or special license renewal.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

MEDICINE BOARD[653](cont'd)

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on January 22, 2019. Comments should be directed to:

Kent Nebel
Iowa Board of Medicine
400 S.W. 8th Street, Suite C
Des Moines, Iowa 50309
Phone: 515.281.7088
Fax: 515.242.5908
Email: kent.nebel@iowa.gov

Public Hearing

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

January 22, 2019
10 to 11 a.m.

Board Office, Suite C
400 S.W. 8th Street
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** definition of "Opioid" in rule **653—11.1(272C)**:
"Opioid" means any FDA-approved product or active pharmaceutical ingredient classified as a controlled substance that produces an agonist effect on opioid receptors and is indicated or used for the treatment of pain.

ITEM 2. Amend subrule 11.4(1) as follows:

11.4(1) Continuing education and training requirements.

a. Continuing education for permanent license or administrative medicine license renewal. Except as provided in these rules, a total of 40 hours of category 1 credit or board-approved equivalent shall be required for biennial renewal of a permanent license or an administrative medicine license. This may include up to 20 hours of credit carried over from the previous license period and category 1 credit acquired within the current license period.

(1) To facilitate license renewal according to birth month, a licensee's first license may be issued for less than 24 months. The number of hours of category 1 credit required of a licensee whose license has been issued for less than 24 months shall be reduced on a pro-rata basis.

(2) A licensee desiring to obtain credit for carryover hours shall report the carryover, not to exceed 20 hours of category 1 credit, on the renewal application.

b. Continuing education for special license renewal. A total of 20 hours of category 1 credit shall be required for annual renewal of a special license. No carryover hours are allowed.

MEDICINE BOARD[653](cont'd)

c. Training for identifying and reporting child and dependent adult abuse for permanent or special license renewal. The licensee in Iowa shall complete the training for identifying and reporting child and dependent adult abuse as part of a category 1 credit or an approved training program. The licensee may utilize category 1 credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1)“a.”

(1) Training to identify child abuse. A licensee who regularly provides primary health care to children in Iowa must complete at least two hours of training in child abuse identification and reporting every five years. “A licensee who regularly provides primary health care to children” means all emergency physicians, family physicians, general practice physicians, pediatricians, and psychiatrists, and any other physician who regularly provides primary health care to children.

(2) Training to identify dependent adult abuse. A licensee who regularly provides primary health care to adults in Iowa must complete at least two hours of training in dependent adult abuse identification and reporting every five years. “A licensee who regularly provides primary health care to adults” means all emergency physicians, family physicians, general practice physicians, internists, obstetricians, gynecologists, and psychiatrists, and any other physician who regularly provides primary health care to adults.

(3) Combined training to identify child and dependent adult abuse. A licensee who regularly provides primary health care to adults and children in Iowa must complete at least two hours of training in the identification and reporting of abuse in dependent adults and children every five years. The training may be completed through separate courses as identified in subparagraphs 11.4(1)“c”(1) and (2) or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. “A licensee who regularly provides primary health care to children and adults” means all emergency physicians, family physicians, general practice physicians, internists, and psychiatrists, and any other physician who regularly provides primary health care to children and adults.

d. Training for chronic pain management for permanent or special license renewal. ~~Rescinded by 2018 Iowa Acts, House File 2377, section 23, effective 7/1/18.~~ The licensee shall complete the training for chronic pain management as part of a category 1 credit. The licensee may utilize category 1 credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1)“a.”

(1) A licensee who has prescribed opioids to a patient during the previous license period must complete at least two hours of category 1 credit regarding the United States Centers for Disease Control and Prevention (CDC) guideline for prescribing opioids for chronic pain, including recommendations on limitations on dosages and the length of prescriptions, risk factors for abuse, and nonopioid and nonpharmacologic therapy options, every five years.

(2) A licensee who had a permanent or special license on January 1, 2019, has until January 1, 2024, to complete the chronic pain management training and shall then complete the training once every five years thereafter.

e. Training for end-of-life care for permanent or special license renewal. The licensee shall complete the training for end-of-life care as part of a category 1 credit. The licensee may utilize category 1 credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1)“a.”

(1) A licensee who regularly provides ~~primary health~~ direct patient care to actively dying patients in Iowa must complete at least two hours of category 1 credit for end-of-life care every five years. “A licensee who regularly provides ~~primary health care to patients~~” means all emergency physicians, family physicians, general practice physicians, internists, neurologists, pain medicine specialists, psychiatrists, and any other physician who regularly provides primary health care to patients.

(2) A licensee who had a permanent or special license on ~~August 17, 2014~~ January 1, 2019, has until ~~August 17, 2016~~ January 1, 2024, to complete the end-of-life care training, and shall then complete the training once every five years thereafter.

ARC 4205C**PHARMACY BOARD[657]****Notice of Intended Action****Proposing rule making related to prescription monitoring program and providing an opportunity for public comment**

The Pharmacy Board hereby proposes to rescind Chapter 37, "Iowa Prescription Monitoring Program," Iowa Administrative Code, and adopt a new Chapter 37 with the same title.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 124.554.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 124.550 to 124.558.

Purpose and Summary

During the 2018 Legislative Session, changes were made to the Iowa Code which affect the Iowa Prescription Monitoring Program (PMP), including a requirement that prescribing practitioners register with the PMP simultaneous to Iowa uniform controlled substance Act (CSA) registration, authorization for the Board to assess up to a 25 percent surcharge on CSA registrations to be deposited into the PMP fund, a requirement that dispensing of controlled substances by prescribers be reported to the PMP, and a requirement that administration of an opioid antagonist by a first responder be reported to the PMP.

The Board and the PMP Advisory Council also took the opportunity to conduct an overall review of the chapter as required by Iowa Code section 17A.7(2) and made changes as reflected in the new chapter to provide clarity where needed and to reorganize and simplify where appropriate.

To further the goal of program utilization, the Board and the PMP Advisory Council propose that pharmacists who are involved in direct patient care shall also be required to register with the PMP simultaneous to licensure or renewal. Also, the specific number of authorized delegates has been removed from the proposed rules to allow practitioners the ability to designate delegates according to their individual practice settings.

Fiscal Impact

The Board is in the process of seeking a format by which first responders can submit data relating to the administration of an opioid antagonist. As stated in the Fiscal Note on 2018 Iowa Acts, House File 2377, this change is anticipated to cost upwards of \$75,000. With respect to the surcharge, the Board is not anticipating implementation of the surcharge at this time.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 657—Chapter 34.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on January 22, 2019. Comments should be directed to:

PHARMACY BOARD[657](cont'd)

Sue Mears
Board of Pharmacy
400 S.W. 8th Street, Suite E
Des Moines, Iowa 50309
Email: sue.mears@iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Rescind 657—Chapter 37 and adopt the following **new** chapter in lieu thereof:

CHAPTER 37
IOWA PRESCRIPTION MONITORING PROGRAM

657—37.1(124) Purpose and scope. These rules establish a prescription monitoring program (PMP) that compiles a central database of reportable prescriptions dispensed to patients in Iowa. An authorized health care practitioner shall access PMP information when mandated by the practitioner’s licensing authority regarding the practitioner’s patient to assist in determining appropriate treatment options and to improve the quality of patient care. The PMP is intended to provide a practitioner with a resource for information regarding a patient’s use of controlled substances and to serve as a tool to assess a prescriber’s prescribing practices. This database will assist the practitioner in identifying any potential diversion, misuse, or abuse of controlled substances without impeding the appropriate medical use of controlled substances.

657—37.2(124) Definitions. For the purposes of this chapter, the following definitions shall apply.

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

“*Controlled substance*” means a drug in Schedules II through IV set forth in Iowa Code chapter 124, division II.

“*Council*” means the PMP advisory council established pursuant to Iowa Code section 124.555 to provide oversight and to co-manage PMP activities with the board.

“*CSA registration*” means registration with the board under the Iowa uniform controlled substances Act pursuant to 657—Chapter 10.

“*DEA number*” means the registration number issued to an individual or pharmacy by the U.S. Department of Justice, Drug Enforcement Administration (DEA), authorizing the individual or pharmacy to engage in the prescribing, dispensing, distributing, or procuring of a controlled substance.

“*Dispenser*” means a pharmacy or prescriber, regardless of location, who delivers to the ultimate user a substance required to be reported to the PMP. “Dispenser” does not include a person exempt from reporting pursuant to subrule 37.7(2).

“*First responder*” means an emergency medical care provider, a registered nurse staffing an authorized service program under Iowa Code section 147A.12, a physician assistant staffing an

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authorized service program under Iowa Code section 147A.13, a firefighter, or a peace officer as defined in Iowa Code section 801.4 who is trained and authorized to administer an opioid antagonist.

“Health care professional” means a person who, by education, training, certification, or licensure, is qualified to provide and is engaged in providing health care to patients. “Health care professional” does not include clerical or administrative staff. A health care professional shall be licensed, registered, certified, or otherwise credentialed in a manner that permits verification of the health care professional’s credentials.

“Health care system” means an organization that includes at least one hospital or at least one group of practitioners that provides comprehensive care who are connected with each other through common ownership or management.

“HIPAA” means the Health Insurance Portability and Accountability Act.

“Law enforcement” means an entity or agency with jurisdiction to investigate or prosecute violations of criminal law. “Law enforcement” includes, but is not limited to, such agencies as police departments, United States attorneys, the DEA, county attorneys, and the Medicaid fraud control unit.

“Licensing authority” means an agency that licenses or registers health care professionals and has jurisdiction to enforce governing laws over those individuals who are licensed or registered. “Licensing authority” includes, but is not limited to, professional licensing boards and the DEA.

“NarxCare” means an analytics tool and care management platform that helps practitioners analyze real-time data from the PMP. The platform analyzes patient data and history to provide a patient risk score and usage patterns to help practitioners identify potential risk factors.

“NDC number” means the universal product identifier used in the United States to identify a specific human drug.

“PMP administrator” means staff persons designated to manage and administer the PMP under the direction and oversight of the board and the council.

“Practitioner” means a prescriber or a pharmacist.

“Practitioner’s delegate” means a health care professional who is under the supervision of a PMP-registered practitioner and who is authorized by the practitioner to access PMP information on the practitioner’s behalf.

“Prescriber” means an individual with an active CSA registration who has the authority to prescribe controlled substances. For the purposes of this chapter, “prescriber” does not include a licensed veterinarian.

“Prescription monitoring program” or *“PMP”* means the program established pursuant to these rules for the collection and maintenance of PMP information and for the provision of PMP information to authorized individuals.

“Reportable prescription” means the record of a controlled substance administered or dispensed by a practitioner and the record of an opioid antagonist dispensed by a practitioner or administered by a first responder. “Reportable prescription” shall not include records identified in subrule 37.7(1). “Reportable prescription” shall include, but not be limited to:

1. The dispensing of a controlled substance to an emergency department patient;
2. The administration of a controlled substance to an emergency department patient at the discretion of the treating practitioner;
3. The administration or dispensing of an opioid antagonist to an emergency department patient;
4. The dispensing of a controlled substance sample; and
5. The dispensing of a controlled substance or opioid antagonist to a patient upon discharge from a hospital or care facility.

657—37.3(124) Registration. Registration for the PMP pursuant to this rule shall be via the Iowa PMP AWARe website at iowa.pmpaware.net.

37.3(1) Prescribers. A prescriber shall register for the PMP at the same time the prescriber registers or renews a CSA registration pursuant to 657—Chapter 10. A licensed veterinarian with an active CSA registration may register for the PMP.

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37.3(2) *Pharmacists.* A pharmacist who is involved in patient care shall register for the PMP at the same time the pharmacist becomes licensed or renews a license pursuant to 657—Chapter 2.

37.3(3) *Practitioner's delegates.* A practitioner may authorize an adequate number of health care professionals who actively work with the practitioner to act as the practitioner's delegates for the purpose of requesting PMP information. A practitioner's delegate shall be licensed, registered, certified, or otherwise credentialed as a health care professional in a manner that permits verification of the health care professional's credentials. The practitioner shall be responsible for the PMP information access of the practitioner's delegates.

37.3(4) *Law enforcement officials.* A law enforcement official may register for the PMP to access information by order, subpoena, or other means of legal compulsion relating to a specific investigation and supported by a determination of probable cause.

37.3(5) *Licensing authority.* A licensing authority official may register for the PMP to access information by order, subpoena, or other means of legal compulsion relating to a specific investigation and supported by a determination of probable cause.

37.3(6) *Medical examiners and medical examiner investigators.* A medical examiner or a medical examiner investigator may register for the PMP to access information when the information relates to an investigation being conducted by the examiner or investigator.

657—37.4 and 37.5 Reserved.

657—37.6(124) Security of PMP credentials. Each user registered to access PMP information shall securely maintain and use the login and password and any other secured credentials assigned to the individual user. Except in an emergency when a patient would be placed in greater jeopardy by restricting PMP information access to the user, a registered user shall not share the user's secure login and password information.

657—37.7(124) PMP reporting—exemptions.

37.7(1) *Exempted dispensing or administration.* The dispensing or administration of a controlled substance as described in this subrule shall not be considered a reportable prescription. A pharmacy engaged in the distribution of controlled substances solely pursuant to one or more of the practices identified in this subrule shall notify the PMP administrator of the exempted practice, and the pharmacy shall not be required to report to the PMP.

- a. The dispensing by a licensed hospital pharmacy for the purposes of inpatient hospital care.
- b. The dispensing by a licensed pharmacy for a patient residing in a long-term care or inpatient hospice facility.
- c. The administration by a prescriber of a controlled substance for the purposes of outpatient procedures.

37.7(2) *Exempted practitioners.* The following entities or individuals shall not be required to report to the PMP and shall not be required to notify the PMP administrator of their exempted status:

- a. A licensed pharmacy that does not have a CSA registration and does not dispense controlled substances in Iowa.
- b. A licensed veterinarian who administers or dispenses a controlled substance in the normal course of the veterinarian's professional practice.
- c. A DEA-registered narcotic treatment program which is subject to the record-keeping provisions of 21 CFR Section 1304.24.

657—37.8(124) PMP reporting—dispensing prescribers. Each dispensing prescriber, unless exempt pursuant to rule 657—37.7(124), shall submit to the PMP a record of each reportable prescription dispensed during a reporting period pursuant to subrule 37.12(2). For purposes of prescriber dispensing, the prescriber shall also be identified as the dispenser or pharmacy.

657—37.9(124) PMP reporting—pharmacies. Each pharmacy, unless exempt pursuant to rule 657—37.7(124), shall submit to the PMP either a record of each reportable prescription dispensed or

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administered during a reporting period pursuant to subrule 37.12(2) or a zero report pursuant to subrule 37.12(4), as appropriate.

657—37.10 and 37.11 Reserved.

657—37.12(124) Reporting requirements.

37.12(1) Data elements. The information submitted to the PMP for each reportable prescription shall be accurate and shall include, at a minimum, the following data elements:

- a. Dispenser DEA number.
- b. Date the prescription is dispensed or administered.
- c. Prescription number or unique identification number.
- d. NDC number of the drug dispensed or administered.
- e. Quantity of the drug dispensed or administered.
- f. Number of days of drug therapy provided by the drug dispensed or administered.
- g. Patient legal first and last names.
- h. Patient address including street address, city, state, and ZIP code.
- i. Patient phone number.
- j. Patient date of birth.
- k. Patient gender.
- l. Prescriber name and DEA number.
- m. Date the prescription was issued by the prescriber.
- n. Method of payment.
- o. Form of transmission of prescription origin.
- p. Refill number.
- q. Number of refills authorized.
- r. Indication as to whether the prescription is new or a refill.

37.12(2) Reporting periods. A record of each reportable administration or prescription dispensed shall be submitted by each dispenser no later than the next business day following administration or dispensing.

37.12(3) Transmission. Prescription dispensing and administration information shall be transmitted via the PMP's current version of data upload or electronic submission.

37.12(4) Zero reports. If a pharmacy did not dispense or administer any reportable prescriptions during a reporting period, the dispenser shall submit a zero report no later than the next business day.

657—37.13(124) Opioid antagonist administration by first responders.

37.13(1) The administration of an opioid antagonist by a first responder shall be reported to the PMP, unless such administration was reported to the Iowa department of public health bureau of emergency and trauma services.

37.13(2) The reporting of the administration of an opioid antagonist by a first responder shall include the following data elements:

- a. Patient first and last names.
- b. First and last names of the individual who administered the opioid antagonist.
- c. Date of administration.
- d. Quantity of the opioid antagonist administered.

657—37.14 and 37.15 Reserved.

657—37.16(124) Access to PMP information. All information contained in the PMP is confidential and shall only be accessed as provided in this rule. All requests for PMP information must comply with the format specified by the board for the particular type of request. Once information is accessed, further dissemination or use of that information is governed by applicable federal and state laws governing the person who accessed the information. The board may charge a fee to recover the actual costs associated with responding to any request by a person other than a practitioner or a practitioner's delegate. Any fees

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or costs assessed by the board shall be considered repayment receipts as defined in Iowa Code section 8.2.

37.16(1) Prescribers. A prescriber may access a patient's prescription history report; the prescriber's report card; proactive alerts or system user notes, such as peer-to-peer communication; and NarxCare reports.

37.16(2) Pharmacists. A pharmacist may access a patient's prescription history report; proactive alerts or system user notes, such as peer-to-peer communication; and NarxCare reports.

37.16(3) Practitioner's delegates. A practitioner's delegate may access a patient's prescription history report; proactive alerts or system user notes, such as peer-to-peer communication; and NarxCare reports.

37.16(4) Licensing authority officials.

a. A licensing authority with jurisdiction over a practitioner may obtain the following information, if the request is accompanied by a subpoena compelling disclosure of such information for a specific investigation into the prescribing or dispensing practices of the licensee: prescription history reports; proactive alerts or system user notes, such as peer-to-peer communication; PMP access logs and login records; and NarxCare reports.

b. A licensing authority with jurisdiction over a health care professional may obtain the following information, if the request is accompanied by a subpoena compelling disclosure of such information for a specific investigation into the licensee's misuse of controlled substances: the licensee's prescription history report.

37.16(5) Law enforcement officials. A law enforcement official may obtain a patient's prescription history report if the request is accompanied by a subpoena or other means of legal compulsion compelling disclosure of such information for use in a specific investigation.

37.16(6) Medical examiners and medical examiner investigators. A medical examiner or medical examiner investigator may obtain a decedent's prescription history report for use in a specific investigation.

37.16(7) Patients. A patient or the patient's agent may request the patient's own prescription history report by using the board's patient request form. The request can be personally delivered to the board office where the patient will be required to present current government-issued photo identification at the time of the delivery of the request. A patient who is unable to personally deliver the request to the board office may submit a notarized request, along with a certified copy of the patient's government-issued photo identification, via mail or commercial delivery service. The following agents may submit a request on behalf of a patient: an individual with a medical power of attorney for the patient, a patient's attorney, or an executor of the patient's estate. In addition to the patient's information, the patient's agent shall be identified by name, current address, and telephone number. In lieu of the patient's signature and identification, the patient's agent shall sign the request and the government-issued photo identification shall identify the patient's agent. The patient's agent shall include a copy of the legal document that establishes the agency relationship with the patient.

657—37.17(124) Integrated systems. A practitioner or a health care system may integrate its electronic health record system with the PMP using an application programming interface. Use of an integrated system shall comply with all of the following:

37.17(1) The integrated system shall log each user's access to PMP information. Access logs shall be retained by the practitioner or health care system for a minimum of four years from the date of access and shall be provided to the board upon request.

37.17(2) If the user identified in access logs is not the practitioner, the integrated system shall clearly identify on which practitioner's behalf the user was accessing PMP information. A practitioner's delegate using an integrated system is required to maintain active PMP registration.

37.17(3) The integrated system shall maintain appropriate administrative, technical, and physical security measures to safeguard against unauthorized access, disclosure, or theft of PMP information and shall meet all HIPAA requirements for safeguarding protected health information.

PHARMACY BOARD[657](cont'd)

37.17(4) The practitioner or health care system shall notify the PMP administrator of any breach in the electronic health record system that may have included PMP information within 72 hours of making the determination that a breach occurred.

37.17(5) An integrated system shall comply with all requirements in subchapter VI of Iowa Code chapter 124 and all requirements of this chapter.

657—37.18(124) PMP administrator access.

37.18(1) PMP staff. The board may designate PMP administrators who may access any PMP information needed to perform the functions of the job.

37.18(2) Statistical data. The PMP administrator or designee may provide summary, statistical, or aggregate data to public or private entities for statistical, public research, public policy, or educational purposes. The board may charge a fee to recover the actual costs associated with responding to a request for PMP data pursuant to this subrule. Any fees or costs assessed by the board shall be considered repayment receipts as defined in Iowa Code section 8.2.

657—37.19 and 37.20 Reserved.

657—37.21(124) Record retention. The PMP shall retain all reported prescriptions and all records of access to or query of PMP information for a minimum of four years from the date of the record.

657—37.22(124) Information errors. Any person who believes that PMP information is erroneous shall notify the pharmacy or dispensing practitioner. Upon notification of a potential error in PMP information, the pharmacy or dispensing practitioner shall promptly correct erroneous information in the record.

657—37.23(124) Discipline. Any licensee who fails to comply with the provisions of the law or these rules is subject to disciplinary action by the board.

These rules are intended to implement Iowa Code sections 124.550 to 124.558.

ARC 4201C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to delivery sales of alternative nicotine products or vapor products and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 82, “Cigarette Tax,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 453A.47C.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 453A.47A as amended by 2017 Iowa Acts, Senate File 516, and sections 453A.47B and 453A.47C as enacted by 2017 Iowa Acts, Senate File 516.

Purpose and Summary

This proposed rule seeks to implement division VII of 2017 Iowa Acts, Senate File 516. The legislation imposed sales and use tax on all delivery sales of alternative nicotine products or vapor

REVENUE DEPARTMENT[701](cont'd)

products within Iowa and required sellers of those products into the state to obtain a permit from the Department.

Division VII of Senate File 516 provided detailed definitions and established requirements relevant to this rule. The bond required to obtain a delivery sale permit is comparable to the bond requirements for other permits imposed by rule 701—82.3(453A).

Fiscal Impact

This rule making has no fiscal impact beyond the legislation it implements. The Department estimated that division VII of Senate File 516 would generate an additional \$0.9 million for FY 2017, \$1.1 million for FY 2018, \$1.4 million in FY 2019, \$1.7 million in FY 2020, and \$2.1 million in FY 2021.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 22, 2019. Comments should be directed to:

Tim Reilly
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.725.2294
Email: tim.reilly@iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend **701—Chapter 82**, title, as follows:
CIGARETTE TAX AND REGULATION OF DELIVERY SALES OF ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS

REVENUE DEPARTMENT[701](cont'd)

ITEM 2. Adopt the following **new** rule 701—82.12(453A):

701—82.12(453A) Delivery sales of alternative nicotine products or vapor products. Pursuant to Iowa Code section 453A.47C, Iowa sales and use taxes are imposed on all delivery sales of alternative nicotine products or vapor products within Iowa in accordance with Iowa Code chapter 423.

82.12(1) Delivery sale permit. Every person located within or outside of Iowa making a delivery sale of alternative nicotine products or vapor products within Iowa must obtain a delivery sale permit from the department. Iowa Code section 453A.47A shall govern the permit application and fee process.

a. Out-of-state retailers. An out-of-state retailer who has applied and otherwise qualifies for a delivery sale permit shall be issued the permit for the retailer's principal place of business.

b. Permitted sales. The delivery sale permit allows a retailer with such a permit to make delivery sales of alternative nicotine products or vapor products via the Internet, telephone, or mail order into Iowa.

82.12(2) Sales and use tax permit. A retailer holding a delivery sale permit must also have an Iowa sales or use tax permit. A retailer holding a delivery sale permit must collect and remit all Iowa sales and use tax due, including any applicable local option sales tax, on all sales in Iowa.

82.12(3) Bond required. A bond of \$1,000 is required to obtain a delivery sale permit.

82.12(4) Prohibited delivery sales. All delivery sales of cigarettes and tobacco products to consumers in Iowa are prohibited.

82.12(5) Penalties. Permit suspension and revocation and other penalties imposed in Iowa Code sections 453A.22 and 453A.50 shall apply to retailers holding a delivery sale permit.

This rule is intended to implement Iowa Code sections 453A.47A, 453A.47B, and 453A.47C.

ARC 4202C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to local option sales and services tax and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 107, "Local Option Sales and Service Tax," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 423B as amended by 2018 Iowa Acts, Senate File 2417.

Purpose and Summary

This rule making proposes amendments to the Department's chapter on local option sales and services tax. The Department proposes to remove rules that repeat the language of the statute, to update calculations, and to incorporate changes necessary as a result of 2018 Iowa Acts, Senate File 2417. The Department also proposes to strike language from this chapter that will be moved to Chapter 223, which is proposed to be amended in **ARC 4200C** (IAB 1/2/19).

Fiscal Impact

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

REVENUE DEPARTMENT[701](cont'd)

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 22, 2019. Comments should be directed to:

Tim Reilly
 Department of Revenue
 Hoover State Office Building
 P.O. Box 10457
 Des Moines, Iowa 50306
 Phone: 515.725.2294
 Email: tim.reilly@iowa.gov

Public Hearing

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

January 23, 2019
 9 to 10 a.m.

Room 430, Fourth Floor
 Hoover State Office Building
 Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend **701—Chapter 107**, title, as follows:

LOCAL OPTION SALES AND ~~SERVICE~~ SERVICES TAX

ITEM 2. Amend rule 701—107.1(422B) as follows:

701—107.1(422B 423B) Definitions. The following words and terms are used in the administration of the local option sales and service tax:

107.1(1) Incorporation of definitions. To the extent it is consistent with Iowa Code chapter 423B and this chapter, all other words and phrases used in this chapter shall mean the same as defined in Iowa Code chapter 423B, Iowa Code section 423.1, and rule 701—211.1(423).

REVENUE DEPARTMENT[701](cont'd)

107.1(2) Chapter-specific definitions. For purposes of this chapter, unless the context otherwise requires:

The word “city” “*City*” means a municipal corporation and includes towns in Iowa which were incorporated prior to July 1, 1975, but a city does not mean a county, township, school district, or any special purpose district or authority.

When the word “department” is used, it means the “Iowa department of revenue.”

“*Local option tax*” or “*local option taxes*” means the taxes imposed by Iowa Code chapter 423B.

“*Most recent certified federal census*” means the final count from the most recent decennial census conducted by the United States Department of Commerce, Bureau of the Census, as modified by subsequent certifications from the Bureau of the Census. If a subsequent certified census occurs which modifies the “most recent certified federal census” for a participating jurisdiction, then the formula set forth in this rule for computations for distribution of the tax shall reflect any population adjustments reported by the subsequent certified census.

The term “unincorporated area of the county” “*Unincorporated area of the county*” means all areas of a county which are outside the corporate limits of all cities which are located within the geographical area of the county.

When the meaning of the word “sale” cannot be determined by referring to the definition of that word set out in Iowa Code section 422.42(17), its meaning should be determined by studying Iowa Code chapter 554, Uniform Commercial Code, Article 2.

ITEM 3. Amend rule 701—107.2(422B) as follows:

701—107.2(422B 423B) Local option sales and service tax. Imposition of local option taxes and notification to the department. This rule describes notification and other requirements as related to the department. For information on the election forms and instructions, see 721—Chapter 21.

107.2(1) Imposition and jurisdiction. Notice to the department. Only a county may impose a tax upon the gross receipts of sales of tangible personal property sold within the county and upon the gross receipts from services rendered, furnished, or performed within the county. The local option sales and service tax may not be imposed by a city except under the circumstances described in rule 107.14(422B). However, the tax may be imposed by a county for transactions in a specified city. The tax may not be imposed on any transaction not subject to state sales tax. Effective May 1, 1999, transactions involving the use of natural gas, natural gas services, electricity or electric services are subject to a local excise tax that is to be imposed on the same basis as the state use tax, unless the sale or use involved in such transactions is subject to a franchise fee or user fee during the period the franchise fee or user fee is imposed. Except as otherwise provided in this chapter, all references to local option sales and service tax also include local excise tax, and all rules governing the administration and collection of local option sales and service tax are also applicable to local excise tax. With the exception of the natural gas and electric related transactions previously mentioned, there is no local option use tax. The local sales and service tax may be imposed at any rate of not more than 1 percent. See rule 701—14.2(422,423) for a tax schedule setting out the combined rate for a state sales tax of 5 percent and a local sales tax of 1 percent. Frequency of deposit and quarterly reports of local option tax with the department of revenue is governed by the retail sales tax provisions found in Iowa Code section 422.52. Local option tax collections shall not be included in the computation of the total tax to determine the frequency of filing under Iowa Code section 422.52.

The local option sales and service tax can be imposed upon the unincorporated area of any county only if a majority of those voting in the area favor its imposition. The tax can be imposed upon any incorporated area within a county only if a majority of those voting in that area favor its imposition. All cities within a county contiguous to each other must be treated as part of one incorporated area, and tax can be imposed in such an incorporated area only if the majority of persons voting in the total area covered by the contiguous cities favor imposition of the tax. For the purposes of this rule, the local option sales and service tax can only be imposed in those areas specified in the ordinance of a county board of supervisors which imposes the tax.

REVENUE DEPARTMENT[701](cont'd)

Within ten days of the election at which a majority of those voting ~~in favor of~~ on the question of imposition, repeal, or change in the rate of tax vote in favor, the county auditor must give notice of the election results to the director ~~in the form of~~ by sending a copy of the abstract of votes and a copy of the sample ballot from the election.

107.2(2) ~~Procedures for implementing and repealing the tax. Avoiding a lapse in tax due to expiration of a former local option tax.~~

α. ~~Implementing the tax.~~ The ballot proposition imposing the tax shall specify the type and rate of the tax and other items set forth in Iowa Code section 422B.1. Effective April 1, 2000, the date of imposition of the tax must occur on either January 1 or July 1, but cannot be earlier than 90 days from the date of the election in which a majority of those voting on the tax favored its imposition. ~~Within ten days of the favorable election, the county auditor must give written notice of the election by sending a copy of the abstract of ballot from the favorable election to the director of revenue. For the purposes of this rule, the “abstract of ballot” is defined as abstract of votes as provided in 721—21.800(4).~~

A jurisdiction that has a local option tax that is set to expire may vote to impose another local option tax. However, due to the required imposition dates previously set forth, there may be a lapse in the tax because of an expiration of the former local option tax and the required imposition dates for imposition of a local option tax. Effective July 1, 2001, a local option jurisdiction may avoid a lapse in local option tax. To avoid a lapse in the tax, a jurisdiction may place on the ballot that the new local option tax will continue without repeal of the prior tax. If the required vote is in favor of imposition of the local option tax, the continued local option tax can be imposed so there is no lapse in the tax.

b. ~~Repeal of the tax.~~ A county that has imposed a local option tax may have the tax repealed. Repeal of the tax in an unincorporated area or an incorporated city area may occur either by the board of supervisors' acting upon its own motion or by the board's acting on a motion submitted by the governing body of an incorporated area asking for the repeal. The repeal is effective on the later of the date of the adoption of the motion of repeal or the earliest date set forth in Iowa Code section 422B.9(1).

~~Effective April 1, 2000, tax shall only be repealed on June 30, or December 31, but not sooner than 90 days following the favorable election if one is held. If the tax has been imposed prior to April 1, 2000, and at the time of election a date for the repeal was specified on the ballot, the tax may be repealed on that date despite the dates previously set forth.~~

This rule is intended to implement Iowa Code sections 422B.1 and 422B.8 and 422B.9 as amended by 2001 Iowa Acts, House File 715, section 14 section 423B.1.

ITEM 4. Rescind rule 701—107.3(422B) and adopt the following **new** rule in lieu thereof:

701—107.3(423B) Administration.

107.3(1) *Generally.* The department is charged with the administration of the tax, once imposed, subject to the rules, regulations, and direction of the director. The department is required to administer the tax as nearly as possible in conjunction with the administration of the state sales tax.

107.3(2) *Incorporation of 701—Chapter 11.* Except as otherwise stated in this chapter, the requirements of 701—Chapter 11 shall apply to retailers required to collect local option taxes in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

This rule is intended to implement Iowa Code section 423B.6.

ITEM 5. Rescind rule 701—107.4(422B) and adopt the following **new** rule in lieu thereof:

701—107.4(423B) Filing returns; payment of tax; penalty and interest.

107.4(1) *Incorporation of 701—Chapter 12.* Except as otherwise stated in this chapter, the requirements of 701—Chapter 12 shall apply to retailers required to collect local option tax in the same manner as those requirements apply to all sellers and retailers making sales subject to state sales tax.

REVENUE DEPARTMENT[701](cont'd)

107.4(2) Local tax collections not included to determine filing frequency. Local option tax collections shall not be included in computation of the total tax to determine frequency of filing under Iowa Code section 423.31.

This rule is intended to implement Iowa Code section 423B.6.

ITEM 6. Rescind rule 701—107.5(422B) and adopt the following **new** rule in lieu thereof:

701—107.5(423B) Permits. Except as otherwise stated in this chapter, the requirements of 701—Chapter 13 shall apply to retailers required to collect local option tax in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

This rule is intended to implement Iowa Code section 423B.6.

ITEM 7. Rescind rule 701—107.6(422B) and adopt the following **new** rule in lieu thereof:

701—107.6(423B) Sales subject to local option sales and services tax. All sales subject to sales tax under Iowa Code chapter 423 are subject to local option sales and services tax. There is no local option use tax.

