



# IOWA ADMINISTRATIVE BULLETIN

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Pages 1505 to 1594

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## 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.

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

### 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 2018

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
16	Friday, January 12, 2018	January 31, 2018
17	Friday, January 26, 2018	February 14, 2018
18	Friday, February 9, 2018	February 28, 2018

**PLEASE NOTE:**

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Friday, January 5, 2018, 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 20, 2017, Iowa Administrative Bulletin.

### COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]"umbrella"

Commission-approved interstate reciprocity agreement—criteria for participation, 21.15

Notice **ARC 3540C** ..... 1/3/18

### HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

Transfer of duties from Iowa emergency response commission to department; local

emergency planning committees, rescind chs 100, 101; amend chs 102, 103 Notice **ARC 3531C** ..... 1/3/18

### HUMAN SERVICES DEPARTMENT[441]

Iowa health and wellness plan, 74.1 Filed **ARC 3548C** ..... 1/3/18

Elimination of three-month retroactive Medicaid coverage benefit, amendments to chs 74 to

76 Filed **ARC 3549C** ..... 1/3/18

Family planning services, 75.1, 75.70, 76.2, 76.14(2) Filed **ARC 3550C** ..... 1/3/18

Crisis response services; subacute mental health services, 77.55, 77.56, 78.60, 78.61,

79.1(2), 79.3(2)"d" Filed **ARC 3551C** ..... 1/3/18

HCBS waivers—home-delivered meals, 78.34(11), 78.37(8), 78.38(6) Filed **ARC 3552C** ..... 1/3/18

Hospice services election statement—Medicare election of hospice benefits, 78.36(4)"b"(1)

Filed **ARC 3553C** ..... 1/3/18

Medicaid providers—alternative means for providing documentation of services, 79.3(2)

Filed **ARC 3554C** ..... 1/3/18

Child care centers—allowable exemptions, 109.1 Filed **ARC 3555C** ..... 1/3/18

Child care settings—sleep practices, professional development training, definition of

"relative," amendments to chs 109, 110, 120 Filed **ARC 3556C** ..... 1/3/18

Weapons present in child care settings, 109.10(17), 110.8(1)"t," 120.8(1)"q"

Notice of Termination **ARC 3547C** ..... 1/3/18

Juvenile detention reimbursement, amendments to ch 167 Notice **ARC 3546C** ..... 1/3/18

### IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Organization; investment board; benefits advisory committee; protection occupations;

employers; benefits, amendments to chs 1 to 5, 11, 31 Notice **ARC 3537C** ..... 1/3/18

### LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

OSHA civil penalty structure, amendments to ch 3 Filed **ARC 3557C** ..... 1/3/18

Amusement rides and devices—operator requirements, inspections, and payments,

61.3(4)"a," 61.4(1)"a," 61.8 Notice **ARC 3539C** ..... 1/3/18

### PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Cosmetology arts and sciences—licensure of practitioners and establishments, continuing

education, amendments to chs 60, 61, 64 Filed **ARC 3558C** ..... 1/3/18

Licensure procedures for hearing aid specialists, amendments to chs 121 to 124 Filed **ARC 3559C** ..... 1/3/18

Massage therapy—licensure, education, curriculum, 131.1 to 131.6, 131.8, 132.2, 132.3

Notice **ARC 3541C** ..... 1/3/18

Licensure of athletic trainers, amendments to ch 351 Filed **ARC 3560C** ..... 1/3/18

### PUBLIC SAFETY DEPARTMENT[661]

Carbon monoxide alarms, ch 211 Notice **ARC 3545C** ..... 1/3/18

### REVENUE DEPARTMENT[701]

Deduction for contributions to Iowa education savings plan trust, 40.53, 41.5(18), 53.21

Notice **ARC 3542C** ..... 1/3/18

### TRANSPORTATION DEPARTMENT[761]

Holiday rest stops and rest areas; rest area sponsorship program, amend chs 105, 106; rescind

ch 123 Filed **ARC 3561C** ..... 1/3/18

Commercial learner's permit—period of validity, amendments to ch 607 Notice **ARC 3532C** ..... 1/3/18

Coordination of public transit services, amendments to ch 910 Notice **ARC 3533C** ..... 1/3/18

School transportation services provided by regional transit systems, amendments to ch 911  
Notice **ARC 3534C** ..... 1/3/18  
 Federal transit assistance, amendments to ch 922 Notice **ARC 3536C** ..... 1/3/18  
 Capital match revolving loan fund, amendments to ch 923 Notice **ARC 3535C**..... 1/3/18

**UTILITIES DIVISION[199]**

COMMERCE DEPARTMENT[181]“umbrella”  
 Cogeneration and small power production, 15.1, 15.10 Notice **ARC 3538C**..... 1/3/18

**WORKFORCE DEVELOPMENT DEPARTMENT[871]**

Employer contribution and charges; claims and benefits, 23.69, 23.70, 23.72(1), 24.1, 24.39,  
 24.40 Filed **ARC 3562C**..... 1/3/18

**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

Representative Megan Jones  
 4470 Highway 71  
 Sioux Rapids, Iowa 50585

Senator Mark Chelgren  
 819 Hutchinson  
 Ottumwa, Iowa 52501

Representative Amy Nielsen  
 168 Lockmoor Circle  
 North Liberty, Iowa 52317

Senator Mark Costello  
 37265 Rains Avenue  
 Imogene, Iowa 51645

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

Senator Wally Horn  
 101 Stoney Point Road, SW  
 Cedar Rapids, Iowa 52404

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

Senator Pam Jochum  
 2368 Jackson Street  
 Dubuque, Iowa 52001

Representative Guy Vander Linden  
 1610 Carbonado Road  
 Oskaloosa, Iowa 52577

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**Administrative Rules Coordinator**  
 Governor’s Ex Officio Representative  
 Capitol, Room 18  
 Des Moines, Iowa 50319  
 Telephone (515)281-5211

**DENTAL BOARD[650]**

Review of applications for  
license, permit, registration or  
qualification, 11.8, 20.18  
IAB 12/6/17 **ARC 3477C**

Board Office, Suite D  
400 S.W. Eighth St.  
Des Moines, Iowa

January 9, 2018  
2 p.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Air quality, amendments to chs  
20, 22, 23, 25, 30, 33, 34  
IAB 12/20/17 **ARC 3520C**

Conference Room 4 East  
Wallace State Office Bldg.  
Des Moines, Iowa

January 22, 2018  
1 p.m.

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

Prohibition of mechanical  
restraints in residential care  
facilities, 57.1, 57.33(8)  
IAB 12/6/17 **ARC 3473C**

Room 319  
Lucas State Office Bldg.  
Des Moines, Iowa

January 3, 2018  
10 a.m.

Residential care facilities for  
persons with an intellectual  
disability, 57.1, 57.6  
IAB 12/6/17 **ARC 3472C**

Room 319  
Lucas State Office Bldg.  
Des Moines, Iowa

January 3, 2018  
10 a.m.

Residential care facilities for  
persons with mental illness, ch  
62  
IAB 12/6/17 **ARC 3474C**

Room 319  
Lucas State Office Bldg.  
Des Moines, Iowa

January 3, 2018  
10 a.m.

Residential care facility—three-  
to five-bed specialized license,  
ch 63  
IAB 12/6/17 **ARC 3475C**

Room 319  
Lucas State Office Bldg.  
Des Moines, Iowa

January 3, 2018  
10 a.m.

**IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]**

Organization; investment  
board; benefits advisory  
committee; protection  
occupations; employers;  
benefits, amendments to chs 1  
to 5, 11, 31  
IAB 1/3/18 **ARC 3537C**

IPERS  
7401 Register Dr.  
Des Moines, Iowa

January 23, 2018  
10 to 11 a.m.

**LABOR SERVICES DIVISION[875]**

Amusement rides and  
devices—operator  
requirements, inspections,  
and payments, 61.3(4)“a,”  
61.4(1)“a,” 61.8  
IAB 1/3/18 **ARC 3539C**

150 Des Moines St.  
Des Moines, Iowa

January 25, 2018  
1:30 p.m.  
(If requested)

**LABOR SERVICES DIVISION[875](cont'd)**

Wind tower lifts; wind turbine tower elevators; update of references to ASME code, 71.11, 71.14(1)“b,” 72.1, 72.13(2), 73.8(2) IAB 12/20/17 <b>ARC 3503C</b>	150 Des Moines St. Des Moines, Iowa	January 10, 2018 1:30 p.m. (If requested)
Boilers and pressure vessels, 81.5, 82.1, 83.1(1), 84.1(1), 85.3(1), 90.15(1), 91.1(2), 91.13(3), 93.2 IAB 12/20/17 <b>ARC 3504C</b>	150 Des Moines St. Des Moines, Iowa	January 10, 2018 10:30 a.m. (If requested)

**PROFESSIONAL LICENSURE DIVISION[645]**

Massage therapy—licensure, education, curriculum, 131.1 to 131.6, 131.8, 132.2, 132.3 IAB 1/3/18 <b>ARC 3541C</b>	Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	January 23, 2018 9 to 10 a.m.
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**PUBLIC SAFETY DEPARTMENT[661]**

Carbon monoxide alarms, ch 211 IAB 1/3/18 <b>ARC 3545C</b>	First Floor Public Conference Room 125 Oran Pape State Office Bldg. Des Moines, Iowa	January 23, 2018 10 a.m.
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**TRANSPORTATION DEPARTMENT[761]**

Motor vehicle and travel trailer dealers, manufacturers, distributors and wholesalers, amendments to ch 425 IAB 12/20/17 <b>ARC 3513C</b>	Motor Vehicle Division Offices 6310 SE Convenience Blvd. Ankeny, Iowa	January 11, 2018 10 a.m. (If requested)
Commercial learner’s permit—period of validity, amendments to ch 607 IAB 1/3/18 <b>ARC 3532C</b>	Motor Vehicle Division Offices 6310 SE Convenience Blvd. Ankeny, Iowa	January 25, 2018 1 p.m. (If requested)
Coordination of public transit services, amendments to ch 910 IAB 1/3/18 <b>ARC 3533C</b>	First Floor, North Conference Room DOT Administration Bldg. 800 Lincoln Way Ames, Iowa	January 25, 2018 8 a.m. (If requested)
School transportation services provided by regional transit systems, amendments to ch 911 IAB 1/3/18 <b>ARC 3534C</b>	First Floor, North Conference Room DOT Administration Bldg. 800 Lincoln Way Ames, Iowa	January 25, 2018 9 a.m. (If requested)
Federal transit assistance, amendments to ch 922 IAB 1/3/18 <b>ARC 3536C</b>	First Floor, North Conference Room DOT Administration Bldg. 800 Lincoln Way Ames, Iowa	January 25, 2018 11 a.m. (If requested)
Capital match revolving loan fund, amendments to ch 923 IAB 1/3/18 <b>ARC 3535C</b>	First Floor, North Conference Room DOT Administration Bldg. 800 Lincoln Way Ames, Iowa	January 25, 2018 10 a.m. (If requested)



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 3540C

## COLLEGE STUDENT AID COMMISSION[283]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 261B.3, the Iowa College Student Aid Commission hereby gives Notice of Intended Action to amend Chapter 21, “Approval of Postsecondary Schools,” Iowa Administrative Code.

The proposed amendment updates rule 283—21.15(261B,261G) to incorporate the state authorization reciprocity agreement (SARA) requirement that Iowa SARA-approved for-profit schools extend the tuition refund policy to out-of-state residents attending distance education programs.

Interested persons may submit comments orally or in writing by 4:30 p.m. on January 23, 2018, to the Executive Director, Iowa College Student Aid Commission, 430 East Grand Avenue, Third Floor, Des Moines, Iowa 50309-1920. Written comments also may be sent by fax to (515)725-3401, by email to [todd.brown@iowa.gov](mailto:todd.brown@iowa.gov), or via the Iowa administrative rules website at [rules.iowa.gov](http://rules.iowa.gov).

The Commission does not intend to grant waivers under the provisions of these rules.

After analysis and review of this rule making, the Commission finds that there is no impact on jobs.

This amendment is intended to implement Iowa Code chapters 261, 261B, and 261G.

The following amendment is proposed.

Amend rule 283—21.15(261B,261G) as follows:

**283—21.15(261B,261G) Approval criteria for a school seeking to participate or renew participation in a commission-approved interstate reciprocity agreement under Iowa Code chapter 261G.** A school that applies to participate in a commission-approved interstate reciprocity agreement shall meet the following criteria:

**21.15(1)** The applicant school shall be in compliance with Iowa Code chapter 261B as provided in this chapter.

**21.15(2)** The applicant school shall submit an institutional participation application as required by the commission-approved interstate reciprocity agreement. The application shall be signed by the school’s chief executive officer or chief academic officer.

**21.15(3)** A nonpublic applicant school must submit evidence that its most recent, official financial responsibility composite score, as calculated using the method prescribed by the United States Department of Education, is at least 1.5. A school demonstrates that its financial responsibility composite score is official by providing written confirmation of its composite score from the United States Department of Education. In accordance with policies established by the interstate reciprocity agreement administrator, the commission shall determine the official financial responsibility composite score for a school that does not participate in the postsecondary student financial aid programs authorized by the United States Department of Education.

**21.15(4)** The commission will consider the application of a nonpublic school whose most recent, official financial responsibility composite score is between 1.0 and 1.49. The applicant school must submit a copy of the school’s most recently audited financial statements accompanied by a written explanation of the circumstances that caused the school’s composite score to be below 1.5 and the school’s plan to raise its composite score to 1.5 within a time frame determined by the commission. The commission may approve, provisionally approve, or deny the school’s application.

**21.15(5)** A for-profit applicant school must demonstrate and maintain compliance with Iowa Code sections 714.18 and 714.23. The school shall apply the policy it adopts under Iowa Code section 714.23

## COLLEGE STUDENT AID COMMISSION[283](cont'd)

to students who attend its campus(es) in Iowa and to Iowa resident and nonresident students who attend distance education programs the school offers under the commission-approved interstate reciprocity agreement.

**21.15(6)** The applicant school shall demonstrate that the military deployment tuition and fee refund policy required under Iowa Code sections 261.9(1)“g,” 262.9(30), and 260C.14(20), subrule 21.3(5) and paragraph 21.14(1)“f” applies to students who attend its campus(es) in Iowa and to Iowa resident and nonresident students who attend distance education programs the school offers under the commission-approved interstate reciprocity agreement.

**21.15(3) 21.15(7)** The commission will provide a link to a page on its Web site for students to use to seek additional information about a school or to file a complaint about a school. An approved school will prominently provide disclose on its Web site the link to the commission’s Web page for students website the school’s participation in the commission-approved interstate reciprocity agreement and provide the commission’s contact information in a format prescribed by the commission for students who wish to inquire about the school or file a complaint. The school will provide the commission with the name of and business contact information for a person whom the school designates to receive student complaints from the commission and coordinate the school’s response.