107.6(1) Sourcing. The general sourcing rules described in Iowa Code section 423.15 and 701—Chapter 223 are used to determine whether a sale is subject to local option taxes and, if so, in what jurisdiction. A local sales and services tax is not applicable to transactions sourced to a place of business, as defined in Iowa Code section 423.1, of a retailer if such place of business is located in part within a city or unincorporated area of the county where the tax is not imposed.

107.6(2) Sellers responsible for collecting local option sales and services tax. Sales sourced to Iowa and made by sellers subject to Iowa Code section 423.1(48) or 423.14A are subject to local option sales and services tax.

This rule is intended to implement Iowa Code section 423B.5(1).

ITEM 8. Rescind rules **701—107.7(422B)** and **701—107.8(423B)**.

ITEM 9. Renumber rules **701—107.9(423B,423E)** to **701—107.11(422B)** as **701—107.7(423B,423E)** to **701—107.9(422B)**.

ITEM 10. Amend renumbered rule 701—107.7(423B) as follows:

701—107.7(423B,423E) Sales not subject to local option tax, including transactions subject to Iowa use tax. The local option sales and ~~service~~ services tax is imposed upon the same basis as the Iowa state sales and ~~service~~ services tax, with ~~six~~ the following exceptions:

1. The sales price from the sale of or service of providing motor fuel or special fuel as defined under Iowa Code chapter 452A is subject to local option tax. However, the sales price from the sale or service of these types of fuels is exempt from local option tax if all of the following criteria are met:

- The motor or special fuel must be consumed by a motor vehicle for highway use, or used in watercraft or aircraft;

- Fuel tax must have been paid on the transaction; and

- A refund has not been or will not be allowed.

~~2. For taxes imposed prior to July 1, 2005, the sales price from the rental of rooms, apartments, or other lodging which was taxed under Iowa Code chapter 422A during the period in which the hotel and motel tax was imposed under that chapter shall be exempt from local option sales tax. As of July 1, 2005, the sales price of lodging is no longer subject to the sales tax imposed by Iowa Code chapter 423; thus, the sales price of lodging is not subject to the local option sales tax. Also, as of July 1, 2005, Iowa Code chapter 422A is repealed. See 701—Chapter 241 for a description of the new state imposed tax on lodging; see 701—Chapters 103, 104, and 105 for a description of the new local option hotel and motel tax.~~

~~3.~~ 2. The sales price from the sale of natural gas or electricity in a city or county is exempt from tax if the sales price is subject to a franchise or user fee during the period the franchise or user fee is imposed.

REVENUE DEPARTMENT[701](cont'd)

4. ~~3.~~ A local taxing jurisdiction is prohibited from taxing the sales price from a pay television service consisting of a direct-to-home satellite service. Section 602 of the federal government's Telecommunications Act of 1996 defines a "direct-to-home satellite service" as "only programming transmitted or broadcast by satellite directly to the subscribers' premises or in the uplink process to the satellite." A "local taxing jurisdiction" is "any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States, with the authority to impose a tax or fee, but does not include a state."

5. ~~4.~~ The sales price from sales of equipment by the Iowa state department of transportation is exempt from local option sales tax.

6. ~~Certain construction-related equipment and other items are exempt.~~

The general application of this exception is as follows: ~~The sales price from the sale of self-propelled building equipment, pile drivers, motorized scaffolding, or attachments that are customarily drawn or attached to self-propelled building equipment, motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment, and replacement parts, and that are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures is exempt from local option sales tax. As of July 1, 2005, taxation of the above-mentioned machinery and equipment is removed from Iowa Code chapter 423 and thus is not subject to the local option sales tax. See 701—Chapter 241, division II, for an explanation of the new state excise tax imposed on sales of construction machinery and equipment.~~

The following definitions apply to this rule:

~~"Directly used" includes equipment used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. To determine if equipment is "directly used," one must first ensure that the equipment is used during the specified activity and not before that process has begun or after it has ended. If the machinery or equipment is used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures, to be "directly used," it must constitute an integral and essential part of such activity as distinguished from a use in such an activity that is incidental, merely convenient, or is remote. The fact that the machinery or equipment is essential or necessary to new construction, reconstruction, alterations, expansion, or remodeling of real property or structures does not mean that it is also "directly used" in such an activity. Machinery or equipment may be necessary to one of the previously mentioned activities, but so remote from it that it is not directly used in the activity.~~

~~In determining whether machinery or equipment is used directly, consideration should be given to the following factors:~~

1. ~~The physical proximity of the machinery or equipment to other machinery or equipment whose direct use is unarguable. The closer the machinery or equipment whose direct use is questionable is to the machinery or equipment whose direct use is not questionable, the more likely it is that the former is directly used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.~~

2. ~~The proximity in time of the use of machinery or equipment whose direct use is questionable to the use of machinery whose direct use is not questionable. The closer in time the use, the more likely that the questionable machinery or equipment's use is direct rather than remote.~~

3. ~~The active causal relationship between the use of the machinery or equipment in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.~~

~~The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in the activities at issue.~~

~~"Equipment" means tangible personal property (other than a machine) directly and primarily used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. "Equipment" may be characterized as property which performs a specialized function, which, of itself, has no moving parts, or if it does possess moving parts, its source of power is external to it.~~

~~"Primarily used" includes machinery and equipment utilized in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. Machinery or equipment is~~

REVENUE DEPARTMENT[701](cont'd)

“primarily used” in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures if more than 50 percent of the total time the machinery or equipment is used in the activity at issue (new construction, reconstruction, alterations, expansion, or remodeling of real property or structures). If a unit of machinery or equipment is used more than 50 percent of the time for the activity at issue and the balance of time for other business purposes, the exemption applies. If a unit of machinery or equipment is used 50 percent or more of the time for business purposes and not being used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures, the exemption does not apply.

“*Real property*” includes the earth, the ground, a building, structure and other tangible personal property incorporated into the ground or a building that becomes a part of the ground, structure or the building if removal of the property from the ground or building will substantially damage the property, ground, or building or substantially diminish the value of the property, ground, or building. The ground or the earth is not machinery or equipment. A building is not machinery or equipment. *Mid American Growers, Inc. v. Dept. of Revenue*, 493 N.E.2d 1097 (Ill. App. Ct. 1986). Instead, a building or structure that is affixed to the ground is considered to be real property. Fence posts embedded in concrete and electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. A test which can be applied to differentiate between equipment and real property is the following: If property is sold to a contractor, and the retailer would be required to consider the property “building material” and charge the contractor sales tax upon the purchase of this building material, then sale of the property is not exempt from local option tax.

“*Replacement parts*” means those parts essential to any repair or reconstruction necessary to self-propelled building equipment, pile drivers, motorized scaffolding, or attachments customarily drawn or attached to self-propelled building equipment, motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of such equipment or equipment’s exempt use in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. “Replacement parts” does not include attachments and accessories not essential to the operation of the machinery or equipment itself (except when sold as part of the assembled unit) such as cigarette lighters, radios, canopies, air-conditioning units, cabs, deluxe seats, and tools or utility boxes.

“*Self-propelled building equipment*” has the same meaning as that in 701—subrule 17.9(5), paragraph “c,” where the term is defined as an implement which is capable of movement from one place to another under its own power. “Self-propelled building equipment” includes, but is not limited to, skid loaders, earthmovers and tractors.

5. Sales subject to Iowa use tax. Since the local option tax is imposed only on the same basis and not on any greater basis than the Iowa sales and service services tax, local option tax is not imposed on any transactions subject to Iowa use tax, including use tax the one-time registration fee applicable to vehicles subject to registration or subject only to the issuance of a certificate of title. Also, exemptions which are applicable only to Iowa use tax cannot be claimed to exempt any transaction subject to local option sales tax. ~~However, if~~

6. Local excise on gas and electricity. If a transaction involves the use of natural gas, natural gas service, electricity, or electric service, ~~then~~ a local excise tax is imposed on the same basis as Iowa use tax under Iowa Code chapter 423. ~~Local~~ This local excise tax is to be collected and administered in the same manner as local option sales and service services tax. Except as otherwise provided in this chapter, all rules governing local option sales and service services tax also apply to local excise tax.

When tangible personal property is sold within a local option sales tax jurisdiction and the seller is obligated to transport it to a point outside Iowa or to transfer it to a common carrier or to the mails or parcel post for subsequent movement to a point outside Iowa, the sales price from the sale is exempt from local option sales tax provided the property is not returned to any point within Iowa except solely in the course of interstate commerce or transportation. (Iowa Code subsection 423.3(43)). Property sold in a local option sales tax jurisdiction for subsequent transport to a point outside the jurisdiction but otherwise within the borders of Iowa is not exempt from tax.

This rule is intended to implement 2005 Iowa Code Supplement sections section 423B.5 and 423E.3.

REVENUE DEPARTMENT[701](cont'd)

ITEM 11. Amend renumbered rule 701—107.8(422B) as follows:

701—107.8(422B 423B) Local option sales and service services tax payments to local governments. For periods after July 1, 1997, when a local sales and service tax is imposed, the director of revenue within 15 days of the beginning of each fiscal year shall send to each city or county where the local option tax is imposed, an estimate of the tax moneys each city or county will receive for the year and for each month of the year. For periods after July 1, 2002, the director of revenue by August 15 of each fiscal year shall send to each city or county where the local option tax is imposed an estimate of the tax moneys each city or county will receive for the year and for each month of the year. At the end of each month, the director may revise the estimates for the year and remaining months. The director shall remit 95 percent of the estimated monthly tax receipts for the city or county to the city or county on or before August 31 of the fiscal year and the last day of each month thereafter. The director shall remit a final payment of the remainder of tax money due to the city or county for the fiscal year before November 10 of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the first payment of the new fiscal year shall be adjusted to reflect any overpayment. An adjustment for an overpayment which resulted in a previous year will be reflected beginning with the November payment. The shares are to be remitted to the board of supervisors if the tax is imposed in the unincorporated areas of the county, and to each city where the tax is imposed.

Each county's account is to be proportionately distributed to participating governments 75 percent on the basis of the most recent certified federal census population, and 25 percent on the basis of the sum of property tax dollars levied by participating boards of supervisors or by cities for the three years from July 1, 1982, through June 30, 1985.

"The most recent certified federal census" is the final count from the most recent decennial census conducted by the United States Department of Commerce, Bureau of the Census, as modified by subsequent certifications from the United States Bureau of the Census. If a subsequent certified census occurs which modifies the "most recent certified federal census" for a participating jurisdiction, then the formula set forth in this rule for computations for distribution of the tax shall reflect any population adjustments reported by the subsequent certified census.

The "sum of property tax dollars levied" by boards of supervisors or city councils for the three years from July 1, 1982, through June 30, 1985, is the amount obtained by using data from county tax rate reports and city tax rate reports compiled by the office of management.

107.8(1) County-imposed local sales and services tax; division of funds from accounts. Division of the amount from each county's account to be distributed is done with these steps.

1. *a.* The total amount in the county's account to be distributed is first divided into two parts. One part is equal to 75 percent of the total amount to be distributed. The second part is the remainder to be distributed.

2. *b.* The part comprised of 75 percent of the total receipts to be distributed is further divided into an amount for each participating city or unincorporated area. This division is based upon the most recent certified federal census population and any subsequent certified census. Population for each participating city and unincorporated area is determined separately and totaled. The population for each sales tax imposing city or unincorporated area is divided by the total population to produce a percentage for each city or the unincorporated area. The percentages are rounded to the nearest one-hundredth of a percent with the total of all percentages equal to 100 percent. Each government's percentage is multiplied by 75 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.

There are two types of certified federal censuses. The first is the usual decennial census which is always conducted throughout the entire area of any county imposing a local option sales tax.

The second type of certified federal census is the "interim" or "subsequent" census which is conducted between decennial censuses. An interim or subsequent census is not necessarily conducted within an entire county but may be used to count increases or decreases in only one or some of the jurisdictions within that county, for instance, one particular municipality. If an interim census is conducted within only certain participating jurisdictions of a county where a local option sales tax is imposed, the changes in population which that census reflects must be included within both the

REVENUE DEPARTMENT[701](cont'd)

numerator and the denominator of the fraction which is used to compute the participating jurisdiction's share of the revenue from the county's account which is based on county population. See 1996 O.A.G. 10-22-96 (Miller to Richards). See also Example 3 of this rule for a demonstration of how an interim census can affect a population distribution formula.

3. c. The remaining 25 percent of the amount to be distributed is further divided based upon property taxes levied. The sum of property tax dollars to be used is the amount levied for the three years from July 1, 1982, through June 30, 1985, as obtained by using data from county tax rate reports and city tax rate reports compiled by the department of management. Property taxes levied by participating cities or the board of supervisors, if the local sales tax is imposed in unincorporated areas, are to be determined separately then totaled. The property tax amount for each sales tax imposing city and the board of supervisors, if the sales tax is imposed in unincorporated areas, is divided by the totaled property tax to produce a percentage. The percentages are rounded to the nearest one-hundredth of a percent with the total of all percentages equal to 100 percent. Each percentage is multiplied by 25 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.

4. d. For each participating city, or the board of supervisors if unincorporated areas of the county participate, the amount determined in "3" paragraph 107.8(1) "c" is added to the amount found in "2." paragraph 107.8(1) "b." This amount is then to be remitted to the appropriate local government.

In order to illustrate the division of local option sales and service services tax receipts, the following examples are provided. The numbers are shown in an attempt to reflect reality but are hypothetical.

EXAMPLE 1. If a local option sales tax is approved for all of Pottawattamie County, the distribution of \$100,000 in countywide receipts would be made in this manner:

Step 1:

Distribution Basis	Amount
Population	\$ 75,000.00
Property Taxes Levied	25,000.00
Total	<u>\$100,000.00</u>

Step 2:

Jurisdiction	Certified Population		Receipts to be
	Number	Percentage	Distributed
Avoca	1,650	1.91%	\$ 1,432.50
Carson	716	0.83%	622.50
Carter Lake	3,438	3.98%	2,985.00
Council Bluffs	56,449	65.30%	48,975.00
Crescent	547	0.63%	472.50
Hancock	254	0.29%	217.50
Macedonia	279	0.32%	240.00
McClelland	177	0.20%	150.00
Minden	419	0.49%	367.50
Neola	839	0.97%	727.50

REVENUE DEPARTMENT[701](cont'd)

Jurisdiction	Certified Population		Receipts to be
	Number	Percentage	Distributed
Oakland	1,552	1.80%	1,350.00
Treynor	981	1.13%	847.50
Underwood	448	0.52%	390.00
Walnut	897	1.04%	780.00
Unincorporated	<u>17,796</u>	<u>20.59%</u>	<u>15,442.50</u>
Total	<u>86,442</u>	<u>100.00%</u>	<u>\$75,000.00</u>

NOTE: The portion of the city of Shelby in Pottawattamie County is excluded.

Step 3:

Jurisdiction	Three-Year Total Taxes Levied		Receipts to be
	Amount	Percentage	Distributed
Avoca	\$ 454,556	0.82%	\$ 205.00
Carson	202,882	0.37%	92.50
Carter Lake	946,026	1.71%	427.50
Council Bluffs	30,290,732	54.81%	13,702.50
Crescent	7,732	0.01%	2.50
Hancock	56,705	0.10%	25.00
Macedonia	64,504	0.12%	30.00
McClelland	24,300	0.04%	10.00
Minden	155,112	0.28%	70.00
Neola	206,560	0.38%	95.00
Oakland	319,153	0.58%	145.00
Treynor	346,849	0.63%	157.50
Underwood	139,571	0.25%	62.50
Walnut	264,145	0.48%	120.00
Unincorporated	<u>21,782,457</u>	<u>39.42%</u>	<u>9,855.00</u>
Total	<u>\$55,262,284</u>	<u>100.00%</u>	<u>\$25,000.00</u>

Step 4:

Jurisdiction	Amount to be Distributed		Total
	By Population	By Taxes	Distribution
Avoca	\$ 1,432.50	\$ 205.00	\$ 1,637.50
Carson	622.50	92.50	715.00
Carter Lake	2,985.00	427.50	3,412.50
Council Bluffs	48,975.00	13,702.50	62,677.50
Crescent	472.50	2.50	475.00
Hancock	217.50	25.00	242.50
Macedonia	240.00	30.00	270.00
McClelland	150.00	10.00	160.00
Minden	367.50	70.00	437.50

REVENUE DEPARTMENT[701](cont'd)

Jurisdiction	Amount to be Distributed		Total Distribution
	By Population	By Taxes	
Neola	727.50	95.00	822.50
Oakland	1,350.00	145.00	1,495.00
Treynor	847.50	157.50	1,005.00
Underwood	390.00	62.50	452.50
Walnut	780.00	120.00	900.00
Unincorporated	<u>15,442.50</u>	<u>9,855.00</u>	<u>25,297.50</u>
Total	<u>\$75,000.00</u>	<u>\$25,000.00</u>	<u>\$100,000.00</u>

EXAMPLE 2. If a local option sales tax is approved for Avoca, Oakland and Treynor in Pottawattamie County and \$10,000 is to be distributed, the distribution would be made in this manner:

Step 1:

Distribution Basis	Amount
Population	\$ 7,500.00
Property Taxes Levied	<u>2,500.00</u>
Total	<u>\$10,000.00</u>

Step 2:

Jurisdiction	Certified Population		Receipts to be Distributed
	Number	Percentage	
Avoca	1,650	39.45%	\$2,958.75
Oakland	1,552	37.10%	2,782.50
Treynor	<u>981</u>	<u>23.45%</u>	<u>1,758.75</u>
Total	<u>4,183</u>	<u>100.00%</u>	<u>\$7,500.00</u>

Step 3:

Jurisdiction	Three-Year Total Taxes Levied		Receipts to be Distributed
	Amount	Percentage	
Avoca	\$ 454,556	40.56%	\$1,014.00
Oakland	319,153	28.48%	712.00
Treynor	<u>346,849</u>	<u>30.96%</u>	<u>774.50</u>
Total	<u>\$1,120,558</u>	<u>100.00%</u>	<u>\$2,500.00</u>

Step 4:

Jurisdiction	Amount to be Distributed		Total Distribution
	By Population	By Taxes	
Avoca	\$2,958.75	\$1,014.00	\$ 3,972.75
Oakland	2,782.50	712.00	3,494.50
Treynor	<u>1,758.75</u>	<u>774.00</u>	<u>2,532.75</u>
Total	<u>\$7,500.00</u>	<u>\$2,500.00</u>	<u>\$10,000.00</u>

EXAMPLE 3. For the purposes of understanding this example, assume that the numbers for "certified population" from Step 2 of Example 2 immediately above are derived from the 1990 decennial census.

REVENUE DEPARTMENT[701](cont'd)

Assume further that in 1993 an interim census is conducted by the Bureau of the Census in Avoca and Oakland only, and nowhere else in Pottawattamie County. As a result of that interim census, the Bureau of the Census certifies the population of Avoca to be 1,752 and the population of Oakland to be 1,493. The towns' percentages of receipts to be distributed are recomputed in the following manner:

$$\text{Avoca's Percentage Equals } \frac{1752}{1752 + 1493 + 981} = 41.45\%$$

$$\text{Oakland's Percentage Equals } \frac{1493}{1493 + 1752 + 981} = 35.32\%$$

Amounts in Step 2 are then revised as follows:

Jurisdiction	Certified Population		Receipts to be Distributed
	Number	Percentage	
Avoca	1,752	41.46%	\$3,109.50
Oakland	1,493	35.33%	2,649.75
Treynor	<u>981</u>	<u>23.21%</u>	<u>1,740.75</u>
Total	<u>4,226</u>	<u>100.00%</u>	<u>\$7,500.00</u>

The "amount to be distributed by population" found in Step 4 of Example 2 would then be recomputed based on the new figures.

107.8(2) City-imposed local option sales and services tax. For information on the distribution of city-imposed local sales and services tax, see Iowa Code section 423B.7(1).

~~Rule 107.10(422B)~~ This rule is intended to implement Iowa Code section 422B.10 as amended by 2002 Iowa Acts, House File 2622, section 12 423B.7.

ITEM 12. Amend renumbered rule 701—107.9(422B) as follows:

701—107.9(422B 423B) Procedure if county of receipt's origins Allocation procedure when sourcing of local option sales tax remitted to the department is unknown. If the director is unable to determine from which county ~~gross receipts were~~ local option sales tax was collected, ~~those receipts that local option sales tax~~ shall be allocated among the various counties in which local option sales and ~~service~~ services tax is imposed according to the following procedure:

1. The calculations performed under this procedure shall be performed at least quarterly, but in no event less often than the treasurer of the state is obligated to distribute shares of each county's account in the local sales and ~~service~~ services tax fund.

2. The total amount of receipts for which the director is unable to determine a county of collection which have accumulated since the last allocation of these receipts shall be added together to form one lump sum.

3. The amount of population (according to the most recent certified federal census) within the areas of each individual county in which a local option sales and ~~service~~ services tax is imposed shall be determined.

4. The amount of population so determined in "3" above for each county shall be added to the amount for every other county in Iowa in which the local option sales and ~~service~~ services tax is imposed, until the figure for the amount of population of all areas of Iowa in which the local option sales and ~~service~~ services tax is imposed is determined.

5. The sum determined to exist in "2" above shall be multiplied by a fraction, the numerator of which is the population of any one county determined in "3" above and the denominator of which is the number calculated by the method described in "4." The procedure described herein in "5" shall be used until the amount of tax due to every county imposing local option sales and ~~service~~ services tax is calculated. After calculations are complete, the treasurer of the state must distribute shares of each county's account in the local sales and ~~service~~ services tax fund. See rule ~~107.10(422B)~~

REVENUE DEPARTMENT[701](cont'd)

701—107.1(423B) for characterization of the term “most recent certified federal census” and rule 701—107.8(423B) for methods of rounding off percentages and monetary sums.

This rule is intended to implement Iowa Code ~~subsection 422B.10(1)~~ section 423B.7(1).

ITEM 13. Adopt the following new rule 701—107.11(423B):

701—107.11(423B) Motor vehicle, recreational vehicle, and recreational boat rental subject to local option sales and services tax. For information on when motor vehicles, recreational vehicles, and recreational boat rentals are subject to local option sales and services tax, see rule 701—26.68(422).

This rule is intended to implement Iowa Code section 423B.3.

ITEM 14. Amend rule 701—107.12(422B) as follows:

701—107.12(422B 423B) Computation of local option tax due from mixed sales on excursion boats. Particular difficulties exist in calculating the amount of local option sales tax due for sales occurring on an excursion gambling boat sailing into and out of jurisdictions imposing the local option sales tax. Ordinarily, ~~whether local option sales tax is payable if tangible personal property is delivered under a contract for sale or if taxable services are rendered, furnished, or performed within that portion of a county where a tax is imposed~~ to a particular jurisdiction is based on destination sourcing. See Iowa Code section 423.15 and 701—Chapter 223. However, it can be quite difficult to determine if a moving excursion gambling boat is at any one point in time within or outside of a jurisdiction imposing the local option tax. Thus, it is difficult to determine if a delivery of property or provision of a service on the boat has occurred inside or outside of a local option tax jurisdiction. Because of this, the department will accept the use of any formula which rationally apportions the progress of an excursion gambling boat among jurisdictions which impose a local option tax and those that do not.

Below are four examples setting out two possible formulas for apportionment. Examples A and C utilize a “distance” formula for apportionment. Examples B and D utilize a “time” formula for apportionment. In Examples A and B, state sales tax is included in the sale sales price of the taxable items. In Examples C and D, state sales tax is added to taxable gross receipts. In all examples, local option sales tax is included in the sales price; also, for every example, it is assumed that the local option sales tax rate is 1 percent in every jurisdiction where it is imposed.

EXAMPLE A. The excursion gambling boat “Auric” is based in Clinton. Assume that during a particular cruise there occurs \$10,000 worth of vending machine and nongambling game sales. State sales tax and local option tax must be included in the amounts charged for these vending machine and nongambling game sales. Assume that the Auric, on an ordinary cruise, travels round trip for 50 miles on the Mississippi River, 25 of those miles through waters which are part of a local option sales tax jurisdiction and 25 of those miles which are not. The amount of state sales tax due and the amount of local option sales tax (LOST) due using a “distance” apportionment formula are determined as follows:

Computation of state sales tax due

$$1. \quad \$10,000 \div 1.04 = \$9,615.38$$

$$2. \quad \$10,000 - \$9,615.38 = \$384.62 = \text{amount of state sales tax due}$$

Computation of local option tax due

$$1. \quad \$9,615.38 \div 1.01 = \$9,520.18$$

$$2. \quad \$9,615.38 - \$9,520.18 = \$95.20$$

$$3. \quad \$95.20 \times \frac{1}{2} = \$47.60 = \text{amount of local option sales tax due}$$

$$1. \quad (25 \div 50) \times 0.01 = 0.005$$

(miles in LOST jurisdiction \div total miles) \times LOST rate = effective LOST rate

$$2. \quad 1 + 0.06 + 0.005 = 1.065$$

1 + state sales tax rate + effective LOST rate = (1 + effective total tax rate)

$$3. \quad \$10,000.00 \div 1.065 = \$9,389.67$$

Gross receipts \div (1 + effective total tax rate) = total sales

$$4. \quad \$9,389.67 \times 0.06 = \$563.38$$

Total sales \times state tax rate = state tax amount

REVENUE DEPARTMENT[701](cont'd)

$$5. \quad \$9,389.67 \times 0.005 = \$46.95$$

Total sales × effective LOST rate = LOST amount

$$6. \quad \$563.38 + \$46.95 = \$610.33$$

State tax amount + LOST amount = total tax amount

EXAMPLE B. The ~~gambling~~ excursion ~~gambling~~ boat “Blue Diamond” is based in Davenport. Assume that, as in Example A, during a particular cruise there occurs \$10,000 worth of vending machine and nongambling game sales. Again, state sales tax and local option tax are included in the amounts charged for these vending machine and nongambling game sales. The Blue Diamond spends three hours on the water during an ordinary cruise. One hour is spent sailing in waters where no local option sales tax is imposed; two hours are spent in waters where the local option tax is imposed. In this case, the Blue Diamond’s operator can use a formula based on time spent sailing inside and outside of a local option tax-imposing jurisdiction rather than distance traveled within and without such a jurisdiction as in Example A, so long as there is a reasonable amount of evidence to indicate that the formula reflects with some accuracy the ratio of nontaxable and taxable sales. ~~In this case, all calculations are the same as those performed in Example A, except that the last~~ The calculation is performed as follows:

$$\underline{\$95.20 \times 2/3 = \$63.40 = \text{amount of local option sales tax due}}$$

$$1. \quad (2 \div 3) \times 0.01 = 0.00666$$

(hours in LOST jurisdiction ÷ total hours) × LOST rate = effective LOST rate

$$2. \quad 1 + 0.06 + 0.00666 = 1.06666$$

$$1 + \text{state sales tax rate} + \text{effective LOST rate} = (1 + \text{effective total tax rate})$$

$$3. \quad \$10,000.00 \div 1.06666 = \$9,375.06$$

$$\underline{\text{Gross receipts} \div (1 + \text{effective total tax rate}) = \text{total sales}}$$

$$4. \quad \$9,375.06 \times 0.06 = \$562.50$$

$$\underline{\text{Total sales} \times \text{state tax rate} = \text{state tax amount}}$$

$$5. \quad \$9,375.06 \times 0.00666 = \$62.44$$

$$\underline{\text{Total sales} \times \text{effective LOST rate} = \text{LOST amount}}$$

$$6. \quad \$562.50 + \$62.44 = \$624.94$$

$$\underline{\text{State tax due} + \text{LOST due} = \text{total tax amount}}$$

EXAMPLE C. The excursion gambling boat “Golconda” is based in Dubuque, Iowa. On an ordinary cruise, it will travel a round trip of 50 miles on the Mississippi River. During 25 of those 50 miles the Golconda is passing through waters which are part of a local option sales tax jurisdiction. Assume that on one particular cruise, \$100,000 in taxable gross receipts is collected on the boat. Local option sales tax is included in the \$100,000 amount but not state sales tax. Thus, the total amount collected is ~~\$104,000~~ \$106,000; \$100,000 in gross receipts, ~~\$4,000~~ \$6,000 in state sales tax. Local option tax is calculated as follows: ~~Divide \$100,000 by 1.01. This result is \$99,009.90. Subtract this from \$100,000 leaving \$990.10. \$990.10 is the amount of local option tax which would be due if all sales during the cruise had occurred in a jurisdiction imposing a local option tax. Since only half the distance traveled was in a jurisdiction imposing the tax, \$990.10 is multiplied by .5 to discover the amount of local option tax due (\$495.05).~~

$$1. \quad (25 \div 50) \times 0.01 = 0.005$$

$$\underline{(\text{miles in LOST jurisdiction} \div \text{total miles}) \times \text{LOST rate} = \text{effective LOST rate}}$$

$$2. \quad 1 + 0.005 = 1.005$$

$$1 + \text{effective LOST rate}$$

$$3. \quad \$100,000.00 \div 1.005 = \$99,502.49$$

$$\underline{\text{Gross receipts including LOST} \div (1 + \text{effective LOST rate}) = \text{total sales}}$$

$$4. \quad \$99,502.49 \times 0.06 = \$5,970.15$$

$$\underline{\text{Total sales} \times \text{state tax rate} = \text{state tax amount}}$$

$$5. \quad \$100,000.00 - 99,502.49 = \$497.51$$

$$\underline{\text{Gross receipts including LOST} - \text{total sales} = \text{LOST amount}}$$

$$6. \quad \$5,970.15 + \$497.51 = \$6,467.66$$

$$\underline{\text{State tax due} + \text{LOST due} = \text{total tax amount}}$$

$$7. \quad \$99,502.49 + \$497.51 + \$5,970.15 = \$105,970.15$$

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Total sales + LOST amount + state tax amount = total amount collected by vendor

EXAMPLE D. The ~~gambling~~ excursion ~~gambling~~ boat "Black Jack" is based in Davenport. Assume that during a particular cruise there is \$150,000 in taxable gross receipts collected on the Black Jack. The full amount collected is ~~\$156,000~~ \$159,000; ~~\$6,000~~ \$9,000 in state sales tax and \$150,000 in gross receipts. The Black Jack spends three hours on the water during an ordinary cruise. One hour is spent sailing in waters where no local option sales tax is imposed; two hours are spent in waters where the local option tax is imposed. In this case, as in Example B, the Black Jack's operator can use a formula based on time spent sailing inside and outside of a local option tax-imposing jurisdiction rather than distance traveled within and without such a jurisdiction so long as there is a reasonable amount of evidence to indicate that the formula reflects with some accuracy the ratio of nontaxable and taxable sales. In this example tax is computed as follows:

$$1. \quad \underline{\$150,000 \div 1.01 = \$148,514.85}$$

$$2. \quad \underline{\$150,000 - \$148,514.85 = \$1,485.15}$$

$$3. \quad \underline{\$1,485.15 \times 2/3 = \$989.11 = \text{amount of tax due}}$$

$$1. \quad \underline{(2 \div 3) \times 0.01 = 0.00666 \text{ effective LOST rate}}$$

(hours in LOST jurisdiction ÷ total hours) × LOST rate = effective LOST rate

$$2. \quad \underline{1 + 0.00666 = 1.00666}$$

1 + effective LOST rate

$$3. \quad \underline{\$150,000.00 \div 1.00666 = \$149,007.61}$$

Gross receipts including LOST but not state tax ÷ (1 + effective LOST rate) = total sales

$$4. \quad \underline{\$149,007.61 \times 0.06 = \$8,940.46}$$

Total sales × state tax rate = state tax amount

$$5. \quad \underline{\$150,000.00 - 149,007.61 = \$992.39}$$

Gross receipts including LOST but not state tax - total sales = LOST amount

$$6. \quad \underline{\$8,940.46 + \$992.39 = \$9,932.85}$$

State tax amount + LOST amount = total tax amount

$$7. \quad \underline{\$149,007.61 + \$992.39 + \$8,940.46 = \$158,940.46}$$

Total sales + LOST amount + state tax amount = total amount collected by vendor

Upon beginning operation, a licensee may choose to employ either the "distance" method of apportionment set out in Examples A and C or the "time" method set out in B and D above without informing the department in advance of filing a sales tax return of ~~its~~ the licensee's choice. A licensee cannot use both methods of apportionment. If a licensee commencing operation wishes to use another method of apportionment, the licensee must petition the department for permission to use this alternative method, and present whatever evidence the department shall rationally require that the alternative method better reflects the ratio of taxable to nontaxable sales before using the alternative method. Any licensee wishing to change from any existing method of apportionment to another method must also petition the department and receive permission to change its method of apportionment.

This rule is intended to implement Iowa Code sections 99F.10(6) and ~~422B.8~~ 423B.5.

ITEM 15. Rescind rules **701—107.13(421,422B)** and **701—107.14(422B)**.

ITEM 16. Renumber rule **701—107.15(422B)** as **701—107.10(422B)**.

ITEM 17. Amend renumbered rule 701—107.10(422B) as follows:

701—107.10(422B 423B) Application of payments. Since a combined state sales and local option return is utilized by the department, all payments received will be applied to satisfy state sales tax and local option sales and ~~service~~ services tax, which include tax, penalty and interest. Application of payments received with the tax return and any subsequent payments received will be applied based on a ratio formula, unless properly designated by the taxpayer as provided in Iowa Code section 421.60(2) "d." The ratio for applying all payments received with the return and all subsequent payments for the given tax period will be based upon the calculated total of state sales and local option sales and

REVENUE DEPARTMENT[701](cont'd)

~~service~~ services tax due for the given tax period in relation to combined total payment of sales and local option sales and ~~service~~ services tax actually received for that tax period.