**21.15(4) 21.15(8)** A school that is approved to participate in the commission-approved interstate reciprocity agreement shall remit an annual fee payable and due to the commission on July 15 of each year. ~~If a school’s participation in the commission-approved interstate reciprocity agreement terminates during a year, the~~ The school shall pay the annual fee to the commission if the school’s registration ~~commission’s approval to participate in the interstate reciprocity agreement~~ is valid as of July 15 of that year. The annual fee is nonrefundable and will be assessed based on a school’s full-time equivalent (FTE) enrollment as follows:

- Under 2,500 FTE – \$2,000.
- 2,500 to 9,999 FTE – \$4,000.
- 10,000 FTE or more – \$6,000.

**21.15(5) 21.15(9)** A school that is approved to participate in the commission-approved interstate reciprocity agreement shall remit to the interstate reciprocity agreement administrator any required fees.

**21.15(6) 21.15(10)** Upon approval by the interstate reciprocity agreement administrator, a school may continue its participation in the reciprocity agreement as long as it meets all requirements of the interstate reciprocity agreement.

**ARC 3531C**

## **HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 30.5 as amended by 2017 Iowa Acts, Senate File 351, the Homeland Security and Emergency Management Department hereby gives Notice of Intended Action to rescind Chapter 100, “Mission of Commission,” and Chapter 101, “Operations of Commission,” and to amend Chapter 102, “Emergency Planning Districts,” and Chapter 103, “Local Emergency Planning Committees,” Iowa Administrative Code.

The proposed rescissions and amendments are intended to implement 2017 Iowa Acts, Senate File 351. Senate File 351 eliminated the Iowa Emergency Response Commission and placed the associated responsibilities of the Commission under the purview of the Department. This transfer of duties does

## HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

not adversely impact the ability of the state to meet the requirements set forth in United States Code Title 42, Chapter 116, Emergency Planning and Community Right-to-Know Act (EPCRA).

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before January 23, 2018. Such written materials should be sent to Administrative Rules Coordinator, Department of Homeland Security and Emergency Management, 7900 Hickman Road, Suite 500, Windsor Heights, Iowa 50324; fax (515)725-3260; or email to [john.benson@iowa.gov](mailto:john.benson@iowa.gov).

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

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

These amendments are intended to implement Iowa Code chapters 29C and 30 as amended by 2017 Iowa Acts, Senate File 351.

The following amendments are proposed.

ITEM 1. Rescind and reserve **605—Chapter 100**.

ITEM 2. Rescind and reserve **605—Chapter 101**.

ITEM 3. Amend rule 605—102.1(30) as follows:

**605—102.1(30) Requirement to designate, and organization of, emergency planning districts.** The ~~Iowa emergency response commission (IERC) department~~ is required to designate emergency planning districts. A local emergency planning committee is appointed by the ~~IERC department~~ for each emergency planning district. The local emergency planning committee shall be responsible for the implementation of Emergency Planning and Community Right-to-Know Act (EPCRA) activities in each of the emergency planning districts including facilitating preparation and implementation of emergency planning for the emergency planning district.

ITEM 4. Amend rule 605—102.3(30) as follows:

**605—102.3(30) Application to modify districts.** Two or more local emergency planning committees with commonality of interests may petition the ~~IERC department~~ to amend, modify, or combine their districts. Petitions shall specify the geographical district requested, the reasons for the change, the benefit to the public by the designation of the proposed geographical district, and the proposed date for the change in designation.

ITEM 5. Amend **605—Chapter 102**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter~~ chapters 29C and 30 and ~~1992 Iowa Acts, chapter 1139.~~

ITEM 6. Amend rules 605—103.1(30) to 605—103.7(30) as follows:

**605—103.1(30) Requirement to appoint local emergency planning committees (LEPC) (LEPCs).**

**103.1(1) Purpose.** The ~~Iowa emergency response commission (IERC) department~~ is required to appoint members to local emergency planning committees. An LEPC is appointed for each of the emergency planning districts established in 605—Chapter 102.

**103.1(2) Representation.** As a minimum, each LEPC should be comprised of a representative from each of the following groups or organizations:

a. and b. No change.

c. ~~Civil defense~~ Emergency management personnel,

d. to l. No change.

**605—103.2(30) Committee Local emergency planning committee (LEPC) members.**

**103.2(1) Appointment of local emergency planning committees.** Nominations to ~~the~~ an existing LEPC shall be made by the ~~local emergency management commission, established under Iowa Code section 29C.9,~~ LEPC and shall be subject to review and appointment by the ~~IERC department.~~ To the extent possible, membership of the LEPC shall be composed of members of the local emergency management commission. Vacancies on the LEPC shall be filled in accordance with this subrule.

## HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

**103.2(2)** No change.

**103.2(3)** *Member changes.* The ~~IERC~~ department may revise the appointments made as it deems appropriate. Interested persons may petition the ~~IERC~~ department to modify the membership of an LEPC.

**605—103.3(30) Local emergency planning committee (LEPC) duties.**

**103.3(1)** to **103.3(3)** No change.

**103.3(4)** The LEPC shall designate an official to respond to requests for information from the public for ~~material~~ safety data sheets, chemical lists, chemical inventory forms, emergency response plans, and toxic chemical releases forms. The information, including minutes of the LEPC and related committee actions shall be available to the public during normal working hours at a location designated by the LEPC. (42 U.S.C. 11044(a))

**103.3(5)** The LEPC shall prepare an emergency plan for the district and shall review and revise as necessary the emergency plan at least annually. Both the initial emergency plan and any updates or revisions shall be submitted by the LEPC to the ~~IERC~~ department in accordance with ~~subrule 103.4(2)~~ rule 605—103.4(30). (42 U.S.C. 11003(a), 42 U.S.C. 11003(e))

**103.3(6)** to **103.3(8)** No change.

**103.3(9)** The LEPC shall annually publish notice that emergency response plan, ~~material~~ safety data sheets, and inventory forms have been submitted and how the public can obtain access to the material for review. (42 U.S.C. 11044(b))

**605—103.4(30) Emergency response plan development.** The ~~IERC~~ department recognizes that emergency planning includes more than chemical release planning. The chemical release planning required by this chapter and EPCRA shall be included in the comprehensive emergency planning conducted by the local emergency management commission as required by Iowa Code chapter 29C and planning standards of the Iowa homeland security and emergency management department.

**605—103.5(30) Local emergency planning committee (LEPC) office.** The LEPC shall designate a local government office that will serve as the focal point for receiving nonemergency notifications from facilities that are subject to the law. This office shall also be the depository for ~~material~~ safety data sheets, chemical lists, chemical inventory forms, emergency response plans, and toxic chemical releases forms and a point of contact for the public regarding community right-to-know inquiries, and the office of record for minutes of the LEPC meetings and related committee actions.

**605—103.6(30) Local emergency response committee (LEPC) meetings.** The LEPC shall meet as frequently as deemed necessary by the chair until the local emergency operations plan is developed and concurred with by the joint administration and reviewed by the ~~IERC~~ department. Subsequent to plan approval, the LEPC is required to meet at least annually to review emergency response procedures, emergency plans and ensure the actions required are properly administered within the local emergency planning district.

**605—103.7(30) Local emergency response plan submission.** After completion of the initial emergency response plan and any subsequent revisions thereto, the LEPC shall submit a copy to the ~~IERC~~ department. The ~~IERC~~ department shall review the submission and make recommendations to the LEPC on appropriate revisions that may be necessary to comply with provisions in 42 U.S.C. 11003(c) and state planning standards in 605—Chapter 7 to ensure coordination with emergency response plans of other emergency planning districts, the state of Iowa, and adjacent states. To the maximum extent practicable, the review shall not delay implementation of the plan or revisions thereto. All plans shall be submitted annually by ~~October 17~~ August 1.

**ARC 3547C****HUMAN SERVICES DEPARTMENT[441]****Notice of Termination**

Pursuant to the authority of Iowa Code section 237A.12, the Department of Human Services terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on November 8, 2017, as **ARC 3437C** amending Chapter 109, “Child Care Centers,” Chapter 110, “Child Development Homes,” and Chapter 120, “Child Care Homes,” Iowa Administrative Code.

These amendments provide parameters on weapons being present in a child care setting. Currently, there are no administrative rules regarding weapons in child development homes or licensed child care centers. It is recognized that some people choose to have weapons in their homes and also may utilize permits to carry weapons. As a result, it is important that the Department ensures that children in care are safe from any weapons.

The Department is terminating the rule making commenced in **ARC 3437C**. The Department is working with stakeholders to revise the proposed amendments with the intent to renotify the proposed amendments to incorporate changes and clarifications to requirements under these chapters.

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

**ARC 3546C****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 167, “Juvenile Detention Reimbursement,” Iowa Administrative Code.

These proposed amendments clarify procedures for juvenile detention facilities to follow when seeking annual cost reimbursement. Juvenile detention facilities eligible for cost reimbursement will have more clearly defined standards and the changes to dates related to process claim reimbursement.

Any interested person may make written comments on the proposed amendments on or before January 23, 2018. 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. Comments may be sent by fax to (515)281-4980 or by email to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

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

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

These amendments are intended to implement Iowa Code section 234.6.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition of “Detained” in rule **441—167.1(232)**:

“*Detained*” means the period of time a youth is physically occupying a bed in a juvenile detention home (that is, from the time of intake at the juvenile detention home (nothing prior to this) to the time a youth is discharged from the bed at the home (nothing after this)).

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

ITEM 2. Amend rule 441—167.3(232) as follows:

**441—167.3(232) Eligible facilities detention homes.** County and multicounty juvenile detention homes shall be eligible for reimbursement under this program when:

**167.3(1)** No change.

**167.3(2)** The home submits the ~~following reports in paragraphs 167.3(2)“a” and 167.3(2)“b”~~ by ~~May 15~~ March 15 and the certified audit in paragraph 167.3(2)“c” by March 15 or within ten days of completion if after March 15 of the year following the conclusion of the state fiscal year for which reimbursement will be made:

*a.* A written statement delivered in printed form or via electronic mail identifying the eligible total net cost that will be claimed under rule 441—167.5(232).

*b.* A printed or electronic copy of the ~~following sections of Form 470-0664, Financial and Statistical Report for Purchase of Service Contracts:~~ department-authorized financial and statistical report for juvenile detention homes.

(1) to (4) No change.

*c.* No change.

**167.3(3)** The department has reviewed the information submitted and determined that the costs to be claimed meet eligibility requirements. Eligible costs shall be determined by using a cost allocation methodology that follows generally accepted accounting principles (GAAP). Eligible costs shall be based on the portions of the allowable costs that are directly attributable to the function of detaining youth in the home.

*a.* and *b.* No change.

*c.* Costs of alternatives to detaining youth in the approved detention home are not eligible for reimbursement. Services ineligible for reimbursement include, but are not limited to:

(1) Community tracking and monitoring activities.

(2) Transportation during the time a youth is detained that is not related to detention service or care and keep or that is the responsibility of or funded by another source.

(3) Outreach services.

(4) In-home detention.

*d.* No change.

ITEM 3. Amend rule 441—167.4(232) as follows:

**441—167.4(232) Available reimbursement.** The reimbursement for the participating ~~facilities~~ detention homes shall be ~~the percentage of the allowable costs based on the distribution formula authorized in the appropriation language for the current fiscal year by Iowa law.~~

ITEM 4. Amend rule 441—167.5(232) as follows:

**441—167.5(232) Submission of voucher.** Eligible facilities shall submit a complete signed and dated Form GAX, General Accounting Expenditure, to the department to claim reimbursement.

**167.5(1)** Form GAX shall be submitted to the Department of Human Services, Division of Fiscal Management, First Floor, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, by August ~~10~~ 1.

**167.5(2)** The ~~form~~ Form GAX shall include the total net eligible costs incurred between July 1 and June 30 of the year covered by the reimbursement. ~~The total net eligible~~ These costs will be used to calculate the ~~legislatively authorized percentage of the home's allowable costs for the year covered by the reimbursement~~ reimbursement amount based on the distribution formula authorized by Iowa law.

**167.5(3)** Only facilities that submit Form GAX by August ~~10~~ 1 shall receive reimbursement.

ITEM 5. Amend rule 441—167.6(232) as follows:

**441—167.6(232) Reimbursement by the department.** Reimbursement shall be made ~~by August 31~~ to those participating ~~facilities which~~ juvenile detention homes that have complied with these rules.



**ARC 3537C****IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 97B.4 and 97B.15, the Iowa Public Employees' Retirement System (IPERS) hereby gives Notice of Intended Action to amend Chapter 1, “Organization,” Chapter 2, “Investment Board,” Chapter 3, “Benefits Advisory Committee,” Chapter 4, “Employers,” Chapter 5, “Employees,” Chapter 11, “Application for, Modification of, and Termination of Benefits,” and Chapter 31, “Agency Procedure for Rule Making,” Iowa Administrative Code.

IPERS proposes the following amendments: to conform rules with other rules and statutes or to rescind rules that are outdated, redundant or inconsistent, or no longer in effect to meet the requirements of the statutory five-year rules review for Chapters 1 to 5; to implement contribution rates for regular and special service members beginning July 1, 2018; to amend language to comply with open meeting laws; to require employers to obtain an IRS determination if they disagree with IPERS' employee coverage determination; to provide consistency with social security determinations of employee versus independent contractor coverage; to add a definition of emergency medical care provider consistent with the coverage afforded in Iowa Code chapter 97B; to match language in the bona fide refund rules with that in the bona fide retirement rules; to clarify that, effective July 1, 2018, a member will not have a bona fide retirement if the member enters into an agreement to return to work with the member's former employer, prior to or during the member's first month of entitlement and before receiving four months of payments from IPERS; to update the interest rate for fraud to match IPERS' lowered investment return assumption to 7 percent; to stress that there are only 60 days to make an alternative election; and to clarify that dual coverage is not allowed for the same position.

These amendments were prepared after consultation with IPERS' staff, IPERS' tax counsel and the Benefits Advisory Committee.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 23, 2018. Such written suggestions or comments should be directed to the IPERS Administrative Rules Coordinator at IPERS, 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117. Persons who wish to present their comments orally may contact the IPERS Administrative Rules Coordinator at (515)281-0054. Comments may also be submitted by fax to (515)281-0045 or by email to [adminrule@ipers.org](mailto:adminrule@ipers.org).

A public hearing will be held on January 23, 2018, from 10 to 11 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa. Persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject matter of the amendments.

There are no waiver provisions included in the proposed amendments.

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

These amendments are intended to implement Iowa Code sections 97B.4 and 97B.15.

The following amendments are proposed.

ITEM 1. Amend rule 495—1.1(97B) as follows:

**495—1.1(97B) Organization.** The agency shall administer the retirement system created by Iowa Code chapter 97B. Specific powers and duties of the agency, CEO, board, committee, and agency staff are set forth in Iowa Code chapter 97B and these administrative rules.

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

Operational units within the agency shall develop and administer policies and procedures governing retirement system programs, including accounting functions for the collection of funds from employers and employee members; disbursement of retirement benefits, death benefits, lump sum payments, and disability retirement benefits; training to employers and subsequent review of employer records for compliance with Iowa Code chapter 97B, rules and policies; preparation and release of informational newsletters and the annual report; and investment of funds contributed to the retirement system by employers and employee members. The retirement system is also the state administrator to the federal Social Security Administration pursuant to Iowa Code chapter 97C.

ITEM 2. Amend rule 495—2.1(97B) as follows:

**495—2.1(97B) Investment board.** The principal place of business of the board is IPERS' headquarters, 7401 Register Drive, Des Moines, Iowa.

1. Effective July 1, 2002, the board shall be the trustee of the retirement fund. The board shall meet annually, and may meet more often, to review its investment policies.

2. At the first meeting in each fiscal year, the voting members shall elect a chair and vice chair. Future meeting dates for the year shall also be decided at the first meeting. Advance notice of time, date, tentative agenda, and place of each meeting shall be given in compliance with Iowa Code chapter 21. All meetings of the board are open to the public and shall be held in accordance with Robert's Rules of Order, Newly Revised.

3. Parties wishing to present items for the agenda of the next meeting shall file a written request with the board chair at least five business days prior to the meeting. ~~The board may take up matters not included on its agenda.~~

4. Four members eligible to vote shall constitute a quorum. A simple majority vote of the full voting membership shall be the vote of the board.

5. Members of the board shall file financial statements pursuant to Iowa Code section 68B.35(2) "e."

6. In the event that it should become necessary to fill the chief investment officer position, the board may consult with, and make hiring recommendations to, the chief executive officer that are consistent with the requirements of Iowa Code chapter 8A, subchapter IV.

7. The board shall set the salary of the CEO pursuant to Iowa Code section 97B.3.

8. The board shall participate in the annual performance evaluation of the chief investment officer.

ITEM 3. Amend subrule 3.3(3) as follows:

**3.3(3) *Citizen representative.*** The citizen representative shall be elected by the eight voting representatives who serve under subrules 3.3(1) and 3.3(2).

ITEM 4. Amend subrule 4.1(6) as follows:

**4.1(6) *Patient advocates.*** For patient advocates employed under Iowa Code section 229.19, the county or counties for which services are performed shall be treated as the covered employer(s) of such individuals, and each such employer is responsible for forwarding reports and for withholding and forwarding the applicable IPERS contributions on wages paid by each employer.

ITEM 5. Amend subrule 4.3(6) as follows:

**4.3(6) *Fees for noncompliance.*** IPERS is authorized to impose reasonable fees on employers that do not file wage reports through the IPERS' employer self-service Internet application as described in subrule 4.3(2), that fail to timely file accurate wage reports, or that fail to pay contributions when due pursuant to subrule 4.3(3).

For submissions filed on or after August 1, 2008, IPERS shall charge employers a processing fee of \$20 plus 25 cents per employee for late submissions and manual processing of wage reports by IPERS. Employers that are late or that do not use IPERS' employer self-service Internet application may be charged both fees. In addition, if a fee for noncompliance is not paid by the fifteenth day of the month after the fee is assessed, the fee will accrue interest daily at the interest rate provided in Iowa Code ~~section~~ sections 97B.9 and 97B.70. No fee will be charged on late contributions received as a result of a wage adjustment, but interest on the amount due will be charged until paid in full.

IOWA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM[495](cont’d)

If the due date for a fee falls on a weekend or state-observed holiday, the due date shall be the next regularly scheduled business day.

ITEM 6. Amend paragraph **4.6(1)“b”** as follows:

b. Effective July 1, 2012, and every year thereafter, the contribution rates for regular members shall be publicly declared by IPERS staff no later than the preceding December as determined by the annual valuation of the preceding fiscal year. The public declaration of contribution rates will be followed by rule making that will include a notice and comment period and that will become effective July 1 of the next fiscal year. Contribution rates for regular members are as follows.

	Effective July 1, 2013	Effective July 1, 2014	Effective July 1, 2015	Effective July 1, 2016	Effective July 1, 2017	Effective July 1, 2018
Combined rate	14.88%	14.88%	14.88%	14.88%	14.88%	15.73%
Employer	8.93%	8.93%	8.93%	8.93%	8.93%	9.44%
Employee	5.95%	5.95%	5.95%	5.95%	5.95%	6.29%

ITEM 7. Amend subrule 4.6(2) as follows:

**4.6(2)** Contribution rates for sheriffs and deputy sheriffs are as follows.

	Effective July 1, 2013	Effective July 1, 2014	Effective July 1, 2015	Effective July 1, 2016	Effective July 1, 2017	Effective July 1, 2018
Combined rate	19.76%	19.76%	19.76%	19.26%	18.76%	19.52%
Employer	9.88%	9.88%	9.88%	9.63%	9.38%	9.76%
Employee	9.88%	9.88%	9.88%	9.63%	9.38%	9.76%

ITEM 8. Amend subrule 4.6(3) as follows:

**4.6(3)** Contribution rates for protection occupations are as follows.

	Effective July 1, 2013	Effective July 1, 2014	Effective July 1, 2015	Effective July 1, 2016	Effective July 1, 2017	Effective July 1, 2018
Combined rate	16.90%	16.90%	16.40%	16.40%	16.40%	17.02%
Employer	10.14%	10.14%	9.84%	9.84%	9.84%	10.21%
Employee	6.76%	6.76%	6.56%	6.56%	6.56%	6.81%

ITEM 9. Amend subrule 5.1(1) as follows:

**5.1(1) Definition of employee—generally.** A person is in employment as defined by Iowa Code chapter 97B if the person and the covered employer enter into a relationship which both recognize to be that of employer/employee. An employee is an individual who is subject to control by the agency for whom the individual performs services for wages. The term “control” refers only to employment and includes control over the way the employee works, where the employee works and the hours the employee works. The control need not be actually exercised for an employer/employee relationship to exist; the right to exercise control is sufficient. A public official may be an “employee” as defined in the agreement between the state of Iowa and the Secretary of Health and Human Services, without the element of direction and control.

A person is not in employment if the person volunteers services to a covered employer for which the person receives no remuneration.

IPERS makes employment determinations based on a common law test, which factors in behavior control, financial control and relationship of the parties. Once this decision is made, if any party disagrees with the decision, the party in disagreement will be required to submit an SS-8 Determination of Workers Status form directly to the Internal Revenue Service (IRS). Upon receipt of the determination by the IRS, IPERS will review this hiring arrangement a second time. A Final Agency Determination will be made at that time.

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

Further, if a person is performing essential governmental functions that can only be performed by a governmental employee, that person shall be IPERS-covered.

ITEM 10. Amend subrule 5.2(6) as follows:

**5.2(6)** Police, firefighters, emergency personnel, and certain peace officers.

a. Effective July 1, 1994, police officers and firefighters of a city not participating in the retirement systems established under Iowa Code chapter 410 or 411 shall be covered.

b. Emergency personnel, such as ambulance drivers, who are deemed to be firefighters by the employer shall be covered as firefighters.

c. Effective January 1, 1995, part-time police officers shall be covered in the same manner as full-time police officers.

d. Reserve peace officers employed under Iowa Code chapter 80D shall not be covered in accordance with Iowa Code section 80D.14.

e. A police chief or fire chief who has submitted a written request to the board of trustees created by Iowa Code section 411.36 to be exempt from coverage under Iowa Code chapter 411 shall not be covered under IPERS in accordance with Iowa Code sections 384.6(1) and 411.3. The city shall make on behalf of such person the contributions required under Iowa Code section 384.6(1) to the International City Management Association/Retirement Corporation.

f. Peace officer candidates of the department of public safety shall not be covered.

g. An emergency medical care provider who provides emergency medical services, as defined in Iowa Code section 147A.1, and who is not a member of the retirement systems established in Iowa Code chapter 401 or 411 shall be covered.

ITEM 11. Amend subrule 5.2(32) as follows:

**5.2(32)** Employees appointed by the state board of regents shall be covered unless, ~~at the discretion of the state board of regents,~~ they elect coverage in an ~~alternate~~ alternative retirement system qualified by the state board of regents. An employee must make an election in the alternative retirement system within 60 days of the employee's first day of employment.

ITEM 12. Amend subrule 5.2(40) as follows:

**5.2(40)** Employees of area community colleges shall be covered unless they elect coverage under an alternative system pursuant to a one-time irrevocable election. An employee must make an election in the alternative retirement system within 60 days of the employee's first day of employment.

ITEM 13. Amend subrule 5.2(41) as follows:

**5.2(41)** Volunteer emergency personnel, such as ambulance drivers and emergency medical technicians, shall be considered temporary employees and shall be covered if they meet the requirements of subrule 5.2(13). Persons who meet such requirements shall be covered under the protection occupation requirements of Iowa Code section 97B.49B if they are considered firefighters by their employers; otherwise they shall be covered under Iowa Code section ~~97B.44~~ 97B.1A.

ITEM 14. Amend rule 495—5.3(97B) as follows:

**495—5.3(97B) Participation in IPERS and another retirement system.** Effective July 1, 1996, an employee may actively participate in IPERS and another retirement system supported by public funds if the person does not receive credit under both IPERS and such other retirement system for ~~any~~ the same position held.

ITEM 15. Amend **495—Chapter 5**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 97B.1A, 97B.4, ~~97B.44~~, 97B.42, 97B.42A, 97B.49B, 97B.49C, and 97B.49G.

ITEM 16. Amend subrule 11.5(1) as follows:

**11.5(1) Bona fide retirement—general.** To receive retirement benefits, a member under the age of 70 must officially leave employment with all IPERS-covered employers, give up all rights as an employee, and complete a period of bona fide retirement. A period of bona fide retirement means four or more consecutive calendar months for which the member qualifies for monthly retirement benefit payments.

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

The qualification period begins with the member's first month of entitlement for retirement benefits as approved by IPERS. A member may not return to covered employment before filing a completed application for benefits. Notwithstanding the foregoing, the continuation of group insurance coverage at employee rates for the remainder of the school year for a school employee who retires following completion of services by that individual shall not cause that person to be in violation of IPERS' bona fide retirement requirements.

A member will not be considered to have a bona fide retirement if the member is a school or university employee and returns to work with the employer after the normal summer vacation. In other positions, temporary or seasonal interruption of service which does not terminate the period of employment does not constitute a bona fide retirement. A member also will not be considered to have a bona fide retirement if the member has, prior to or during the member's first month of entitlement, entered into ~~contractual~~ verbal or written arrangements with the employer to return to employment after the expiration of the four-month bona fide retirement period.

Effective July 1, 1990, a school employee will not be considered terminated if, while performing the normal duties, the employee performs for the same employer additional duties which take the employee beyond the expected termination date for the normal duties. Only when all the employee's compensated duties cease for that employer will that employee be considered terminated.

~~The bona fide retirement period will be waived, however, if the member is elected to public office which term begins during the normal four-month bona fide retirement period. This waiver does not apply if the member was an elected official who was reelected to the same position for another term. The bona fide retirement period will also be waived for state legislators who terminate their nonlegislative employment and the IPERS coverage for their legislative employment and begin retirement but wish to continue with their legislative duties.~~

The bona fide retirement period shall be waived for an elected official covered under Iowa Code section 97B.1A(8) "a"(1), and for a member of the general assembly covered under Iowa Code section 97B.1A(8) "a"(2), when the elected official or legislator notifies IPERS of the intent to terminate IPERS coverage for the elective office and, at the same time, terminates all other IPERS-covered employment prior to the issuance of the retirement benefit. Such an elected official or legislator may remain in the elective office and receive an IPERS retirement without violating IPERS' bona fide retirement rules. If such elected official or legislator terminates coverage for the elective office and also terminates all other IPERS-covered employment but is then reemployed in covered employment, and has not received a retirement as of the date of hire, the retirement shall not be made. Furthermore, if such elected official or legislator is reemployed in covered employment, the election to revoke IPERS coverage for the elective position shall remain in effect, and the elected official or legislator shall not be eligible for new IPERS coverage for such elected position. The prior election to revoke IPERS coverage for the elected position shall also remain in effect if such elected official or legislator is reelected to the same position without an intervening term out of office.

~~A member will have a bona fide retirement if the member returns to work as an independent contractor with a public employer during the four-month qualifying period. Independent contractors are not covered under IPERS.~~

~~Effective July 1, 1998, through June 30, 2000, a member does not have a bona fide retirement until all employment with covered employers, including employment which is not covered by 495—Chapter 4, is terminated and the member receives at least four monthly benefit payments. In order to receive retirement benefits, the member must file a completed application for benefits with IPERS before returning to any employment with the same employer.~~

Effective July 1, 2000, a member does not have a bona fide retirement until all employment with covered employers, including employment which is not covered under this chapter, is terminated for at least one month, and the member does not return to covered employment for an additional three months. In order to receive retirement benefits, the member must file a completed application for benefits before returning to any employment with a covered employer.

Effective July 1, 2018, a member will not have a bona fide retirement if the member enters into a verbal or written arrangement to perform duties for the member's former employer(s) as an independent

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

contractor prior to or during the member's first month of entitlement or performs any duties for the member's former employer(s) as an independent contractor prior to receiving four months of retirement benefits.

ITEM 17. Amend paragraph **11.7(5)“b”** as follows:

*b. Overpayments in violation of Iowa Code section 97B.40 or 715A.8.* If the overpayment of benefits, other than an overpayment that results from a violation described in subrule 11.7(4), was the result of wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay interest charges at the rate of ~~7.5~~ 7 percent on the outstanding balance, beginning on the date of the overpayment(s).

ITEM 18. Amend subrule 31.2(1) as follows:

**31.2(1)** IPERS shall designate the benefits advisory committee (BAC), and investment board as applicable, as the stakeholder rule-making group, pursuant to the rules for creation, public notice, procedures, public input, and results as outlined in Executive Order Number 80. The stakeholder group shall review and comment on any proposed ~~rules~~ rule changes before the rules are considered to be pending, as defined in subrule 31.3(2).

**ARC 3539C**

## **LABOR SERVICES DIVISION[875]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 88A.3, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 61, “Administration of Iowa Code Chapter 88A,” Iowa Administrative Code.

This rule making proposes to amend three rule provisions related to amusement rides and devices. Item 1 would clearly set forth that a fatality related to the operation of an amusement ride or device shall be reported to the Labor Commissioner. Item 2 would allow the owner of an air-supported structure who has been designated to perform annual inspections to also inspect related electrical equipment and would specify that the designation to perform annual inspections is only valid until December 31 of the year of issuance. Item 3 would facilitate electronic payments and more accurately state the Labor Commissioner's policy on the form of payment for permit and inspection fees.

The purposes of these amendments are to implement legislative intent and protect the public health and safety.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on January 23, 2018, a public hearing will be held on January 25, 2018, at 1:30 p.m. at 150 Des Moines Street, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)725-5615 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than January 25, 2018, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [kathleen.uehling@iwd.iowa.gov](mailto:kathleen.uehling@iwd.iowa.gov).

After analysis and review of this rule making, no adverse impact on jobs is expected.

These amendments are intended to implement Iowa Code chapter 88A.

The following amendments are proposed.

## LABOR SERVICES DIVISION[875](cont'd)

ITEM 1. Amend paragraph **61.3(4)“a”** as follows:

a. The operator shall immediately report by telephone any accident that results in death or medical care beyond first aid.

ITEM 2. Amend paragraph **61.4(1)“a”** as follows:

a. *Annual inspection by owner.* At the discretion of the commissioner, the owner of an air-supported structure may be designated by the commissioner to perform the annual inspection of the owner's air-supported structure, and blower, and related electrical equipment. An owner designated pursuant to this paragraph shall perform the inspection according to applicable standards. The owner shall submit in the format required by the commissioner an affidavit attesting to the performance of the inspection, correction of code violations, and other required information. A designation pursuant to this paragraph shall terminate on December 31 of the year of issuance.