This rule is intended to implement Iowa Code ~~Supplement~~ section ~~422B.10~~ 423B.7.

ITEM 18. Rescind rules **701—107.16(422B)** and **701—107.17(422B,422E)**.

ARC 4200C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to sourcing of taxable services, tangible personal property, and specified digital products and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 223, “Sourcing of Taxable Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 423.15 as amended by 2018 Iowa Acts, Senate File 2417.

Purpose and Summary

This rule making proposes to amend the Department’s chapter on the sourcing of taxable services to remove language that is outdated, unnecessary, or duplicative of Iowa Code provisions. This proposed rule making incorporates the sourcing of tangible personal property and specified digital products pursuant to changes to the Iowa Code made by 2018 Iowa Acts, Senate File 2417. This proposed rule making also adopts rules relating to sourcing that are proposed for rescission from Chapter 107, Local Option Sales and Services Tax, in **ARC 4202C** (IAB 1/2/19).

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 23, 2019. Comments should be directed to:

REVENUE DEPARTMENT[701](cont'd)

Tim Reilly
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.725.2294
Email: tim.reilly@iowa.gov

Public Hearing

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

January 23, 2019
10 to 11 a.m.

Room 430, Fourth Floor
Hoover State Office Building
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend **701—Chapter 223**, title, as follows:
**SOURCING OF TAXABLE SERVICES, TANGIBLE PERSONAL PROPERTY, AND SPECIFIED
DIGITAL PRODUCTS**

ITEM 2. Amend rule 701—223.2(423), introductory paragraph, as follows:

701—223.2(423) General sourcing rules for taxable services. Except as otherwise provided in the agreement, retailers providing taxable services in Iowa shall source the sales of those services ~~under~~ using the ~~general~~ destination sourcing ~~regime~~ requirements described in Iowa Code section 423.15. In determining whether to apply the provisions of Iowa Code section 423.15 to the sale of a taxable service, it is necessary to determine the location where the service is received, first used, or could potentially be first used, by the purchaser or the purchaser's donee. With respect to taxable services performed on tangible personal property, the location where the retailer performs the taxable service does not determine the location where the purchaser receives the service. This rule and subsequent rules in Chapter 223 clarify the application of the definition of "receive" or "receipt" to various categories of services to assist in applying the sourcing provisions of Iowa Code section 423.15 to sales of services. The provisions of these rules do not affect the obligation of a purchaser or lessee to remit additional tax, if any, to another taxing jurisdiction based on the use of the service at another location.

ITEM 3. Amend subrule 223.3(2) as follows:

223.3(2) Sourcing of taxable services performed on tangible personal property as applied to local option sales and ~~service~~ services tax. A local option sales and ~~service~~ services tax shall be imposed on the same basis as the state sales and ~~service~~ services tax. With respect to sourcing of taxable services performed on tangible personal property, the local option sales and ~~service~~ services tax sourcing rules shall be the same as the ~~general~~ destination ~~regime~~ sourcing requirements described in Iowa Code section

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423.15 and as set forth in rules 701—223.1(423) and 701—223.2(423) and subrule 223.3(1). However, the location of the taxable service performed on tangible personal property shall be sourced to the taxing jurisdiction, rather than to the state, where the customer regains possession or can potentially make first use of the tangible personal property on which the seller performed the service. Iowa does not impose a local option use tax.

ITEM 4. Adopt the following **new** rule 701—223.5(423):

701—223.5(423) Sourcing of tickets or admissions to places of amusement, fairs, and athletic events. Sales of tickets or admissions to places of amusement, fairs, and athletic events are sourced in the same manner as services, using the destination sourcing requirements described in Iowa Code section 423.15 and as set forth in rule 701—223.2(423). Generally, the sale of a service is sourced to the location where the purchaser makes first use of the service. In the case of an event that the purchaser attends at a physical location, first use would occur at the location of the event.

EXAMPLE: X makes retail sales of tickets to music concerts in Iowa. X is a retailer maintaining a place of business in this state under Iowa Code section 423.1(48) and therefore is required to collect Iowa sales tax and local option sales tax on retail sales of these tickets. See Iowa Code section 423.2(3). Y is a resident of Marshalltown, Iowa. Y purchases two tickets to attend a concert in Ames, Iowa. The sale is sourced to Ames, the location of the event. The result is the same regardless of how or where Y's tickets are delivered. X must charge Iowa sales tax and any local option sales tax that applies to sales sourced to Ames, Iowa.

223.5(1) Sales of admissions to virtual events. First use of a ticket of admission to a virtual event occurs at the location where the attendee first participates in or accesses the event, if known to the seller. If this location is unknown, the sale is sourced pursuant to Iowa Code section 423.15(1).

EXAMPLE: X is hosting a virtual video game tournament. X is a retailer maintaining a place of business in this state under Iowa Code section 423.1(48). Y purchases admission to participate in the virtual video game tournament from a residence in Council Bluffs, Iowa. Y's access to the tournament begins immediately upon purchase, and Y's location is known to X. Therefore, X must source the admission to Council Bluffs, Iowa. X must charge Iowa sales tax and any local option sales tax that applies to sales sourced to Council Bluffs, Iowa.

223.5(2) Sales of admissions that can be used at multiple locations. Admissions that may be used at multiple locations should be sourced to the location where the admission is purchased if the purchaser picks it up in person and it can be used at that location. If the service cannot be used at that location or the sale is made online, the sale should be sourced using the provisions of Iowa Code section 423.15 and these rules that apply when the location of first use is unknown.

EXAMPLE 1: X is a movie theater located in West Des Moines, Iowa. X sells movie passes that can be used at its location and other locations across Iowa. Y purchases a movie pass at X's location in West Des Moines. Y's purchase is sourced to West Des Moines. X must collect Iowa sales tax and any local option sales tax that applies to sales sourced to West Des Moines, Iowa.

EXAMPLE 2: X is a health club with locations across Iowa. X has a website where memberships can be purchased. Memberships can be used at any of X's locations. Y purchases a membership through X's website. Y is required to provide an address when the membership purchase information is filled out. Y provides an address in Clive, Iowa. Therefore the sale is sourced to Clive. See Iowa Code section 423.15(1) "c." X must therefore collect Iowa sales tax and any local option sales tax imposed in the city of Clive.

ITEM 5. Adopt the following **new** rule 701—223.6(423):

701—223.6(423) Sourcing rules for tangible personal property and specified digital products. All sales of tangible personal property and specified digital products by sellers obligated to collect sales and use tax, except those enumerated in Iowa Code section 423.16, shall be sourced using the destination sourcing requirements described in Iowa Code section 423.15. Products received by a purchaser at a seller's business location shall be sourced to that business location. When the retailer has the address

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to which the retailer or a shipping company will deliver a product to the purchaser, Iowa Code section 423.15(1) "b" applies and the sale is sourced to the delivery address. The sale of a product delivered to a shipping company is not sourced to the location of the shipping company. The terms of a sale as F.O.B. (origin) are irrelevant for purposes of sourcing a sale. See Iowa Code section 423.1(43) "b" and *In the Matter of Clipper Windpower, LLC*, Iowa Dep't of Revenue Declaratory Order No. 2016-300-2-0058 (Sept. 8, 2017).

223.6(1) *General examples of sourcing of tangible personal property.* The following examples illustrate the sourcing principles of Iowa Code section 423.15(1) as applied to sales, but not leases or rentals, of tangible personal property.

EXAMPLE 1: Item received at retail store of the seller. X purchases a product at a retail store in Waterloo, Iowa. X takes the product home from the retail store that day. The sale is sourced to the retail store in Waterloo, Iowa, because that is the business location where X receives the product. See Iowa Code section 423.15(1) "a." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Waterloo.

EXAMPLE 2: Item received at warehouse of the seller. X purchases a product at a retail store in Waterloo, Iowa, but X has to pick up the product at a warehouse in Cedar Falls, Iowa. The sale is sourced to the warehouse in Cedar Falls because that is the business location where X receives the product. See Iowa Code section 423.15(1) "a." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Cedar Falls.

EXAMPLE 3: Item received at alternate location. X purchases a product at a retail store in Waterloo, Iowa. While purchasing the product, X provides the retail store with X's home address as the location where X would like to have the product delivered. The retail store's delivery truck delivers the product to X's home in Waverly, Iowa. The sale is sourced to X's home in Waverly, Iowa, because that is the location where X receives the product and the location is known to the seller. See Iowa Code section 423.15(1) "b." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Waverly. The outcome in this example is the same regardless of whether the retail store delivered the product with its own truck or by common carrier.

EXAMPLE 4: Sale by Iowa seller, product received by buyer in Iowa, but product delivered from outside of Iowa. X lives in Maxwell, Iowa. X purchases a product online from an Iowa seller with a retail location in Des Moines, Iowa. While purchasing the product, X provides the retail store with X's home address as the location where X would like to have the product delivered. The seller sends the product to X via a common carrier from its shipping facility in Lincoln, Nebraska, and X receives the product at X's home in Maxwell. The sale is sourced to Maxwell because the product is received at that location and that location is known to the seller. See Iowa Code section 423.15(1) "b." The outcome in this example is the same regardless of the fact that the product was delivered by a third party and regardless of the fact that the product was delivered from out of state. See Iowa Code section 423.15(1) "b." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Maxwell.

EXAMPLE 5: Sale by remote seller, product delivered into Iowa. X lives in Maxwell, Iowa. X purchases a product online from a remote seller (a seller who has no physical presence in Iowa) located in Kansas City, Missouri, who is required to collect Iowa sales and local option taxes on Iowa sales pursuant to Iowa Code section 423.14A(3). While purchasing the product, X inputs X's home address as the delivery address. The product is shipped via common carrier. The sale is sourced to Maxwell, Iowa, because the product is received at that location and that location is known to the seller. See Iowa Code section 423.15(1) "b." It is irrelevant that the product was delivered by a third-party common carrier. See Iowa Code section 423.15(1) "b." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Maxwell.

EXAMPLE 6: Location of receipt by a purchaser's donee. X lives in Omaha, Nebraska. X purchases a birthday gift for Y, who lives in Davenport, Iowa. X purchases the gift from a remote seller (a seller who has no physical presence in Iowa) located in Chicago, Illinois, who is required to collect Iowa sales and local option taxes on Iowa sales pursuant to Iowa Code section 423.14A(3). While purchasing the gift, X inputs Y's Davenport, Iowa, address as the delivery address. The sale is sourced to Davenport, Iowa. Y is the purchaser's donee. The gift is received by Y in Davenport, Iowa, and that location is

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known to the seller. See Iowa Code section 423.15(1) “b.” The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Davenport.

EXAMPLE 7: Location of receipt unknown to the seller, but purchaser’s address available from seller’s business records. X purchases a product at a retail store in Waterloo, Iowa. X provides a billing address located in Fort Dodge, Iowa, with X’s payment information. X indicates to the retail store that X will arrange for a third-party shipping company to pick up the product. X does not provide the retailer a shipping address. Even though the retailer does not know the delivery address, the retailer’s business records indicate that the purchaser’s address is in Fort Dodge. Therefore, the sale is sourced to Fort Dodge. See Iowa Code section 423.15(1) “c.” The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Fort Dodge.

EXAMPLE 8: Location of receipt unknown to the seller, but purchaser’s address only indicated on a payment instrument used in the transaction. X purchases a product at a retail store in Waterloo, Iowa. X pays with a check that lists a Fort Dodge, Iowa, address for X. X indicates to the retail store that X will arrange for a third-party shipping company to pick up the product. X does not provide a shipping address to the retail store. Even though the retail store does not have a shipping address or other address for X on file, the check lists an address for the purchaser in Fort Dodge. Therefore, the sale is sourced to Fort Dodge. See Iowa Code section 423.15(1) “d.” The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Fort Dodge.

EXAMPLE 9: Location from which the item was shipped, if location of receipt is unknown to the seller and the seller has no other record or indication of buyer’s address. X orders a product at a retail store in Adel, Iowa. X pays in cash and indicates to the retail store that X will arrange for a third-party shipping company to pick up the product. X does not provide a shipping address or a billing address, and the retail store does not have an address on file for X. Because X paid in cash, X’s address is not indicated on a payment instrument. The retail store may source the sale to its location in Adel, Iowa. See Iowa Code section 423.15(1) “e.” The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Adel.

223.6(2) General examples of sourcing of specified digital products. The following examples illustrate the sourcing principles of Iowa Code section 423.15(1) as applied to specified digital products.

EXAMPLE 1: Specified digital product purchased at seller’s business location. Y owns and operates a restaurant in Sioux City, Iowa. Y provides guests access to an on-site electronic device on which guests may purchase access to video games to play while they wait to receive their food. Guests’ access to the games ends once they pay their bill, and the charge for the access is included on the final bill. All sales of video games from Y’s on-site electronic devices are sourced to Sioux City, the location at which guests receive access to the video games. See Iowa Code section 423.15(1) “a.” Y must therefore collect state sales tax and any local option sales tax imposed in the city of Sioux City.

EXAMPLE 2: Location of receipt by purchaser known to seller. X purchases and receives a specified digital product on X’s smart phone through an online application marketplace. The marketplace knows X is in Ames, Iowa, when X purchases and downloads the specified digital product. The sale is sourced to Ames because the product is received at that location (see Iowa Code section 423.1(43)) and that location is known to the seller. See Iowa Code section 423.15(1) “b.” If the marketplace meets the thresholds described in Iowa Code section 423.14A(3), the marketplace must collect state sales tax and any local option sales tax imposed in the city of Ames.

EXAMPLE 3: Location of receipt by purchaser unknown, but purchaser’s address is available from seller’s business records. X purchases a specified digital product from C’s website. Prior to purchasing the specified digital product, X creates a user account through C’s website and lists X’s home address in Jefferson, Iowa. When X purchases the specified digital product, C does not know where X received the specified digital product. Even though C does not know where the specified digital product is received by X, C’s business records that are maintained in the ordinary course of business indicate that X’s address is in Jefferson, Iowa. See Iowa Code section 423.15(1) “c.” If C meets the thresholds described in Iowa Code section 423.14A(3), C must collect state sales tax and any local option sales tax imposed in the city of Jefferson.

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EXAMPLE 4: Location of receipt by purchaser unknown, but purchaser's address only indicated on a payment instrument used in the transaction. X downloads a mobile video game application on X's phone through an online application marketplace. X pays for the video game with X's credit card. The marketplace saves the Ames, Iowa, home address associated with X's credit card. However, the marketplace does not know X's location when X downloads and purchases the video game. The marketplace may rely on the Ames address associated with X's payment information to source the sale. See Iowa Code section 423.15(1) "d." If the marketplace meets the thresholds described in Iowa Code section 423.14A(3), the marketplace must collect state sales tax and any local option sales tax imposed in the city of Ames.

223.6(3) *Examples of sourcing of leases and rentals of tangible personal property other than transportation equipment or products described in Iowa Code section 423.16.* The following examples illustrate the sourcing principles of Iowa Code section 423.15(2) as applied to leases or rentals of tangible personal property, other than transportation equipment as defined in Iowa Code section 423.15(3). This rule does not cover products described in Iowa Code section 423.16.

EXAMPLE 1A: Lease that requires recurring periodic payments. X resides in Indianola, Iowa. X enters into a rental agreement with Y, a furniture rental company located in Des Moines, for the rental of a couch. The agreement specifies that X will pay to Y a \$50 down payment and \$20 each month thereafter until the rental is terminated.

In exchange for possession of the couch, X makes the required \$50 down payment to Y at Y's office in Des Moines, Iowa. X receives the couch at Y's office in Des Moines, and X takes the couch to X's home in Indianola, Iowa. While purchasing the couch, X provides Y with X's Indianola address, which Y keeps on file. For the remainder of the rental period, X's primary address remains the same.

The first periodic payment—the down payment—is sourced the same as sales under Iowa Code section 423.15(1). See Iowa Code section 423.15(2) "a." In this case, the down payment was made and the product was received at the seller's business location. Iowa Code section 423.15(1) "a" governs the sourcing of the down payment. See subrule 223.5(1). Therefore in this case, the down payment is sourced to Des Moines. Y must collect state sales tax and any local option sales tax imposed in the city of Des Moines on the down payment.

Because X's home address is on file with Y for the remainder of the rental period, X's address is the "primary property location" of the couch during those periods. See Iowa Code section 423.15(2) "a." Therefore, the subsequent monthly payments are sourced to X's Indianola address that is contained in the records maintained by Y in the ordinary course of business. See Iowa Code section 423.15(2) "a." Y must collect state sales tax and any local option sales tax imposed in the city of Indianola on the monthly payments.

EXAMPLE 1B: Assume the same facts as Example 1A. In this example, however, X provides the \$50 down payment, gives Y X's home address in Indianola, Iowa, and arranges to have Y deliver the couch to X's home in Indianola, Iowa. The \$50 down payment constitutes the "first periodic payment" and is therefore sourced to Indianola in accordance with Iowa Code section 423.15(1) "b." See Iowa Code section 423.15(2) "a." Because Y knows the location where the product will be received by the purchaser, Y must collect Iowa sales and any local option sales tax applicable in the city of Indianola on the down payment. See subrule 223.6(1). The result is the same regardless of whether Y or a third-party shipping agent delivers the product and regardless of whether the product is shipped from outside of Iowa. See subrule 223.6(1), Examples 3 and 4.

All other facts and results from Example 1A remain the same.

EXAMPLE 1C: Same facts as in Example 1A. In this example, however, part way through the rental period, X moves to Clinton, Iowa, for the remainder of the rental period. X informs Y of the change in address and that X is bringing the couch to Clinton as part of the move. Y updates Y's business records to reflect X's new address and the location of the couch.

Every payment that occurs after X informed Y of X's new address is sourced to Clinton, Iowa, because the "primary property location" as indicated by an address for the property provided by the lessee was updated to Clinton, Iowa. See Iowa Code section 423.15(2) "a."

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EXAMPLE 1D: Same facts as Example 1A. X makes the first several monthly payments while residing in Indianola. However, part way through the rental period, X moves to Ames and brings the couch. X does not update Y about the new address and location of the couch. Y does not receive any record from X indicating X's new address.

Even though the couch is actually located in Ames, the "primary property location" indicated by an address for the property provided by X that is available to Y from records maintained in the ordinary course of business is the Indianola address. See Iowa Code section 423.15(2)"a." Therefore, Y is correct in sourcing each lease payment to Indianola.

EXAMPLE 2: Rental that does not require recurring periodic payments. B rents a woodchipper from C for a week in exchange for a single, up-front payment. C delivers the woodchipper to B at a location in Sioux Center, Iowa. The rental payment is sourced to Sioux Center, Iowa, because that is the location where B receives the woodchipper and the location is known to C, the seller. See Iowa Code section 423.15(1)"b." C must therefore collect state sales tax and any local option sales tax imposed in the city of Sioux Center. A rental that does not require recurring period payment is sourced the same as retail sales under Iowa Code section 423.15(1) and subrule 223.6(1). See Iowa Code section 423.15(2)"b."

223.6(4) *Sales of items from vending machines.* Sales from vending machines are sourced to the location of the individual vending machine at which the purchaser receives the item.

223.6(5) *Sales of items by an itinerant merchant, peddler, or salesperson having a route.* When an itinerant merchant, peddler, or mobile salesperson meets with a customer and solicits an order or completes a contract for sale and the customer receives the item at that location, the sale is sourced to that location pursuant to Iowa Code section 423.15(1)"b," regardless of whether the location is the customer's home, a business establishment, or elsewhere. This rule applies to all other sales by itinerant merchants, peddlers, and mobile salespersons in the same manner as they apply to any other seller.

223.6(6) *Items purchased for resale but withdrawn from inventory.* If a person purchases items for resale or processing but withdraws and uses any of those items from inventory or from a stock of materials held for processing, the gross receipts from the sales of the items withdrawn and used are sourced to the county in which they are withdrawn regardless of where the item was purchased for resale.

EXAMPLE: X owns and operates a home and furniture store located in Black Hawk County, Iowa. In Johnson County, Iowa, X purchases five rocking chairs. X provides the Johnson County retailer with sales tax exemption certificates stating that the rocking chairs are purchased for resale; the retailer accepts the certificates and does not charge Iowa sales tax on the sale of the rocking chairs. After returning to Black Hawk County, X decides to use one rocking chair in X's home instead of selling it. Because the rocking chair was withdrawn from inventory in Black Hawk County, sales tax and the applicable local option tax in Black Hawk County is due.

223.6(7) *Items withdrawn from inventory by a manufacturer.* Where a manufacturer manufactures tangible personal property and uses the property it manufactures for any purpose except for resale or processing, such use by the manufacturer is subject to sales tax and sourced to the county in which the manufacturer first used the property. Taxable use includes using such property as building materials, supplies, or equipment in the performance of a construction contract. Tax is computed upon the cost to fabricate the property. See rule 701—219.6(423) for more information.

EXAMPLE: X manufactures steel beams in Madison County, Iowa. X withdraws a beam from inventory to use on a construction project at its facility. X's withdrawal of the beam for use in the construction project is sourced to Madison County, Iowa, and sales tax and the applicable local option tax is due.

ARC 4199C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

**Proposing rule making related to federal payment offset
and providing an opportunity for public comment**

The Workforce Development Department hereby proposes to amend Chapter 25, “Benefit Payment Control,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 96.11.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 96.

Purpose and Summary

This proposed rule making is intended to further clarify the process by which the Department uses the federal treasury offset program, including to clarify the appeal rights of debtors to whom the offset will be applied.

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.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 22, 2019. Comments should be directed to:

David Steen
Iowa Department of Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Email: david.steen@iwd.gov

Public Hearing

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

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Rescind rule 871—25.17(96) and adopt the following **new** rule in lieu thereof:

871—25.17(96) Federal payment offset. Pursuant to 42 U.S.C. §503(m), 26 U.S.C. §6402(f), and 31 CFR §285.8, the department shall utilize the treasury offset program in order to collect past-due, legally enforceable covered unemployment compensation debt.

25.17(1) Definitions.

“Covered unemployment compensation debt” means:

1. A past-due debt for erroneous payment of unemployment compensation due to fraud or the person's failure to report earnings, as identified by the integrity bureau, which has become final under the law of this state and which remains uncollected; or
2. Contributions due to the unemployment fund of this state for which the state has determined the person to be liable and which remain uncollected; and
3. Any penalties and interest assessed on such debt.

“Department,” “state of Iowa,” “Iowa” or “the state” means the department of workforce development.

“Overpayment” means a federal tax refund due and owing to a person or persons.

“Tax refund offset” means withholding or reducing, in whole or in part, a federal tax refund payment by an amount necessary to satisfy a past-due, legally enforceable covered unemployment compensation debt owed by the payee (taxpayer) of the tax refund payment.

“Tax refund payment” means the amount to be refunded to a person by the federal government after the Internal Revenue Service (IRS) has applied the person's overpayment to the person's covered unemployment compensation debts in accordance with 26 U.S.C. §6402(f) and 31 CFR §285.8.

25.17(2) Prerequisites for requesting a federal offset. The following are the requirements that must be met before the department can certify a tax refund offset against a covered unemployment debt:

a. Written demand. The department must have made written demand on the person to obtain payment of the covered unemployment compensation debt for which the request for offset is being submitted.

b. Legally enforceable. The debt must be legally enforceable under applicable law. To be considered legally enforceable, the debt must be a final determination that is not subject to further appeal.

c. Minimum amount. Before offset of a federal refund can be requested by the state of Iowa, the person's covered unemployment compensation debt must be at least \$25.

d. Notice. The department must send the debtor a pre-offset notice which complies with the requirements of subrule 25.17(3).

25.17(3) Pre-offset notice and explanation of rights. At least 60 days prior to requesting the offset of a person's federal overpayment for a covered unemployment compensation debt owed to the state, the state of Iowa must provide notice to the person owing the debt. The notice must include the following information:

- a.* That the department intends to request the offset of the person's federal overpayment against a specified covered unemployment compensation debt;
- b.* The amount and basis of the debt;
- c.* That such debt is past due and legally enforceable;

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

- d.* That such debt is due to fraud or failure to report earnings, and how and on what date the department made that determination;
- e.* That the authority for this offset is 26 U.S.C. §6402(f), as implemented by this chapter;
- f.* That the person has 60 days from the date the notice is received to submit evidence to the department that all or part of such debt at issue:
 - (1) Is not past due or is not legally enforceable, or
 - (2) Is not a covered unemployment compensation debt, i.e., not due to fraud or the person's failure to report earnings;
- g.* That the person is entitled to inspect and copy the records of the department related to the claim;
- h.* The method(s) of delivery for submitting the evidence described in paragraph 25.17(3) "f";
- i.* That failure to timely submit the evidence waives the person's right to protest the amount, validity or qualification of the covered unemployment compensation debt for offset at any time in the future; and
- j.* Where contact can be made with the department for additional information, questions, or to inspect and copy the records of the department related to the claim.

This rule is intended to implement 42 U.S.C. §503(m).

ARC 4220C

HUMAN SERVICES DEPARTMENT[441]**Adopted and Filed Emergency****Rule making related to state supplementary assistance**

The Human Services Department hereby amends Chapter 51, "Eligibility," and Chapter 52, "Payment," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4; 20 CFR §§416.2095 and 416.2096; and 2017 Iowa Acts, House File 653, sections 53 and 70.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4; 20 CFR §§416.2095 and 416.2096; and 2017 Iowa Acts, House File 653, sections 53 and 70.

Purpose and Summary

These amendments strike the specific assistance standard amounts for State Supplementary Assistance and amend the assistance standards definition to include the legal citation to pass along the cost-of-living adjustments (COLAs) in accordance with 20 CFR §§416.2095 and 416.2096. COLA changes are effective January 1 each year.

*Reason for Adoption of Rule Making Without
Prior Notice and Opportunity for Public Participation*

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary or impractical because the amendments increase payment amounts and income limits under the State Supplementary Assistance program in accordance with cost-of-living increases in supplemental security income (SSI) benefits, as required to meet federal pass-along requirements.

In compliance with Iowa Code section 17A.4(3)"a," the Administrative Rules Review Committee at its December 7, 2018, meeting reviewed the Department's determination and this rule making and approved the emergency adoption.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)"b"(1)(b), the Department also finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on January 1, 2019, because the amendments confer a benefit on the public or remove a restriction on the public. The amendments increase payment amounts and income limits under the State Supplementary Assistance program.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on December 12, 2018.

Concurrent Publication of Notice of Intended Action

In addition to its adoption on an emergency basis, this rule making has been initiated through the normal rule-making process and is published herein under Notice of Intended Action as **ARC 4219C** to allow for public comment.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Fiscal Impact

The residential care facility (RCF) and family-life home personal needs allowances are increasing by \$4 per month from \$99 to \$103 per month. The base personal needs allowance (PNA) is increased due to the 2.8 percent COLA this year along with an increase in the average monthly Medicaid copayment per client per month for RCF recipients. (The average Medicaid copayment per client per month is added to the base PNA to determine the final monthly PNA.) The average copayment per client per month for RCF recipients for August 2017 through July 2018 was \$1.71. This is an increase of \$0.81 from last year's average of \$0.90. For family-life home recipients, the \$17 increase in the payment to the family-life home is offset by the \$4 increase in the personal needs deduction and a \$21 increase in the SSI payment. The recipient will pay up to \$17 more due to the \$21 increase in income and a \$4 increase in the personal needs allowance. For RCF assistance recipients, the maximum total payment to the facility will increase up to \$20.77 per month per recipient $[(\$31.27 - \$30.60) \times 31 \text{ days}]$. RCF costs are shared by the state and the RCF recipient. Any potential increased costs to the state are expected to be more than offset by declining RCF caseloads in SFY 2019 and SFY 2020. For recipients of dependent-person assistance, the maximum monthly payment is increasing by \$11, from \$387 to \$398. Each dependent-person assistance recipient will receive up to an \$11 increase, resulting in an anticipated increase in state expenditures. However, this increase will be offset by the anticipated declining number of recipients, and most recipients do not qualify for the maximum payment.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making became effective on January 1, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 51.4(1) as follows:

51.4(1) Income. Income of a dependent relative shall be less than ~~\$387 per month~~ the amount established by the department based on assistance standards as provided in rule 441—52.1(249). When the dependent's income is from earnings, an exemption of \$65 shall be allowed to cover work expense.

ITEM 2. Amend rule 441—51.7(249) as follows:

441—51.7(249) Income from providing room and board. In determining ~~profit~~ income from furnishing room and board or providing family-life home care, ~~\$387 per month~~ the amount established by the department based on assistance standards as provided in rule 441—52.1(249) shall be deducted to cover the cost, and the remaining amount shall be treated as earned income.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 3. Amend rule 441—52.1(249), introductory paragraph, as follows:

441—52.1(249) Assistance standards. Assistance standards are the amounts of money allowed on a monthly basis to recipients of state supplementary assistance in determining financial need and the amount of assistance granted. Current assistance standards shall be published on the department’s website. Assistance standards shall be adjusted annually to reflect cost-of-living adjustments (COLA) adopted by the Social Security Administration, in accordance with 20 CFR §§416.2095 and 416.2096. Adjustments to the assistance standards based on COLA are effective January 1 of each year.

ITEM 4. Amend subrule 52.1(1) as follows:

52.1(1) Protective living arrangement. ~~The following assistance~~ Assistance standards have been shall be established by the department as provided in rule 441—52.1(249) for state supplementary assistance care and personal allowances for persons living in a family-life home certified under rules in 441—Chapter 111.

\$813	Care allowance
\$ 99	Personal allowance
\$912	Total

ITEM 5. Amend subrule 52.1(2) as follows:

52.1(2) Dependent relative. ~~The following assistance~~ Assistance standards for the following categories have been shall be established by the department as provided in rule 441—52.1(249) for state supplementary assistance for dependent relatives residing in a recipient’s home.

- a. Aged or disabled client and a dependent relative..... \$1,137.
- b. Aged or disabled client, eligible spouse, and a dependent relative..... \$1,512.
- c. Blind client and a dependent relative..... \$1,159.
- d. Blind client, aged or disabled spouse, and a dependent relative..... \$1,534.
- e. Blind client, blind spouse, and a dependent relative..... \$1,556.

ITEM 6. Amend subrule 52.1(3) as follows:

52.1(3) Residential care. For periods of eligibility before July 1, 2017, the department will reimburse a recipient in either a privately operated or non-privately operated residential care facility on a flat per diem rate of ~~\$17.86~~ or on a cost-related reimbursement system with a maximum per diem rate of ~~\$30.11~~, established consistent with the assistance standards principles provided in rule 441—52.1(249). The department shall establish a cost-related per diem rate for each licensed residential care facility choosing the cost-related reimbursement method of payment according to rule 441—54.3(249).

For periods of eligibility beginning July 1, 2017, and thereafter, payment to a recipient in a privately operated licensed residential care facility shall be based on the maximum per diem rate of ~~\$30.11~~. Reimbursement for recipients in non-privately operated residential care facilities will be based on the flat per diem rate of ~~\$17.86~~ or be based on the cost-related reimbursement system with a maximum per diem rate of ~~\$30.11~~, established consistent with the assistance standards principles provided in rule 441—52.1(249).

~~For periods of eligibility beginning January 1, 2018, and thereafter, payment to a recipient in a privately operated licensed residential care facility shall be based on the maximum per diem rate of \$30.60. Reimbursement for recipients in non-privately operated residential care facilities will be based on the flat per diem rate of \$17.86 or be based on the cost-related reimbursement system with a maximum per diem rate of \$30.60.~~

The facility shall accept the per diem rate established by the department for state supplementary assistance recipients as payment in full from the recipient and make no additional charges to the recipient.

- a. All income of a recipient as described in this subrule after the disregards described in this subrule shall be applied to meet the cost of care before payment is made through the state supplementary assistance program.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Income applied to meet the cost of care shall be the income considered available to the resident pursuant to supplemental security income (SSI) policy plus the SSI benefit less the following monthly disregards applied in the order specified:

- (1) No change.
 - (2) An allowance of ~~\$99~~ established by the department consistent with rule 441—52.1(249) shall be given to meet personal expenses and Medicaid copayment expenses.
 - (3) to (6) No change.
- b. to g. No change.

[Filed Emergency 12/12/18, effective 1/1/19]

[Published 1/2/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/2/19.

ARC 4206C**ENGINEERING AND LAND SURVEYING
EXAMINING BOARD[193C]****Adopted and Filed****Rule making related to review of agency's rules**

The Engineering and Land Surveying Examining Board hereby amends Chapter 1, "Administration," Chapter 3, "Application and Renewal Process," Chapter 4, "Engineering Licensure," Chapter 5, "Land Surveying Licensure," Chapter 7, "Professional Development," Chapter 8, "Professional Conduct of Licensees," Chapter 9, "Complaints, Investigations and Disciplinary Action," Chapter 10, "Peer Review," Chapter 11, "Minimum Standards for Property Surveys," and Chapter 12, "Minimum Standards for U.S. Public Land Survey Corner Certificates," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 542B.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 542B.

Purpose and Summary

These amendments reflect partial compliance with Iowa Code section 17A.7(2), which states that beginning July 1, 2012, over each five-year period of time, an agency shall conduct an ongoing and comprehensive review of all of the agency's rules. The goal of the review is to identify and eliminate all rules that are outdated, redundant, or inconsistent or incompatible with statute or the agency's rules or the rules of other agencies.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 15, 2018, as **ARC 3946C**. A public hearing was held on September 5, 2018, at 9 a.m. at 200 East Grand Avenue, Suite 350, Des Moines, Iowa. No one attended the public hearing. Thirteen written comments were received, and as a result, four changes from the Notice were made. Items 3, 7 and 13 of the Notice were not adopted because the Board felt further discussion was appropriate. New Item 19 was added to amend subrule 7.5(1). The remaining items were renumbered accordingly.