ITEM 3. Rescind rule 875—61.8(88A) and adopt the following **new** rule in lieu thereof:

**875—61.8(88A) Payments.** All fees are nonrefundable. Cash is not accepted. Based on reasonable justification, the commissioner may notify an individual operator that the operator's check will not be accepted.

**ARC 3541C****PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 152C.3, the Board of Massage Therapy hereby gives Notice of Intended Action to amend Chapter 131, “Licensure of Massage Therapists,” and Chapter 132, “Massage Therapy Education Curriculum,” Iowa Administrative Code.

Item 1 removes terms that are not used in Chapter 131. Items 2 to 4 contain nonsubstantive updates. Item 5 removes the option for applicants to provide verification of national examination scores. This amendment will help protect against fraud in the licensure process. Removal of this option is not expected to cause any delays in the licensure process as score transfers directly from the examination service typically occur within one or two days. Items 6 and 12 update subrules that mirrored language from a rule that is generally used for professions that have a fixed expiration date for all licensees. Massage therapist licensees receive licenses with an expiration date calculated on the anniversary date of license issuance. Item 7 adds to rule 645—131.2(152C) language from rule 645—131.6(152C) to require license verifications for applicants who have held licensure in another state. Item 8 updates the education requirements to require completion of a 600-hour program and sets minimum core requirements. The current 500-hour requirement is not in line with Iowa Code section 152C.3(1)“a,” which sets a 600-hour standard for massage therapy education. This amendment is not expected to impact Iowa massage therapy schools as all Iowa schools that have submitted a curriculum for approval with the Board currently meet or exceed the 600-hour program requirement. Item 9 clarifies the responsibility for getting national examination scores submitted to the Board. Item 10 replaces a reference to a Board-approved school with a reference to the new educational standards found in subrule 131.3(1). Item 11 rescinds rule 645—131.6(152C). With the changes proposed in Item 7, this rule would be duplicative. Item 13 clarifies that mandatory reporter training is for those licensees who treat dependent adults, not any adult. Item 14 removes outdated language. Item 15 amends the curriculum approval requirements to mirror the hours and category requirements proposed in Item 8.

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

Any interested person may make written comments on the proposed amendments no later than January 23, 2018, addressed to Tony Alden, Professional Licensure Division, Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075; email [tony.alden@idph.iowa.gov](mailto:tony.alden@idph.iowa.gov).

A public hearing will be held on January 23, 2018, from 9 to 10 a.m. in the Fifth Floor Conference Room 526, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

There is no known fiscal impact to the state.

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Division of Professional Licensure are subject to the waiver provisions accorded under 645—Chapter 18.

After analysis and review of this rule making, no impact on jobs is expected.

These amendments are intended to implement Iowa Code section 152C.3.

The following amendments are proposed.

ITEM 1. Amend rule **645—131.1(152C)**, definitions of “Licensure by endorsement” and “Reciprocal license,” as follows:

~~“Licensure by endorsement” means the issuance of an Iowa license to practice massage therapy to an applicant who is or has been licensed in another state.~~

~~“Reciprocal license” means the issuance of an Iowa license to practice massage therapy to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of massage therapy to license persons who have the same or similar qualifications to those required in Iowa.~~

ITEM 2. Amend subrule 131.2(1) as follows:

**131.2(1)** The applicant shall complete a board-approved application packet. Application forms may be obtained from the board’s ~~Web site~~ website (<http://www.idph.state.ia.us/licensure>) or directly from the board office, or applications may be submitted electronically at [ibplicense.iowa.gov](http://ibplicense.iowa.gov). ~~All Paper~~ applications shall be sent to Board of Massage Therapy, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

ITEM 3. Amend subrule 131.2(3) as follows:

**131.2(3)** Each application shall be accompanied by the appropriate fees payable ~~by check or money order~~ to the Board of Massage Therapy. The fees are nonrefundable.

ITEM 4. Amend subrule 131.2(4) as follows:

**131.2(4)** The applicant shall have official copies of academic transcripts sent directly from the ~~board-approved~~ school to the board of massage therapy. If a school has closed and is no longer operational, the board will accept an official transcript provided by the student.

ITEM 5. Amend subrule 131.2(6) as follows:

**131.2(6)** The applicant shall provide proof of passing any National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) examination or the Massage and Bodywork Licensing Examination (MBLEx). Proof of passing shall be sent directly from the testing service to the board of massage therapy. ~~The applicant may submit a copy of the official notification from the testing service of the applicant’s passing a board-approved examination. The copy of the applicant’s official notification may be used by the board as proof of passage of a board-approved examination until the official proof of passage is received directly from the testing service. Submission of the applicant’s copy of the official notification from the testing service shall not be allowed in lieu of the applicant’s arranging for and the board’s receiving the official record of proof of passage sent directly from the testing service. The examination score must be received from the testing service within 60 days of issuance of the license.~~ The passing score on the written examination shall be the passing point criterion established by the national testing authority at the time the test was administered.



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

ITEM 6. Amend subrule 131.2(7) as follows:

**131.2(7)** ~~Licensees who were issued their licenses within six months prior to the renewal shall not be required to renew their licenses until the renewal month two years later.~~ Licensees shall expire on the fifteenth day of the anniversary month two years later.

ITEM 7. Amend subrule 131.2(9) as follows:

**131.2(9)** The applicant shall provide verification of license(s) from every state in which the applicant has been licensed as a massage therapist, sent directly from the state(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:

- a. Licensee's name;
- b. Date of initial licensure;
- c. Current licensure status; and
- d. Any disciplinary action taken against the license.

ITEM 8. Amend subrule 131.3(1) as follows:

**131.3(1)** The applicant shall have ~~graduated from a board-approved school that has completed~~ a minimum of ~~500~~ 600 hours of massage therapy education. An applicant shall have completed at a minimum, the following content:

- a. Fundamentals of massage therapy – 250 hours.
- b. Clinical application of massage and bodywork therapies – 75 hours.
- c. Anatomy, physiology, and kinesiology – 125 hours.
- d. Pathology – 40 hours.
- e. Ethics, business management, record keeping, health care referral, and documentation – 10 hours.
- f. Massage therapy-related electives – 100 hours.

ITEM 9. Amend subrules 131.4(1) and 131.4(2) as follows:

**131.4(1)** ~~The applicant shall apply to the National Certification Board for Therapeutic Massage and Bodywork~~ is responsible for contacting the examination service to arrange for a score transfer or to arrange for examination administration.

**131.4(2)** Results of the examination are ~~mailed sent~~ sent directly from the examination service to the board of massage therapy ~~after the applicant takes the examination.~~

ITEM 10. Amend subrule 131.5(3) as follows:

**131.5(3)** ~~The applicant shall be issued a permanent license upon receipt of a transcript of completion from a board-approved school verifying completion of education meeting the requirements of subrule 131.3(1) sent directly from the school, and proof of passing any board-approved examination sent directly from the testing service to the board office.~~

ITEM 11. Rescind and reserve rule ~~645—131.6(152C)~~.

ITEM 12. Amend subrule 131.8(2) as follows:

**131.8(2)** ~~An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal date two years later.~~ Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses.

ITEM 13. Amend paragraphs **131.8(4)“b”** and **“c”** as follows:

*b.* A licensee who, in the course of employment, examines, attends, counsels or treats dependent adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph *“e.”*

*c.* A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels or treats both dependent adults and children in Iowa shall indicate on the renewal

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

application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph “e.”

Training may be completed through separate courses as identified in paragraphs “a” and “b” or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

ITEM 14. Amend rule 645—132.2(152C) as follows:

**645—132.2(152C) Application for approval of massage therapy education curriculum.**

~~132.2(1) From October 31, 2007, through June 30, 2008, both in-state and out-of-state massage therapy schools may apply for curriculum approval. Beginning July 1, 2008, only in-state massage therapy schools may request curriculum approval or reapproval. Massage therapy schools seeking curriculum approval shall submit the application and fees in accordance with the requirements of subrule 132.2(3). The~~ Massage therapy school curriculum approval shall be valid for up to two years with reapplication for approval due June 30 of each even-numbered year. The biennial renewal cycle shall begin July 1 of an even-numbered year and end June 30 two years later. Schools that receive curriculum approval within six months prior to the start of the next biennial renewal cycle shall not need to reapply for curriculum approval until the following even-numbered year.

**132.2(2)** The board-approved application form and Curriculum Criteria and Documentation form for schools providing a massage therapy curriculum shall be obtained from the board’s ~~Web site~~ website, [www.idph.state.ia.us/licensure](http://www.idph.state.ia.us/licensure), or directly from the board office.

**132.2(3)** Applications and fees shall be submitted to the Board of Massage Therapy, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. The application for curriculum approval shall include all of the following:

- ~~a.~~ A completed board-approved application form;
- ~~b.~~ The curriculum approval application fee as specified in 645—Chapter ~~135~~; 5.
- ~~c.~~ ~~A completed Curriculum Criteria and Documentation form;~~
- ~~d.~~ ~~The current school catalog, including name of the program(s), a description of the curriculum delivery system, course descriptions, and program accreditation or approval by other professional entities; and~~
- ~~e.~~ ~~A sample diploma and a sample transcript that identify the name of the graduate, name of the program, graduation date, and the degree, diploma or certificate awarded.~~

**132.2(4)** ~~Beginning June 30, 2008, the~~ The board shall conduct curriculum reviews only for in-state massage therapy schools. Out-of-state school curriculum shall be reviewed on a case-by-case basis upon receipt of the curriculum as a part of an individual’s application for licensure to practice massage therapy in the state of Iowa.

**132.2(5)** No change.

**132.2(6)** Schools that apply for curriculum approval shall, at a minimum, provide a curriculum that meets the requirements of this chapter, offer a course of study of at least ~~500~~ 600 clock hours or the equivalent in academic credit hours, and require for entrance into the massage therapy school graduation from high school or its equivalent.

ITEM 15. Amend rule 645—132.3(152C) as follows:

**645—132.3(152C) Curriculum requirements.** An approved curriculum shall include but not be limited to the following content areas:

- ~~1.~~ a. Fundamentals of massage therapy – 250 hours.
- ~~2.~~ b. Clinical application of massage and bodywork therapies – 75 hours.
- ~~3.~~ c. ~~Client communication theory and practice.~~ Anatomy, physiology, and kinesiology – 125 hours.
- ~~4.~~ d. ~~Health care referral theory and practice.~~ Pathology – 40 hours.

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

~~5. e. Anatomy and physiology. Ethics, business management, record keeping, health care referral, and documentation – 10 hours.~~

~~6. Kinesiology.~~

~~7. Pathology and skills in infection control, injury prevention and sanitation.~~

~~8. Iowa law and ethics.~~

~~9. Business management, including legal and financial aspects, documentation and record maintenance.~~

~~10. Wellness and healthy lifestyle theory and practice in such areas as hydrotherapy, hot and cold applications, spa techniques, nutrition, herbal studies, wellness models, somatic movement and energy work.~~

132.3(2) The remaining 100 hours of the required 600 hours of massage therapy may be massage therapy-related electives at the discretion of the educational program.

132.3(3) Applicants from schools that have had their certification revoked by a state agency or a national massage organization will need additional review by the board.

**ARC 3545C**

**PUBLIC SAFETY DEPARTMENT[661]**

**Notice of Intended Action**

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

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

Pursuant to the authority of 2016 Iowa Acts, Senate File 2219, and Iowa Code section 100.35, the State Fire Marshal in the Department of Public Safety hereby gives Notice of Intended Action to adopt new Chapter 211, “Carbon Monoxide Alarms,” Iowa Administrative Code.

2016 Iowa Acts, Senate File 2219, which requires the installation of carbon monoxide alarms in certain single-family dwellings and single- and multiple-unit residential buildings and which provides for enforcement and penalties, was enacted by the Iowa General Assembly during its regular session in 2016. The legislation requires the State Fire Marshal to promulgate administrative rules to require the installation of carbon monoxide alarms in existing single-family dwellings and existing single-family rental units and multiple-unit residential buildings that have a fuel-fired heater or appliance, a fireplace, or an attached garage and to require the installation of carbon monoxide alarms in single-family dwellings and single-family rental units and multiple-unit residential buildings that have a fuel-fired heater or appliance, a fireplace, or an attached garage and for which construction is authorized or is started on or after July 1, 2018. The legislation also requires the State Fire Marshal to promulgate administrative rules for the enforcement of these requirements, including the placement of carbon monoxide alarms and the use of approved carbon monoxide alarms, and authorizes the State Fire Marshal to implement a program of inspections limited to the placement, repair, and operability of carbon monoxide alarms to monitor compliance and to provide for the notification of the owner or manager of any noncompliance. The legislation authorizes the State Fire Marshal to contract with any political subdivision for the performance of the inspections and notifications without any fee assessed to either the State Fire Marshal or the political subdivision. The legislation will become effective on July 1, 2018.

Any person may comment on the amendment by email at [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us) or by mail to Rules Coordinator, Iowa Department of Public Safety, Oran Pape Building, 215 East 7th Street, Des Moines, Iowa 50319. Comments must be received by 4:30 p.m. on January 23, 2018.

A public hearing on the amendment will be held on January 23, 2018, at 10 a.m. in the First Floor Public Conference Room (Room 125), Oran Pape Building, 215 East 7th Street, Des Moines, Iowa. Persons may present their views orally or in writing at the public hearing.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

The fiscal impact is expected to be minimal and less than \$100,000. The State Fire Marshal intends to coordinate and work closely with local building code officials and inspectors to fulfill the requirements of the legislation. There will be a fiscal impact to the property owners for the cost of providing or installing carbon monoxide alarms as required.

Pursuant to the provisions of rule 661—10.222(17A), the State Fire Marshal does not have authority to waive requirements established by statute. Pursuant to the provisions of rules 661—200.2(100) and 661—10.222(17A), the State Fire Marshal has the authority to grant waivers from the rules.

It is expected that there will be no impact on jobs. The installation of carbon monoxide alarms will promote the safety of persons living in single- or multi-family dwelling units.

These rules are intended to implement 2016 Iowa Acts, Senate File 2219.

The following amendment is proposed.

Adopt the following **new** 661—Chapter 211:

CHAPTER 211  
CARBON MONOXIDE ALARMS

**661—211.1(86GA,SF2219) Scope.** The provisions of this chapter apply to new and existing single-family residences, single-family rental units, and multiple-unit residential buildings. The provisions of this chapter do not apply to nonresidential occupancies including but not limited to Group I and Group E occupancies.

**661—211.2 to 211.9** Reserved.

**661—211.10(86GA,SF2219) Definitions.** The following definitions apply to this chapter.

*“Building”* means a combination of materials, whether portable or fixed, to form a structure affording facilities or shelter for persons, animals or property. The term “building” includes any part of a building or an addition to a building.

*“Carbon monoxide alarm”* means one or more devices, including but not limited to combination carbon monoxide alarm/smoke alarms, which detect carbon monoxide gas for the purpose of alerting occupants by a distinct audible signal, which incorporate a sensor, control components, and an alarm notification appliance in a single unit operated from a power source either in the unit or obtained at the point of installation, and which meet the standards established by the Underwriters Laboratories (UL). All carbon monoxide alarms shall meet the requirements of the National Fire Protection Association (NFPA) Standard 720, 2013 edition, and be UL listed in accordance with UL 2034.