In addition, the ZIP code was added to the Board's address in subrule 1.1(2) and the word terms was changed to term in subrule 7.8(2).

Adoption of Rule Making

This rule making was adopted by the Board on November 14, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. No current fees are being changed, and no new fees are being imposed.

Jobs Impact

After analysis and review of this rule making, there is a potential impact on jobs. The amendment to 4.1(2)"c" decreases from 25 to 10 the required years of work experience necessary for a waiver of the fundamentals of Engineering (FE) examination. This change may make Professional Engineering (PE) licensure available to a larger group of candidates.

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 193—Chapter 5.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on February 6, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 1.1(1) as follows:

1.1(1) Administration. Administration of the board has not been separated into panels, divisions, or departments. While the expertise of a board member may be called upon to frame special examinations and evaluate applications for licensing in a specialized engineering branch, the board functions in a unified capacity on all matters that may come before it. The board maintains an office at ~~1920 S.E. Hulsizer Road, Ankeny, Iowa 50021~~ 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309, and requests or submissions may be directed to the secretary of the board at that location.

ITEM 2. Amend subrule 1.1(2) as follows:

1.1(2) Meetings. Regular meetings of the board are held in ~~Ankeny~~ Des Moines, Iowa. Information concerning the location and dates for meetings may be obtained from the board's office at ~~1920 S.E. Hulsizer Road, Ankeny, Iowa 50021~~ 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309, or by telephoning ~~(515)281-4126~~ (515)725-9022.

ITEM 3. Amend subrule 3.1(1) as follows:

3.1(1) Application expiration. On the examination ~~application and comity applications~~ due date, the examination application is applications are considered current if it has been one year or less since it was signed and notarized. A comity application expires one year from the date that it was signed and notarized the applications were received by the board office.

ITEM 4. Amend subrule 3.2(2) as follows:

3.2(2) Fundamentals of Land Surveying examination application components and due dates. The components of this application include: the completed, ~~notarized~~ application forms, references pursuant to 193C—paragraph 5.1(5)“b”~~;~~ and transcripts. Fundamentals of Land Surveying examination applications must be submitted to the board office. Applications submitted by the first day of each month will be reviewed by the board at the next regularly scheduled board meeting.

ITEM 5. Amend subrule 3.2(3) as follows:

3.2(3) Principles and Practice examination application components and due dates. Principles and Practice of Engineering and Principles and Practice of Land Surveying examination applications require a detailed review and must, therefore, be submitted to the board office, ~~postmarked on or before July 15 of each year for the examination given in the fall and on or before January 15 of each year for the examination given in the spring.~~ To facilitate the transition to computer-based testing offered throughout the year, application files with all required components submitted to the board office by the first day of each month will be reviewed at the next regularly scheduled board meeting. The Principles and Practice examination application packet, ~~including includes~~ the following components, ~~must be postmarked on or before the deadline date:~~ (1) the completed, ~~notarized and signed~~ online application

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

form;₂ (2) the required number of references;₂ (3) the project statement;₂ and (4) the ethics questionnaire. In addition, a complete application file must include verification of examination records and transcripts. Examination applications will not be reviewed by the board until the application file is complete. Since the verification of examination records must be sent directly from the jurisdiction where the applicant took the Fundamentals of Engineering examination, the applicant should contact the other jurisdiction well in advance of the deadline for submittal of the application to request this verification ~~in order to ensure that the verification is received by the board no later than July 25 for the fall examination or by January 25 for the spring examination.~~ For transcripts, the applicant should contact the university well in advance of the deadline for submittal of the application to ensure that the transcripts are received ~~no later than July 25 for the fall examination or by January 25 for the spring examination.~~ Examination application files that are not complete by January 25 will not be reviewed for the spring examination. Likewise, examination applications that are not complete by July 25 will not be reviewed for the fall examination by the deadline.

ITEM 6. Amend paragraph 4.1(2)“c” as follows:

c. An applicant who graduated from a satisfactory engineering program and has ~~25~~ 10 years or more of work experience satisfactory to the board shall not be required to take the FE exam.

ITEM 7. Amend paragraph 4.1(6)“a” as follows:

a. *Fundamentals of Engineering examination* (~~fundamentals examination~~). The Fundamentals of Engineering examination is a ~~written~~ computer-based examination covering general engineering principles and other subjects commonly taught in accredited engineering programs.

ITEM 8. Amend paragraph 4.1(6)“b” as follows:

b. *Principles and Practice of Engineering examination* (~~professional examination~~). The Principles and Practice of Engineering examination is a ~~written~~ computer-based examination designed to determine proficiency and qualification to engage in the practice of professional engineering only in a specific branch. The Principles and Practice of Engineering two-module Structural examination is a ~~written~~ computer-based examination designed to determine proficiency and qualification to engage in the practice of structural engineering. A separate examination shall be required for each branch in which licensure is granted. An applicant may obtain a Structural branch license by passing either the Principles and Practice of Engineering Civil (Structural) examination or the Principles and Practice of Engineering two-module Structural examination.

ITEM 9. Amend subparagraph 4.2(3)“b”(1) as follows:

(1) An applicant who graduated from a satisfactory engineering program and who has ~~25~~ 10 years or more of work experience satisfactory to the board shall not be required to take the Fundamentals of Engineering examination.

ITEM 10. Amend paragraph 4.2(4)“b” as follows:

b. For applicants who were originally licensed in another jurisdiction and who meet the requirements of Iowa Code section 542B.14(1)(a)(3) 542B.14(1)“a”(1)(c), the board will employ the following chart to determine if the applicant’s licensure was granted after satisfaction of requirements substantially equivalent to those which were required by Iowa Code section 542B.14 at the time of the applicant’s original licensure. Column 1 indicates the years of practical experience that were required prior to the Fundamentals of Engineering examination in addition to the completion of the required educational level. To determine the total years of practical experience that were required prior to taking the Principles and Practice of Engineering examination, column 2 is added to column 1.

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

EXPERIENCE REQUIREMENTS FOR COMITY APPLICANTS Who meet the requirements of Iowa Code section 542B.14(1)(a)(3) 542B.14(1)“a”(1)(c)		
If the applicant’s educational level was:	The applicant must have had the following additional years of experience prior to taking the Fundamentals of Engineering examination:	The applicant must have had the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Engineering examination:
College or junior college (mathematics or physical sciences)		
Two years	6	4
Three years	5	4
Four-year BS degree	3	4
Four-year BS degree plus master’s degree in engineering	0	4
All engineering technology programs and architecture		
Two years	6	4
Three years	5	4
Four-year degree, nonaccredited technology or BA in architecture	3	4
Four-year degree, accredited technology	2	4
Four-year degree or more, bachelor of architecture	2	4
Four-year BS degree, technology or architecture plus master’s degree in engineering	0	4
Engineering program, nonaccredited		
Two years	6	4
Three years	3	4
Four-year BS degree	1	4
Four-year BS degree plus master’s degree in engineering	0	4
Engineering program, accredited		
Two years	6	4
Three years	3	4
Four-year BS degree	0	4

ITEM 11. Amend subrule 5.1(7), introductory paragraph, as follows:

5.1(7) Practical experience requirements. Practical land surveying experience, of which a minimum of 25 percent is field experience, is required prior to licensing. The purpose of this requirement is to ensure that the applicant has acquired the professional judgment, capacity and competence to determine land boundaries. The following criteria will be considered by the board in determining whether an applicant’s experience satisfies the statutory requirements.

ITEM 12. Amend paragraph **5.1(8)“a”** as follows:

a. *Fundamentals examination.* The Fundamentals of Land Surveying examination is a ~~written~~ computer-based examination covering general surveying principles.

ITEM 13. Rescind paragraph **5.1(8)“b.”**

ITEM 14. Reletter paragraphs **5.1(8)“c”** to **“h”** as **5.1(8)“b”** to **“g.”**

ITEM 15. Amend relettered subparagraph **5.1(8)“d”(4)** as follows:

(4) An applicant who has failed two consecutive examinations of the state-specific portion of the professional land surveying examination shall not be allowed to retake the state-specific portion for

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

~~the next two years~~ one year in order for the applicant to acquire the necessary skill and knowledge to successfully pass the examination.

ITEM 16. Amend subrule 5.2(1) as follows:

5.2(1) References. An applicant for licensure by comity shall submit ~~three~~ one or more professional land surveyor references on forms provided by the board, ~~at least two of which shall be from licensed professional land surveyors~~ to verify the number of years of satisfactory experience required with the applicant's level of education. The board reserves the right to contact employers for information about the applicant's professional experience and competence.

ITEM 17. Amend paragraph **7.3(1)“i”** as follows:

- i. Attendance at ~~satellite down-link~~ online video courses;

ITEM 18. Amend subrule 7.4(1) as follows:

7.4(1) Group 1 activities. Group 1 activities are intended to maintain, improve, or expand skills and knowledge obtained prior to initial licensure. The following chart illustrates the maximum PDH allowable per renewal period for Group 1 activities:

Type of course/activity	Number of PDH allowed per renewal period
Mathematics and basic sciences Math beyond Trigonometry Basic sciences: Chemistry, Physics, Life sciences, Earth sciences	10 PDH
Engineering sciences Mechanics, Thermodynamics, Electrical and electrical circuits, Materials science, *Computer science *Courses in computer science will generally be considered a part of the Engineering Sciences category in the ABET criterion and, therefore, limited to a maximum of 10 PDH per renewal period.	10 PDH
Humanities and social sciences Philosophy, Religion, History, Literature, Fine arts, Sociology, Psychology, Political science, Anthropology, Economics, Foreign languages, Professional ethics, Social responsibility	5 PDH
Engineering curriculum <u>Engineering-related</u> courses Accounting, Industrial management, Finance, Personnel administration, Engineering economy, English, Speech, *Computer applications *Courses in CAD and fundamental computer applications will generally not be applicable in either Group 1 or Group 2 activities. The computer is viewed as a tool available to the engineer or land surveyor, much as a pencil or hand-held calculator is a tool. Only computer courses that have the solution of engineering or land surveying problems as a purpose will be considered acceptable. An example of this might be a course that trains an engineer in the utilization of a specific software package to perform structural analysis. The concept of the computer as a tool does not apply to a computer engineer. *The computer is considered a tool available to engineers and land surveyors. Courses related to computer drafting and general computer applications are generally not applicable to either Group 1 or Group 2 activities. Computer courses that relate to engineering or land surveying design applications, such as structural design/analysis software, are considered acceptable.	10 PDH

ITEM 19. Amend subrule 7.5(1) as follows:

7.5(1) The continuing education requirement for biennial licensure renewal is 30 professional development hours for an active licensee in engineering or land surveying. At least 2 of the 30 professional development hours must be in the area of professional ethics. For individuals actively licensed in both engineering and land surveying, at least 4 of the 40 total professional development hours must be in the area of professional ethics. The number of professional development hours that may be carried forward into the next biennium shall not exceed 15.

ITEM 20. Amend subrule 7.8(1) as follows:

7.8(1) Record keeping. Maintaining records to be used to support professional development hours claimed is the responsibility of the licensee. It is recommended that each licensee keep a log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name,

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

and PDH credits earned. Documentation of reported PDHs shall be maintained by the licensee for two years after the period for which the form was submitted.

ITEM 21. Amend subrule 7.8(2) as follows:

7.8(2) Compliance review. The board may select licensees for review of compliance with continuing education requirements on a random basis or upon receiving information regarding noncompliance and shall review compliance with continuing education requirements for reinstatement of lapsed or inactive licenses. Each licensed board member shall be audited for PDH compliance for a biennium that is within each member's respective three-year appointment term. For each ~~professional development hour~~ PDH claimed, licensees chosen for compliance review shall furnish:

- a. Proof of attendance. Attendance verification records in the form of completion certificates, or other documents supporting evidence of attendance;
- b. Verification of the hours claimed; and
- c. Information about the course content.

ITEM 22. Amend subrule 7.8(3) as follows:

7.8(3) Compliance review sanctions. Any discrepancy between the number of PDHs reported and the number of PDHs actually supported by documentation may result in a disciplinary review. If, after the disciplinary review, the board disallows any PDH, or the licensee has failed to complete the required PDHs, the licensee shall have 60 days from board notice to either provide further evidence of having completed the PDHs disallowed or remedy the discrepancy by completing the required number of PDHs (provided that such PDHs shall not again be used for the next renewal). Extension of time may be granted on an individual basis and must be requested by the licensee within 30 days of notification by the board. If the licensee fails to comply with the requirements of this subrule, the licensee may be subject to disciplinary action. If the board finds, after proper notice and hearing, that the licensee willfully disregarded these requirements or falsified documentation of required PDHs, the licensee may be subject to disciplinary action as further identified in 193C—paragraphs 9.3(1)“c” and 9.3(3)“e.”

ITEM 23. Amend subrule **8.5(2)**, definition of “In responsible charge,” as follows:

“In responsible charge” means having direct control of and personal supervision over any professional land surveying work or work involving the practice of professional engineering. One or more persons, jointly or severally, may be in responsible charge. ~~Indicia~~ Indications of being ~~“in in~~ responsible charge” charge include:

1. Obtaining or setting the project or service parameters or criteria.
2. Dictating the manner and methods by which professional services are performed.
3. Establishing procedures for quality control and authority over professional services in a manner that ensures that the professional licensee is in control of the work and of all individuals performing the work under the licensee's supervision.
4. Spending sufficient time directly performing the work or directly supervising the work to ensure that the licensee is familiar with all significant details of the work.
5. Maintaining familiarity with the capabilities and methods of the persons performing professional services, and providing adequate training for all persons working under the licensee's direct supervision.
6. Sustaining readily accessible contact with all persons performing professional services by direct physical proximity, or as appropriate in the licensee's professional judgment, by frequent communication, in clear and complete verbal and visual form, of information about the work being performed.
7. Specifically pertaining to land surveying, reviewing all field evidence and making all final decisions concerning the placement of survey monuments and surveyed lines.

ITEM 24. Amend subrule 9.1(1) as follows:

9.1(1) Complaints. The board shall, upon receipt of a complaint ~~in writing~~, or may upon its own motion pursuant to other evidence received by the board, review and investigate alleged acts or omissions which reasonably constitute cause under applicable law or administrative rule for licensee

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

discipline. ~~Written complaints~~ Complaints may be submitted to the board office ~~by mail, E-mail, facsimile, or personal delivery~~ via the board's website by members of the public, including clients, business organizations, nonprofit organizations, governmental bodies, licensees, or other individuals or entities with knowledge of possible violations of laws or rules by licensees.

ITEM 25. Amend rule 193C—9.3(17A,272C,542B,546), introductory paragraph, as follows:

193C—9.3(17A,272C,542B,546) Grounds for discipline. The board has authority pursuant to Iowa Code chapters 542B, 17A and 272C to impose discipline for violations of those chapters and the rules promulgated thereunder and may initiate disciplinary action against a licensee holding an active, inactive or lapsed license on any of the following grounds:

ITEM 26. Rescind subrule 9.3(6) and adopt the following **new** subrule in lieu thereof:

9.3(6) Professional misconduct. Professional misconduct includes, but is not limited to, revocation, suspension, or other disciplinary action taken against a licensee by a licensing authority of this state or another state, territory, or country. “Disciplinary action” includes a voluntary surrender of a license to resolve a pending disciplinary investigation or proceeding. 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, discipline by the board based solely on such action shall be vacated. A licensee shall notify the board of such disciplinary action within 30 days of the disciplinary action.

ITEM 27. Amend rule 193C—9.6(542B) as follows:

193C—9.6(542B) Publication of decisions. In addition to publication requirements found at 193—subrule 7.30(3), the following notifications shall be issued:

1. Following suspension of a professional land surveyor's license, notification must be ~~mailed~~ issued to the county recorders and county auditors of the county of residence and immediately adjacent counties in Iowa.

2. and 3. No change.

ITEM 28. Amend rule 193C—10.1(542B,272C) as follows:

193C—10.1(542B,272C) Peer review ~~committee (PRC).~~ The board may appoint a peer ~~review committee~~ reviewer, or multiple peer reviewers, for the investigation of a complaint about the acts or omissions of one or more licensees.

10.1(1) ~~PRC membership~~ Peer review. ~~A PRC Peer reviewers shall generally consist of three or more~~ be licensed engineers or licensed land surveyors or both, as determined by the board, who are selected for their knowledge and experience in the type of engineering or land surveying involved in the complaint. ~~The board may appoint a two-member PRC or a single peer review consultant to perform the function of a PRC when, in the board's opinion, appointing a committee with three or more members would be impractical, unnecessary or undesirable given the nature of the expertise required, the need for prompt action or the circumstances of the complaint.~~

An individual shall be ineligible ~~for membership on a PRC as a peer reviewer~~ in accordance with the standard for disqualification found at 193 IAC 7.14(1) 193—subrule 7.14(1). If a ~~PRC member peer reviewer~~ peer reviewer is unable to serve after an investigation has begun, the ~~PRC member peer reviewer~~ peer reviewer must notify the board office.

10.1(2) Authority. The ~~PRC's~~ peer reviewer's investigation may include activities such as interviewing the complainant, the respondent, individuals with knowledge of the alleged violation, and individuals with knowledge of the respondent's practice in the community; gathering documents; conducting site visits; and performing independent analyses as deemed necessary. Although the board does not become involved in a complaint investigation, the board may give specific instructions to the ~~PRC peer reviewer~~ peer reviewer regarding the scope of the investigation. In the course of the investigation, ~~PRC members~~ the peer reviewer shall refrain from advising the complainant or respondent on actions that the board might take.

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

10.1(3) *Term of service.* The PRC peer reviewer serves at the pleasure of the board. The board may dismiss any ~~or all members of a PRC peer reviewer~~ or add new ~~members~~ peer reviewers at any time.

10.1(4) *Compensation.* The terms of payment as authorized by the peer review agreement may vary based on the nature and complexity of each assignment ~~and whether the peer reviewer will act as a single peer reviewer or as part of a peer review committee.~~ The peer reviewer shall be additionally entitled to reimbursement of expenses directly related to the peer review process, deposition or hearing preparation, or deposition or hearing testimony, such as mileage, meals, or out-of-pocket charges for securing copies of documents. Expenses will be reimbursed as allowed under the manuals and guidelines published by the Iowa department of administrative services, state accounting enterprise. The PRC peer reviewer shall not hire legal counsel, investigators, secretarial help or any other assistance without written authorization from the board.

ITEM 29. Amend rule 193C—10.2(542B,272C) as follows:

193C—10.2(542B,272C) Reports. Each PRC peer reviewer shall submit a written report to the board within ~~a reasonable period of time~~ 90 days of the peer review assignment, unless an extension is granted by the board.

10.2(1) *Components of the report.* The report shall include:

- a. A statement of the charge to the PRC peer reviewer;
- b. A description of the actions taken by the PRC peer reviewer in ~~its~~ the peer reviewer's investigation, including but not limited to document review, interviews and site visits;
- c. A summary of the PRC's peer reviewer's findings, including (1) the PRC's peer reviewer's opinion as to whether a violation has occurred, (2) citation of the Iowa Code section(s) and Iowa Administrative Code rule(s) violated, and (3) the PRC's peer reviewer's opinion of the seriousness of the violation; and
- d. A recommendation.

In the case of a land surveyor PRC peer reviewer report, the report must be plat-specific as to the violations.

10.2(2) *Recommended action.* The PRC peer reviewer report shall recommend one of the following:

- a. Dismissal of the complaint,
- b. Further investigation, or
- c. Disciplinary proceedings.

If the PRC peer reviewer recommends further investigation or disciplinary proceedings, supporting information must be submitted to the board, including citation of the specific Iowa Code section(s) and Iowa Administrative Code rule(s) violated.

10.2(3) *Disciplinary recommendations.* When recommending disciplinary proceedings, a PRC peer reviewer shall refrain from suggesting a particular form of discipline, but may provide guidance on the severity of the violations that prompted the recommendation and may identify professional areas in which the licensee needs additional education, experience or monitoring in order to safely practice.

ITEM 30. Amend rule 193C—10.3(542B,272C) as follows:

193C—10.3(542B,272C) Confidentiality. The PRC peer reviewer shall not discuss ~~its~~ the peer reviewer's findings and conclusions with any party to the complaint. PRC Peer reviewer findings including the name of the complainant shall be kept confidential at all times. The PRC peer reviewer shall not reveal ~~its~~ the peer reviewer's findings to anyone other than the board (through ~~its~~ the peer reviewer's report to the board) or board staff. PRC Peer reviewer findings shall be used only for the purposes of the board's possible disciplinary action and not for any other court case, lawsuit, or investigation. PRC Peer reviewer reports are not subject to discovery.

ITEM 31. Amend rule 193C—10.4(542B,272C) as follows:

193C—10.4(542B,272C) Testimony. ~~PRC members~~ Peer reviewers may be required to testify in the event of formal disciplinary proceedings.

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

ITEM 32. Amend rule **193C—11.2(542B)**, definition of “Retrace,” as follows:

“Retrace” means following along a previously established line to logical termini ~~monumented by corners that are found or placed by the surveyor.~~

ITEM 33. Amend rule 193C—11.4(542B) as follows:

193C—11.4(542B) Descriptions. Descriptions defining land boundaries written for conveyance or other purposes shall be complete, providing definite and unequivocal identification of lines or boundaries. The description must contain dimensions sufficient to enable the description to be platted and retraced and shall describe the land surveyed either by government lot or by quarter-quarter section or by quarter section and shall identify the section, township, range and county; and by metes and bounds commencing with ~~some a corner marked~~ monumented and established in the U.S. Public Land Survey System; or if such land is located in a recorded subdivision or recorded addition thereto, then by the number or other description of the lot, block or subdivision thereof which has been previously tied to a corner ~~marked~~ monumented and established by the U.S. Public Land Survey System. If the parcel is described by metes and bounds, it may be referenced to known lot or block corners in recorded subdivision or additions.

ITEM 34. Amend subrule 11.5(5) as follows:

11.5(5) The plat shall show that record title boundaries, centerlines, and other boundary lines were retraced to monuments found or placed by the surveyor. ~~The surveyor shall retrace those exterior lines of a section that divide a metes and bounds described parcel of land to determine acreage for assessment and taxation purposes.~~

ITEM 35. Amend paragraph **12.2(2)“a”** as follows:

a. There is no certificate for the corner monument on file with the recorder of the county in which the corner is located.

ITEM 36. Amend paragraph **12.2(3)“a”** as follows:

a. The identity of the corner monument, with reference to the U.S. Public Land Survey System, shall be clearly indicated.

[Filed 12/7/18, effective 2/6/19]

[Published 1/2/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/2/19.

ARC 4207C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to mental health and disability services regions

The Human Services Department hereby amends Chapter 25, “Disability Services Management,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 225C.6 and 2018 Iowa Acts, House File 2456.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 225C.6 and 2018 Iowa Acts, House File 2456.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Purpose and Summary

These amendments implement 2018 Iowa Acts, House File 2456, which requires the mental health and disability services regions to initiate new core services, expand the core services that the regions currently provide, meet new access standards for these services, and include the service changes in their services, budget planning, and reporting by a specified date. The regions must also collaborate to ensure that core services are available in minimum numbers strategically located throughout the state.

These amendments also establish new and revised service standards for providers of comprehensive crisis services, subacute mental health services, and intensive mental health services.

Finally, these amendments provide for a broader and more accessible statewide array of crisis and intensive mental health services to individuals with severe and persistent mental illness and to other individuals experiencing a mental health or substance use crisis.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 15, 2018, as **ARC 3942C**. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on October 10, 2018, as **ARC 4044C**. A public hearing was held on November 14, 2018, at 2:30 p.m. at Polk County River Place, Rooms 1 and 1A, 2309 Euclid Avenue, Des Moines, Iowa.

Eighteen individuals attended the public hearing; seven individuals presented 12 oral statements. Additionally, two individuals submitted their comments in writing.

The Department received 326 comments from 25 individuals in addition to the comments provided during the public hearing. A consolidated comment and response document detailing changes to the amendments as the result of comments received and the Department's responses to those comments is available on the Department's website at www.dhs.iowa.gov.

The following changes were made to the amendments published under Notice of Intended Action. Changes to the proposed amendments are shown by subject area.

I. DEFINITIONS.

1. In the definition of "access center," the words "for adults with serious mental health conditions or substance use disorders" were changed to "for individuals experiencing a mental health or substance use crisis" to clarify that no diagnosis is necessary for a person to enter an access center for screening and assessment.

2. The definition of "ACT full-size team" was removed as unnecessary because the term was eliminated from Chapter 25.

3. The definition of "ACT population" was removed as unnecessary because the term was eliminated from Chapter 25.

4. The definition of "ACT small-size team" was removed as unnecessary because the term was eliminated from Chapter 25.

5. The definition of "care coordination" was revised to refer to transition planning in addition to service and discharge planning.

6. A definition of "face-to-face" that refers to the definition of "face-to-face" in rule 441—24.20(225C) was added. This definition relates to the use of telehealth in service delivery.

7. The definition of "intensive residential service homes" was revised to describe the individuals served as "individuals with a severe and persistent mental illness who have functional impairments and may also have multi-occurring conditions."

8. A definition for "medical assistance program" was added. The definition cross-references the definition of the same term in Iowa Code section 249A.2. This definition relates to the paragraph on regional coordination.

9. The definition for "medically stable" was removed as unnecessary because the term was eliminated from Chapter 25.

10. In the definition of "multi-occurring conditions," the term "substance-related disorder" was replaced with the term "substance use disorder" for consistency.

HUMAN SERVICES DEPARTMENT[441](cont'd)

11. The words “in-person, or telehealth” were deleted from the definition of “prescreening assessment” as redundant since those words are included in the definition of “face-to-face.”
12. The definition of “severe and persistent mental illness” was changed to replace “substance-related disorders” with “substance use disorders” for consistency and to replace the reference to “principal mental health disorder” with “primary mental health disorder,” as more appropriate in this context.
13. The definition of “subacute mental health services” was revised to include the words “and includes both subacute facility-based services and subacute community-based services” to clarify that “subacute mental health services” refers inclusively to both types of subacute services.
14. The definition of “substance-related disorder” was removed as unnecessary because the term was eliminated from the chapter.
15. A definition for “substance use disorder” was added. The definition cross-references the definition of the same term in Iowa Department of Public Health (IDPH) rule 641—155.1(125,135).
16. Where appropriate, references to “substance abuse” were changed to “substance use,” and all references to “substance-related disorder” were changed to “substance use disorder” for consistency within this chapter and with IDPH rules.
17. For consistency, references to “serious mental illness” were replaced with references to “severe and persistent mental illness” throughout, except where a more inclusive population is intended, such as in reference to experience working with individuals with “mental illness” (as in staff qualifications) or in reference to individuals “experiencing a mental health . . . crisis.”

II. ACCESS STANDARDS.

1. Paragraph 25.4(2)“b,” the access standard for crisis stabilization community-based services (CSCBS), has been changed to clarify that the 120-minute time frame for receiving face-to-face contact begins after the individual has been determined to need the service. The paragraph now reads as follows:

“b. Crisis stabilization community-based services. An individual who has been determined to need CSCBS shall receive face-to-face contact from the CSCBS provider within 120 minutes from the time of referral.”
2. Paragraph 25.4(2)“c,” the access standard for crisis stabilization residential services (CSRS), has been changed to clarify that the 120-minute time frame for receiving CSRS begins after the individual has been determined to need the service. The distance access standard has also been changed from 100 miles to 120 miles to allow more flexibility in reaching individuals in rural areas or near regional boundaries. The paragraph now reads as follows:

“c. Crisis stabilization residential services. An individual who has been determined to need CSRS shall receive CSRS within 120 minutes of referral. The service shall be located within 120 miles from the residence of the individual.”
3. Paragraph 25.4(2)“e,” the access standard for 23-hour observation and holding, has been changed to clarify that the 120-minute time frame for observation and holding begins after the individual has been determined to need the service. The distance access standard has also been changed from 100 miles to 120 miles to allow more flexibility in reaching individuals in rural areas or near regional boundaries. The paragraph now reads as follows:

“e. Twenty-three-hour observation and holding. An individual who has been determined to need 23-hour observation and holding shall receive 23-hour observation and holding within 120 minutes of referral. The service shall be located within 120 miles from the residence of the individual.”
4. Subrule 25.4(4), the access standard for subacute facility-based mental health services, has been revised to change the distance access standard from 100 miles to 120 miles to allow more flexibility in reaching individuals in rural areas or near regional boundaries.
5. Subparagraph (2) of paragraph 25.4(9)“a,” the access standard for assertive community treatment (ACT), has been revised to read as follows:

“(2) A sufficient number of ACT teams shall be available to serve the number of individuals in the region who are eligible for ACT services. As a guideline for planning purposes, the ACT-eligible population is estimated to be about 0.06 percent of the adult population of the region. The region may

HUMAN SERVICES DEPARTMENT[441](cont'd)

identify multiple geographic areas within the region for ACT team coverage. Regions may work with one or more other regions to identify geographic areas for ACT team coverage.”

This revision clarifies that the 0.06 percent figure is a guideline rather than a requirement and that the region is responsible for having a sufficient number of ACT teams to serve its ACT-eligible population.

6. Subparagraph (2) of paragraph 25.4(9)“b,” the access standard for access centers, has been revised to increase the distance access standard from 100 miles to 120 miles and the time access standard from 90 minutes to 120 minutes to allow more flexibility in reaching individuals in rural areas or near regional boundaries.

III. ACCESS CENTERS.

1. The words “the purpose of an access center is to serve individuals with a serious mental health condition or substance use disorder who are otherwise medically stable” in the introductory paragraph of subrule 25.6(1) were changed to “the purpose of an access center is to serve individuals experiencing a mental health or substance use crisis” to clarify that no diagnosis is necessary for a person to enter an access center for screening and assessment. The term “medically stable” was eliminated to clarify that the criteria are intended to be a reasonable-person determination rather than a formal clinical judgment.

2. The words “with the support of the medical assistance program” were added to subparagraph 25.6(1)“a”(1) so that the subparagraph now reads:

“(1) Regions shall work collaboratively to develop a minimum of six access centers strategically located throughout the state, with the support of the medical assistance program.”

This revision was made to clarify that the medical assistance program will support the regional development of access centers.

3. Subparagraph 25.6(1)“b”(5) was revised to read:

“(5) An access center shall provide services on a no reject, no eject basis to individuals who meet service eligibility criteria.”

This revision was made to clarify that “no reject, no eject” does not waive service eligibility criteria.

4. A new subparagraph 25.6(1)“b”(7) was added and reads as follows:

“(7) An access center shall provide all required services listed in 25.6(1) ‘d’ in a coordinated manner. An access center may provide coordinated services in one or more locations.”

The purpose of the new language is to clarify that access center services must be coordinated but that the services are not all required to be located in the same physical place.

5. Subparagraph (1) of paragraph 25.6(1)“c,” eligibility for access center services, was changed so that the subparagraph no longer refers to “an adult in need of services or treatment related to a serious mental health condition or a substance use disorder” and instead reads as follows:

“(1) The individual is in need of screening, assessment, services or treatment related to a mental health or substance use crisis.”

This revision was made (1) to allow access centers the flexibility to serve individuals under the age of 18 when deemed appropriate and (2) to clarify that no diagnosis is required for an individual to enter an access center for screening or assessment.

6. Subparagraph 25.6(1)“c”(2) was changed to read as follows:

“(2) The individual shows no obvious sign of illness or injury indicating a need for immediate medical attention.”

This revision was made to eliminate the term “medically stable” and to clarify that this is a reasonable-person determination, not a formal clinical judgment.

7. In subparagraph (1) of paragraph 25.6(1)“d,” access center services, the words “immediate intake assessment and screening for multi-occurring conditions, including but not limited to suicide risk, brain injury, and drug and alcohol use” were changed to “immediate intake assessment and screening that includes but is not limited to mental and physical health conditions, suicide risk, brain injury, and substance use” to specifically add “mental and physical health conditions” as part of the screening to indicate that all aspects of the person’s condition and needs are to be addressed and to replace “drug and alcohol use” with “substance use” for consistency. Also, the words “crisis evaluation may serve as an intake assessment” were changed to “crisis evaluation that includes all the required screenings may serve as an intake assessment” to clarify that the screenings must be part of any assessment performed.

HUMAN SERVICES DEPARTMENT[441](cont'd)

8. In subparagraph 25.6(1)“d”(7), the words “medically necessary physical health services” were changed to “physical health care services as indicated by a health screening” (1) to remove the reference to “medically necessary” to avoid confusion with determinations of “medical necessity” and (2) to add “as indicated by a health screening” to make the wording more consistent with the revised wording described above.

9. In subparagraph 25.6(1)“d”(8), the phrase “as defined in rule 441—25.1(331)” relating to “care coordination” was deleted as unnecessary.

10. In subparagraph 25.6(1)“d”(9), intellectual and developmental disability services were added to the list of services requiring service navigation and linkage to more clearly cover the range of multi-occurring conditions. The subparagraph now reads as follows:

“(9) Service navigation and linkage to needed services including housing, employment, shelter services, intellectual and developmental disability services, and brain injury services, with warm handoffs to other service providers.”

IV. ASSERTIVE COMMUNITY TREATMENT (ACT) SERVICES.

1. Subparagraph (1) of paragraph 25.6(2)“a,” regional coordination of ACT services, was revised to eliminate references to ACT full-size and small-size teams and now reads:

“(1) Each region shall determine the number of ACT teams needed to serve the ACT-eligible population of the region.”

This revision was made to simplify the ACT team standards and allow more flexibility in determining the team size and number of teams needed.

2. Subparagraph 25.6(2)“a”(2) was revised (1) to remove references to “meeting” fidelity criteria because there is a range of fidelity scores that may be acceptable and (2) to require fidelity reviews and reporting of fidelity scores on a regular schedule, as follows: an initial review during the first 12 months of operation, an annual review during the second and third years of operation, a biennial review thereafter for teams with satisfactory reviews, and an annual review for any team with an unsatisfactory review. The subparagraph was also revised to indicate that the results of the ACT team fidelity reviews shall be included in the region’s annual report.

3. Paragraph 25.6(2)“b,” ACT team composition, has been simplified to require each ACT team to have a minimum of six members. The six members are required to include each of eight areas of competency. One member may fill more than one area of competency. This change establishes a minimum size for all teams and allows for larger teams to be used when necessary to meet the needs of the individuals being served.

4. In subparagraph 25.6(2)“c”(1), psychiatrist staff qualifications, all references to a board-certified psychiatrist have been changed to include both board-certified psychiatrists and psychiatrists who are eligible for board certification to allow greater flexibility in securing the services of psychiatrists on ACT teams. This change was also made in subparagraph 25.6(2)“b”(1) for consistency.

5. Paragraph “1” of subparagraph 25.6(2)“c”(4), team leader staff qualifications, has been revised to read:

“1. Has a master’s degree in a mental health field, including but not limited to nursing, social work, mental health counseling, psychiatric rehabilitation, or psychology.”

The revised wording allows for greater flexibility in hiring ACT team leaders.

6. Paragraph 25.6(2)“c”(4)“2” has been revised to remove the reference to “clinician” and now reads:

“2. Is actively involved in direct contact with individuals being served by the team.”

This revision clarifies that the team leader need not be a licensed clinician but must be active in the delivery of ACT services to individuals and cannot serve a solely administrative function.

7. Under subparagraph 25.6(2)“c”(6), mental health professional qualifications, language was added to include occupational therapists licensed pursuant to 645—Chapter 206 in the list of types of licensed professionals who may qualify to serve as a mental health professional on an ACT team.

8. Under subparagraph 25.6(2)“c”(9), peer support specialist qualifications, language was added to allow peer support specialists on ACT teams up to six months after the date of hire to complete their peer support training.

HUMAN SERVICES DEPARTMENT[441](cont'd)

9. Employment specialist qualifications were inadvertently omitted from the noticed rules. The qualifications have been added herein as new subparagraph 25.6(2)“c”(10); the subsequent subparagraph was renumbered accordingly.

10. In subparagraph (2) of paragraph 25.6(2)“e,” ACT team standards, the words “provide 24-hour services for the psychiatric needs of the individual” were changed to “ensure that services for the psychiatric needs of the individual are available 24 hours a day” to clarify that the standard is to have service availability at all times, not to have continuous services 24 hours a day.

11. The end of subparagraph 25.6(2)“e”(7) was revised to read: “The number of team contacts per individual served shall average at least three per week per individual when calculated across all individuals served by the team. Contacts may be weekly, daily, or more frequent. The frequency of contacts is determined by the needs of the individual.”

These revisions are intended to clarify that the team has flexibility in determining how often to schedule contacts based on needs of the individuals being served, which may change over time. The frequency of contacts is averaged for all individuals served by the team.

12. Subparagraph 25.6(2)“e”(9) was revised to clarify that the team must ensure that treatment, rehabilitation, and support activities are available 24 hours a day, 7 days a week but that it is not required to provide continuous 24-hour services.

13. Paragraph 25.6(2)“f,” staff-to-client ratio, was revised to establish one minimum ratio for all teams, regardless of size. The paragraph now reads:

“f. Staff-to-client ratio. ACT teams shall maintain a ratio of at least one full-time or full-time equivalent staff person to every ten individuals served. The ACT team staff-to-client ratios do not include the psychiatrist, advanced nurse practitioner, or physician assistant practicing under the supervision of a psychiatrist.”

The language setting a 1-to-8 ratio for teams that serve up to 48 individuals and a 1-to-10 ratio for teams that serve more than 48 individuals has been removed for simplicity and to allow for greater flexibility.

14. Subparagraph (2) of paragraph 25.6(2)“g,” eligibility criteria for ACT services, has been revised to add “personality disorder” to the list of primary diagnoses that are not eligible for ACT services, because ACT has not been found to be an effective treatment for individuals with personality disorder.

15. Subparagraph 25.6(2)“g”(3) has been revised to clarify that an individual may meet eligibility criteria if the individual has either “one or both” of the following: (1) A pattern of repeated treatment failures during the previous 12 months, including at least two psychiatric hospitalizations or psychiatric care delivered at least twice in an emergency department, at an access center, or by a mobile crisis team; or (2) the need for multiple or combined mental health and basic living supports to prevent the need for a more intrusive level of care.

16. Paragraph “4” of subparagraph 25.6(2)“g”(4) has been revised for clarity to read:

“4. Lives independently in the community or demonstrates a capacity and desire to live independently in the community.”

17. Paragraph “1” of subparagraph 25.6(2)“h”(1), ACT service initial assessment and treatment planning, has been revised for clarity and to eliminate repetitive language. It now reads:

“1. An assessment of the individual shall be completed within 30 days of admission that includes psychiatric history, medical history, educational history, employment, substance use, problems with activities of daily living, social interests, and family relationships.”

V. 23-HOUR OBSERVATION AND HOLDING.

In subrule 25.6(4), the language of the purpose statement has been revised to describe the care as provided “in a safe and secure, medically staffed treatment environment.” This change brought the language into closer alignment with provisions in 441—Chapter 24 for this service and eliminated the phrase “psychiatrically supervised” as unnecessarily prescriptive.

VI. SUBACUTE MENTAL HEALTH SERVICES.

Subparagraph 25.6(7)“b”(2) was revised to clarify that subacute mental health services in a community-based setting are the same as ACT services. The subparagraph now reads as follows:

HUMAN SERVICES DEPARTMENT[441](cont'd)

“(2) Subacute mental health services in a community-based setting are the same as assertive community treatment (ACT) services provided as described in subrule 25.6(2).”

VII. INTENSIVE RESIDENTIAL SERVICES.

1. Subparagraph (1) of paragraph 25.6(8)“a,” regional coordination, was changed to include the phrase “with the support of the medical assistance program” to clarify that the medical assistance program will support the regional development of intensive residential services.

2. In subparagraph (1) of paragraph 25.6(8)“b,” intensive residential services standards, the language requiring a provider to be in good standing with all Iowa Medicaid managed care organizations (MCOs) was eliminated to clarify that intensive residential service providers are not required to contract with all MCOs.

3. Subparagraph 25.6(8)“b”(6) was revised to require that coordination for the individual be provided for “other services and supports” as well as for “clinical mental health and physical health treatment.”

4. Subparagraph 25.6(8)“b”(7) was revised to indicate that “all” behavioral health services provided to individuals shall be overseen by a mental health professional; to add that any cognitive or physical rehabilitation plans are to be included in the plans the mental health professional must consult on and review; and to improve clarity.

5. Subparagraph (2) of paragraph 25.6(8)“c,” eligibility criteria for admission to intensive residential services, was revised for clarity to read:

“(2) The individual is approved by the Iowa Medicaid enterprise or Medicaid managed care organization, as appropriate, for the highest rate of home-based habilitation or the highest rate of home- and community-based services intellectual disability waiver supported community living service. Reimbursement rates for intensive residential services shall be equal to or greater than the established fees for those services. Regional reimbursement rates for non-Medicaid individuals receiving intensive residential services shall be negotiated by the region and the provider and shall be no less than the minimum Medicaid rate.”

These revisions were made to eliminate reference to “fee schedule” and “floor rate” for the purpose of aligning the language with currently used Medicaid terms.

6. The words “or continued” were added to paragraph “5” of subparagraph 25.6(8)“c”(3) to clarify that individuals who are doing well in intensive residential services should not be discharged if the level of supports the individuals are receiving continues to be needed to maintain their level of functioning.

VIII. ANNUAL SERVICE AND BUDGET PLAN; ANNUAL REPORTS.

1. The words “shall be included” were added to the introductory paragraph of 25.18(2)“d” to make it parallel to the other paragraphs in the subrule.

2. In paragraph “4” of rule 441—25.20(331), the reporting language for regions with relation to ACT teams has been revised to reflect changes made in subparagraph 25.6(2)“a”(2) to the fidelity review requirements for ACT teams. The revised paragraph reads as follows:

“4. Documentation that each regionally designated ACT team has been evaluated for program fidelity, including a peer review as required by subrule 25.6(2), and documentation of each team’s most recent fidelity score.”

Adoption of Rule Making

This rule making was adopted by the Mental Health and Disability Services Commission on December 6, 2018.

Fiscal Impact

This rule making has a fiscal impact to the State of Iowa of \$100,000 annually or \$500,000 over five years. The fiscal impact statement containing a detailed discussion of assumptions and how estimates were derived is available from the Department upon request.

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Jobs Impact

These amendments are not expected to have a significant impact on private-sector jobs and employment opportunities in Iowa. However, the introduction of new and expanded services may provide a small number of new jobs or opportunities for job change or advancement.

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 1, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend **441—Chapter 25**, chapter preamble, as follows:

This chapter provides for definitions of regional core services; access and standards; implementation dates; practice standards; reporting of regional expenditures; development and submission of regional management plans; data collection; applications for funding as they relate to regional service systems for individuals with mental illness, intellectual disabilities, developmental disabilities, or brain injury; and submission of data for Medicaid offset calculations.

ITEM 2. Amend **441—Chapter 25**, Division I title, as follows:

REGIONAL CORE SERVICES

ITEM 3. Amend rule **441—25.1(331)**, definitions of “Assertive community treatment,” “Case manager” and “Home and vehicle modification,” as follows:

“*Assertive community treatment*” or “*ACT*” means a program of comprehensive outpatient services consistent with evidence-based practice standards published by the Substance Abuse and Mental Health Services Administration, provided in the community and directed toward the amelioration of symptoms and the rehabilitation of behavioral, functional, and social deficits of individuals with severe and persistent mental disorders ~~illness~~ and individuals with complex ~~symptomatology~~ symptomology who require multiple mental health and supportive services to live in the community ~~eonsistent with evidence-based practice standards published by the Substance Abuse and Mental Health Services Administration.~~

“*Case manager*” means a person who has completed specified and required training to provide case management through the medical assistance program ~~or the Iowa Behavioral Health Care Plan.~~

“*Home and vehicle modification*” means a service that provides physical modifications to the home or vehicle that directly address the medical health or remedial needs of the individual and that are necessary to provide for the health, welfare, and safety of the ~~member~~ individual and to increase or maintain independence.

ITEM 4. Adopt the following new definitions of “Access center,” “Adult,” “Brain injury,” “Care coordination,” “Comprehensive assessment,” “Crisis assessment,” “Crisis intervention plan,” “Crisis screening,” “Crisis stabilization community-based services,” “Crisis stabilization residential services,”

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“Emergency detention,” “Face-to-face,” “HCBS,” “Homeless,” “Intake assessment,” “Intensive residential service homes,” “Medical assistance program,” “Mobile response,” “Multi-occurring conditions,” “No reject, no eject,” “Precariously housed,” “Prescreening assessment,” “Region,” “Severe and persistent mental illness,” “Subacute mental health services,” “Substance use disorder,” “Twenty-four-hour crisis response,” “Twenty-three-hour observation and holding,” and “Warm handoff,” in rule **441—25.1(331)**:

“*Access center*” means the coordinated provision of intake assessment, screening for multi-occurring conditions, care coordination, crisis stabilization residential services, subacute mental health services, and substance abuse treatment for individuals experiencing a mental health or substance use crisis who do not need inpatient psychiatric hospital treatment, but who do need significant amounts of supports and services not available in other home- and community-based settings.

“*Adult*” means the same as defined in 441—subrule 78.27(1).

“*Brain injury*” means the same as defined in rule 441—83.81(249A).

“*Care coordination*” means facilitating communication and ensuring provision of services among multiple professionals and service providers, the individual, and family members or other natural supports when designated by the individual, and ensuring the individual has the information necessary to actively participate in service and discharge or transition planning.

“*Comprehensive assessment*” means the same as “crisis assessment” defined in rule 441—24.20(225C) for individuals being referred to crisis stabilization residential services and means the same as “assessment” defined in rule 481—71.2(135G) for individuals being referred to subacute mental health services.

“*Crisis assessment*” means the same as defined in rule 441—24.20(225C).

“*Crisis intervention plan*” means the same as defined in rule 441—24.1(225C).

“*Crisis screening*” means a brief assessment to make a determination of the presenting problem and referral to the appropriate level of care.

“*Crisis stabilization community-based services*” or “*CSCBS*” means the same as defined in rule 441—24.20(225C).

“*Crisis stabilization residential services*” or “*CSRS*” means the same as defined in rule 441—24.20(225C).

“*Emergency detention*” means the same as “immediately detained” as described in Iowa Code section 229.22(1).

“*Face-to-face*” means the same as defined in rule 441—24.20(225C).

“*HCBS*” means home- and community-based services as defined in rule 441—78.27(249A).

“*Homeless*” means the same as “homeless person” defined in rule 441—25.11(331).

“*Intake assessment*” means the process used with an individual to collect information related to the individual’s history, needs, strengths, and abilities for the purpose of determining the individual’s need for comprehensive assessment, appropriate services or referral.

“*Intensive residential service homes*” or “*intensive residential services*” means intensive, community-based services provided 24 hours a day, 7 days a week, 365 days a year to individuals with a severe and persistent mental illness who have functional impairments and may also have multi-occurring conditions. Providers of intensive residential service homes are enrolled with Medicaid as providers of HCBS habilitation or HCBS intellectual disability waiver supported community living and meet additional criteria specified in subrule 25.6(8).

“*Medical assistance program*” means the same as defined in Iowa Code section 249A.2.

“*Mobile response*” means the same as defined in rule 441—24.20(225C).

“*Multi-occurring conditions*” means a diagnosis of a severe and persistent mental illness occurring along with one or more of the following: a physical health condition, a substance use disorder, an intellectual or developmental disability, or a brain injury.

“*No reject, no eject*” means that an individual who otherwise meets the eligibility criteria for a service shall not be denied access to that service or discharged from that service based on the severity or complexity of that individual’s mental health and multi-occurring needs.

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“Precariously housed” means that a person does not have a permanent household and is living day-to-day in a motel, in a vehicle, with family or friends, or in some other temporary location.

“Prescreening assessment” means a face-to-face clinical interview to ascertain an individual’s current and previous level of functioning, potential for dangerousness, physical health, and psychiatric and medical condition.

“Region” means a mental health and disability service region that operates as the “regional administrator” or “regional administrative entity” as defined in rule 441—25.11(331).

“Severe and persistent mental illness” or *“SPMI”* means a documented primary mental health disorder diagnosed by a mental health professional that causes symptoms and impairments in basic mental and behavioral processes that produce distress and major functional disability in adult role functioning inclusive of social, personal, family, educational or vocational roles. The individual has a degree of impairment arising from a psychiatric disorder such that: (1) the individual does not have the resources or skills necessary to maintain function in the home or community environment without assistance or support; (2) the individual’s judgment, impulse control, or cognitive perceptual abilities are compromised; (3) the individual exhibits significant impairment in social, interpersonal, or familial functioning; and (4) the individual has a documented mental health diagnosis. For this purpose, a “mental health diagnosis” means a disorder, dysfunction, or dysphoria diagnosed pursuant to the current version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, excluding neurodevelopmental disorders, substance use disorders, personality disorders, medication-induced movement disorders and other adverse effects of medication, and other conditions that may be a focus of clinical attention as defined in the current version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

“Subacute mental health services” means the same as defined in Iowa Code section 225C.6(4) “c” and includes both subacute facility-based services and subacute community-based services.

“Substance use disorder” means the same as defined in rule 641—155.1(125,135).

“Twenty-four-hour crisis response” means the same as defined in rule 441—24.20(225C).

“Twenty-three-hour observation and holding” means the same as defined in rule 441—24.20(225C).

“Warm handoff” means an approach to care transitions in which a health care provider uses face-to-face or telephone contact to directly link individuals being treated to other providers or specialists.

ITEM 5. Rescind subrule 25.2(3) and adopt the following **new** subrule in lieu thereof:

25.2(3) The region shall ensure that the following services are available in the region:

- a. Access centers.
- b. Assertive community treatment.
- c. Assessment and evaluation.
- d. Case management.
- e. Crisis evaluation.
- f. Crisis stabilization community-based services.
- g. Crisis stabilization residential services.
- h. Day habilitation.
- i. Family support.
- j. Health homes.
- k. Home and vehicle modification.
- l. Home health aide.
- m. Intensive residential service homes.
- n. Job development.
- o. Medication prescribing and management.
- p. Mental health inpatient treatment.
- q. Mental health outpatient treatment.
- r. Mobile response.
- s. Peer support.

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- t.* Personal emergency response system.
- u.* Prevocational services.
- v.* Respite.
- w.* Subacute mental health services.
- x.* Supported employment.
- y.* Supportive community living.
- z.* Twenty-four-hour access to crisis response.
- aa.* Twenty-three-hour crisis observation and holding.

Regions may fund or provide other services in addition to the required core services consistent with requirements set forth in subrules 25.2(4) and 25.2(5).

ITEM 6. Amend subrule 25.2(5), introductory paragraph, as follows:

25.2(5) A regional service system may provide funding for other appropriate services or ~~other~~ support. In considering whether to provide such funding, a region may consider the following criteria:

ITEM 7. Rescind rule 441—25.3(331) and adopt the following new rule in lieu thereof:

441—25.3(331) Implementation dates.

25.3(1) Regions shall implement the following core services effective July 1, 2014:

- a.* Assessment and evaluation.
- b.* Case management.
- c.* Crisis evaluation.
- d.* Day habilitation.
- e.* Family support.
- f.* Health homes.
- g.* Home and vehicle modification.
- h.* Home health aide.
- i.* Job development.
- j.* Medication prescribing and management.
- k.* Mental health inpatient therapy.
- l.* Mental health outpatient therapy.
- m.* Peer support.
- n.* Personal emergency response system.
- o.* Prevocational services.
- p.* Respite.
- q.* Supported employment.
- r.* Supportive community living.
- s.* Twenty-four-hour access to crisis response.

25.3(2) Regions shall implement the following intensive mental health core services on or before July 1, 2021, provided that federal matching funds are available under the Iowa health and wellness plan pursuant to Iowa Code chapter 249N:

- a.* Access centers.
- b.* Assertive community treatment.
- c.* Crisis stabilization community-based services.
- d.* Crisis stabilization residential services.
- e.* Intensive residential service homes.
- f.* Mobile response.
- g.* Subacute mental health services provided in facility and community-based settings.
- h.* Twenty-three-hour crisis observation and holding.

ITEM 8. Rescind rule 441—25.4(331) and adopt the following new rule in lieu thereof:

441—25.4(331) Access standards. Regions shall meet the following access standards:

25.4(1) A sufficient provider network which shall include:

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a. A community mental health center or federally qualified health center that provides psychiatric and outpatient mental health services in the region.

b. A hospital with an inpatient psychiatric unit or state mental health institute located in or within reasonably close proximity that has the capacity to provide inpatient services to the applicant.

25.4(2) Crisis services shall be available 24 hours per day, 7 days per week, 365 days per year for mental health and disability-related emergencies. A region may make arrangements with one or more other regions to meet the required access standards.

a. *Basic crisis response.*

(1) Twenty-four-hour crisis response. An individual shall have immediate access to crisis response services by means of telephone, electronic, or face-to-face communication.

(2) Crisis evaluation. An individual shall have immediate access to a crisis screening and will have a crisis assessment by a licensed mental health professional within 24 hours of referral.

b. *Crisis stabilization community-based services.* An individual who has been determined to need CSCBS shall receive face-to-face contact from the CSCBS provider within 120 minutes from the time of referral.

c. *Crisis stabilization residential services.* An individual who has been determined to need CSRS shall receive CSRS within 120 minutes of referral. The service shall be located within 120 miles from the residence of the individual.

d. *Mobile response.* An individual in need of mobile response services shall have face-to-face contact with mobile crisis staff within 60 minutes of dispatch.

e. *Twenty-three-hour observation and holding.* An individual who has been determined to need 23-hour observation and holding shall receive 23-hour observation and holding within 120 minutes of referral. The service shall be located within 120 miles from the residence of the individual.

25.4(3) The region shall provide the following treatment services:

a. *Outpatient.*

(1) Emergency: During an emergency, outpatient services shall be initiated to an individual within 15 minutes of telephone contact.

(2) Urgent: Outpatient services shall be provided to an individual within one hour of presentation or 24 hours of telephone contact.

(3) Routine: Outpatient services shall be provided to an individual within four weeks of request for appointment.

(4) Distance: Outpatient services shall be offered within 30 miles for an individual residing in an urban community and 45 miles for an individual residing in a rural community.

b. *Inpatient.*

(1) An individual in need of emergency inpatient services shall receive treatment within 24 hours.

(2) Inpatient services shall be available within reasonably close proximity to the region.

c. *Assessment and evaluation.* An individual who has received inpatient services shall be assessed and evaluated within four weeks.

25.4(4) Subacute facility-based mental health services. An individual shall receive subacute facility-based mental health services within 24 hours of referral. The service shall be located within 120 miles of the residence of the individual.

25.4(5) Support for community living. The first appointment shall occur within four weeks of the individual's request of support for community living.

25.4(6) Support for employment. The initial referral shall take place within 60 days of the individual's request of support for employment.

25.4(7) Recovery services. An individual receiving recovery services shall not have to travel more than 30 miles if residing in an urban area or 45 miles if residing in a rural area to receive services.

25.4(8) Service coordination.

a. An individual receiving service coordination shall not have to travel more than 30 miles if residing in an urban area or 45 miles if residing in a rural area to receive services.

b. An individual shall receive service coordination within ten days of the initial request for such service or being discharged from an inpatient facility.

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25.4(9) The region shall make the following intensive mental health services available. A region may make arrangements with one or more other regions to meet the required access standards.

a. Assertive community treatment.

(1) A minimum of 22 ACT teams shall be operational statewide.

(2) A sufficient number of ACT teams shall be available to serve the number of individuals in the region who are eligible for ACT services. As a guideline for planning purposes, the ACT-eligible population is estimated to be about 0.06 percent of the adult population of the region. The region may identify multiple geographic areas within the region for ACT team coverage. Regions may work with one or more other regions to identify geographic areas for ACT team coverage.

b. Access centers.

(1) A minimum of six access centers shall be operational statewide.

(2) An access center shall be located within 120 miles of the residence of the individual or be available within 120 minutes from the time of the determination that the individual needs access center services.

c. Intensive residential services.

(1) A minimum of 120 intensive residential service beds shall be available statewide.

(2) An individual receiving intensive residential services shall have the service available within two hours of the individual's residence.

(3) An individual shall be admitted to intensive residential services within four weeks from referral.

25.4(10) The following limitations apply to home and vehicle modification for an individual receiving mental health and disability services:

a. A lifetime limit equal to that established for the home- and community-based services waiver for individuals with intellectual disabilities in the medical assistance program.

b. A provider reimbursement payment will be no lower than that provided through the home- and community-based services waiver for individuals with intellectual disabilities in the medical assistance program.

ITEM 9. Adopt the following **new** rule 441—25.5(331):

441—25.5(331) Practices. A region shall ensure that access is available to providers of core services that demonstrate the following competencies:

25.5(1) Regions shall have service providers that are trained to provide effective services to individuals with multi-occurring conditions. Training for serving individuals with multi-occurring conditions provided by the region shall be training identified by the Substance Abuse and Mental Health Services Administration, the Dartmouth Psychiatric Research Center or other generally recognized professional organization specified in the regional service system management plan.

25.5(2) Regions shall have service providers that are trained to provide effective trauma-informed care. Trauma-informed care training provided by the region shall be recognized by the National Center for Trauma-Informed Care or other generally recognized professional organization specified in the regional service system management plan.

25.5(3) Regions must have evidence-based practices that the region has independently verified as meeting established fidelity to evidence-based service models including, but not limited to, assertive community treatment or strengths-based case management; integrated treatment of co-occurring substance use and mental health disorders; supported employment; family psychoeducation; illness management and recovery; and permanent supportive housing.

ITEM 10. Adopt the following **new** rule 441—25.6(331):

441—25.6(331) Intensive mental health services. The purpose of intensive mental health services is to provide a continuum of services and supports to individuals with complex mental health and multi-occurring conditions who need a high level of intensive and specialized support to attain stability in health, housing, and employment and to work toward recovery.

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25.6(1) Access centers. The purpose of an access center is to serve individuals experiencing a mental health or substance use crisis who are not in need of an inpatient psychiatric level of care and who do not have alternative, safe, effective services immediately available.

a. Regional coordination. Each region shall designate at least one access center provider and ensure that access center services are available to the residents of the region consistent with subrule 25.4(9).

(1) Regions shall work collaboratively to develop a minimum of six access centers strategically located throughout the state, with the support of the medical assistance program.

(2) Access centers may be shared by two or more regions.

(3) Each region shall establish methods to provide for reimbursement of a region when a non-Medicaid-eligible resident of another region utilizes an access center or other non-Medicaid-covered services located in that region.

b. Access center standards. A designated access center shall meet all of the following criteria:

(1) An access center shall have no residential facility-based setting with more than 16 beds.

(2) An access center provider shall be accredited to provide crisis stabilization residential services pursuant to 441—Chapter 24.

(3) An access center provider shall be licensed to provide subacute mental health services as described in rule 441—77.56(249A).

(4) An access center provider shall be licensed as a substance abuse treatment program pursuant to Iowa Code chapter 125 or have a cooperative agreement with and immediate access to licensed substance abuse treatment services or medical care that incorporates withdrawal management.

(5) An access center shall provide services on a no reject, no eject basis to individuals who meet service eligibility criteria.

(6) An access center shall accept and serve eligible individuals who are court-ordered to participate in mental health or substance use disorder treatment.

(7) An access center shall provide all required services listed in 25.6(1)“d” in a coordinated manner. An access center may provide coordinated services in one or more locations.

c. Eligibility for access center services. To be eligible to receive access center services, an individual shall meet all of the following criteria:

(1) The individual is in need of screening, assessment, services or treatment related to a mental health or substance use crisis.

(2) The individual shows no obvious signs of illness or injury indicating a need for immediate medical attention.

(3) The individual has been determined not to need an inpatient psychiatric hospital level of care.

(4) The individual does not have immediate access to alternative, safe, and effective services.

d. Access center services. An access center shall provide or arrange for the provision of all of the following:

(1) Immediate intake assessment and screening that includes but is not limited to mental and physical health conditions, suicide risk, brain injury, and substance use. A crisis evaluation that includes all required screenings may serve as an intake assessment.

(2) Comprehensive person-centered mental health assessments by appropriately licensed or credentialed professionals, as indicated by the intake assessment.

(3) Comprehensive person-centered substance use disorder assessments by appropriately licensed or credentialed professionals, as indicated by the intake assessment.

(4) Peer support services, as indicated by a comprehensive assessment.

(5) Mental health treatment, as indicated by a comprehensive assessment.

(6) Substance use treatment, as indicated by a comprehensive assessment.

(7) Physical health care services as indicated by a health screening.

(8) Care coordination.

(9) Service navigation and linkage to needed services including housing, employment, shelter services, intellectual and developmental disability services, and brain injury services, with warm handoffs to other service providers.

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25.6(2) Assertive community treatment (ACT) services. The purpose of assertive community treatment is to serve individuals with the most severe and persistent mental illness conditions and functional impairments. ACT services provide a set of comprehensive, integrated, intensive outpatient services delivered by a multidisciplinary team under the supervision of a psychiatrist, an advanced registered nurse practitioner, or a physician assistant under the supervision of a psychiatrist. An ACT program shall designate an individual to be responsible for administration of the program and with the authority to sign documents and receive payments on behalf of the program.

a. Regional coordination. Each region shall designate at least one ACT provider and ensure that ACT services are available to the residents of the region consistent with subrule 25.4(9). Regions may work collaboratively with other regions when an ACT team is serving more than one region.

(1) Each region shall determine the number and size of ACT teams needed to serve the ACT-eligible population in that region.

(2) Each region shall verify that all ACT programs operating in the region have periodic fidelity reviews consistent with evidence-based practice standards published by the Substance Abuse and Mental Health Services Administration (SAMHSA). Each ACT program shall have a fidelity review, including a peer review, on the following schedule:

1. Within the first 12 months of operation.
2. Annually during each of the second and third years of operation.
3. Biennially thereafter for teams with satisfactory fidelity reviews. Teams with unsatisfactory reviews shall be reviewed again after one year.

Results of the ACT team fidelity reviews shall be included in the region's annual report.

b. ACT team composition. Each ACT team shall include a minimum of six members and must include a member qualified to fill each of the eight following roles. One team member may fill more than one role if all other qualifications are met.

(1) A psychiatrist, an advanced registered nurse practitioner, or a physician assistant under the supervision of a psychiatrist who is board-certified or eligible for board certification.

(2) A team leader.

(3) A registered nurse.

(4) A mental health professional.

(5) A substance abuse treatment provider.

(6) A community support specialist.

(7) A peer support specialist.

(8) An employment specialist.

c. Staff qualifications. ACT team members shall meet the following qualifications:

(1) Psychiatrist. A psychiatrist on the team shall be a person who meets all of the following criteria:

1. Is a doctor of medicine (M.D.) or a doctor of osteopathy (D.O.).

2. Is licensed in Iowa pursuant to 653—Chapter 9.

3. Is certified or is eligible to be certified as a psychiatrist by the American Board of Medical Specialties' Board of Psychiatry and Neurology or by the American Osteopathic Board of Neurology and Psychiatry.

4. Has experience working with persons with severe and persistent mental illness.

5. Provides a minimum of 16 hours per week of psychiatrist time for every 50 ACT clients.

(2) Advanced registered nurse practitioner. An advanced registered nurse practitioner on the team shall be a person who meets all of the following criteria:

1. Is licensed pursuant to 655—Chapter 7.

2. Has a mental health certification.

3. Has experience working with persons with severe and persistent mental illness.

4. Provides a minimum of 16 hours per week of advanced registered nurse practitioner time for every 50 ACT clients.

(3) Physician assistant. A physician assistant on the team shall be a person who meets all of the following criteria:

1. Is licensed pursuant to 645—Chapter 326.

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2. Has experience working with persons with severe and persistent mental illness.
3. Is practicing under the supervision of a psychiatrist who is board-certified or eligible for board certification.
4. Provides a minimum of 16 hours per week of physician assistant time for every 50 ACT clients.
- (4) Team leader. A team leader shall be a person on the team who meets all of the following criteria:
 1. Has a master's degree in a mental health field, including but not limited to nursing, social work, mental health counseling, psychiatric rehabilitation, or psychology.
 2. Is actively involved in direct contact with individuals being served by the team.
 3. Is a full-time staff member whose responsibilities are limited to the ACT team and who serves as the clinical and administrative supervisor of the team.
- (5) Registered nurse. A registered nurse on the team shall be a person who meets all of the following criteria:
 1. Is licensed as a registered nurse pursuant to 655—Chapter 3.
 2. Has experience working with persons with severe and persistent mental illness.
- (6) Mental health professional. A mental health professional on the team shall be a person who meets all of the following criteria:
 1. Is a mental health counselor or marital and family therapist licensed pursuant to 645—Chapter 31; a social worker licensed as a master or independent social worker pursuant to 645—Chapter 280; or an occupational therapist licensed pursuant to 645—Chapter 206.
 2. Has experience working with persons with severe and persistent mental illness.
- (7) Substance abuse treatment professional. A substance abuse treatment professional on the team shall be a person who meets all of the following criteria:
 1. Is an appropriately credentialed counselor pursuant to 641—subparagraph 155.21(8) "b"(1).
 2. Has at least three years of experience working with persons with substance use disorders.
- (8) Community support specialist. A community support specialist on the team shall be a person who meets all of the following criteria:
 1. Has a bachelor's degree with at least 30 semester hours or equivalent quarter hours in a human services field, including but not limited to sociology, social work, counseling, psychology, or human services.
 2. Has experience working with persons with severe and persistent mental illness.
- (9) Peer support specialist. A peer support specialist on the team shall be a person who meets all of the following criteria:
 1. Has been diagnosed with a severe and persistent mental illness.
 2. Has met all requirements of the Appalachian Consulting Group Peer Support Training Model by no later than six months after the date of hire.
- (10) Employment specialist. An employment specialist on the team shall be a person who meets all of the following criteria:
 1. Has experience working with persons with severe and persistent mental illness.
 2. Meets one of the following:
 - Has a bachelor's degree with at least 30 semester hours or equivalent quarter hours in a human services field, including but not limited to sociology, social work, counseling, or psychology, and completes at least 12 hours of employment services training within six months of the date of hire.
 - Has a high school diploma or equivalent, has at least one year of specialized vocational training or supervised experience in vocational and related services, including but not limited to supported employment, job coaching, supported community living, or habilitation, and completes at least 12 hours of employment services training within six months of the date of hire.
- (11) Psychologist. A psychologist on the team shall be a person who meets all of the following criteria:
 1. Is licensed pursuant to 645—Chapter 240.
 2. Has experience working with persons with a severe and persistent mental illness.

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d. ACT provider standards. Organizations seeking regional designation as an ACT provider shall meet the following criteria at initial application and annually thereafter. A designated ACT provider shall:

(1) Develop and maintain written ACT-specific admission policies and procedures, including but not limited to a gradual rate of admission and program eligibility requirements.