*“Carbon monoxide detection system”* means a system or portion of a combination system which consists of a control unit, components, and circuits arranged to monitor and annunciate the status of carbon monoxide alarm initiating devices and to initiate the appropriate response to those signals, and which meets the standards established by the Underwriters Laboratories (UL). All carbon monoxide detection systems shall meet the requirements of the National Fire Protection Association (NFPA) Standard 720, 2013 edition, shall display a label or other identification issued by an approved testing agency, and shall be UL listed in accordance with UL 2075.

*“Communicating opening”* means a door, window, or any other opening which allows air to be exchanged between a fuel-burning appliance or garage and a sleeping unit or dwelling unit.

*“Dwelling unit”* means a room or suite of rooms used for human habitation which provide complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

*“Existing”* means buildings, facilities or conditions that are already in existence, constructed or officially authorized prior to July 1, 2018.

*“Fuel”* means coal, kerosene, oil, fuel gases, or other petroleum products or hydrocarbon products such as wood that emit carbon monoxide as a byproduct of combustion.

*“Fuel-burning”* or *“fuel-fired”* means an appliance, heater, furnace, or fireplace which uses and combusts fuel as part of its designed use.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

“*Garage*” or “*attached garage*” means a building or portion of a building in which motor vehicles are stored or kept.

“*Listed*” means equipment, materials, products or services included in a list published by an organization acceptable to the state fire marshal or local fire code official and concerned with evaluation of products or services that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services and whose listing states either that the equipment, material, product or service meets identified standards or has been tested and found suitable for a specified purpose. All carbon monoxide alarms, combination carbon monoxide alarm/smoke alarms, and carbon monoxide detection systems installed under these rules must be listed with the Underwriters Laboratories.

“*Multiple-unit residential building*” means a building that contains more than two dwelling units or sleeping units. “Multiple-unit residential building” includes but is not limited to condominiums; townhouses; co-ops; apartment houses or portions of a building or an apartment house; hotels; motels; dormitories; or rooming houses.

“*Open-ended corridor*” means an interior corridor that is open on each end and connects to an exterior stairway or ramp at each end with no intervening doors or separation from the corridor.

“*Single-family rental unit*” means a building that contains not more than two dwelling units or sleeping units that are rented or leased for living purposes.

“*Single-family residence*” or “*single-family dwelling*” means a building that contains not more than two dwelling units that are used, or intended or designed to be used, for living purposes.

“*Sleeping unit*” means a room or space in a building in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

**661—211.11(86GA,SF2219) Carbon monoxide alarms—required.** Carbon monoxide alarms are required in the following buildings if the building is served by a fuel-burning heater, fuel-burning furnace, fuel-burning appliance, fuel-burning fireplace, or has an attached garage.

**211.11(1) *New construction.*** Multiple-unit residential buildings and single-family residences for which construction is begun on or after July 1, 2018.

**211.11(2) *Existing buildings.*** Single-family rental units, single-family residences, and multiple-unit residential buildings.

**661—211.12(86GA,SF2219) Installation and placement of carbon monoxide alarms.**

**211.12(1) *Location.*** When required by rule 661—211.11(86GA,SF2219), a carbon monoxide alarm shall be installed in the following locations:

- a. In the immediate vicinity of every room used for sleeping purposes in each dwelling unit.
- b. In each bedroom where a fuel-burning heater or furnace, fuel-burning appliance, or fireplace is located within the bedroom or its attached bathroom.
- c. In each sleeping unit, if the sleeping unit or its attached bathroom contains a fuel-burning appliance, fuel-burning heater or furnace, or fireplace.
- d. In the immediate vicinity of each sleeping unit where the sleeping unit or its attached bathroom does not contain a fuel-burning appliance, fuel-burning heater, or fireplace and is not served by a forced-air furnace.

**211.12(2) *Carbon monoxide alarm location—exceptions.*** A carbon monoxide alarm shall not be required in the locations specified by subrule 211.12(1) when:

- a. There are no communicating openings between the fuel-burning heater or furnace, fuel-burning appliance, fireplace, or attached garage and a dwelling unit or sleeping unit.
- b. There are no communicating openings between the fuel-burning heater or furnace, fuel-burning appliance or fireplace and a dwelling unit or sleeping unit and when a dwelling unit or sleeping unit is located more than one story above or below an attached garage.
- c. There are no communicating openings between the fuel-burning heater or furnace, fuel-burning appliance, or fireplace and a sleeping unit or dwelling unit and the attached garage connects to the building through an open-ended corridor.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

*d.* A carbon monoxide alarm is located on the ceiling of the room containing the fuel-burning heater, fuel-burning appliance or fireplace, or in the first room or area between the fuel-burning heater, fuel-burning appliance or fireplace and the dwelling unit or sleeping unit.

**211.12(3) *Forced-air furnace—exception.*** A carbon monoxide alarm shall not be required in a dwelling unit or sleeping unit which is served by a fuel-burning forced-air furnace when a carbon monoxide alarm is located on the ceiling of the room containing the forced-air furnace or in the first room or area served by each main duct leaving the forced-air furnace and the carbon monoxide alarm signals are automatically transmitted to the occupants of each dwelling unit or sleeping unit served by the forced-air furnace.

**661—211.13(86GA,SF2219) Carbon monoxide alarms—alternative systems.**

**211.13(1) *Carbon monoxide detection systems.*** Commercially installed carbon monoxide detection systems which have the capability of notifying all occupants of dwelling units or sleeping units within a building shall be an acceptable alternative to the installation of carbon monoxide alarms and shall be deemed compliant with this chapter.

**211.13(2) *Combination alarms.*** The carbon monoxide alarm may be combined with smoke detecting devices provided that the combined unit complies with the respective provisions of 661—Chapter 210 regarding smoke detectors and this chapter regarding carbon monoxide alarms or other reference standards and applicable codes. A combined carbon monoxide alarm/smoke alarm shall emit different alarm signals for carbon monoxide and for smoke. Combination carbon monoxide alarm/smoke alarms shall be an acceptable alternative to carbon monoxide alarms.

**661—211.14(86GA,SF2219) Carbon monoxide alarms—power source.**

**211.14(1) *New construction—power source.*** In buildings for which construction is begun on or after July 1, 2018, carbon monoxide alarms shall receive their primary power from the building wiring when such wiring is served from a commercial source. Wiring shall be permanent and without a disconnecting switch other than that required for overcurrent protection and shall be equipped with a battery backup.

**211.14(2) *Wiring installation.*** Any installation of wiring and equipment shall comply with 661—Chapter 504, Standards for Electrical Work, and requirements established by the manufacturer of the equipment serviced by the wiring.

**211.14(3) *Existing buildings—power source.*** New and replacement carbon monoxide alarms installed in existing buildings may be solely battery operated or may plug into an electrical socket and have a battery backup.

**661—211.15 to 211.19** Reserved.

**661—211.20(86GA,SF2219) Responsibility for installation and maintenance of carbon monoxide alarms.**

**211.20(1) *Owner, owner's agent, or manager.*** It is the responsibility of the owner, owner's agent, or manager of a multiple-unit residential building, single-family residence, or single-family rental unit to install carbon monoxide alarms as required by this chapter. However, if a dwelling unit in a multiple-unit residential building qualifies for a homestead credit pursuant to Iowa Code chapter 425, then only the owner-occupant of the dwelling unit shall have the responsibility to install and maintain carbon monoxide alarms as required by this chapter.

**211.20(2) *Maintenance of carbon monoxide alarms.***

*a.* It is the responsibility of the owner of a multiple-unit residential building, single-family rental unit, or dwelling unit to supply and install all required carbon monoxide alarms and to ensure that the batteries are in operating condition at the time the lessee, tenant, guest or roomer takes possession of the dwelling unit or sleeping unit. The owner is responsible for providing written information regarding carbon monoxide alarm testing and maintenance to one lessee, tenant, guest or roomer per dwelling unit or sleeping unit.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

*b.* An owner or manager may require a lessee, tenant, guest, or roomer who has a residency longer than 30 days to be responsible for general maintenance, including but not limited to replacement of any required batteries of the carbon monoxide alarms in the lessee's, tenant's, guest's, or roomer's dwelling unit or sleeping unit, and for testing the carbon monoxide alarms within the lessee's, tenant's, guest's, or roomer's dwelling unit or sleeping unit. The lessee, tenant, guest or roomer is responsible for notifying the owner or manager in writing of any deficiencies that the lessee, tenant, guest or roomer cannot correct. The lessee, tenant, guest or roomer shall provide the owner or manager with access to the dwelling unit or sleeping unit to correct any deficiencies in the carbon monoxide alarm that have been reported in writing to the owner or manager.

**211.20(3) *Hearing-impaired tenant.*** An owner of a multiple-unit residential building or a single-family rental unit in which a carbon monoxide alarm is required, or the owner's agent, shall, upon request of a tenant who has a hearing impairment, install light-emitting carbon monoxide alarms.

**661—211.21(86GA,SF2219) Certification of installation required.** A person who files for a homestead credit pursuant to Iowa Code chapter 425 shall certify that the dwelling unit that has a fuel-fired heater or furnace, a fuel-fired appliance, a fireplace, or an attached garage has carbon monoxide alarms installed in compliance with this chapter or that such alarms will be installed within 30 days of the date the filing for the credit is made.

**661—211.22(86GA,SF2219) Inspections, notifications and remedies.**

**211.22(1) *Inspections authorized.*** Inspections may be conducted by the state fire marshal or by the fire marshal's subordinates, chiefs of local fire departments, state or local building inspectors, or other fire, building, or safety officials authorized by the state fire marshal. Any inspections authorized under this rule are limited to the placement, repair, and operability of carbon monoxide alarms and carbon monoxide detection systems.

**211.22(2) *Inoperable carbon monoxide alarms.*** If a carbon monoxide alarm is found to be inoperable, the owner or manager of the multiple-unit residential building or single-family rental unit shall promptly provide for repair or replacement of the carbon monoxide alarm.

**211.22(3) *Corrective action.*** Upon receiving written notification by a tenant, guest, or roomer or by the state fire marshal, fire marshal's subordinates, a chief of a local fire department, a building inspector, or other fire, building or safety official that a carbon monoxide alarm is inoperable, the owner or manager of the multiple-unit residential building or single-family rental unit shall repair or replace the carbon monoxide alarm within 30 days.

**211.22(4) *Remedies by tenant, guest, or roomer.*** If the owner or manager of a multiple-unit residential building or single-family rental unit fails to correct the situation within the 30 days after receipt of written notice, the tenant, guest, or roomer may cause the carbon monoxide alarm to be repaired or may purchase and install a carbon monoxide alarm required under this chapter and may deduct the repair cost or purchase price from the next rental payment or payments made by the tenant, guest, or roomer.

These rules are intended to implement 2016 Iowa Acts, Senate File 2219.

ARC 3542C

**REVENUE DEPARTMENT[701]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 422.7 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 40, “Determination of Net Income,” Chapter 41, “Determination of Taxable Income,” and Chapter 53, “Determination of Net Income,” Iowa Administrative Code.

Legislation passed in 2015 and 2016 made changes to the Iowa Education Savings Plan Trust Program. The 2015 changes allowed participants to deduct certain contributions made after the end of the tax year for which the deduction was claimed, but before the Iowa filing deadline for that year, on their Iowa income tax returns. The 2016 changes allowed certain charitable organizations to establish Iowa education savings plan accounts as participants and provided restrictions on the charitable deductions that individuals and corporations were allowed to take on contributions to those participant organizations. These proposed amendments are intended to update the existing rules to reflect these legislative changes. These amendments also strike some outdated language that is no longer in effect.

Any interested person may make written suggestions or comments on these proposed amendments on or before January 23, 2018. Such written comments should be emailed to Ben Clough at [ben.clough@iowa.gov](mailto:ben.clough@iowa.gov) or mailed to Ben Clough, Legal Services, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons wishing to convey their views orally should contact Ben Clough, Legal Services, Department of Revenue, at (515)725-2176 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by January 23, 2018.

Both of the bills this Notice is intended to implement had estimated fiscal impacts on the general fund. These amendments to the Department’s rules have no known fiscal impact beyond that of the legislative changes the amendments are intended to implement.

Any person who believes that the application of the discretionary provisions of these rules 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).

After analysis and review of this rule making, the Department finds that the proposed amendments are not likely to have a significant impact on jobs.

These amendments are intended to implement Iowa Code section 422.7 as amended by 2015 Iowa Acts, Senate File 510, and Iowa Code sections 422.9 and 422.35 as amended by 2016 Iowa Acts, Senate File 2301.

The following amendments are proposed.

ITEM 1. Amend rule 701—40.53(422) as follows:

**701—40.53(422) Deduction for contributions by taxpayers to the Iowa educational savings plan trust and addition to income for refunds of contributions previously deducted.** The Iowa educational savings plan trust was created so that individuals and certain other qualified participants can contribute funds on behalf of beneficiaries in accounts administered by the treasurer of state to cover future higher education costs of the beneficiaries. The Iowa educational savings plan trust includes the college savings Iowa plan and the Iowa advisor 529 plan. The following subrules provide details on how individuals’ net incomes are affected by contributions to beneficiaries’ accounts, interest and any other earnings earned on beneficiaries’ accounts, and refunds of contributions which were previously deducted. Definitions and



## REVENUE DEPARTMENT[701](cont'd)

other information about establishing college savings Iowa accounts may be found in rules promulgated by the treasurer of state.

**40.53(1)** *Deduction from net income for contributions made to the Iowa educational savings plan trust on behalf of beneficiaries.*

a. Effective with contributions made on or after July 1, 1998, an An individual referred to as a “participant” can claim a deduction on the Iowa individual income tax return for contributions made by that individual to the Iowa educational savings plan trust on behalf of a beneficiary.

b. For tax years beginning on or after January 1, 2015, if a participant makes a contribution to the Iowa educational savings plan trust on or after January 1, but on or before the deadline for filing an Iowa individual income tax return, excluding extensions, the participant may elect to have the deduction for the contribution apply to that participant’s Iowa individual income taxes for the calendar year immediately preceding the year in which the contribution was made. Once a participant has elected to apply a contribution to the calendar year immediately preceding the year in which the contribution was made, the contribution is deemed to have been made on December 31 of that previous calendar year. Once the election has been made, the deduction for that contribution may only be applied in computing the taxpayer’s Iowa net income for the calendar year immediately preceding the year in which the contribution was made. Contributions made on or after January 1, but before the deadline for filing Iowa individual income taxes, that the participant elects to have applied to the immediately preceding calendar year shall count toward the maximum contribution that may be deducted for that previous year. See paragraph 40.53(1) “c” below.