(2) Develop and maintain written ACT-specific discharge policies and procedures. Discharge criteria shall include but are not limited to the following:

1. An individual reaches individually established goals for discharge, and the individual and program staff mutually agree to the termination of services; or

2. An individual requests discharge, demonstrates the ability to function in all major role areas without ongoing assistance from the program and without significant relapse when services are withdrawn, and the program staff agree to the termination of services; or

3. An individual moves outside the geographic area of the team's responsibility. In such cases, the team shall arrange for transfer of responsibility for mental health services to an ACT program or another provider wherever the individual is relocating, and the team shall maintain contact with the individual until the service transfer is implemented; or

4. An individual declines or refuses services and requests discharge despite the team's best efforts to develop an acceptable treatment plan with the individual.

(3) Documentation of discharges. Documentation shall include:

1. The reason(s) for discharge as stated by both the individual and the team.

2. A summary of the individual's biopsychosocial status at the time of discharge.

3. A written final evaluation summary of the individual's progress toward the goals in the treatment plan.

4. A plan developed in conjunction with the individual for follow-up treatment after discharge.

5. The signature of each of the following:

- The individual, or documentation of why the individual's signature was not obtained.

- The service coordinator.

- The team leader.

- The psychiatrist, advanced registered nurse practitioner, or physician assistant under the supervision of a board-certified psychiatrist.

e. ACT team standards. All designated ACT teams shall:

(1) Participate in all of the individual's mental health services.

(2) Ensure that services for the psychiatric needs of the individual are available 24 hours a day.

(3) Develop a specific treatment plan based on the assessment of needs and including goals and actions to address the individual's medical, social, educational, and other needs.

(4) Make referrals to services and related activities to assist the individual with the individual's assessed needs.

(5) Monitor and perform follow-up activities necessary to ensure that the treatment plan is carried out and that the individual has access to necessary services. Activities may include monitoring contacts with providers, family members, natural supports, and others.

(6) Hold team meetings at least four times a week to facilitate ACT services and briefly review the status of the individual with other members of the team.

(7) Have the capacity to provide multiple contacts a week with individuals experiencing severe symptoms, trying a new medication, experiencing a health problem or serious life event, trying to go back to school or starting a new job, making changes in a living situation or employment, or having significant ongoing problems in daily living. All members of the team share responsibility for addressing the needs of all individuals. The number of team contacts per individual served shall average at least three per week per individual when calculated across all individuals served by the team. Contacts may be weekly, daily, or more frequent. The frequency of contacts is determined by the needs of the individual.

(8) Have the capacity to rapidly increase service intensity to an individual when the individual's status requires it or the individual requests it.

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(9) Ensure that treatment, rehabilitation, and support activities are available 24 hours a day, 7 days a week, 365 days a year, including nights, weekends, and holidays. If there are insufficient numbers of staff to operate an after-hours on-call system, staff shall provide crisis response during regular work hours and arrange coverage for all other hours through a reliable crisis response service.

(10) Provide no more than 20 percent of service contacts in office-based settings.

f. Staff-to-client ratio. ACT teams shall maintain a ratio of at least one full-time or full-time equivalent staff person to every ten individuals served. The ACT team staff-to-client ratios do not include the psychiatrist, advanced nurse practitioner, or physician assistant practicing under the supervision of a psychiatrist.

g. Eligibility criteria for ACT services. To be eligible to receive ACT services, the individual shall meet all of the following criteria:

(1) Is at least 17 years of age.

(2) Has a severe and persistent mental illness or complex mental health symptomology. Individuals with a primary diagnosis of substance use disorder, developmental disability, personality disorder, or organic disorder are not eligible for ACT services.

(3) Is in need of a consistent team of professionals and multiple mental health and support services to live independently in the community and reduce hospitalizations, as evidenced by one or both of the following:

1. A pattern of repeated treatment failures during the previous 12 months, including at least two psychiatric hospitalizations or psychiatric care delivered at least twice in an emergency department, at an access center, or by a mobile crisis team; or

2. The need for multiple or combined mental health and basic living supports to prevent the need for a more intrusive level of care.

(4) Presents a reasonable likelihood that ACT services will lead to specific, observable improvements in the individual's functioning and assist the individual in achieving or maintaining independent community living. Specifically, the individual:

1. Is medically stable;

2. Does not require a level of care that includes more intensive medical monitoring;

3. Presents a low risk to self, others, or property, with treatment and support; and

4. Lives independently in the community or demonstrates a capacity and desire to live independently in the community.

h. ACT services. ACT teams shall provide the following services:

(1) Initial assessment and treatment planning.

1. An assessment of the individual shall be completed within 30 days of admission that includes psychiatric history, medical history, educational history, employment, substance use, problems with activities of daily living, social interests, and family relationships.

2. An individualized written treatment plan shall be developed based on the assessment. The treatment plan shall identify the necessary psychiatric rehabilitation treatment and support services, including all of the following:

- Treatment objectives and outcomes.

- The expected frequency and duration of each service.

- The location where the services will be provided.

- A crisis plan.

- The schedule for updates of the treatment plan.

(2) Evaluation and medication management.

1. The evaluation portion of ACT services consists of a comprehensive mental health evaluation and assessment of the individual by a psychiatrist, advanced registered nurse practitioner, or physician assistant.

2. Medication management consists of the prescription and management of medication by a psychiatrist, advanced registered nurse practitioner, or physician assistant in response to the individual's complaints and symptoms. A psychiatric registered nurse assists in this management by making contact with the individual regarding medications and their effect on the individual's complaints and symptoms.

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(3) Integrated therapy and counseling for mental health and substance abuse. Integrated therapy and counseling consists of direct counseling for treatment of mental health and substance abuse symptoms by a psychiatrist, licensed mental health professional, advanced registered nurse practitioner, physician assistant, or substance abuse specialist. Individual counseling may be provided by other team members under the supervision of a psychiatrist or licensed mental health practitioner.

(4) Skill teaching. Skill teaching consists of side-by-side demonstration and observation of daily living activities by any team member.

(5) Community support. Community support may be provided by any team member and consists of the following activities focused on recovery and rehabilitation:

1. Personal and home skills training to assist the individual to develop and maintain skills for self-direction and coping with the living situation.

2. Community skills training to assist the individual in maintaining a positive level of participation in the community through development of socialization skills and personal coping skills.

(6) Medication monitoring. Medication monitoring services shall be provided by a psychiatric nurse and other team members under the supervision of a psychiatrist or psychiatric nurse and consists of:

1. Monitoring the individual's day-to-day functioning, medication compliance, and access to medications; and

2. Ensuring that the individual keeps appointments.

(7) Case management for treatment and service plan coordination. Case management consists of the development of an individualized treatment and service plan, including personalized goals and outcomes, to address the individual's medical symptoms and remedial functional impairments. Case management includes:

1. Assessments, referrals, follow-up, and monitoring.

2. Assisting the individual in gaining access to necessary medical, social, educational, and other services.

3. Assessing the individual to determine service needs by collecting relevant historical information through records and other information from relevant professionals and natural supports.

(8) Crisis response. Crisis response consists of direct assessment and treatment of the individual's urgent or crisis symptoms in the community by any team member, as appropriate.

(9) Work-related services. Work-related services may be provided by any team member. Services consist of assisting the individual in managing mental health symptoms as they relate to job performance and may include:

1. Collaborating with the individual to look for job situations of the individual's choice and creating strategies to manage situations that cause symptoms to increase.

2. Assisting the individual to develop or enhance skills to obtain a work placement, such as individual work-related behavioral management.

3. Providing supports to maintain employment, such as crisis intervention related to employment.

4. Teaching communication, problem-solving, and safety skills.

5. Teaching personal skills, such as time management and appropriate grooming for employment.

(10) Peer support services. Peer support services are provided by a peer support specialist and include, but are not limited to, education and information, individual advocacy, and crisis response.

(11) Support services. All team members are responsible for providing support services. Services consist of assisting the individual in obtaining the basic necessities of daily life, including but not limited to:

1. Medical and dental services.

2. Safe, clean, and affordable housing.

3. Financial support.

4. Benefits counseling.

5. Social services.

6. Transportation.

7. Legal advocacy and representation.

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(12) Education, support, and consultation to family members and other major supports of individuals. All team members are responsible for providing education, support, and consultation to family members and other major supports of individuals with the agreement or consent of the individual. Services include but are not limited to:

1. Individualized psychoeducation about the individual's illness and the role of the family and other significant people in the therapeutic process.
2. Intervention to restore contact, resolve conflicts, and maintain relationships with family or other significant people or both.
3. Ongoing communication and collaboration, face-to-face and by telephone, between the ACT team and the family.
4. Introduction and referral to family self-help programs and advocacy organizations that promote recovery.
5. Assistance to obtain necessary services for individuals with children, including but not limited to:
 - Individual supportive counseling.
 - Parenting training.
 - Service coordination.
 - Services to help the individual throughout pregnancy and the birth of a child.
 - Services to help the individual fulfill parenting responsibilities and coordinate services for the child or children.
 - Services to help the individual restore relationships with children who are not in the individual's custody.

25.6(3) *Mobile response.* The purpose of mobile response is to provide short-term individualized crisis stabilization, following a crisis screening or assessment, that is designed to restore the individual to a prior functional level. Mobile response services shall be provided as described in rule 441—24.36(225C).

25.6(4) *23-hour observation and holding.* The purpose of 23-hour observation and holding is to provide up to 23 hours of care in a safe and secure, medically staffed treatment environment. Twenty-three-hour observation and holding shall be provided as described in rule 441—24.37(225C).

25.6(5) *Crisis stabilization community-based services.* The purpose of crisis stabilization community-based services is to provide short-term services designed to de-escalate a crisis situation and stabilize an individual following a mental health crisis in the setting where the individual lives, works, or recreates. Crisis stabilization community-based services shall be provided as described in rule 441—24.38(225C).

25.6(6) *Crisis stabilization residential services.* The purpose of crisis stabilization residential services is to provide a short-term alternative living arrangement in a setting of no more than 16 beds that is designed to de-escalate a crisis situation and stabilize an individual following a mental health crisis. Crisis stabilization residential services shall be provided as described in rule 441—24.39(225C).

25.6(7) *Subacute mental health services.* The purpose of subacute mental health services is to provide a comprehensive set of wraparound services to individuals who have had or are at imminent risk of having acute or crisis mental health symptoms.

a. Regional coordination. Each region shall designate at least one subacute mental health service provider and ensure that subacute mental health services are available to the residents of the region consistent with subrule 25.4(4).

b. Subacute mental health services standards.

(1) Subacute mental health services in a facility-based setting shall be provided as described in Iowa Code chapter 135G and 481—Chapter 71.

(2) Subacute mental health services in a community-based setting are the same as assertive community treatment (ACT) services provided as described in subrule 25.6(2).

25.6(8) *Intensive residential services.* The purpose of intensive residential services is to serve individuals with the most intensive severe and persistent mental illness conditions who have functional impairments and may also have multi-occurring conditions. Intensive residential services

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provide intensive 24-hour supervision, behavioral health services, and other supportive services in a community-based residential setting.

a. Regional coordination. Each region shall designate at least one intensive residential services provider and ensure that intensive residential services are available to the residents of the region consistent with subrule 25.4(9).

(1) Regions shall work collaboratively to develop intensive residential services strategically located throughout the state with the capacity to serve a minimum of 120 individuals, with the support of the medical assistance program.

(2) Intensive residential services may be shared by two or more regions.

(3) Each region shall establish methods to provide for reimbursement of a region when the non-Medicaid-eligible resident of another region utilizes intensive residential services or other non-Medicaid-covered services located in that region.

b. Intensive residential services standards. An organization that seeks regional designation as an intensive residential service provider shall meet the following criteria at initial application and annually thereafter. A designated intensive residential service provider shall:

(1) Be enrolled as an HCBS 1915(i) habilitation provider or an HCBS 1915(c) intellectual disability waiver supported community living provider in good standing with the Iowa Medicaid enterprise.

(2) Provide staffing 24 hours a day, 7 days a week, 365 days a year.

(3) Maintain a minimum staffing ratio of one staff to every two and one-half residents. Staffing ratios shall be responsive to the needs of the individuals served.

(4) Ensure that all staff members have the following minimum qualifications:

1. One year of experience working with individuals with a mental illness or multi-occurring conditions.

2. A high school diploma or equivalent.

(5) Ensure that within the first year of employment, staff members complete 48 hours of training in mental health and multi-occurring conditions. During each consecutive year of employment, staff members shall complete 24 hours of training in mental health and multi-occurring conditions. Staff training shall include, but is not limited to the following:

1. Applied behavioral analysis.

2. Autism spectrum disorders, diagnoses, symptomology and treatment.

3. Brain injury diagnoses, symptomology and treatment.

4. Crisis management and de-escalation and mental health diagnoses, symptomology and treatment.

5. Motivational interviewing.

6. Psychiatric medications.

7. Substance use disorders and treatment.

8. Other diagnoses or conditions present in the population served.

(6) Provide coordination with the individual's clinical mental health and physical health treatment, and other services and supports.

(7) Provide clinical oversight by a mental health professional. The mental health professional shall review and consult on all behavioral health services provided to the individual, and any other plans developed for the individual, including but not limited to service plans, behavior intervention plans, crisis intervention plans, emergency plans, cognitive rehabilitation plans, or physical rehabilitation plans.

(8) Have a written cooperative agreement with an outpatient mental health provider and ensure that individuals have timely access to outpatient mental health services, including but not limited to ACT.

(9) Be licensed as a substance abuse treatment program pursuant to Iowa Code chapter 125 or have a written cooperative agreement with and timely access to licensed substance abuse treatment services for those individuals with a demonstrated need.

(10) Accept and serve eligible individuals who are court-ordered to intensive residential services.

(11) Provide services to eligible individuals on a no reject, no eject basis.

(12) If funded through HCBS and not licensed as a residential care facility, serve no more than five individuals at a site.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(13) Be located in a neighborhood setting to maximize community integration and natural supports.

(14) Demonstrate specialization in serving individuals with an SPMI or multi-occurring conditions and serve individuals with similar conditions in the same site.

c. Eligibility criteria for admission to intensive residential services. To be eligible to receive intensive residential services, an individual shall meet all of the following criteria:

(1) The individual is an adult with a diagnosis of a severe and persistent mental illness or multi-occurring conditions.

(2) The individual is approved by the Iowa Medicaid enterprise or Medicaid managed care organization, as appropriate, for the highest rate of home-based habilitation or the highest rate of home- and community-based services intellectual disability waiver supported community living service. Reimbursement rates for intensive residential services shall be equal to or greater than the established fees for those services. Regional reimbursement rates for non-Medicaid individuals receiving intensive residential services shall be negotiated by the region and the provider and shall be no less than the minimum Medicaid rate.

(3) The individual has had a standardized functional assessment and screening for multi-occurring conditions completed 30 days or less prior to application for intensive residential services, and the functional assessment and screening demonstrates that the individual:

1. Has a diagnosis that meets the criteria of severe and persistent mental illness as defined in rule 441—25.1(331);

2. Has three or more areas of significant impairment in activities of daily living or instrumental activities of daily living;

3. Is in need of 24-hour supervised and monitored treatment to maintain or improve functioning and avoid relapse that would require a higher level of treatment;

4. Has exhibited a lack of progress or regression after an adequate trial of active treatment at a less intensive level of care;

5. Is at risk of significant functional deterioration if intensive residential services are not received or continued; and

6. Meets one or more of the following:

- Has a record of three or more psychiatric hospitalizations in the 12 months preceding application for intensive residential services.

- Has a record of more than 30 medically unnecessary psychiatric hospital days in the 12 months preceding application for intensive residential services.

- Has a record of more than 90 psychiatric hospital days in the 12 months preceding application for intensive residential services.

- Has a record of three or more emergency room visits related to a psychiatric diagnosis in the 12 months preceding application for intensive residential services.

- Is residing in a state resource center and has an SPMI.

- Is being served out of state due to the unavailability of medically necessary services in Iowa.

- Has an SPMI and is scheduled for release from a correctional facility or a county jail.

- Is homeless or precariously housed.

ITEM 11. Adopt the following **new** rule 441—25.7(331):

441—25.7(331) Non-core services. When a mental health and disability services region chooses to make the following non-core services available, the region shall ensure that such services meet the requirements of this rule.

25.7(1) Prescreening assessments. Prescreening assessments provided by the region or an entity contracting with the region shall meet the following requirements:

a. The prescreening assessment shall be provided in an emergency room or other crisis assessment setting within four hours of an emergency detention of an individual believed to be mentally ill to determine if inpatient psychiatric hospitalization is necessary.

b. The prescreening assessment shall be performed by a licensed physician or mental health professional who shall also provide ongoing consultations while the individual remains in the emergency

HUMAN SERVICES DEPARTMENT[441](cont'd)

room or other crisis assessment setting. The services provided by the consulting professional are intended to supplement, but do not replace, the services of the emergency room or other crisis setting staff.

c. The licensed physician or mental health professional shall submit appropriate documentation and reports to the emergency room or other crisis setting and the court as necessary.

d. The region or entity contracting with the region shall ensure the coordination of appropriate levels of care. Coordination may include but is not limited to:

(1) Securing an inpatient psychiatric bed when inpatient psychiatric hospitalization is needed.

(2) Utilizing community-based resources and services such as 23-hour observation and holding, crisis stabilization community-based or residential services, subacute facility-based mental health services or detoxification centers.

(3) Facilitating outpatient treatment appointments when inpatient psychiatric hospitalization is not needed.

25.7(2) Transportation. A service provider that is under contract with a region and transports individuals pursuant to an Iowa Code chapter 229 court order shall meet the following requirements:

a. The transport vehicle shall be secure such that the individual being transported cannot open doors or windows of the vehicle while it is moving.

b. Transportation staff shall complete a minimum of eight hours of training in mental health issues and crisis intervention in the first month of employment. After the initial training, each staff member shall complete a minimum of two hours of training annually.

ITEM 12. Amend **441—Chapter 25**, Division I, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 331 and ~~2012 Iowa Acts, chapter 1120, section 15~~ 2018 Iowa Acts, House File 2456.

ITEM 13. Amend subrule 25.15(5), introductory paragraph, as follows:

25.15(5) Eligibility for brain injury services. An individual must comply with all of the following requirements to be eligible for brain injury services under the regional service system, if such services were provided to the same class of individuals by a county in the region prior to regional formation ~~and if funds are available to continue such services without limiting or reducing core services.~~

ITEM 14. Amend subrule 25.18(2) as follows:

25.18(2) The annual service and budget plan shall include but not be limited to:

a. and b. No change.

c. Crisis planning. ~~The plan for ensuring effective~~ A list of accredited crisis services available in the region for crisis prevention, response and resolution, including contact information for the agencies responsible, shall be included.

d. Intensive mental health services. Identification of the services designated by the region according to rule 441—25.6(331), including the provider name, contact information, and location of each of the following, shall be included:

(1) Access center(s).

(2) ACT services.

(3) Intensive residential services.

(4) Subacute mental health services.

~~d. e.~~ Scope of services. A description of the scope of services to be provided, a projection of need for the service, and the funding necessary to meet the need shall be included.

(1) and (2) No change.

~~e. f.~~ Budget and financing provisions for the next year. The provisions shall address how county, regional, state and other funding sources will be used to meet the service needs within the region.

~~f. g.~~ Financial forecasting measures. The plan shall describe the financial forecasting measures used in the identification of service need and funding necessary for services.

~~g. h.~~ The provider reimbursement provisions. The plan shall describe the types of reimbursement methods that will be used, including fee for service, compensating providers for a “system of care” approach, and use of nontraditional providers. A region also shall provide funding approaches that

HUMAN SERVICES DEPARTMENT[441](cont'd)

identify and incorporate all services and sources of funding used by the individuals receiving services, including the medical assistance program.

ITEM 15. Amend rule 441—25.19(331) as follows:

441—25.19(331) Annual service and budget plan approval. The annual service and budget plan shall be submitted each year by April 1, 2014, ~~as a part of the region's management plan for the fiscal year beginning July 1, 2014.~~ The director shall review all regional annual service and budget plans submitted by the dates specified. If the director finds the regional annual service and budget plan in compliance with these rules and state and federal laws, the director may approve the plan. A plan approved by the director for ~~the~~ a fiscal year beginning July 1, 2014, shall remain in effect until June 30, 2015, subject to amendment.

25.19(1) No change.

25.19(2) Notification. Except as specified in subrule 25.19(3), the director shall notify the region in writing of the decision on the plan by June 1, 2014 of each year. The decision shall specify that either:

a. and *b.* No change.

25.19(3) Review of late submittals. The director may review plans not submitted by April 1, 2014, after all plans submitted by that date have been reviewed. The director will proceed with the late submittals in a timely manner.

25.19(4) and **25.19(5)** No change.

ITEM 16. Amend rule 441—25.20(331) as follows:

441—25.20(331) Annual report. The annual report shall describe the services provided, the cost of those services, the number of individuals served, and the outcomes achieved for the previous fiscal year. The annual report is due on December 1 following a completed fiscal year of implementing the annual service and budget plan. The initial report is due on December 1, 2015. The annual report shall include but not be limited to:

1. Services actually provided.

2. Actual numbers of individuals served.

3. Documentation that each regionally designated access center has met the service standards in subrule 25.6(1).

4. Documentation that each regionally designated ACT team has been evaluated for program fidelity, including a peer review as required by subrule 25.6(2), and documentation of each team's most recent fidelity score.

5. Documentation that each regionally designated subacute service has met the service standards in subrule 25.6(7).

6. Documentation that each regionally designated intensive residential service home or intensive residential service has met the service standards in subrule 25.6(8).

~~3.~~ 7. Moneys expended.

~~4.~~ 8. Outcomes achieved.

ITEM 17. Amend **441—Chapter 25**, Division VIII title, as follows:

~~CRITERIA FOR EXEMPTING COUNTIES FROM JOINING INTO REGIONS TO ADMINISTER
MENTAL HEALTH AND DISABILITY SERVICES~~

ITEM 18. Rescind and reserve rule **441—25.91(331)**.

ITEM 19. Rescind **441—Chapter 25**, Division XI.

[Filed 12/6/18, effective 3/1/19]

[Published 1/2/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/2/19.

ARC 4208C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed****Rule making related to conditions of Medicaid eligibility**

The Human Services Department hereby amends Chapter 75, “Conditions of Eligibility,” and Chapter 76, “Enrollment and Reenrollment,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4 and 2018 Iowa Acts, Senate File 2418, section 107.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4 and 2018 Iowa Acts, Senate File 2418, section 107.

Purpose and Summary

Currently, Medicaid may be available to a person who was pregnant or an infant under the age of one during any of the three months preceding the month in which an application is filed. 2018 Iowa Acts, Senate File 2418, section 107, extends this applicability by stating, “[e]ffective July 1, 2018, a three-month retroactive Medicaid coverage benefit shall apply to a Medicaid applicant who is otherwise Medicaid-eligible and is a resident of a nursing facility licensed under chapter 135C.”

These amendments revise the definitions of “retroactive certification period” and “retroactive period” in Chapter 75 to correctly reference subrule 76.13(3), which defines who is eligible for Medicaid coverage during any or all of the three months preceding the month in which an application is filed.

These amendments also update subrule 76.13(3) to reinstate a three-month retroactive coverage benefit for applicants who are residents of a nursing facility licensed under Iowa Code chapter 135C at the time of application and are otherwise Medicaid-eligible.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 7, 2018, as **ARC 4106C**. The Department received comments from one respondent during the public comment period. The respondent’s consolidated comment and the Department’s response are as follows:

Comment: The respondent requested that the Department include all providers in being able to bill for Medicaid services retroactively.

The respondent stated that retroactive enrollment occurs when an individual has applied for Medicaid and enrollment is granted with an effective date prior to the date the enrollment determination was made, that this has historically allowed for a 90-day look back and that this is especially important to hospitals because a patient seeking services can complete the application for Medicaid while the patient is immediately receiving the necessary medical services and the hospital is then able to be reimbursed for the services the hospital provided for up to three months prior to the effective date.

The respondent also stated that pursuant to federal law, hospitals must examine and treat individuals who have an emergency medical condition and present in an emergency room, regardless of coverage or ability to pay, and that retroactive enrollment had always provided a mechanism for reimbursement for emergency services provided. The respondent noted that this coverage was eliminated during the 2017 Legislative Session.

The respondent asked the following questions under the premise that retroactive Medicaid coverage benefits apply only to Medicaid applicants residing in a nursing facility:

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1. If a Medicaid-eligible individual first receives care in a hospital setting and is then moved to a nursing facility for post-hospital care, would the services the individual received in the hospital then be covered by Medicaid when the individual applies for the Medicaid benefit at the nursing facility?

2. If a Medicaid-eligible individual in need of hospital care were to forgo that necessary care and instead go straight to a nursing facility because of the ability to apply for a three-month retroactive Medicaid coverage benefit, how would the Department prevent this scenario from occurring?

Department response: 2018 Iowa Acts, Senate File 2418, required reinstatement of retroactive eligibility for individuals residing in nursing homes on the date of application. In accordance with Senate File 2418, which was passed by the Iowa Legislature during the 2018 session, the Department is revising the policy to reinstate a three-month retroactive Medicaid coverage benefit for applicants who are residents of a nursing facility (licensed under Iowa Code chapter 135C) at the time of application and are otherwise Medicaid-eligible.

In order to restore retroactive coverage for all Medicaid applicants, the Department must have legislative authority.

Whether the hospital receives a Medicaid reimbursement for services already provided may not always be dependent on retroactive coverage policy. When an application for Medicaid is filed with the Department, the effective date of Medicaid eligibility is the first day of the month in which the application was filed. Therefore, if an application is filed within the same month in which the services were received, the hospital could still receive Medicaid reimbursement for those services, as long as the application resulted in an approval of eligibility.

The respondent's questions assume that although a person is Medicaid-eligible, the person may not be on Medicaid at the time of hospital services. Facility-based Medicaid relates only to services provided in the nursing facility.

The Department did not revise the rule making based on the comments of the respondent. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on December 12, 2018.

Fiscal Impact

This rule making has a fiscal impact of \$100,000 annually or \$500,000 over five years to the State of Iowa. 2018 Iowa Acts, Senate File 2418, reinstates the three-month retroactive Medicaid coverage benefit for residents of nursing facilities if the residents are otherwise Medicaid-eligible during the retroactive period. Reinstating the three-month retroactive Medicaid coverage benefit to this population will allow more eligible people to receive Medicaid benefits during the retroactive months. Funding to restore retroactive eligibility for residents of long-term care facilities was authorized during the 2018 Legislative Session.

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 pursuant to rule 441—1.8(17A,217).

Review by Administrative Rules Review Committee

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

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

Effective Date

This rule making will become effective on February 6, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule **441—75.25(249A)**, definitions of “Retroactive certification period” and “Retroactive period,” as follows:

“*Retroactive certification period*” for medically needy shall mean one, two, or three calendar months prior to the date of application, as provided in 441—subrule 76.13(3). The retroactive certification period begins with the first month Medicaid-covered services were received and continues to the end of the month immediately prior to the month of application.

“*Retroactive period*” shall mean the three or fewer calendar months immediately preceding the month in which an application is filed, pursuant to 441—subrule 76.13(3).

ITEM 2. Amend subrule 76.13(3) as follows:

76.13(3) Retroactive enrollment.

a. Except as provided in paragraph 76.13(3)“*e*,” medical assistance shall be available for all or any of the three months preceding the month in which an application is filed to a person who was pregnant, ~~or~~ an infant (under the age of one), or a resident of a nursing facility licensed under Iowa Code chapter 135C during any of the three months and who:

(1) and (2) No change.

b. No change.

c. Retroactive medical assistance shall be made available when an application has been made on behalf of a deceased person who was an infant, ~~or was pregnant,~~ or a resident of a nursing facility licensed under Iowa Code chapter 135C if the conditions in paragraph 76.13(3)“*a*” are met.

d. and *e.* No change.

[Filed 12/12/18, effective 2/6/19]

[Published 1/2/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/2/19.

ARC 4209C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to health and disability waiver

The Human Services Department hereby amends Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4 and 42 U.S.C. Section 1396n(d).

HUMAN SERVICES DEPARTMENT[441](cont'd)

Purpose and Summary

These amendments change the eligibility criteria for health and disability waiver participation. This change to the criteria will broaden the population that will be eligible for the waiver. While the change will not increase the number of members served at one time, the change will allow for an expanded population.

These amendments also revise the language regarding increasing the waiver budgets by putting in place specific guidelines for the process and cost limitations. Providers, members, case managers, and managed care organizations will have greater clarity regarding how the waiver service is to be administered because the amendments further define the benefits associated with the waiver.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 24, 2018, as **ARC 4089C**. The Department received no comments during the public comment period. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on December 12, 2018.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on February 6, 2019.

The following rule-making actions are adopted:

ITEM 1. Rescind and reserve paragraph **83.2(1)“b.”**

ITEM 2. Amend paragraph **83.2(2)“b”** as follows:

b. Except as provided below, the total monthly cost of the health and disability waiver services, excluding the cost of home and vehicle modification services, shall not exceed the established aggregate monthly cost for level of care as follows:

Skilled level of care	Nursing level of care	ICF/ID
\$2,792.65	\$959.50	\$3,742.93

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~~For members eligible for SSI who remain eligible for health and disability waiver services until the age of 25 because they are receiving health and disability waiver services upon reaching the age of 21, these amounts shall be increased by the cost of services for which the member would be eligible under 441—subrule 78.9(10) if still under 21 years of age.~~

For members enrolled in the health and disability waiver in accordance with subrule 83.2(1), when a member turns 21 years of age, the average monthly cost of services received through 441—subrule 78.9(10) (state plan private duty nursing or personal care services for persons aged 20 and under) shall be used to increase the monthly waiver budget in accordance with the following:

(1) The member must request the revised waiver budget through the member's case manager no earlier than two months before, and no later than six months after, the member's twenty-first birthday. A renewal request must be received annually no earlier than two months before, and no later than six months after, each subsequent birthday.

(2) The member's waiver budget shall be increased by the average monthly cost of state plan private duty nursing or personal care services for the member that was billed to and paid by Iowa Medicaid or an Iowa Medicaid-contracted managed care organization during the year in which the member is 20 years of age.

(3) Once the request is received by the department, the department shall determine the average monthly cost pursuant to the claims data available at the time of the request. No subsequent claims data shall be considered.

(4) The revised waiver budget reflecting the average cost of state plan private duty nursing or personal care services shall become effective on the later of the first day of the month of the member's twenty-first birthday or the first day of the month of the completed review.

(5) The revised waiver budget shall extend up to the first of the month following the member's twenty-fifth birthday and shall remain at the initially authorized amount for the member while aged 21 through 24.

[Filed 12/12/18, effective 2/6/19]

[Published 1/2/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/2/19.

ARC 4210C

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Rule making related to allocation of private activity bonds

The Iowa Finance Authority hereby amends Chapter 8, "Private Activity Bond Allocation," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 7C.12 and 16.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 7C.

Purpose and Summary

The purpose of these amendments is to update and clarify the rules surrounding the allocation of private activity bonds, as defined in Section 141 of the Internal Revenue Code. The rules in Chapter 8 have not been revised for many years. The amendments also update the Authority's address.

IOWA FINANCE AUTHORITY[265](cont'd)

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 24, 2018, as **ARC 4087C**. No public comments were received. Two changes from the Notice have been made. Rule 265—8.2(7C) was revised by striking the Authority's address and adding a reference to the address specified in rule 265—1.3(16). (See **ARC 4196C**, IAB 1/2/19.) In addition, the word "for" was added before "industrial purposes" in subrule 8.3(3).

Adoption of Rule Making

This rule making was adopted by the Authority on December 5, 2018.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on February 6, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 265—8.1(7C) as follows:

265—8.1(7C) General. The governor has appointed the executive director of the Iowa finance authority as the governor's designee responsible for administration of the law which establishes procedures for allocation of private activity bonds as defined in Section 141 of the Internal Revenue Code. Procedures set out in the law and in these rules shall be followed in allocating the private activity bond state ceiling ("state ceiling") between cities, counties and the state of Iowa. ~~For each calendar year, the state ceiling shall be allocated among bonds issued for various purposes in the percentages set forth in Iowa Code section 7C.4A. The state ceiling shall be allocated among all issuers for those various purposes annually in accordance with Iowa Code chapter 7C and these rules. All applications received in any calendar year shall expire as of December 31 of that year.~~

ITEM 2. Amend rule 265—8.2(7C) as follows:

265—8.2(7C) Forms and applications. Information and forms necessary for compliance with provisions of the law are available upon request from the Iowa Finance Authority, ~~2015 Grand Avenue, Des Moines, Iowa 50312~~ at the address set forth in rule 265—1.3(16) or on the website at

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iowafinanceauthority.gov. The telephone number of the authority is (515)725-4900. The facsimile number of the authority is (515)725-4901.

8.2(1) An issuer or beneficiary, or the duly authorized agent of an issuer or beneficiary, must make an application by filing the form, available from the governor's designee, entitled "Private Activity Volume Cap Application" for the allocation of a portion of the private activity bond state ceiling allocated pursuant to Iowa Code chapter 7C. Applications may be submitted electronically or via email or facsimile. An application for current year allocation or carryforward allocation may be submitted at any time.

8.2(2) An application for allocation may be made only after the governing body of an issuer has adopted a resolution evidencing an intent to issue the bonds.

8.2(3) An application must be accompanied by the application fee set forth in rule 265—8.10(7C), and all required attachments to the application must be submitted before such application is considered for allocation under rule 265—8.5(7C).

8.2(4) An application for allocation for industries under Iowa Code section 7C.4A(5) is limited to \$10 million per project per calendar year.

8.2(5) The state ceiling allocated under Iowa Code sections 7C.4A(4), 7C.4A(5), 7C.4A(6) and 7C.4A(7) shall be allocated among all issuers as provided in rules 265—8.3(7C) and 265—8.4(7C).

This rule is intended to implement Iowa Code sections 7C.4, 7C.5 and 7C.6.

ITEM 3. Amend rule 265—8.3(7C) as follows:

265—8.3(7C) Formula for Applications for current allocation received prior to the calendar year for such allocation.

~~8.3(1) The state ceiling shall be allocated among all issuers on the basis of chronological order of receipt of applications. Chronological order of receipt shall be determined by the date, hour and minute indicated by the time stamp as affixed to the application at the offices of the governor's designee. Applications for any given calendar year may be submitted to the Iowa finance authority offices during the month of December of the preceding year with a request that the application be treated as received when the Iowa finance authority opens for business on the first business day of the calendar year for which the application is made. Applications submitted in this manner must be clearly marked on the first page of such application with words such as: "This application for private activity bond allocation for year 2018 is to be held for constructive delivery and receipt by the Iowa finance authority upon the opening of business on the first business day of calendar year 2018." There may be only one application for each separate project. All applications so received with the application fee and any required documentation attached will be deemed received simultaneously by the Iowa finance authority on the first business day of the calendar year for which application is made. Expired applications made in previous years may be resubmitted to the authority pursuant to this procedure.~~

~~8.3(2) All applications that are submitted for receipt pursuant to the provisions of subrule 8.4(2) shall be considered simultaneously received at the opening of business on the first business day of the calendar year, and the same date, hour and minute shall be stamped on each application so received.~~

~~a. If the total amount of allocations requested in all of the complete applications received pursuant to subrule 8.4(2) 8.3(1) that seek (a) allocations of bonds for first-time farmers pursuant to Iowa Code section 7C.4A(4), (b) allocations for industries pursuant to Iowa Code subsection section 7C.4A(5) exceed the amount of the state ceiling available for that purpose, the applications will be considered for allocation in the order determined pursuant to the procedures set forth in paragraph 8.3(3) "a."~~

~~b. If the total amount of allocations requested in all of the applications received pursuant to subrule 8.4(2) that seek, or (c) allocations of private activity bonds issued by public political subdivisions, the proceeds of which are used by the issuing subdivision pursuant to Iowa Code section 7C.4A(6), exceed the amount of the state ceiling available for that the respective purpose, the applications for each applicable purpose will be considered for allocation in the order determined pursuant to the procedures set forth in paragraph 8.3(3) "b." subrule 8.3(3).~~

~~8.3(3) Allocation process.~~

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~~a.~~ In order to determine the order of allocation of the state ceiling to each of the applications for first-time farmer purposes, for industrial purposes or for political subdivisions that are simultaneously received pursuant to subrules 8.4(2) and 8.4(4) subrule 8.3(1), each application for the applicable purpose shall be assigned a preference number determined by a random drawing for allocation for such purpose conducted at approximately 10 a.m. on the first day of business of the calendar year at the Iowa finance authority offices. Any person desiring to attend and witness the drawing and assigning of preference numbers may do so. Each application for a specified purpose shall be assigned an identification code that shall be written on the outside first page of the sealed envelope containing the application. The identification codes for applications for a specified purpose shall be written on strips of paper and placed in individual envelopes and sealed. The sealed envelopes containing identification codes for each application for the specified purpose shall be placed in a container separate containers, mixed, and drawn from the applicable container at random by a member of the authority's staff. The application corresponding with the identification code that is drawn first shall be placed first on the list of applicants to receive an allocation of the state ceiling for such purpose. The application corresponding with the identification code that is selected second shall be placed second on the applicable list, and so forth. Drawings shall continue until all applications for each specified purpose are assigned a place on the list of applications for such purpose received.

~~b.~~ In order to determine the order of allocation of the state ceiling to each of the applications for state ceiling for political subdivisions that are simultaneously received pursuant to subrules 8.4(2) and 8.4(4), each application shall be assigned a preference number determined by a random drawing conducted at 10 a.m. on the first day of business of the calendar year at the Iowa finance authority offices. Any person desiring to attend and witness the drawing and assigning of preference numbers may do so. Applications shall be assigned an identification code that shall be written on the outside of the sealed envelope containing the application. The identification codes shall be written on strips of paper and placed in individual envelopes and sealed. The sealed envelopes containing identification codes shall be placed in a container, mixed, and drawn from the container at random by a member of the authority's staff. The application corresponding with the identification code that is drawn first shall be placed first on the list of applicants to receive an allocation of the state ceiling. The application corresponding with the identification code that is selected second shall be placed second on the list, and so forth. Drawings shall continue until all applications are assigned a place on the list of applications received.

~~8.3(4)~~ The governor's designee shall maintain one list of applications for private activity bonds for the purpose of industries and a separate list for applications for private activity bonds for the use of political subdivisions. The applications that are simultaneously received pursuant to subrules 8.4(2) and 8.4(4) shall be listed in the order of preferences established pursuant to paragraphs 8.3(3) "a" and 8.3(3) "b." Applications received after the opening of the first day of business of a calendar year shall be added to the appropriate list depending upon the subject of the application in the chronological order received.

~~8.3(5)~~ Formula for allocations following June 30 of each year. As permitted by Iowa Code section 7C.5, following June 30 of each year issuers which initially applied for state ceiling allocated under Iowa Code section 7C.4A(6) for bonds, the proceeds of which are to be used by the issuing political subdivision, shall be given priority over any applications received for state ceiling for bonds otherwise requiring an allocation under Section 146 of the Internal Revenue Code.

This rule is intended to implement Iowa Code sections 7C.4A(7) "a" and 7C.5.

ITEM 4. Amend rule 265—8.4(7C) as follows:

265—8.4(7C) Application for current allocation received during the calendar year.

~~8.4(1)~~ An issuer or beneficiary, or the duly authorized agent of an issuer or beneficiary, must make an application by filing the form available from the governor's designee entitled, "Application and Response," for the allocation of a portion of the private activity bond state ceiling. Applications for current allocation for any given calendar year may be submitted to the Iowa finance authority offices at any time during the calendar year.

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~~8.4(2)~~ Applications for any given calendar year may be submitted to the Iowa finance authority offices during the month of December of the previous year with a request that the application be treated as received when the authority opens for business on the first business day of the calendar year for which the application is made. Applications submitted in this manner must be contained in a sealed envelope that is clearly marked with words such as: “This application for private activity bond allocation for year 2001 is to be held for constructive delivery and receipt, and stamped ‘received’ by the Iowa Finance Authority upon the opening of business on the first business day of calendar year 2001.” Applicants should also indicate on the outside of the sealed envelope the type of bond for which application is made and the amount requested. There may be only one application for each separate project. All applications so received will be deemed received simultaneously as of the date, hour and minute of the opening of business of the Iowa finance authority on the first business day of the calendar year for which application is made. Expired applications made in previous years may be resubmitted to the authority pursuant to this procedure. Complete applications received during the calendar year will be allocated for each applicable purpose (other than applications for which the Iowa finance authority determines, in its sole discretion, to make an allocation under Iowa Code section 7C.4A(1) “a”(4) pursuant to subrule 8.5(3) and subject to subrule 8.5(2)) in the order such application is received.

~~8.4(3)~~ Applications for any given calendar year may be submitted to the Iowa finance authority offices at any time during the calendar year. Applications must be contained in a sealed envelope that is clearly marked with the year for which the application is made, the type of bond sought, and the amount of the state ceiling requested. Applications received during the calendar year will be immediately stamped with the day, hour and minute they are received by the authority.

~~8.4(4)~~ All applications received pursuant to the provisions of subrule 8.4(2) will be deemed to have been received simultaneously on the date, hour and minute that the authority opens for business on the first business day of the year for which the applications are made.

This rule is intended to implement Iowa Code sections 7C.4A and 7C.5.

ITEM 5. Amend rule 265—8.5(7C) as follows:

265—8.5(7C) Certification of current allocation. This rule implements 2000 Iowa Acts, chapter 1166, section 8, providing that “for the calendar year beginning January 1, 2001, applications for the state ceiling allocation under [Iowa Code] section 7C.4A, subsection 5, shall not be approved prior to March 1.” For the calendar year beginning January 1, 2001, unless Iowa Code chapter 7C has been otherwise amended, upon receipt of a completed application, the

8.5(1) The governor’s designee shall maintain separate lists of applications for private activity bonds for the purpose of industries, for private activity bonds for the use of political subdivisions, and for allocation pursuant to Iowa Code section 7C.4A(7). If there are additional applications after the state ceiling for the purpose of industries is fully allocated and, before June 30, the state ceiling for the use of political subdivisions is fully allocated to applications, all applications that have not been allocated any state ceiling will be placed on the list for allocation pursuant to Iowa Code section 7C.4A(7) in the chronological order of receipt without regard to the purpose for which such applications were made.

8.5(2) The governor’s designee shall promptly, commencing March 1, 2001, certify to the issuer the amount of the state ceiling allocated to the bonds for the purpose of the project for which the application was submitted, in the order as determined by Iowa Code chapter 7C and rules 265—8.3(7C) and 265—8.4(7C). The governor’s designee shall continue to allocate the state ceiling for each purpose separately (or, if the allocation is made under Iowa Code section 7C.4A(7), in the chronological order of applications received) until all the available state ceiling for that purpose is fully allocated. A project receiving an allocation made under Iowa Code section 7C.4A(7) is limited to \$50 million in any calendar year. If there is not sufficient available state ceiling to fully fund an application which is next in order for allocation, the governor’s designee shall notify the applicant of the amount that is available and the applicant shall have the option to take what is available within five calendar days of receiving notice of availability. If the applicant does not notify the governor’s designee of its decision to take the available allocation within five calendar days of receiving notice of that option, the available state ceiling shall be offered to the next application on the list under the same conditions, and the initial

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offeree will maintain its position on the list. If the partial allocation is accepted, the applicant ~~shall~~ may submit a new application for additional state ceiling and that application will be added to the bottom of the applicable list in the chronological order of its receipt.

8.5(3) If the bonds are issued and delivered prior to the expiration date of the allocation, then the issuer or the issuer's attorney shall within ten days following the issuance and delivery of the bonds notify the governor's designee by filing the form captioned "Notice "Private Activity Volume Cap Notice of Issuance and Delivery of Bonds." Upon receipt of the form the governor's designee shall return a time-stamped copy of the form to the issuer or issuer's attorney.

8.5(4) Upon receipt of a complete application for allocation for a qualified residential rental project, the bonds for which will be issued by the Iowa finance authority, the Iowa finance authority may determine in its sole discretion to allocate a portion of its allocation under Iowa Code section 7C.4A(1)"a"(4) to such application. If the Iowa finance authority determines in its sole discretion to make such a certification of allocation, the Iowa finance authority has the sole discretion to determine the amount and order of such certification of each such allocation.

This rule is intended to implement Iowa Code sections 7C.4A and 7C.5.

ITEM 6. Amend rule 265—8.6(7C) as follows:

265—8.6(7C) State ceiling carryforwards. In the event the aggregate principal amount of bonds issued by all issuers in a calendar year is less than the state ceiling for that calendar year, then an issuer or beneficiary may apply to the governor's designee for an allocation of a specified portion of the excess state ceiling to be applied to a specified carryforward project. The application must be in writing and shall comply with the carryforward provisions of Section 103(n) 146(f) of the Internal Revenue Code and regulations promulgated under that section. All applications for carryforward of state ceiling must be filed with the governor's designee by December 31 of the calendar year for which the allocation is to be carried forward from Any carryforward allocation that has not expired under Section 146 of the Internal Revenue Code released by the original applicant may be allocated to any other applicant for allocation for the same purpose for which the original application was made.

ITEM 7. Amend rule 265—8.7(7C) as follows:

265—8.7(7C) Expiration dates of applications and allocations.

8.7(1) All applications for current allocation received in any calendar year shall expire 120 days after the date of certification of allocation; provided that, before the expiration of the 120-day period, the issuer or beneficiary may make a request in writing to the governor's designee for an extension of not more than 30 days after the expiration of the 120-day period. Such request for extension shall be accompanied by an agreement among the issuer, the proposed purchaser of the bonds, and the beneficiary showing an intent of the proposed purchaser to purchase the bonds.

8.7(2) If the expiration date of either the 90-day 120-day period or any 30-day extension period is a Saturday, Sunday or any day on which the offices of the state banking institutions or savings and loan associations in the state are authorized or required to close, the expiration date is extended to the first day thereafter which is not a Saturday, Sunday or previously described day.

8.7(3) All applications for current allocation received in any calendar year which do not otherwise expire under subrules 8.7(1) and 8.7(2) shall expire as of December 24 of that year except for applications for current year allocation for bonds described in Iowa Code section 7C.11, which expire on December 31 of that year.

ITEM 8. Amend rule 265—8.9(7C) as follows:

265—8.9(7C) Use by political subdivisions. With respect to the amount of the state ceiling allocated for the purpose of private activity bonds issued by political subdivisions, the proceeds of which are used by the issuing political subdivisions under Iowa Code section 7C.4A(6), the political subdivision must use the proceeds to finance a project owned or utilized directly by the political subdivision, or finance

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a program of the political subdivision which the legislature by statute has authorized or directed the political subdivision to implement.

This rule is intended to implement Iowa Code section 7C.4A(6).

ITEM 9. Amend rule 265—8.10(7C) as follows:

265—8.10(7C) Application and allocation fees. The Iowa finance authority may charge reasonable fees for providing administrative assistance with regard to the filing of applications and the allocation of the private activity bond state ceiling in accordance with these rules. A fee of ~~1 2~~ 2 basis ~~point (.01%)~~ points (.02%) of the amount of state ceiling for which application is made shall be paid by the applicant upon filing the application with the governor's designee. ~~An additional fee of 1 basis point shall be paid by the applicant upon receipt of the certification by the governor's designee of the state ceiling allocated.~~

ITEM 10. Rescind and reserve rule **265—8.11(7C)**.

[Filed 12/7/18, effective 2/6/19]

[Published 1/2/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/2/19.

ARC 4211C

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Rule making related to wastewater and drinking water treatment financial assistance program

The Iowa Finance Authority hereby amends Chapter 28, "Wastewater Treatment Financial Assistance Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 16.5 and 2018 Iowa Acts, Senate File 512.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2018 Iowa Acts, Senate File 512.

Purpose and Summary

The amendments are intended to implement changes required by 2018 Iowa Acts, Senate File 512, including the addition of drinking water treatment facilities to the program.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 24, 2018, as **ARC 4090C**. A public hearing was held on November 13, 2018. The public comment at the hearing related to the need to include protections for communities that rely on groundwater as their source of drinking water. Written comments were received making the same points as communicated at the public hearing. As a result, paragraph 28.3(2)"f" was revised to address the points raised in the public comments. In addition, references to 2018 Iowa Acts, Senate File 512, were updated because the legislation has been codified in Iowa Code section 16.134.

Adoption of Rule Making

This rule making was adopted by the Authority on December 5, 2018.

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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 Authority for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on February 6, 2019.

The following rule-making actions are adopted:

- ITEM 1. Amend **265—Chapter 28**, title, as follows:
WASTEWATER AND DRINKING WATER TREATMENT FINANCIAL ASSISTANCE PROGRAM
- ITEM 2. Amend rule 265—28.1(81GA, HF2782) as follows:

265—28.1(81GA, HF2782 16) Overview.

~~28.1(1) Statutory authority Sources of funds. The authority to provide financial assistance to communities that must install or upgrade wastewater treatment facilities and systems is provided by 2006 Iowa Acts, House File 2782, section 63. The wastewater and drinking water treatment financial assistance fund shall consist of appropriations made to the fund and transfers of interest, earnings, and moneys from other funds as provided by law.~~

~~28.1(2) Purpose. The purpose of the program is to provide grants financial assistance to enhance water quality and to assist communities to comply with water quality standards adopted by the department of natural resources. Financial assistance under the program shall be used for eligible costs to install or upgrade wastewater treatment facilities and systems, and drinking water treatment facilities and systems, including source water protection projects, and for engineering or technical assistance for facility planning and design.~~

- ITEM 3. Amend rule 265—28.2(81GA, HF2782) as follows:

265—28.2(81GA, HF2782 16) Definitions.

~~“Authority” or “IFA” means the Iowa finance authority as established by Iowa Code chapter 16.~~

~~“Committee” means the water quality financing review committee consisting of the secretary of agriculture or the secretary’s designee, the executive director of the authority or the executive director’s designee, and the director of the department of natural resources or the director’s designee.~~

~~“Community” means a city, county, sanitary district, rural water district, or other governmental body empowered to provide sewage collection and treatment services or drinking water distribution and treatment in connection with a project. “Community” includes a utility management organization formed under Iowa Code chapter 28E or operated by a rural water system organized under Iowa Code chapter 357A or 504.~~

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“Costs” means all expenses incurred by the recipient and determined by the authority as reasonable and necessary to carry out a project.

“Department” or “DNR” means the Iowa department of natural resources.

“Director” means the director of the authority.

“Disadvantaged community” means the same as defined in Iowa Code section 455B.199B.

“Program” means the wastewater and drinking water treatment financial assistance program created in 2006 Iowa Acts, House File 2782, section 63 Iowa Code section 16.134.

“Project” means the acquisition, construction, reconstruction, extension, equipping, improvement or rehabilitation of any works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner and for drinking water infrastructure improvements, source water protection, and other activities intended to facilitate public water supply system compliance and public health protection.

“Recipient” means the entity receiving funds from the program.

“SRF” means the state revolving fund, which is the Iowa water pollution control works and drinking water facilities financing program administered by IFA and DNR.

ITEM 4. Amend rule 265—28.3(81GA,HF2782) as follows:

265—28.3(81GA,HF2782 16) Project funding.

28.3(1) *Recipient eligibility Approval of projects.* Communities eligible to apply for assistance shall meet the following criteria: The committee will approve or deny applications for financial assistance. The committee will approve financial assistance from the fund in accordance with the priorities listed in subrule 28.3(2). The committee will determine the weighting of priorities on an annual basis.

a. The project will serve a community that qualifies as a disadvantaged community as defined by DNR for the drinking water facilities revolving loan fund established in Iowa Code section 455B.295;

b. The community is required to install or upgrade wastewater treatment facilities or systems due to regulatory activity in response to water quality standards adopted by DNR in calendar year 2006; and

c. The population of the community served by the project is less than 3,000.

28.3(2) *Project eligibility and priority.* Financial assistance is available for the upgrade or installation of wastewater treatment facilities and systems attributable to compliance with changes to the water quality standards adopted by DNR in calendar year 2006. Financial assistance shall be available under the program only for projects for which DNR determines that completion of the project, or a part of the project, is necessary for the community to meet water quality standards. Priority shall be given to projects in which the program financial assistance is used in connection with financing under the SRF, or is used in connection with other federal or state financing. Priority shall also be given to projects that will provide the most significant improvement to water quality; this criterion will be determined by the score given to a project by the department pursuant to the project priority rating system used for the water pollution control state revolving fund and set forth in 567—Chapter 91. Priority will be given:

a. To projects in which a disadvantaged community is seeking financial assistance for the installation or upgrade of wastewater treatment facilities and drinking water treatment facilities.

b. To projects whose completion will provide significant improvement to water quality in the watershed.

c. To communities that employ an alternative wastewater treatment technology pursuant to Iowa Code section 455B.199C.

d. To communities where sewer or water rates are the highest as a percentage of that community’s median household income.

e. To communities that employ technology to address the goals of the Iowa nutrient reduction strategy.

f. To communities whose drinking water facilities and systems use as a supply, or to projects whose completion will improve, source waters or waters on the state’s impaired waters list.

28.3(3) *Applications Awards.* Applications will be accepted quarterly on forms developed by IFA and available at www.iowafinanceauthority.gov. Grants will be awarded quarterly. IFA will coordinate

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~~with other applicable state or federal financing programs when possible. Financial assistance in the form of grants will be issued on an annual basis. No recipient will receive a grant in excess of \$500,000.~~

~~**28.3(4) Required matching funds.** Communities approved for financing shall provide matching moneys in the following amounts:~~

~~*a.* Sewered communities and unsewered incorporated communities with a population of less than 500 shall provide a 5 percent match.~~

~~*b.* Communities with a population of 500 or more but less than 1,000 shall provide a 10 percent match.~~

~~*c.* Communities with a population of 1,000 or more but less than 1,500 shall provide a 20 percent match.~~

~~*d.* Communities with a population of 1,500 or more but less than 2,000 shall provide a 30 percent match.~~

~~*e.* Communities with a population of 2,000 or more but less than 3,000 shall provide a 40 percent match.~~

~~**28.3(5) 28.3(4) Costs.** All eligible costs must be documented to the satisfaction of the authority before proceeds may be disbursed. The applicant must declare how much of the total project costs are attributable to complying with the changes to the water quality standards adopted by DNR in calendar year 2006.~~

~~**28.3(6) 28.3(5) Record retention.** The recipient shall maintain records that document all costs associated with the project. The recipient shall agree to provide access to these records to the authority. The recipient shall retain such records and documents for inspection and audit purposes for a period of three years from the date of the final disbursement of grant funds.~~

~~**28.3(7) 28.3(6) Site access.** The recipient shall agree to provide the authority, the department and the department's agent access to the project site at all times during the construction process to verify that the funds are being used for the purpose intended and that the construction work meets applicable state and federal requirements.~~

ITEM 5. Amend rule 265—28.4(81GA, HF2782), parenthetical implementation statute, as follows:

265—28.4(81GA, HF2782) 16) Termination; rectification of deficiencies; disputes.

ITEM 6. Amend 265—Chapter 28, implementation sentence, as follows:

These rules are intended to implement 2006 Iowa Acts, House File 2782, section 63 Iowa Code chapter 16.

[Filed 12/7/18, effective 2/6/19]

[Published 1/2/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/2/19.

ARC 4212C

LABOR SERVICES DIVISION[875]

Adopted and Filed

Rule making related to hoistway lighting and conduit

The Elevator Safety Board hereby amends Chapter 71, "Administration of the Conveyance Safety Program," Chapter 72, "Conveyances Installed On or After January 1, 1975," and Chapter 73, "Conveyances Installed Prior to January 1, 1975," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 89A.3.

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State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 89A.

Purpose and Summary

These amendments require additional lighting and conduit for hoistways of new elevators and additional hoistway lighting when an elevator controller is being replaced.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 24, 2018, as **ARC 4088C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on December 4, 2018.

Fiscal Impact

The estimated installation cost for hoistway lighting is \$100 per floor. Conduit is typically part of the package for a new elevator, but some elevator mechanics do not use the conduit. Labor costs to install the conduit are minimal.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 66.

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 March 1, 2019.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definition of “Center of the elevator path” in rule **875—71.1(89A)**:

“Center of the elevator path” means a vertical line through the center point of an elevator car top beginning 2 feet below the lower landing and ending 10 feet above the highest landing of an elevator.

ITEM 2. Adopt the following **new** subrules 72.10(3) and 72.10(4):

72.10(3) Permanent lighting shall be installed in the hoistway of an elevator contracted after March 1, 2019. Three-way switches to control the hoistway lighting shall be installed at the pit access door and the top landing access door. The lighting shall be sufficient to provide 10 foot-candles of light to the center of the elevator path measured when the car top lights are off. Engineering calculations that prove

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10 foot-candles of light are provided to the center of the elevator path may be substituted for light meter measurements under circumstances such as a glass back car where use of a light meter is not practical.

72.10(4) For conveyances contracted after March 1, 2019, all electrical wiring in a machine room, control space, control room, machinery space, and hoistway shall comply with ANSI/NFPA 70 and shall be enclosed in metal conduit, flexible conduit, or metal raceways. However, this subrule shall not apply in applications such as traveling cables and car top work lights where movement is required for proper function, or to operating devices and control equipment where adjustment may be needed.

ITEM 3. Adopt the following **new** subrule 72.13(7):

72.13(7) *Hoistway lighting.* If the controller for an elevator is being replaced, permanent lighting shall be installed in the hoistway of the elevator. Three-way switches to control the hoistway lighting shall be installed at the pit access door and the top landing access door. The lighting shall be sufficient to provide 10 foot-candles of light to the center of the elevator path measured when the car top lights are off. Engineering calculations that prove 10 foot-candles of light are provided to the center of the elevator path may be substituted for light meter measurements under circumstances such as a glass back car where use of a light meter is not practical.

ITEM 4. Adopt the following **new** subrule 73.8(8):

73.8(8) *Hoistway lighting.* If the controller for an elevator is being replaced, permanent lighting shall be installed in the hoistway of the elevator. Three-way switches to control the hoistway lighting shall be installed at the pit access door and the top landing access door. The lighting shall be sufficient to provide 10 foot-candles of light to the center of the elevator path measured when the car top lights are off. Engineering calculations that prove 10 foot-candles of light are provided to the center of the elevator path may be substituted for light meter measurements under circumstances such as a glass back car where use of a light meter is not practical.

[Filed 12/4/18, effective 3/1/19]

[Published 1/2/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/2/19.

ARC 4213C

MEDICINE BOARD[653]

Adopted and Filed

Rule making related to supervision of physician assistants

The Medicine Board hereby amends Chapter 21, "Physician Supervision of a Physician Assistant," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapters 147, 148 and 272C.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 147, 148 and 272C.

Purpose and Summary

This rule making amends the minimum requirements for a physician who supervises a physician assistant at a remote medical site.

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Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 12, 2018, as **ARC 3992C**. A public hearing was held on October 3, 2018, at 10 a.m. at the Board's office, Suite C, 400 S.W. Eighth Street, Des Moines, Iowa. No one attended the public hearing. The public comments are posted on the Board's website.

The current rules for the Iowa Board of Medicine and the Iowa Board of Physician Assistants require that each supervising physician physically visit a remote medical site to provide additional medical direction, medical services and consultation at least every two weeks or less frequently as specified in unusual or emergency circumstances. The proposed rules would allow the supervising physician to physically visit the remote medical site or communicate with a physician assistant at the remote medical site via electronic communications, at least every two weeks. The proposed rules would require that at least one supervising physician meet in person with the physician assistant at the remote medical site at least once every six months to evaluate and discuss the medical facilities, resources, and medical services provided at the remote medical site. The proposed rules are intended to lessen the burden on the supervising physicians by only requiring at least one supervising physician to physically visit the remote medical site every six months, rather than every two weeks. Several physician assistants and physician assistant groups requested that the meetings at least once every six months be allowed to occur via any form of secure communication, rather than in person. The Iowa Board of Medicine believes that an in-person meeting between at least one supervising physician (not each supervising physician) and the physician assistant at the remote medical site is essential to maintaining an effective supervisory relationship so that the supervising physician is familiar with the medical facilities, resources, and medical services provided at the remote medical site. The Iowa Board of Physician Assistants has indicated that it supports the rules and has initiated rule making that essentially mirrors the rules.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on October 26, 2018.

Fiscal Impact

This rule making will likely reduce the administrative costs associated with the supervision of a physician assistant at a remote medical site and increase access to health care services provided at remote medical sites. The rule making will likely have a positive fiscal impact, which is difficult to measure at this time.

Jobs Impact

This rule making will likely reduce the administrative burdens associated with the supervision of a physician assistant at a remote medical site and increase access to health care services provided at remote medical sites. The rule making will likely have a positive jobs impact, which is difficult to measure at this time.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, pursuant to 653—Chapter 3 and rule 653—21.8(17A,147,148,272C).

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

MEDICINE BOARD[653](cont'd)

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

Effective Date

This rule making will become effective on February 6, 2019.

The following rule-making action is adopted:

Amend subrule 21.4(6) as follows:

21.4(6) Remote medical site. ~~The supervisory agreement shall include a provision which ensures that the supervising physician visits a remote medical site to provide additional medical direction, medical services and consultation at least every two weeks or less frequently as specified in unusual or emergency circumstances. When visits are less frequent than every two weeks in unusual or emergency circumstances, the physician shall notify the board in writing of these circumstances within 30 days. "Remote medical site" means a medical clinic for ambulatory patients which is away from the main practice location of a the supervising physician and in which a the supervising physician is present less than 50 percent of the time when the remote medical site is open. "Remote medical site" will not apply to nursing homes, patient homes, hospital outpatient departments, outreach clinics, or any location at which medical care is incidentally provided (e.g., diet center, free clinic, site for athletic physicals, jail facility). The supervisory agreement shall include a provision which ensures that the supervising physician visits the remote medical site, or communicates with a physician assistant at the remote medical site via electronic communications, at least every two weeks to provide additional medical direction, medical services and consultation specific to the medical services provided at the remote medical site. For purposes of this subrule, communication may consist of, but shall not be limited to, in-person meetings or two-way, interactive communication directly between the supervising physician and the physician assistant via the telephone, secure messaging, electronic mail, or chart review. The supervisory agreement shall also include a provision which ensures that at least one supervising physician meets in person, and documents the meeting, with the physician assistant at the remote medical site at least once every six months to evaluate and discuss the medical facilities, resources, and medical services provided at the remote medical site. The board shall only grant a waiver or variance of this provision if substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in this rule.~~

[Filed 12/3/18, effective 2/6/19]

[Published 1/2/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/2/19.

ARC 4214C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rule making related to licensure by endorsement

The Board of Speech Pathology and Audiology hereby amends Chapter 300, "Licensure of Speech Pathologists and Audiologists," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapters 154F and 272C and section 147.76.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 147, 154F and 272C.

Purpose and Summary

Applicants for licensure by endorsement are not able to provide examination scores from the testing center when it has been more than ten years since the examination was taken because the examination company, Praxis, purges these scores after a decade has passed. The Board has granted waivers for applicants and, in review of rule 645—300.9(147), has found the rule unduly restrictive. The amendment allows applicants for licensure by endorsement to satisfy the requirement of proof of passing the Board-designated examination by providing evidence of a current clinical competence certification through the American Speech-Language-Hearing Association (ASHA), which confirms the completion of clinical hours and passing of the Praxis examination.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 26, 2018, as **ARC 4035C**. A public hearing was held on October 16, 2018, at 8:30 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on December 11, 2018.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 645—Chapter 18.

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 February 6, 2019.

The following rule-making action is adopted:

Amend rule 645—300.9(147) as follows:

645—300.9(147) Licensure by endorsement.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

~~300.9(1) An applicant~~ The board may issue a license by endorsement to any applicant from the District of Columbia or another state, territory, province or foreign country who has been a licensed speech pathologist or audiologist under the laws of another jurisdiction ~~shall file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:~~

- ~~1. Submits to the board a completed application;~~
- ~~2. Pays the licensure fee;~~
- ~~3. Shows evidence of licensure requirements that are similar to those required in Iowa;~~
- ~~4. Shows evidence of a current ASHA certificate or at least nine months of full-time clinical experience or its equivalent;~~
- ~~5. Shows evidence that the Praxis Examination scores have been sent directly from the examination service to the board;~~
- ~~6. Provides official copies of the academic transcripts; and~~
- ~~7. Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:~~
 - ~~● Licensee's name;~~
 - ~~● Date of initial licensure;~~
 - ~~● Current licensure status; and~~
 - ~~● Any disciplinary action taken against the license.~~

300.9(2) The applicant shall complete a board-approved application packet. Application forms may be obtained from the board's website (www.idph.iowa.gov/licensure) or directly from the board office. All applications shall be sent to Board of Speech Pathology and Audiology, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. Each application shall be submitted with the following:

- a. Payment of the appropriate fees payable to the Board of Speech Pathology and Audiology. The fees are nonrefundable.
- b. Verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification sent directly from the jurisdiction's board office if the verification provides:
 - (1) Licensee's name;
 - (2) Date of initial licensure;
 - (3) Current licensure status; and
 - (4) Any disciplinary action taken against the license.
- c. Evidence of current ASHA certification or submission of documents required under 300.3(4) "b."

[Filed 12/11/18, effective 2/6/19]

[Published 1/2/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/2/19.

ARC 4215C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rule making related to code of ethics

The Board of Speech Pathology and Audiology hereby amends Chapter 304, "Discipline for Speech Pathologists and Audiologists," Iowa Administrative Code.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 272C and section 147.76.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 147, 154F and 272C.

Purpose and Summary

This amendment updates the chapter to incorporate language used in the American Academy of Audiology (AAA) and the American Speech-Language-Hearing Association (ASHA) codes of ethics. This amendment includes a reference to the reporting requirements in Iowa Code section 135.131 and 641—Chapter 3 as the requirements relate to newborn and infant care screening evaluations.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 26, 2018, as **ARC 4036C**. A public hearing was held on October 16, 2018, at 8:30 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on December 11, 2018.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 645—Chapter 18.

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 February 6, 2019.

The following rule-making action is adopted:

Amend subrule 304.2(31) as follows:

304.2(31) Violation of the following code of ethics:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

a. Licensees shall provide ethical, professional services, conduct research with honesty and compassion, and respect the dignity, worth and rights of those served.

~~a.~~ b. Claims of expected clinical results shall be based upon sound evidence and shall accurately convey the probability and degree of expected improvement.

~~b.~~ c. Records shall be adequately maintained for the period of time required by applicable state and federal laws.

~~e.~~ d. Persons served professionally or the files of such persons will be used for teaching or research purposes only after obtaining informed consent from those persons or from the legal guardians of such persons.