EXAMPLE: An individual makes a contribution to her Iowa educational savings plan account on April 5, 2018. The deadline for filing a 2017 Iowa income tax return is April 30, 2018. The individual elects to have the contribution apply to her 2017 individual income taxes instead of her 2018 Iowa individual income taxes. The department of revenue will consider the individual’s contribution to have been made on December 31, 2017. The individual may now claim a deduction for the contribution, up to the annual maximum deduction, on her 2017 Iowa income taxes. However, because the individual elected to have her contribution apply to her 2017 Iowa income taxes, she cannot claim the deduction for the April 5, 2018, contribution on her 2018 Iowa income tax return.

c. The deduction on the 1998 Iowa return cannot exceed \$2,000 per beneficiary for contributions made in 1998 or the adjusted maximum annual amount for contributions made after 1998. Note that the maximum annual amount that can be deducted per beneficiary may be adjusted or increased to an amount greater than \$2,000 for inflation on an annual basis. Rollover contributions from other states’ educational savings plans will qualify for the deduction, subject to the maximum amount allowable. Starting with tax years beginning in the 2000 calendar year, a participant may contribute an amount on behalf of a beneficiary that is greater than \$2,000, but may claim a deduction on the Iowa individual return of the lesser of the amount given or \$2,000 as adjusted by inflation. For example, if a taxpayer made a \$5,000 contribution on behalf of a beneficiary to the educational savings plan in 2000, the taxpayer may claim a deduction on the IA 1040 return for 2000 in the amount of \$2,054, as this amount is \$2,000 as adjusted for inflation in effect for 2000.

~~For example, an~~ EXAMPLE: An individual has ten grandchildren from the age of six months to 12 years. In October 1998, the person became a participant in the Iowa educational savings plan trust by making \$2,000 contributions to the trust on behalf of each of the ten grandchildren. When the participant files the 1998 Iowa individual income tax return, the participant can claim a deduction on the return for the \$20,000 contributed to the Iowa educational savings plan trust on behalf of the individual’s ten grandchildren.

**40.53(2)** *Exclusion of interest and earnings on beneficiary accounts in the Iowa educational savings plan trust.* To the extent that interest or other earnings accrue on a beneficiary’s account in the Iowa educational savings plan trust, the interest or other earnings are excluded for purposes of computing net income on the Iowa individual income tax return of the participant or the return of the beneficiary.

**40.53(3)** *Including on the Iowa individual return amounts refunded to the participant from the Iowa educational savings plan trust that had previously been deducted.* If a participant cancels a beneficiary’s account in the Iowa educational savings plan trust and receives a refund of the funds in the account

## REVENUE DEPARTMENT[701](cont'd)

made on behalf of the beneficiary, or if a participant makes a withdrawal from the Iowa educational savings plan trust for purposes other than the payment of qualified education expenses, the refund of the funds is to be included in net income on the participant's Iowa individual income tax return to the extent that contributions to the account had been deducted on prior state individual income tax returns of the participant.

~~For example, because~~ EXAMPLE: Because a beneficiary of a certain participant died in the year 2000, this participant in the Iowa educational savings plan trust canceled the participant agreement for the beneficiary with the trust and received a refund of \$4,200 of funds in the beneficiary's account. Because \$4,000 of the refund represented contributions that the participant had deducted on prior Iowa individual income tax returns, the participant was to report on the Iowa return for the tax year 2000, \$4,000 in contributions that had been deducted on the participant's Iowa returns for 1998 and 1999.

~~**40.53(4)** Deduction for contributions made to the endowment fund of the Iowa educational savings plan trust. To the extent that the contribution was not deductible for federal income tax purposes, an individual can deduct on the Iowa individual income tax return a gift, grant, or donation to the endowment fund of the Iowa educational savings plan trust. The contribution must be made on or after July 1, 1998, but before April 15, 2004. Effective April 15, 2004, the deduction for contributions made to the endowment fund is repealed.~~

This rule is intended to implement Iowa Code section 422.7 as amended by 2007 Iowa Acts, House File 923 2015 Iowa Acts, chapter 138, sections 72 and 73, and 2016 Iowa Acts, chapter 1107.

ITEM 2. Adopt the following new subrule 41.5(18):

**41.5(18)** Charitable contributions relating to the Iowa education savings plan trust. For tax years beginning on or after January 1, 2016, certain qualifying organizations may establish Iowa education savings plan trust accounts as participants, as described in Iowa Code chapter 12D. Taxpayers may make charitable contributions to such qualifying organizations so that the organization can deposit the contribution into the organization's Iowa education savings plan trust account. However, for Iowa income tax purposes, a taxpayer must add back any portion of the federal charitable contribution deduction allowed for a contribution to a qualifying organization, to the extent that the taxpayer designated that any part of such contribution be used for the direct benefit of the taxpayer's dependent or for the benefit of any other specific person chosen by the taxpayer.

ITEM 3. Amend rule 701—53.21(422) as follows:

~~**701—53.21(422)** Deduction for contributions made to the endowment fund of~~ **Deductions related to the Iowa educational savings plan trust.** ~~To the extent that the contribution was not deductible for federal income tax purposes, any gift, grant, or donation to the endowment fund of the Iowa educational savings plan trust may be deducted for Iowa income tax purposes. The contribution must be made on or after July 1, 1998, but before April 15, 2004. Effective April 15, 2004, the deduction for contributions made to the endowment fund is repealed.~~ For tax years beginning on or after January 1, 2016, certain qualifying organizations may establish Iowa education savings plan trust accounts as participants, as described in Iowa Code chapter 12D. Taxpayers may make contributions to such qualifying organizations so that the organization can deposit the contribution into the organization's Iowa education savings plan trust account. However, for Iowa income tax purposes, a taxpayer must add back any portion of the federal charitable contribution deduction allowed for a contribution to a qualifying organization, to the extent that the taxpayer designated that any part of such contribution be used for the direct benefit of a dependent of a shareholder or for the benefit of any other specific person chosen by the taxpayer.

This rule is intended to implement Iowa Code section 422.35 as amended by 1998 Iowa Acts, House File 2449 2016 Iowa Acts, chapter 1107.

**ARC 3532C****TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 321.180, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 607, “Commercial Driver Licensing,” Iowa Administrative Code.

The Department is proposing amendments to Chapter 607 to comply with 2017 Iowa Acts, House File 463, section 1, which amended Iowa Code section 321.180(2). The proposed amendments to Chapter 607 change the validity period of a commercial learner’s permit (CLP) from 180 days to one year, update the affected implementation sentences and make corrections to the Department’s contact information. The following explains each item in this rule making:

Item 1 amends subrule 607.2(1) to correct the name of the office responsible for administering this chapter and to strike an outdated telephone number.

Item 2 amends paragraph 607.20(1)“b” to change the validity period of a CLP from 180 days to one year. Previously, a CLP could be issued for a duration of 180 days, with an option to renew it for an additional 180 days. However, the Federal Motor Carrier Safety Administration issued an exemption that allowed states to forego renewal after 180 days and instead to make the CLP valid for one year; this exemption was first issued April 5, 2016, and revised on November 29, 2016, to correct an oversight in its initial articulation. The Iowa General Assembly chose to amend the statute, Iowa Code section 321.180(2), and utilize the exemption to change the CLP period of validity to one year, which reduces costs and expense for the Department and eliminates renewals and unnecessary trips to licensing locations for CLP holders. This amendment updates the rule to conform with the statutory change.

Item 3 amends subrule 607.28(3) to conform with the statutory change. Since there will no longer be a CLP renewal, the provisions of this subrule which require that the skills test be retaken before issuance of a renewal no longer apply.

Item 4 amends subrule 607.31(1) to reflect the statutory change that the skills test results are valid for one year since the CLP period of validity is now one year rather than 180 days.

Item 5 amends the implementation sentence for rule 761—607.31(321) to reflect the aforementioned statutory change made to Iowa Code section 321.180(2).

These rules do not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Strategic Communications and Policy, 800 Lincoln Way, Ames, Iowa 50010; email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us).
5. Be received by the Department’s rules administrator no later than January 23, 2018.

A meeting to hear requested oral presentations is scheduled for Thursday, January 25, 2018, at 1 p.m. at the Iowa Department of Transportation’s Motor Vehicle Division offices located at 6310 SE Convenience Boulevard, Ankeny, Iowa.

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

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

After analysis and review of this rule making, these amendments are expected to have a positive impact on private sector jobs and employment opportunities in Iowa since the CLP renewal process was eliminated in favor of a one-year period of validity.

These amendments are intended to implement Iowa Code section 321.180(2).

The following amendments are proposed.

ITEM 1. Amend subrule 607.2(1) as follows:

**607.2(1) Information and location.** Applications, forms and information about the commercial driver's license (CDL) are available at any driver's license examination station. Assistance is also available by mail from the Office of Driver and Identification Services, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at (800)532-1121 or (515)244-8725; by facsimile at (515)239-1837; or on the department's Web site website at www.iowadot.gov.

ITEM 2. Amend paragraph **607.20(1)“b”** as follows:

*b.* A commercial learner's permit is valid for 180 days and may be renewed for an additional 180 days one year without retaking the general and endorsement knowledge tests required by Iowa Code section 321.188.

ITEM 3. Amend subrule 607.28(3) as follows:

**607.28(3) Order.** The skills test must be administered and successfully completed in the following order: pre-trip inspection, basic vehicle control skills, on-road skills. If an applicant fails one segment of the skills test, the applicant cannot continue to the next segment of the test, and scores for the passed segments of the test are only valid during initial issuance of the commercial learner's permit. ~~If the commercial learner's permit is renewed, all three segments of the skills test must be retaken. However:~~

*a.* ~~If the applicant wants to remove an air brake restriction, full air brake restriction, or manual transmission restriction, the applicant does not have to retake the complete skills test, and may complete a modified skills test that demonstrates the applicant can safely and effectively operate the vehicle's full air brakes, air over hydraulic brakes, or manual transmission. In addition, to remove the air brake or full air brake restriction, the applicant must successfully perform the air brake pre-trip inspection and pass the air brake knowledge test.~~

*b.* ~~If the applicant wants to remove the tractor-trailer restriction, the applicant must retake all three skills tests in a representative tractor-trailer.~~

ITEM 4. Amend subrule 607.31(1) as follows:

**607.31(1) Period of validity.** Passing knowledge and skills test results shall remain valid for a period of 180 days one year.

ITEM 5. Amend rule ~~761~~—**607.31(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.180, 321.186, 321.187 and 321.188.

**ARC 3533C**

## TRANSPORTATION DEPARTMENT[761]

### Notice of Intended Action

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

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 324A.5, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 910, “Coordination of Public Transit Services,” Iowa Administrative Code.

The proposed amendments to this chapter:

- Amend the definition of “department” to remove an obsolete division name.

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

- Amend the definition of “incidental transportation” to reflect Federal Transit Administration terminology.
- Amend the definition of “public transit service” to:
  - o Add the word “exclusive” before “public school transportation” to indicate school transportation provided during open-to-the-public service is allowable while closed “exclusive” school transportation is not.
  - o Update the list of state institutions which provide their own on-campus transportation, which is not considered a public transit service.
- Rescind the definition of “public transit system” since this definition is already included in Iowa Code section 324A.1. Rule 761—910.1(324A) already states that the definitions in Iowa Code section 324A.1 apply to these rules.
- Update the contact information to correct an office name and add the Department’s website address.
- Update language throughout the chapter to remove obsolete office and division names.
- Change how often the Statewide Transportation Coordination Advisory Council must meet from monthly to quarterly to give the Council greater flexibility to meet when needed, rather than meeting monthly without a full agenda.
- Make editorial corrections for readability.
- Correct references to Iowa Code section 324A.5(3) since this section was renumbered.
- Remove a reference to Iowa Code section 17A.18 since this section concerns licenses and is not pertinent to this chapter.

These rules do not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Strategic Communications and Policy, 800 Lincoln Way, Ames, Iowa 50010; email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us).
5. Be received by the Department’s rules administrator no later than January 23, 2018.

A meeting to hear requested oral presentations is scheduled for Thursday, January 25, 2018, at 8 a.m. in the Administration Building, First Floor, North Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

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

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

These amendments are intended to implement Iowa Code sections 324A.4 and 324A.5.

The following amendments are proposed.

ITEM 1. Amend rule **761—910.1(324A)**, definitions of “Department,” “Incidental transportation” and “Public transit service,” as follows:

“*Department*” means the state department of transportation. The department’s office of public transportation of the air and transit division of the department transit administers Iowa Code chapter 324A.

“*Incidental transportation*” means ~~transportation provided by an agency or entity when the driver must provide supervision, educational assistance or other support enroute and at the origin or destination. Transportation used merely to access other services is not incidental~~ the provision of transit

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

rides when existing public transportation services cannot meet demand. Allowable charter service and meal deliveries are examples of incidental transportation.

*“Public transit service”* means any publicly funded passenger transportation for the general public or for specific client groups not including exclusive public school transportation, emergency transportation or incidental transportation or transportation provided by the state department of human services or state department of corrections on the grounds of the following institutions:

~~State juvenile home, Toledo;~~  
 State training school, Eldora;  
 Cherokee mental health institute;  
~~Clarinda mental health institute;~~  
 Independence mental health institute;  
~~Mount Pleasant mental health institute;~~  
 Glenwood state hospital-school;  
 Woodward state hospital-school;  
 Iowa veterans home, Marshalltown;  
 Iowa state penitentiary, Fort Madison;  
~~Iowa state men’s reformatory, Anamosa~~ state penitentiary, Anamosa;  
 Iowa correctional institution for women, Mitchellville;  
~~Medium security unit, Mount Pleasant~~ correctional facility, Mount Pleasant;  
~~Riverview release center, Newton~~ correctional facility, Newton;  
 Iowa medical and classification center, ~~Oakdale~~ Coralville;  
 North central correctional facility, Rockwell City;  
~~Fort Dodge correctional facility, Fort Dodge;~~  
~~Correctional treatment unit, Clarinda~~ correctional facility, Clarinda.

ITEM 2. Rescind the definition of “Public transit system” in rule **761—910.1(324A)**.

ITEM 3. Amend rule 761—910.2(17A) as follows:

**761—910.2(17A) Information and location.** ~~Requests for forms~~ Forms or information about the coordination of public transit services ~~shall be addressed to:~~ are available from the Office of Public Transportation, ~~Air and Transit Division~~ Transit, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)233-7870 or on the department’s website at [www.iowadot.gov](http://www.iowadot.gov).

This rule is intended to implement Iowa Code section 17A.3.

ITEM 4. Amend paragraph **910.3(2)“c”** as follows:

*c. Staff.* Staff support for council activities shall be provided by the ~~department’s office of public transportation~~ department.

ITEM 5. Amend paragraph **910.3(2)“d”** as follows:

*d. Meetings.* Meetings shall be held at least once each ~~month~~ quarter and may be held more frequently if necessary to enable the council to expeditiously discharge its duties.

ITEM 6. Amend paragraph **910.3(3)“d”** as follows:

*d.* Advise and make recommendations to the ~~department’s office of public transportation~~ department concerning public transportation policy.

ITEM 7. Amend paragraph **910.4(4)“b”** as follows:

*b.* Forms submitted directly to the department by its recipients or by providers not receiving state or state-administered funds shall be reviewed for completeness by the office of public ~~transportation~~ transit within 10 working days.

ITEM 8. Amend paragraph **910.5(2)“b”** as follows:

*b.* Operates all services open to the public under contract with and under control of a designated transit system, or

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

ITEM 9. Amend subrule 910.7(1) as follows:

**910.7(1)** If the department of human services purchases services from the noncompliant provider, the ~~department's office of public transportation~~ transit shall notify the department of human services of the noncompliant finding.