~~d.~~ e. Information of a personal or professional nature obtained from persons served professionally will be released only to individuals authorized by the persons receiving professional service or to those individuals to whom release is required by law.

f. Licensees who engage in research shall comply with all institutional, state, and federal regulations that address any aspects of research, including those that involve human participants and animals, such as those promulgated in the current Responsible Conduct of Research by the U.S. Office of Research Integrity.

g. Individuals in administrative or supervisory roles shall not require or permit their professional staff to provide services or conduct clinical activities that compromise the staff members' independent and objective professional judgment.

~~e.~~ h. Relationships between professionals and between a professional and a client shall be based on high personal regard and mutual respect without concern for race, religious preference, sex, or age, ethnicity, gender identity/gender expression, sexual orientation, national origin, disability, culture, language or dialect.

~~f.~~ i. Referral of clients for additional services or evaluation and recommendation of sources for purchasing appliances shall be without any consideration for financial or material gain to the licensee making the referral or recommendation for purchase.

~~g.~~ j. Licensees who dispense products to persons served professionally shall provide clients with freedom of choice for the source of services and products.

~~h.~~ k. Failure to comply with current Food and Drug Administration regulations 21 CFR §801.420, "Hearing aid devices; professional and patient labeling," and 21 CFR §801.421, "Hearing aid devices; conditions for sale."

l. Licensees shall comply with universal newborn and infant hearing screening requirements within Iowa Code section 135.131 and 641—Chapter 3.

[Filed 12/11/18, effective 2/6/19]

[Published 1/2/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/2/19.

ARC 4216C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to personal transportation service

The Revenue Department hereby amends Chapter 26, "Sales and Use Tax on Services," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 421.14.

REVENUE DEPARTMENT[701](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 423.2 and 423.3 as amended by 2018 Iowa Acts, Senate File 2417.

Purpose and Summary

This rule making implements changes to the taxability of personal transportation services made by division XI of 2018 Iowa Acts, Senate File 2417. This rule making defines personal transportation service, addresses sourcing of personal transportation service, and describes the applicable exemptions.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 7, 2018, as **ARC 4108C**. A public hearing was held on November 27, 2018, at 1 p.m. in the auditorium of the Wallace State Office Building, Des Moines, Iowa. Three people attended the public hearing, and a comment was made by a representative of Uber Technologies. Uber asserted that the proposed rule did not make clear whether a transportation network company should collect tax or whether its drivers should collect tax. Uber was also concerned that the proposed rule “unduly burdened” Uber and other transportation network companies over other providers of personal transportation services.

Uber submitted written comments in line with its statements at the public hearing.

The Department modified its definition of “personal transportation service” to more explicitly reference language from Iowa Code chapter 321N, which regulates transportation network companies such as Uber. The Department also provided examples to illustrate the collection responsibility of a transportation network company in three scenarios: a driver only provides rides through one network; a driver provides rides through two networks; and a driver provides rides through a network and independent from a network.

In addition, references to 2018 Iowa Acts, Senate File 2417, have been updated to refer to Iowa Code sections 423.2(6)“ac” and 423.3(106) since the legislation has been codified.

Adoption of Rule Making

This rule making was adopted by the Department on December 12, 2018.

Fiscal Impact

This rule making has no fiscal impact beyond the impact estimated by the Legislative Services Agency for 2018 Iowa Acts, Senate File 2417. That estimate predicts that in FY 2019, the taxation of “ride sharing services” as enacted in Senate File 2417 will result in increased revenue of \$3.5 million and, by FY 2024, will result in increased revenue of \$18.7 million.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

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

REVENUE DEPARTMENT[701](cont'd)

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

Effective Date

This rule making will become effective on February 6, 2019.

The following rule-making action is adopted:

Rescind rule 701—26.80(422,423) and adopt the following new rule in lieu thereof:

701—26.80(422,423) Personal transportation service.

26.80(1) *Personal transportation service defined.* “Personal transportation service” means the arrangement or provision of transportation of a person or persons for consideration, regardless of whether the person or entity providing such service supplies or uses a vehicle in conjunction with the service. “Personal transportation service” includes, but is not limited to, the following:

a. Transportation services provided by a human driver, including but not limited to drivers with a Class C, Class D endorsement 3, or Class M license, or by a chauffeur as defined in Iowa Code section 321.1(8). Examples of such services include, but are not limited to, taxi services, driver services, limousine services, bus services, shuttle services, and rides for hire;

b. Transportation services provided by a nonhuman driver, autonomous vehicle, or driverless vehicle; and

c. Ride sharing services, including but not limited to use of a network to connect transportation network company riders to transportation network company drivers who provide prearranged rides as defined in Iowa Code section 321N.1(4).

EXAMPLE 1A: Marketplace X is a transportation network company that operates a network to connect drivers to riders. Driver D provides rides in Iowa exclusively through X’s network. A person in Iowa requests a ride through X’s network, and D provides the ride in D’s car. X is a marketplace facilitator. X must collect Iowa sales tax and applicable local option sales tax on the sales price of the ride. Because D makes all of D’s Iowa sales through X, which collects all applicable taxes on all of D’s rides, D does not need to register for an Iowa sales tax permit or file an Iowa sales tax return. X will report the sales tax on X’s Iowa sales tax return.

EXAMPLE 1B: D provides rides for X and Y, two different transportation network companies. X is a marketplace facilitator responsible for collecting and remitting Iowa sales tax and applicable local option sales tax on the sales price of the rides D provides through its network. Y is also a marketplace facilitator responsible for collecting all applicable taxes on the rides D provides through Y’s network. D still does not need to register for an Iowa sales tax permit or file an Iowa sales tax return.

EXAMPLE 1C: D independently provides rides in addition to providing rides through X’s network. X must collect all applicable taxes on the rides D provides through its network. X is not responsible for collecting tax on any of the rides D provides independent from X’s network. D, a seller of personal transportation service with physical presence in Iowa, must collect and remit Iowa sales tax and applicable local option sales tax on the sales price of the rides D sells independent of X’s network.

26.80(2) *Tax imposed; sourcing.* On and after January 1, 2019, the sales price from rendering, furnishing, or performing a personal transportation service in Iowa is subject to Iowa sales tax. The tax is imposed if the personal transportation service is first used in Iowa and is sourced to the location at which the service is first received.

EXAMPLE: R schedules a personal transportation service while at R’s residence in Des Moines. R schedules the transportation service to transport R from Grinnell to Iowa City. R independently travels to Grinnell, where R enters a vehicle owned by the transportation service. The transportation service takes R from Grinnell to Iowa City, where the service ends and R pays for the service. The sale is sourced to Grinnell, the location at which R first received the transportation service. The transportation service must charge sales tax and the applicable local option tax in Grinnell, even though R scheduled the service while in Des Moines and the service concluded and payment was made in Iowa City.

REVENUE DEPARTMENT[701](cont'd)

26.80(3) *No tax imposed on interstate motor carrier transportation service.* Where a personal transportation service involves interstate travel by a motor carrier as defined in 49 U.S.C. Section 13102(14), no tax shall be imposed on the transaction to the extent prohibited by 49 U.S.C. Section 14505.

26.80(4) *Exemption for transportation services furnished by a qualified public transit system, medical transportation service, or paratransit service.* The sales price from sales of transportation services by public transit systems, medical transportation services, or paratransit services is exempt from tax. For purposes of the exemption under Iowa Code section 423.3(106), the following definitions shall apply:

“Medical transportation” means a personal transportation service for an individual to travel to a health care provider for the individual’s medical care. Medical transportation is not limited to transportation services for immediate life-threatening or serious injuries.

“Paratransit service” means a personal transportation service provided to individuals with disabilities.

“Public transit system” means a public transit system as defined in Iowa Code section 324A.1(4). This rule is intended to implement Iowa Code sections 423.2(6) “ac” and 423.3(106).

[Filed 12/12/18, effective 2/6/19]

[Published 1/2/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/2/19.

ARC 4217C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to water service excise tax

The Revenue Department hereby adopts new Chapter 97, “State-Imposed Water Service Excise Tax,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2018 Iowa Acts, Senate File 512.

Purpose and Summary

This rule making adopts new Chapter 97 to establish rules to administer the water service excise tax enacted by 2018 Iowa Acts, Senate File 512. Specifically, these rules implement sections 10 through 17 of Senate File 512, which exempt certain sales of water from sales tax and create Iowa Code chapter 423G, imposing a water service excise tax on the sales price from the sale or furnishing of water service.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 18, 2018, as **ARC 3896C**. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on October 24, 2018, as **ARC 4083C**.

A public hearing was held on November 13, 2018, at 1 p.m. in Room 430, Fourth Floor, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received. References to 2018 Iowa Acts, Senate File 512, have been replaced with references to the corresponding sections of Iowa Code chapter 423G since the amendments in the

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Senate File have been codified in the 2019 Iowa Code. No other changes from the Amended Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on November 28, 2018.

Fiscal Impact

This rule making has no fiscal impact beyond the impact estimated by the Legislative Services Agency for 2018 Iowa Acts, Senate File 512. That estimate predicts that in FY 2019, Senate File 512 will have no impact on the General Fund, will reduce Secure an Advanced Vision for Education (SAVE) revenues by \$3.9 million, and will reduce local option sales tax (LOST) revenues by \$3 million. The estimate further predicts that by FY 2030, Senate File 512 will reduce General Fund revenues by \$26.1 million, will reduce SAVE revenues by \$5.2 million, and will reduce LOST revenues by \$4 million.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on February 6, 2019.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** Title XIII:

TITLE XIII
WATER SERVICE EXCISE TAX

ITEM 2. Adopt the following **new** 701—Chapter 97:

CHAPTER 97
STATE-IMPOSED WATER SERVICE EXCISE TAX

701—97.1(423G) Definitions.

97.1(1) Incorporation of definitions. To the extent they are consistent with Iowa Code chapter 423G, all words and phrases used in this chapter shall mean the same as defined in Iowa Code section 423.1 and rule 701—211.1(423).

97.1(2) Chapter-specific definitions. For the purposes of this chapter, unless the context otherwise requires:

REVENUE DEPARTMENT[701](cont'd)

“*Facilities*” means any storage tanks, water towers, wells, plants, reservoirs, aqueducts, hydrants, pumps, pipes, or any other similar devices, mechanisms, equipment, or amenities designed to hold, treat, sanitize, or deliver water.

“*State-imposed tax*” or “*tax*,” unless otherwise indicated, means the water service excise tax imposed by Iowa Code section 423G.3.

“*Water utility*” means the same as defined in Iowa Code section 423.3(103). “*Corporation*” as used in Iowa Code section 476.1(3) and as incorporated by Iowa Code section 423.3(103), includes municipal corporations. See 1968 Iowa Op. Atty. Gen. 1-21, 1968 WL 172465.

This rule is intended to implement Iowa Code sections 423G.2 and 423G.3.

701—97.2(423G) Imposition. A state-imposed tax of 6 percent is imposed upon the sales price of water service furnished by a water utility to a purchaser.

This rule is intended to implement Iowa Code section 423G.3.

701—97.3(423G) Administration.

97.3(1) *Generally.* The department is charged with the administration of the tax, subject to the rules, regulations, and direction of the director. The department is required to administer the tax as nearly as possible in conjunction with the administration of the state sales tax except that portion of the Iowa Code which implements the streamlined sales and use tax agreement.

97.3(2) *Application of 701—Chapter 11.* The requirements of 701—Chapter 11 shall apply to water utilities in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

This rule is intended to implement Iowa Code sections 423.3(103), 423G.3, and 423G.5.

701—97.4(423G) Charges and fees included in the provision of water service.

97.4(1) *Sales integral to the ability to furnish water service.* The water service excise tax applies to the sale of water by piped distribution to consumers or users, including sales of accompanying services that are integral to furnishing water by piped distribution, even if the water service and accompanying services are billed separately.

97.4(2) *Examples of sales integral to the provision of water service.* Sales of services to customers or users that are considered integral to the furnishing of water by piped distribution include, but are not limited to, the following:

- a. Sales of nonitemized tangible personal property included with the sale of water service or an accompanying service that is integral to the provision of water service. See subparagraph 97.4(4)“a”(2).
- b. The sales price of water sold, regardless of whether the water is metered.
- c. Service, account, or administrative charges or fees for water service, including but not limited to new customer account charges and minimum charges for access to water service, whether the customer uses the water service or not.
- d. Fees for connection, disconnection, or reconnection to or from a water utility’s facilities, including tap fees.
- e. Fees for maintenance, inspection, and repairs of the water distribution system, water supplies, and facilities, including but not limited to fees for labor or materials.
- f. Fees for using or checking water meters.
- g. Water distribution system infrastructure and improvement fees.

97.4(3) *Examples of sales that are not water service or are not integral to the provision of water service.* Sales of services that are not integral to the furnishing of water by piped distribution include, but are not limited to, the following:

- a. Residential service contracts regulated under Iowa Code chapter 523C.
- b. Sales or rentals of tangible personal property, other than water, sold for a separately itemized price. See subparagraph 97.4(4)“a”(1).
- c. Returned check fees.
- d. Deposits, including but not limited to check and meter deposits.

REVENUE DEPARTMENT[701](cont'd)

- e. Fees for printed bills, statements, labels, and other documents.
- f. Fees for late charges and nonpayment penalties.
- g. Leak detection fees.

97.4(4) *Sales generally not subject to water service excise tax.* Water utilities may make sales that may or may not be integral to the sale of water service but that are not subject to water service excise tax because those nonintegral sales are subject to sales tax under Iowa Code section 423.2 as the sale of tangible personal property or as enumerated non-water services.

a. *Sales of tangible personal property.* Whether the sale of tangible personal property that is integral to water service is subject to the water service excise tax depends on whether the tangible personal property is sold to the consumer or user for a separately itemized price.

(1) *Itemized tangible personal property.* Sales or rentals of tangible personal property by a water utility for a separately itemized price are not subject to the water service excise tax but may be subject to sales and use tax.

(2) *Nonitemized tangible personal property.* If the sale of tangible personal property is not itemized but is instead bundled with the sale of water service, including sales of services listed in subrule 97.4(2), then the entire sales price is subject to the water service excise tax.

b. *Painting of hydrants.* The painting of hydrants constitutes painting services under Iowa Code section 423.2(6) "aj." Painting is subject to sales tax and is not subject to water service excise tax.

c. *Plumbing and pipefitting.* Some repairs of a water distribution system may constitute plumbing and pipefitting under Iowa Code section 423.2(6) "an." Plumbing and pipefitting services are subject to sales tax and are not subject to water service excise tax.

97.4(5) *Exemptions.* The exemptions from sales tax under Iowa Code section 423.3 also apply to sales subject to water service excise tax. For example, a water utility that purchases water service from a different water utility may be eligible to claim the sale for resale exemption pursuant to Iowa Code section 423.3(2).

This rule is intended to implement Iowa Code sections 423G.4 and 423G.5.

701—97.5(423G) When water service is furnished for compensation.

97.5(1) *Itemized sales of water service.* Water service is furnished for compensation when water service is sold for a separately itemized price.

EXAMPLE: *Itemized sale of water service.* Z is an entity that provides water from a well by piped distribution to various homes in the community. Each home that is connected to the well pays \$20 per month, which is used by Z for maintaining the water distribution system. Z is a water utility making sales of water service and must collect and remit water service excise tax on the \$20 monthly fee charged to each of Z's members. See *In the Matter of Lakewood Utils.*, Iowa Dep't of Revenue, Docket No. 78-161-6A-RC (Feb. 8, 1980).

EXAMPLE: *Sale for resale.* An apartment owner purchases water from a city water utility and distributes the water to each unit through a system of pipes. The city meters the apartment owner's use of water each month and charges the apartment owner for the water service. The apartment owner separately bills each of the tenants \$40 per month for water service, including the cost of water and maintenance on the water distribution system. The apartment owner is a water utility and must collect and remit water service excise tax on the \$40 monthly charge for water service. The apartment owner may purchase the water from the city tax exempt as a sale for resale.

97.5(2) *Water service sold for an identifiable price.* Water service is furnished for compensation when the price of the water service is identifiable from an invoice, bill, catalogue, price list, rate card, receipt, agreement, or other similar document, including where the total sales price increases when water service is included in the sale.

EXAMPLE: *Cost varies with inclusion of water service.* A campground provides three campsite packages to its customers:

Package A includes only campsite access for \$10 per night.

Package B includes campsite access and an electrical hookup for \$20 per night.

Package C includes campsite access, an electrical hookup, and water service for \$30 per night.

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Sales of package C by the campground include sales of water service. The campground must collect and remit water service excise tax on \$10—the identifiable sales price of water service.

97.5(3) *Water service not furnished for compensation; incidental sales.* No sale of water service for compensation occurs where water service is not sold for a separately itemized or identifiable price and is incidental to the rental of real property.

EXAMPLE: Water service sold with real estate rental for one nonitemized price. A manufactured housing community (MHC) owner owns a well and pipes water to the lots. The MHC owner charges tenants \$500 per month for each lot rental. Water from the well is included in the \$500 rental charge. The MHC owner does not do any of the following: charge a flat water fee, charge tenants based on their actual water used, or offer comparable lots at a lower price that do not have access to water service. The MHC owner is not required to collect or remit water service excise tax because water is not being furnished for compensation; it is incidental to the rental of real property.

EXAMPLE: Water service sold with real estate rental for one nonitemized price. A manufactured housing community (MHC) purchases water from a city water utility and distributes the water to each lot in the community through a system of pipes. The city meters the MHC's use of water each month and charges the MHC for the water service and the applicable water service excise tax. The MHC charges its tenants \$500 for lot rental. As in the previous example, the MHC owner does not do any of the following: charge a flat water fee, charge tenants based on their actual water used, or offer comparable lots at a lower price that do not have access to water service. The MHC owner is not required to collect or remit water service excise tax because water is not being furnished for compensation; it is incidental to the rental of real property.

This rule is intended to implement Iowa Code section 423G.3.

701—97.6(423G) Itemization of tax required. A water utility shall add the tax to the sales price of the water service, and the tax, when collected, shall be stated as a distinct item on any bill, receipt, agreement, or other similar document. The tax shall be identified as the water service excise tax, and the amount of tax paid shall be displayed clearly on the bill, receipt, agreement, or other similar document provided to the purchaser.

This rule is intended to implement Iowa Code section 423G.3.

701—97.7(423G) Date of billing—effective date and repeal date. For purposes of determining whether sales tax or water service excise tax applies to billings which span across the 2018 Iowa Acts, Senate File 512, effective date of July 1, 2018, and the future repeal date as described in Iowa Code section 423G.7, the provisions of 701—subrule 14.3(9) shall apply.

This rule is intended to implement Iowa Code section 423G.5.

701—97.8(423G) Filing returns; payment of tax; penalty and interest.

97.8(1) *Application of 701—Chapter 12.* The requirements of 701—Chapter 12 shall apply to water utilities in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

97.8(2) *Frequency of deposit filing based on combined water service excise tax and sales tax.* With respect to the tax thresholds used for determining whether a retailer must remit sales tax semimonthly, monthly, quarterly, or annually, as described in rule 701—12.13(422), the threshold for determining how frequently a water utility must remit the water service excise tax shall be based on the sum of the total amount of sales tax collected and the total amount of water service excise tax collected.

EXAMPLE: Prior to the imposition of the water service excise tax, a water utility collected \$70,000 in sales tax per year. Pursuant to 701—subrule 12.13(2), the water utility filed its sales tax deposits with the department on a semimonthly basis. Following the imposition of the water service excise tax, the water utility now collects \$35,000 in sales tax per year and \$35,000 in water service excise tax per year. The combined sum of the water utility's monthly collected sales tax and water service excise tax is \$70,000. Therefore, the water utility will continue to make semimonthly deposits.

This rule is intended to implement Iowa Code section 423G.5.

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701—97.9(423G) Permits.

97.9(1) *Application of 701—Chapter 13.* The requirements of 701—Chapter 13 shall apply to water utilities in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

97.9(2) *Separate water service excise tax permit required.* All water utilities must register for a water service excise tax permit, and the water service excise tax shall be remitted under that permit. Water utilities that make water service sales subject to water service excise tax and other sales subject to sales tax shall obtain a water service excise tax permit in addition to their current sales tax permit and shall remit all sales tax under the sales tax permit and all water service excise tax under the water service excise tax permit.

This rule is intended to implement Iowa Code section 423G.5.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/2/19.

ARC 4218C**REVENUE DEPARTMENT[701]****Adopted and Filed****Rule making related to exemptions primarily benefiting manufacturers and other persons engaged in processing**

The Revenue Department hereby amends Chapter 211, "Definitions," and Chapter 230, "Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 421.17.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 423.3 as amended by 2018 Iowa Acts, Senate File 2417.

Purpose and Summary

This rule making implements the changes to Iowa Code section 423.3(47)"d" as amended by 2018 Iowa Acts, Senate File 2417.

Iowa Code section 423.3(47) provides a sales tax exemption for the "sales price from the sale or rental of computers, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies" if those items are, in relevant part, "directly and primarily used in processing by a manufacturer." Senate File 2417 modified definitions of "manufacturer" and "manufacturing." This rule making amends the Department's rules implementing that provision to reflect the changes in Senate File 2417, which went into effect on May 30, 2018.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 7, 2018, as **ARC 4109C**. A public hearing was held on November 27, 2018, at 9 a.m. in the auditorium of the Wallace State Office Building, Des Moines, Iowa.

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Six people attended the public hearing. Comments were received from representatives of the Iowa Association of Business and Industry (ABI) and the Iowa Taxpayers Association (ITA). The comments addressed the same issues: the exclusion of a person engaged in construction contracting from qualifying as a manufacturer, and the inclusion of a list of factors a manufacturer can use to rebut the presumption that a manufacturer's premises is primarily used to make retail sales according to the calculation set forth in the rule.

The Department received written comments from ABI and ITA mirroring the comments made at the public hearing. The Department also received written comments from LifeServe Blood Center, which voiced concern with the statutory change in 2018 Iowa Acts, Senate File 2417, excluding nonprofit organizations from qualifying as manufacturers.

The Department made four changes from the Notice in response to comments. The Department did not adopt the example proposed under the "manufacturer" subrule. The Department added some language to subparagraph 230.15(5)"c"(2) to clarify that the determination that a manufacturer's premises is primarily used to make retail sales is a presumption. The Department added subparagraph 230.15(5)"c"(3) to provide a nonexclusive list of factors manufacturers may use to rebut that presumption. The Department also added an example in subrule 230.15(5) illustrating how a manufacturer may use the factors to rebut the presumption.

In addition, references to 2018 Iowa Acts, Senate File 2417, have been removed since the amendments in the Senate File have been codified in the 2019 Iowa Code.

Adoption of Rule Making

This rule making was adopted by the Department on December 12, 2018.

Fiscal Impact

This rule making has no fiscal impact beyond the legislation it implements. According to the Legislative Services Agency's fiscal estimate for Senate File 2417, the Iowa Code changes implemented by this proposed rule making will increase General Fund revenues by \$13.8 million in FY 2019, \$13.9 million in FY 2020, \$14.4 million in FY 2021, \$14.9 million in FY 2022, \$15.5 million in FY 2023, and \$16.1 million in FY 2024.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on February 6, 2019.

The following rule-making actions are adopted:

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ITEM 1. Amend rule **701—211.1(423)**, definition of “Manufacturer,” as follows:

“*Manufacturer*” means ~~any person, firm, or corporation that purchases, receives, or holds personal property for the purpose of adding to its value by any process of manufacturing, refining, purifying, or combining of different materials or by packing of meats with an intent to sell at a gain or profit~~ the same as defined in Iowa Code section 423.3(47).

ITEM 2. Rescind and reserve subrule **230.2(1)**.

ITEM 3. Rescind subrule 230.15(4) and adopt the following **new** subrule in lieu thereof:

230.15(4) Manufacturer:

a. *Generally.* Iowa Code section 423.3(47)“d”(4) abrogates *The Sherwin-Williams Company v. Iowa Department of Revenue*, 789 N.W.2d 417 (Iowa 2010).

b. *Definitions.*

“*Construction contracting*” means engaging in or performing a construction contract as defined in rule 701—219.8(423).

“*Manufacturer*” means the same as defined in Iowa Code section 423.3(47).

“*Transporting for hire*” means the service of moving persons or property for consideration, including but not limited to the use of a “personal transportation service” as that term is described in Iowa Code section 423.2(6) and rule 701—26.80(422,423).

ITEM 4. Renumber subrule **230.15(5)** as **230.15(6)**.

ITEM 5. Adopt the following **new** subrule 230.15(5):

230.15(5) Manufacturing.

a. *Activities commonly understood to be manufacturing.* “Manufacturing” means the same as defined in Iowa Code section 423.3(47).

b. *Premises primarily used to make retail sales.*

(1) A person engaged in activities on a premises primarily used to make retail sales is not engaged in manufacturing at that premises and cannot claim this exemption for items used at that premises.

(2) The following are “premises primarily used to make retail sales”:

1. Restaurants.
2. Mobile food vendors, vehicles, trailers, and other facilities used for retail sales.
3. Retail bakeries.
4. Prepared food retailers establishments.
5. Bars and taverns.
6. Racing and gaming establishments.
7. Racetracks.
8. Casinos.
9. Gas stations.
10. Convenience stores.
11. Hardware and home improvement stores.
12. Grocery stores.
13. Paint or paint supply stores.
14. Floral shops.
15. Other retail stores.

c. *Rebuttable presumption.* In addition to the premises listed in paragraph 230.15(5)“b,” a premises shall be presumed to be “primarily used to make retail sales” when more than 50 percent of the gross sales of a business and its affiliates attributable to the premises are retail sales sourced to the premises under Iowa Code section 423.15(1)“a.”

(1) For purposes of paragraph 230.15(5)“c”:

“*Attributable to the premises*” means sales of tangible personal property at the premises or shipped from the premises to another location for sale or eventual sale.

“*Premises*” means any contiguous parcels, as defined in Iowa Code section 426C.1, which are owned, leased, rented, or occupied by a business or its affiliates and are operated by that business or

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its affiliates for a common business purpose. A “common business purpose” means the participation in any stage of manufacturing, production, or sale of a product. Whether a business is operating for a common business purpose is a fact-based determination that will depend on the individual circumstances at issue.

(2) Calculation. If a business seeking to claim this exemption makes retail sales sourced to a premises under Iowa Code section 423.15(1) “a” and the location is not one of those listed in paragraph 230.15(5) “b,” the business shall determine whether a specific premises are primarily used to make retail sales by determining the amount of retail sales sourced to the premises under Iowa Code section 423.15(1) “a” during the 12-month period after the date the tangible personal property claimed to be exempt is used at the premises. The calculation should be done as follows:

Retail sales sourced to the premises

Gross sales attributable to the premises

If the result is less than or equal to 0.5 (or 50 percent), the premises is not primarily used to make retail sales. If the result is greater than 0.5, the premises is presumed to be primarily used to make retail sales.

(3) Rebutting the presumption. If a premises is presumed to be primarily used to make retail sales under subparagraph 230.15(5) “c”(2), a manufacturer may prove to the department the premises is not primarily used to make retail sales by providing information regarding the following nonexclusive list of factors to support its assertion:

1. The square footage of the premises allocated to the manufacturing process.
2. The number of employees or employee work hours allocated to the manufacturing process.
3. The wages and salaries of employees working at the premises allocated to the manufacturing process.
4. The cost of operating the premises attributable to the manufacturing process.

The department’s determination shall be a fact-based determination based on the information provided by a manufacturer and the individual circumstances at issue.

EXAMPLE 1: Company A owns a centralized facility where it makes widgets and distributes them to several of its own retail stores for retail sale. The retail stores are not contiguous to the centralized facility. Company A purchases a widget maker for its centralized facility and seeks to claim this exemption. Because the widgets sold are sold at the retail stores, the sales of those widgets are sourced to the retail stores where the sales occur. Therefore, none of the sales are retail sales sourced to the centralized facility. Because Company A does not make retail sales sourced to the centralized facility, the centralized facility is not primarily used to make retail sales.

EXAMPLE 2A: Company A makes widgets at its premises in Iowa, known as Location 1. Company A sells its widgets to retailers for resale and also makes some retail sales that are sourced to Location 1.

Twelve months ago, Company A purchased and put into use at Location 1 a new molding machine for making new widgets. Company A paid tax on the sales price of the molding machine at the time of purchase. During the 12-month period after Company A first used the molding machine, 2 percent of the gross sales attributable to Location 1 were from retail sales sourced to Location 1 and 98 percent of the gross sales attributable to Location 1 were from sales of widgets to retailers.

Because less than half of the sales attributable to Location 1 during the 12-month period after the molding machine was first used at Location 1 were generated from retail sales sourced to Location 1, Location 1 is not primarily used to make retail sales. Therefore, if Company A’s use of the molding machine satisfies all other requirements of the exemption, Company A’s activities occurring on the premises constitute manufacturing.

EXAMPLE 2B: Same facts as in Example 2A, except that Company A also owns a second, noncontiguous premises in Iowa, known as Location 2. At Location 2, Company A operates a factory that makes the same types of widgets as Location 1. Company A also makes substantial retail sales that are sourced to Location 2.

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Twelve months ago, Company A purchased new molding machines for Location 1 and Location 2. Company A paid tax on the sales price of the molding machines. During this 12-month period, 2 percent of the gross sales attributable to Location 1 were retail sales sourced to Location 1 and 98 percent of the gross sales attributable to Location 1 were from sales of widgets to distributors. Also during this 12-month period, 60 percent of the gross sales attributable to Location 2 were retail sales sourced to Location 2 and 40 percent of the gross sales attributable to Location 2 were from sales of widgets to distributors.

With respect to Location 1, the outcome is the same as in Example 1A. Because less than half of the sales attributable to Location 1 during the 12-month period after the molding machine was used at Location 1 were generated from retail sales sourced to Location 1, Location 1 is not primarily used to make retail sales.

However, Location 2 is presumed to be primarily used to make retail sales because more than half of the gross sales attributable to Location 2 are from retail sales sourced to Location 2.

EXAMPLE 2C: Same facts as in Example 2B. Company A decides to purchase new molding machines for both Location 1 and Location 2. Relying on the exemption determinations for the prior year, Company A pays sales tax on the purchase price of the molding machine for Location 2 but tenders an exemption certificate for the purchase of the molding machine for Location 1 and does not pay sales tax on that transaction.

Twelve months pass since the new molding machines were used at their respective locations. At Location 1, the gross sales attributable to the premises and retail sales sourced to the premises remained the same. However, at Location 2, Company A experienced a decrease in on-site retail sales and an increase in distribution sales. Because of a shift in sales, 45 percent of the gross sales attributable to Location 2 were retail sales sourced to Location 2, and 55 percent of the gross sales attributable to Location 2 were from sales of widgets to distributors.

Therefore, this year, Location 2 is no longer presumed to be primarily used to make retail sales because in the 12 months after the machine was used at Location 2, less than half of the gross sales attributable to Location 2 were from retail sales sourced to Location 2.

EXAMPLE 3A: Company A owns a premises on which it makes baseball bats. A portion of the premises is leased to Company B, which operates a retail store on the premises that sells clothing and is not commonly understood to be a manufacturer. Company A and Company B are unaffiliated entities.

Company A is seeking to purchase several new lathes to use in its bat production. In the last year, 95 percent of Company A's gross sales attributable to the premises came from selling bats to distributors, and 5 percent of Company A's gross sales attributable to the premises were from retail sales at a small on-site location. Also in the last year, 100 percent of Company B's gross sales attributable to the premises were from on-site retail sales.

Because Company A and Company B are not affiliated in any way, none of Company B's sales are attributable to Company A. Therefore, for purposes of Company A's determining its eligibility to claim the exemption, Company A's premises are not primarily used to make retail sales because less than half of its gross sales attributable to the premises are from retail sales sourced to the premises.

EXAMPLE 3B: Same facts as in Example 3A, except that Company B is an affiliate of Company A.

The result is the same; while Company B is an affiliate of Company A, the premises are not being operated for a common business purpose because Company B is not selling any of the bats manufactured by Company A. Therefore, none of Company B's business is attributable to Company A. For purposes of Company A's determining its eligibility to claim the exemption, Company A's premises are not primarily used to make retail sales because less than half of its gross sales attributable to the premises are from retail sales sourced to the premises.

EXAMPLE 3C: Same facts as in Example 3A, except that Company B is an affiliate of Company A and instead of operating a clothing store, Company B operates a sporting goods store where it sells some of the bats manufactured by Company A.

In this case, Company B's sales are attributable to Company A because both companies use the premises for a common business purpose: the sale of baseball bats manufactured by Company A. Therefore, the gross sales attributable to the premises of both Company A and Company B must be

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included in Company A's gross sales attributable to the premises. The premises will be presumed to be primarily used to make retail sales if the combined retail sales by Company A and Company B that are sourced to the premises exceed 50 percent of the gross sales attributable to the premises.

EXAMPLE 4: Company A owns a premises not included in the list above at which it makes widgets. Company A sells 15 percent of its widgets by delivery to customers' homes, 30 percent to wholesalers, and the remaining 55 percent directly to customers who pick up widgets at the premises. Company A's premises is presumed to be primarily used to make retail sales.

Company A dedicates 75 percent of the square footage of the premises to the production of widgets, 20 percent to storage, and 5 percent to a loading dock. Company A employs a total of 50 people, 40 of whom work on the production floor making widgets. Company A's production staff accounts for 80 percent of its total wages and salaries paid to all employees. The cost of operating the widget production area accounts for 90 percent of Company A's total expenses. Upon claiming this exemption, Company A provides information satisfactory to the department to demonstrate these facts. Company A qualifies for the exemption.

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