ITEM 10. Amend subrule 910.7(2) as follows:

**910.7(2)** If the noncompliant provider is a recipient of public funds from other than the department of human services, the ~~department's office of public transportation~~ department shall notify the proper authority as required in Iowa Code ~~subsection 324A.5(3)~~ section 324A.5.

ITEM 11. Amend rule 761—910.8(17A,324A) as follows:

**761—910.8(17A,324A) Revocation.**

**910.8(1)** If certification is revoked, the ~~air and transit division~~ department shall send a written notice of revocation to the provider.

**910.8(2)** The affected public transit system, the provider and the ~~air and transit division~~ department shall meet within 10 days after the date of the revocation notice to determine an acceptable amendment of the transportation services. The amendments which are agreed upon shall become effective within 60 days. The contract between the provider and the affected public transit system shall be amended, if necessary, to agree with the service changes.

**910.8(3)** If the transportation services are not ~~timely amended in a timely manner~~, the ~~air and transit division~~ department shall initiate actions as required in Iowa Code ~~subsection 324A.5(3)~~ section 324A.5(2).

This rule is intended to implement Iowa Code ~~sections 17A.18 and~~ section 324A.5.

**ARC 3534C**

**TRANSPORTATION DEPARTMENT[761]**

**Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 321.377, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 911, "School Transportation Services Provided by Regional Transit Systems," Iowa Administrative Code.

The Department is proposing amendments to Chapter 911 to update the chapter. The following explains each proposed amendment:

- Item 1 updates the office contact information, corrects a telephone number and adds the Department's website.

- Item 2 makes changes to the definitions of "automobile" and "multipurpose vehicle" so the terms refer to the definitions used in Iowa Code section 321.1. This item also amends the definition of "regional transit system" so the term refers to the definition used in Iowa Code section 324A.1. These three terms will only refer to the definitions in the Iowa Code, rather than repeat the definitions so the rules will not need to be modified if the Iowa Code definition changes. Item 2 also updates the definition of "student" to include Head Start participants.

- Item 3 adds a new definition of "public transit system" which refers to the definition used in Iowa Code section 324A.1.

- Item 4 adopts the current parts of the Code of Federal Regulations (CFR) referenced in Chapter 911 as follows: 49 CFR 38, Americans with Disabilities Act; 49 CFR 571, Federal Motor Vehicle Safety Standards; and 49 CFR Part 655, Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations. While the CFR date in 761—subrule 911.5(1) has not been updated since 2006, no changes to the federal regulations adopted within this chapter have occurred during that time and the

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

Department is proposing to adopt the October 1, 2017, CFR. This item also provides the website of the U.S. Government Publishing Office where the public may review the federal regulations.

- Item 5 provides that each driver is subject to certain testing for drug and alcohol usage as detailed by the Federal Transit Administration (FTA). This item changes the word “required” to “detailed” since the FTA does not require preemployment alcohol testing. All other tests listed in subrule 911.6(1) are required by the FTA. Preemployment alcohol testing is optional for employees of public transit systems.

- Item 6 requires that each new driver complete a course of instruction approved by the Iowa Department of Education in the time period required by Iowa Code section 321.376. The amendments comply with the changes made in Iowa Code section 321.376.

- Item 7 allows a driver who is in training to be licensed with a commercial learner’s permit as long as the driver abides by the restrictions in rule 761—607.20(321).

- Item 8 adds new subrule 911.6(7), which requires each driver who transports students to undergo a physical examination by a certified medical examiner who is listed on the National Registry of Certified Medical Examiners in accordance with Iowa Code section 321.375(1)“d” and with Iowa Department of Education rules. This item also requires the driver to annually submit the signed medical examiner’s certificate to the driver’s employer.

- Item 9 removes outdated language and requires that buses used for school transportation incorporate a rear emergency exit door.

- Item 10 concerns passenger restraint/protection devices and corrects the wording of Standard No. 225 to read: Child Restraint Anchorage Systems.

- Item 11 adds new subrule 911.7(6), which requires that, when a public transit system purchases a used vehicle from another public transit system, the previous owner’s Iowa Department of Education’s bus inspection stickers be removed. This item also states that if the purchasing public transit system plans to use the vehicle for school transportation service, a new inspection must be performed on the vehicle.

- Item 12 removes unnecessary language.

- Item 13 eliminates the required use of a prescribed form created by the Department when maintenance personnel annually inspect a vehicle. Each mechanic or dealership where inspections are completed likely has its own form and therefore the need for a specific form was removed.

- Item 14 adds the option of a mobile data terminal tablet as an item of equipment used to communicate between the vehicle and the regional transit system’s base of operations. Many regional transit agencies utilize this technology, connected by cellular service, to communicate with the driver. This item also requires fire extinguishers to be inspected and maintained in accordance with standards set by the National Fire Protection Association. These standards mirror those required of Iowa school buses as detailed in 281—Chapter 44 of the Iowa Department of Education’s rules. The National Fire Protection Association’s standard for portable fire extinguishers may be accessed with a free login to the association’s website. Item 14 also requires the following additional equipment be on board public transit vehicles transporting school children: a seatbelt web cutter, roadside reflective triangles, an operable flashlight and a reflective vest. These items are required of all public transit vehicles, regardless of whether the vehicle is transporting school children or not, but the Iowa Department of Education is in agreement with listing these items in this chapter to define expectations. Flashlights must be on board vehicles when the vehicle is in use, whether assigned to the vehicle or to the driver. Often, during compliance review checks, flashlights have been found to contain nonworking batteries; therefore the word “operable” was included to ensure that the flashlights are in working condition at all times.

- Item 15 states that every driver must make a complete stop before driving across the tracks of any railroad crossing, in accordance with Iowa Code section 321.343. Iowa Code section 321.343 was amended and the Department made changes to the rules to refer to these requirements.

- Item 16 requires the driver to perform posttrip inspections that include a walk-through to the back of the vehicle to ensure no sleeping or hiding children are left behind. Children, especially younger students, are small and can be difficult to see in a rearview mirror of a vehicle.



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

• Item 17 amends the chapter's implementation sentence to add a reference to Iowa Code section 321.375, which concerns school bus drivers' qualifications and grounds for suspension.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.

2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.

3. Indicate the general content of a requested oral presentation.

4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Strategic Communications and Policy, 800 Lincoln Way, Ames, Iowa 50010; email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us).

5. Be received by the Department's rules administrator no later than January 23, 2018.

A meeting to hear requested oral presentations is scheduled for Thursday, January 25, 2018, at 9 a.m. in the Administration Building, First Floor, North Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

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

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

These amendments are intended to implement Iowa Code sections 321.1, 321.189, 321.343, 321.375, 321.377 and 324A.1.

The following amendments are proposed.

ITEM 1. Amend subrule 911.1(2) as follows:

**911.1(2) Information.** Information and forms may be obtained from the Office of Public Transit, Iowa Department of Transportation, Office of Public Transit, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1875 (515)233-7870; or the department's website at [www.iowadot.gov](http://www.iowadot.gov).

ITEM 2. Amend rule ~~761—911.2(321,324A)~~, definitions of “Automobile,” “Multipurpose vehicle,” “Regional transit system” and “Student,” as follows:

~~“Automobile” means a motor vehicle, except a motorcycle or motorized bicycle, designed primarily to carry nine persons or less, the same as defined in Iowa Code section 321.1.~~

~~“Multipurpose vehicle” means a motor vehicle designed to carry not more than ten persons, and constructed either on a truck chassis or with special features for occasional off-road operation, the same as defined in Iowa Code section 321.1.~~

~~“Regional transit system” means a regional transit system designated under the same as defined in Iowa Code section 324A.1 and all subcontracted providers to the designated regional transit system. It does not mean an urban transit system designated under that section.~~

~~“Student” means a person attending a public or nonpublic school, grades prekindergarten through high school, including a Head Start participant.~~

ITEM 3. Adopt the following **new** definition of “Public transit system” in rule ~~761—911.2(321,324A)~~:

~~“Public transit system” means the same as defined in Iowa Code section 324A.1.~~

ITEM 4. Amend rule 761—911.5(321) as follows:

**761—911.5(321) Adoption of federal regulations.**

**911.5(1) Code of Federal Regulations.** The department of transportation adopts the following portions of the October 1, ~~2006~~ 2017, Code of Federal Regulations, which are referenced throughout this chapter:

a. 49 CFR Part 38, Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles.

b. 49 CFR Part 571, Federal Motor Vehicle Safety Standards.

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

c. 49 CFR Part 655, Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations. **911.5(2)** *Obtaining copies of regulations.* Copies of these regulations are available from the state law library or through the Internet at <http://www.dot.gov> online through the U.S. Government Publishing Office at [www.ecfr.gov](http://www.ecfr.gov).

ITEM 5. Amend subrule 911.6(1) as follows:

**911.6(1)** *FTA drug and alcohol testing.* Each driver is subject to the following testing for drug and alcohol usage as required detailed by the Federal Transit Administration in 49 CFR Part 655, including:

- a. Preemployment testing.
- b. Reasonable suspicion testing.
- c. Postaccident testing.
- d. Random testing.
- e. Return to duty testing.
- f. Follow-up testing.

ITEM 6. Amend subrule 911.6(2) as follows:

**911.6(2)** *Training.* Each new driver must, before or within the first six months of assignment and at least every ~~12~~ 24 months thereafter, complete a course of instruction approved by the department of education, in accordance with Iowa Code section 321.376.

ITEM 7. Amend subrule 911.6(5) as follows:

**911.6(5)** *Driver licensing.* Each driver must be licensed appropriately for the size and type of vehicle used as provided in Iowa Code section 321.189. A Class A, B or C commercial driver's license with passenger endorsement may be required. A driver may operate the vehicle for purposes of training if the driver has the appropriate commercial learner's permit as defined in 761—Chapter 607, and the restrictions in rule 761—607.20(321) shall apply. If a commercial driver's license is not required, a Class D (chauffeur) license with passenger endorsement is required.

ITEM 8. Adopt the following **new** subrule 911.6(7):

**911.6(7)** *Physical fitness.* Each driver who transports students must undergo a physical examination by a certified medical examiner who is listed on the National Registry of Certified Medical Examiners in accordance with Iowa Code section 321.375(1)“d” and with department of education rule 281—43.15(285) or 281—43.17(285). Annually, the driver must submit the signed medical examiner's certificate to the driver's employer.

ITEM 9. Amend subparagraph **911.7(1)“b”(1)** as follows:

(1) Standard No. 217, Bus Emergency Exits and Window Retention and Release. Buses ~~purchased after January 1, 2000,~~ utilized for school transportation shall incorporate a rear emergency exit door in meeting this standard.

ITEM 10. Amend paragraph **911.7(2)“f”** as follows:

- f. Standard No. 225, Child Restraint ~~Anchoring~~ Anchorage Systems.

ITEM 11. Adopt the following **new** subrule 911.7(6):

**911.7(6)** *Transfer to another public transit system.* When a public transit system purchases a used vehicle from another public transit system, the previous owner's department of education's bus inspections stickers must be removed. If the purchasing public transit system plans to use the vehicle for school transportation service, a new inspection must be performed on the vehicle.

ITEM 12. Amend subrule 911.8(2) as follows:

**911.8(2)** *Daily pretrip vehicle inspections.* Drivers of these vehicles must perform daily pretrip vehicle inspections using a form prescribed by the department of ~~transportation~~. Regional transit systems must retain daily pretrip vehicle inspection reports and documentation of follow-up maintenance for one year.

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

ITEM 13. Amend subrule 911.8(3) as follows:

**911.8(3) *Annual vehicle inspection.*** Maintenance personnel must annually inspect each vehicle ~~using a form prescribed by the department of transportation.~~ Regional transit systems must retain annual vehicle inspection forms records for one year.

ITEM 14. Amend rule 761—911.9(321) as follows:

**761—911.9(321) *Safety equipment.*** Regional transit system vehicles assigned to provide school transportation service must carry the following safety equipment:

**911.9(1) *Communication equipment.*** Each vehicle must be equipped with a two-way radio, ~~or~~ cellular telephone, or mobile data terminal tablet capable of emergency communication between the vehicle and the regional transit system's base of operations.

**911.9(2)** No change.

**911.9(3) *Fire extinguisher.*** Each bus or school bus must be equipped with a minimum 5-pound capacity, dry chemical fire extinguisher. Each automobile and multipurpose vehicle must be equipped with an extinguisher of at least 2.5-pound capacity. Extinguishers must have a 2A-10BC rating. All fire extinguishers shall be inspected and maintained in accordance with the National Fire Protection Association requirements. The standards for portable extinguishers are available online from the National Fire Protection Association at [www.nfpa.org](http://www.nfpa.org).

**911.9(4) *Seatbelt web cutter.*** A seatbelt web cutter must be mounted or placed within reach of the driver.

**911.9(5) *Roadside reflective triangles.*** Each vehicle must be equipped with roadside reflective triangles for use in case of breakdown or emergency.

**911.9(6) *Flashlight.*** Each vehicle must be equipped with an operable flashlight or each driver must be assigned an operable flashlight to be in the vehicle at all times of operation.

**911.9(7) *Reflective vest.*** Each vehicle must be equipped with a reflective vest or each driver must be assigned a reflective vest that must be in the vehicle at all times of operation. Individual regional transit systems are to establish a policy for when the reflective vests must be worn.

ITEM 15. Amend subrule 911.10(4) as follows:

**911.10(4) *Stops at rail crossings.*** Every driver must make a complete stop before ~~crossing driving~~ across the tracks of any railroad crossing, in accordance with Iowa Code section 321.343. ~~In the case of a bus or school bus, the driver must open the service entrance door, look and listen for approaching trains and proceed to cross the tracks only when the driver can do so safely. No stop is needed where the crossing is posted with an exempt sign.~~

ITEM 16. Amend subrule 911.10(8) as follows:

**911.10(8) *Posttrip inspection.*** After each trip that had students on board, the driver must perform a posttrip inspection of the interior of the vehicle ~~used to transport the students.~~ The posttrip inspection must include a walk-through to the back of the vehicle to ensure that no sleeping or hiding children are left behind.

ITEM 17. Amend **761—Chapter 911**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 321.1, 321.189, 321.343, 321.375, 321.376, 321.377 and 324A.1.

**ARC 3536C****TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 922, “Federal Transit Assistance,” Iowa Administrative Code.

The proposed amendment to this chapter:

- Reflects the current federal transit program names and updates or includes descriptions of these federal transit funding sources that the Department receives for distribution. Program names and United States Code sections for the former Section 16 and Section 18 of the Federal Transit Act have been updated: Section 16 is renamed Section 5310 and Section 18 is renamed Section 5311. A new paragraph to subrule 922.1(1) detailing the transit capital funding source, Section 5339, has also been added.
- Updates who is designated by the Governor to administer these federal programs that are subject to review by the Federal Transit Administration (FTA). The Department is responsible for the administration of these transit programs rather than the Transportation Commission. The Transportation Commission’s role is to award funds from these programs when they are not allocated by formula.
- Makes changes to the subrule concerning the state management plan to reflect the current federal transit programs and current name and date of the Iowa state management plan, to correct the relevant FTA circulars, and to update the Department’s contact information to include the correct office name and add a telephone number and a website address.

These rules do not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Strategic Communications and Policy, 800 Lincoln Way, Ames, Iowa 50010; email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us).
5. Be received by the Department’s rules administrator no later than January 23, 2018.

A meeting to hear requested oral presentations is scheduled for Thursday, January 25, 2018, at 11 a.m. in the Administration Building, First Floor, North Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

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

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

This amendment is intended to implement Iowa Code sections 324A.4 and 324A.6.

The following amendment is proposed.

Amend rule 761—922.1(324A) as follows:

**761—922.1(324A) Projects for nonurbanized areas and private nonprofit transportation providers.**

**922.1(1) General information.**

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

~~a. Section 18 of the Federal Transit Act established a program of federal financial assistance for support of public transportation projects in areas outside urbanized areas of 50,000 or more population as defined by the U.S. Census Bureau.~~

~~b. a. Section 16 of the same Act 5310 of Title 49 United States Code established the enhanced mobility of seniors and individuals with disabilities program, a program of federal financial assistance for support of capital acquisitions for private nonprofit providers of specialized transportation services for elderly seniors and handicapped persons with disabilities.~~

~~b. Section 5311 of Title 49 United States Code established the formula grants for rural areas program, a program of federal financial assistance for support of public transportation in rural areas with populations of less than 50,000, as defined by the U.S. Census Bureau.~~

~~c. Section 5339 of Title 49 United States Code established the bus and bus facilities program, a program of federal financial assistance for support of capital acquisitions for public transportation providers.~~

~~e. d. As required by the Federal Transit Act Title 49 United States Code, the Iowa transportation commission department has been designated by the governor to administer both these programs within Iowa, subject to review by the Federal Transit Administration (FTA).~~

**922.1(2) State management plan.**

~~a. Sections 16 and 18 5310, 5311 and 5339 of Title 49 United States Code federal transit assistance programs within Iowa shall be administered according to “Iowa’s the “Iowa State Management Plan for the Section 16 and 18 FTA Programs Administration of Funding and Grants Under the Federal Transit Administration, Sections 5310, 5311, 5316, 5317 and 5339 Programs,” dated July 1, 1993 March 2017, which has been prepared by the department and approved by the Federal Transit Administration in conformance with FTA Circulars 9040 and 9070.1C 5100.1, 9040.1G and 9070.1G.~~

~~b. Copies of the state management plan are available upon request from: Air and Transit Division the Office of Public Transit, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)233-7870; or the department’s website at [www.iowadot.gov](http://www.iowadot.gov).~~

This rule is intended to implement Iowa Code chapter 324A.

**ARC 3535C**

**TRANSPORTATION DEPARTMENT[761]**

**Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 1985 Iowa Acts, chapter 265, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 923, “Capital Match Revolving Loan Fund,” Iowa Administrative Code.

The Department is proposing amendments to Chapter 923 to update the chapter. The following explains each proposed amendment:

- Item 1 updates subrule 923.1(1), which explains the scope of the chapter, to include state-funded capital projects in addition to federally funded capital projects. This change will allow public transit systems to obtain local matching funds required to qualify for capital purchases under state-funded projects. Federal capital projects remain eligible for local matching funds under the Capital Match Revolving Loan Fund. Since fiscal year 2007, the Department has been the recipient of money from the Rebuild Iowa Infrastructure Fund for the Public Transit Infrastructure Grant Program as detailed in Chapter 924. The Rebuild Iowa Infrastructure Fund is to be used to fund public transit vertical infrastructure projects. Making state-funded capital projects eligible through the Capital Match Revolving Loan Fund will ensure every transit agency can apply for Public Transit Infrastructure Grant Program funds and complete projects in a timely manner. Item 1 also updates subrule 923.1(2) to

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

correct the name of the office responsible for administering this chapter and to add the Department's website address.

- Item 2 adds the definitions of “department,” “project” and “public transit system” to the chapter instead of referring the reader to another chapter to obtain the definitions.

- Item 3 makes changes to rule 761—923.3(71GA,ch265), which concerns system eligibility criteria, to clarify the language and to coordinate the criteria within the rule with the criteria included in 761—paragraphs 920.5(1)“a,” “b,” and “c.” The Department is proposing to remove language concerning use of a centralized accounting system and having one person responsible for managing assets, operations and funding of the system in favor of language requiring compliance with applicable state and federal laws and regulations and the required length of time to keep documentation. The type of accounting system used and number of staff involved at the public transit agency level do not matter so long as the state and federal financial requirements are followed.

- Item 4 makes changes to rule 761—923.4(71GA,ch265), which concerns project eligibility criteria, to strike a criterion that is no longer applicable concerning federal funding eligibility since the Department proposes to now include state projects funded through the Public Transit Infrastructure Grant Program. This item also makes editorial changes for clarity and consistency and corrects a reference to an Iowa Code citation that defines the term “vanpool.”

- Item 5 updates rule 761—923.5(71GA,ch265), which concerns procedures to reflect that a loan request may be for either state or federal funding, to strike the obsolete division name of “air and transit division” and replace it with “department,” make editorial corrections for readability, and change “signing” of contracts to “execution” to reflect electronic signature methods. This item also changes the approval decisions from the Transportation Commission to the Department to allow for expediency in providing loans as requests are submitted. Item 5 also removes the following duplicative wording: “Submission may be on an annual or individual basis.” The timing for submitting an application is already explained under subrule 923.5(2) and allows for loan requests to be made annually or at any time a specific need arises.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.

2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.

3. Indicate the general content of a requested oral presentation.

4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Strategic Communications and Policy, 800 Lincoln Way, Ames, Iowa 50010; email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us).

5. Be received by the Department's rules administrator no later than January 23, 2018.

A meeting to hear requested oral presentations is scheduled for Thursday, January 25, 2018, at 10 a.m. in the Administration Building, First Floor, North Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

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

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

These amendments are intended to implement 1985 Iowa Acts, chapter 265.

The following amendments are proposed.

ITEM 1. Amend rule 761—923.1(71GA,ch265) as follows:

**761—923.1(71GA,ch265) General information.**

**923.1(1) Scope of chapter.** The general assembly appropriated money from the petroleum overcharge fund to the department to be used as a revolving loan fund for transit capital purchases by

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

public transit systems. The revolving loan fund will enable public transit systems to obtain the matching funds required to qualify for capital purchases under state or federally funded projects. The fund will provide multiyear interest-free loans to public transit systems to allow faster capital acquisitions. Loan recipients shall be required to demonstrate ability to repay the loan from budgeted funds or revenues.

~~923.1(2) Information. Information requests~~ Requests for information about and for assistance, and answers to questions about with the preparation and submission of loan requests ~~may be obtained by contacting:~~ should be directed to the Office of Public Transportation, Air and Transit Division Transit, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)233-7870. Information is also available on the department's website at [www.iowadot.gov](http://www.iowadot.gov).

ITEM 2. Amend rule 761—923.2(71GA,ch265) as follows:

**761—923.2(71GA,ch265) Definitions.** The definitions in rule 761—920.3(324A), Iowa Administrative Code, for “department,” “public transit system,” and “project” shall also apply to this chapter.

“Department” means the Iowa department of transportation.

“Project” means a concerted set of actions that will develop, maintain or improve one or more elements of the public transit system’s service.

“Public transit system” means the same as defined in Iowa Code section 324A.1.

ITEM 3. Amend rule 761—923.3(71GA,ch265) as follows:

**761—923.3(71GA,ch265) System eligibility.** A public transit system is eligible to request a capital assistance loan from the revolving loan fund ~~if it~~ provided that the public transit system complies with all of the following criteria:

~~923.3(1) It uses a centralized accounting system that maintains primary documentation for all revenue and expenses~~ The transit system abides by all applicable state and federal laws and regulations.

~~923.3(2) One person is responsible for managing the assets, operations, and funding of the system~~ The transit system maintains primary documentation for all revenues and expenses for a period of at least three years.

~~923.3(3) It~~ The transit system maintains its the system’s policies, routes, schedules, fare structure, and budget in a manner that encourages public review, responsiveness to user concerns, energy conservation, and fiscal solvency.

ITEM 4. Amend rule 761—923.4(71GA,ch265) as follows:

**761—923.4(71GA,ch265) Project eligibility.**

**923.4(1)** A project is eligible if it meets all of the following criteria:

~~a. It~~ The project is a transit-related project for a capital purchase, e.g., new or replacement vehicles, facilities, or both.

~~b. It qualifies for federal funding approval which includes meeting the federal spare vehicle ratio requirement.~~

~~c. It~~ The project meets an identifiable transit need that has been included in the public transit system’s planning or programming document.

~~d. It~~ The project is part of a statewide program of transit projects which has been adopted by the transportation commission.

~~e. d.~~ The local funding needed for the project justifiably exceeds the public transit system’s annual capital match funding capability.

**923.4(2)** A project to purchase vans for a vanpool, as defined in Iowa Code ~~subsection 325.1(9)~~ section 325A.12, may be submitted by an individual or a group through the appropriate public transit system. A vanpool project is eligible for an interest-free loan from the revolving loan fund only after funds for all other projects have been allocated.

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

ITEM 5. Amend rule 761—923.5(71GA,ch265) as follows:

**761—923.5(71GA,ch265) Procedure.**

**923.5(1) ~~Federal funding~~ Funding request.** The public transit system shall submit ~~an~~ a funding application for ~~federal funding approval~~ of the proposed project to either the ~~air and transit division department~~ or to the Federal Transit Administration, as required by the type of funding requested.

**923.5(2) Loan request.** The public transit system shall normally submit a request for a revolving fund loan to the ~~air and transit division department~~ when the annual grant application is made, but may submit a request at any time if a specific need arises. The request shall include, but not be limited to, the following topics and documents:

*a. to e.* No change.

**923.5(3) Criteria for selection.** The ~~air and transit division department~~ shall review each loan request and shall evaluate the projects for funding. Based on the following criteria (~~not listed in order of preference in no particular order~~), preference shall be given to projects that:

*a. to f.* No change.

**923.5(4) Approval.** Based on available funds, the ~~air and transit division department~~ shall approve loans for projects meeting the criteria in ~~subrule 923.4(1) or shall submit recommended loan projects meeting the criteria in subrule 923.4(2) to the transportation commission for approval. Submission may be on an annual or an individual basis~~ rule 761—923.4(71GA,ch265).

**923.5(5) Agreement.** Upon approval ~~by the transportation commission~~, the ~~air and transit division department~~ shall prepare a loan contract and send it to the public transit system for signing. ~~The signed contract shall be returned to the air and transit division for signing by the department execution.~~

**923.5(6) Default.** If a public transit system fails to make a loan payment as agreed in the contract, the ~~air and transit division department~~ may, at its option, deduct the amount of any past due loan payment ~~past due~~ from state transit assistance payments allocated to that transit system.

**ARC 3538C**

**UTILITIES DIVISION[199]**

**Notice of Intended Action**

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

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

Pursuant to Iowa Code chapter 476 and section 17A.4, the Utilities Board (Board) gives notice that on December 8, 2017, the Board issued an order in Docket No. RMU-2016-0006, In re: Review of Cogeneration and Small Power Production Rules [199 IAC Chapter 15], “Order Commencing Rule Making,” proposing to amend the Board’s chapter 15 cogeneration and small power production rules. Chapter 15 regulates interactions between utilities and qualifying facilities and alternative energy production (AEP) facilities, provides guidelines for alternative energy purchase programs, provides guidance regarding renewable energy and wind energy production tax credits, and regulates small wind innovation zones.

The Board is proposing to amend rule 199—15.10(476) to be consistent with recent amendments to rule 199—45.3(476), which were adopted by the Board on December 28, 2016, in Docket No. RMU-2016-0003. Those amendments were adopted in response to newly enacted Iowa Code section 476.58. The Board is also proposing to adopt new definitions in rule 199—15.1(476) to help clarify some of the new language in rule 199—15.10(476). These definitions can also be found in rule 199—45.1(476).

The order approving this Notice of Intended Action can be found on the Board’s Electronic Filing System (EFS) website, [efs.iowa.gov](http://efs.iowa.gov), in Docket No. RMU-2016-0006.



## UTILITIES DIVISION[199](cont'd)

Pursuant to Iowa Code section 17A.4(1)“a” and “b,” any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before January 23, 2018. The statement should be filed electronically through the Board’s EFS. Instructions for making an electronic filing can be found on the EFS website at [efs.iowa.gov](http://efs.iowa.gov). Filings shall comply with the format requirements in 199 IAC 2.2(2) and clearly state the author’s name and address and make specific reference to Docket No. RMU-2016-0006. Paper comments may only be filed with approval of the Board.

No oral presentation is scheduled at this time. Pursuant to section 17A.4(1)“b,” an oral presentation may be requested or the Board on its own motion after reviewing the comments may determine an oral presentation should be scheduled. Requests for an oral presentation should be filed by January 23, 2018.

After analysis and review of this rule making, the Board tentatively concludes that the proposed amendments, if adopted, will not have a detrimental effect on employment in Iowa.

These amendments are intended to implement Iowa Code chapter 476 and section 17A.4.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions of “Disconnection device,” “Distributed generation facility” and “Electric meter” in rule **199—15.1(476)**:

“*Disconnection device*” means a lockable visual disconnect or other disconnection device capable of isolating, disconnecting, and de-energizing the residual voltage in a distributed generation facility.

“*Distributed generation facility*” means a qualifying facility, an AEP facility, or an energy storage facility.

“*Electric meter*” means a device used by an electric utility that measures and registers the integral of an electrical quantity with respect to time.

ITEM 2. Amend rule 199—15.10(476) as follows:

**199—15.10(476) Standards for interconnection, safety, and operating reliability.** For purposes of this rule, “electric utility” or “utility” means both rate-regulated and non-rate-regulated electric utilities.

**15.10(1) Acceptable standards.** The interconnection of ~~qualifying facilities and AEP~~ distributed generation facilities and associated interconnection equipment to an electric utility system shall meet the applicable provisions of the publications listed below:

*a.* Standard for Interconnecting Distributed Resources with Electric Power Systems, ANSI/IEEE IEEE Standard 1547-2003. For guidance in applying IEEE Standard 1547, the utility may refer to:

(1) IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems—IEEE Standard 519-1992; and

(2) IEC/TR3 61000-3-7 Assessment of Emission Limits for Fluctuating Loads in MV and HV Power Systems.

*b.* Iowa Electrical Safety Code, as defined in 199—Chapter 25.

*c.* National Electrical Code, ANSI/NFPA ~~70-2014~~ 70-2014.

**15.10(2) Modifications required.** Rescinded IAB 7/23/03, effective 8/27/03.

**15.10(3) Interconnection facilities.**

*a.* ~~The utility may require the distributed generation facility to have the capability to be isolated from the utility, either by means of a lockable, visible break isolation device accessible by the utility, or by means of a lockable isolation device whose status is indicated and is accessible by the utility. If an isolation device is required by the utility, the device shall be installed, owned, and maintained by the owner of the distributed generation facility and located electrically between the distributed generation facility and the point of interconnection. A draw-out type of circuit breaker accessible to the utility with a provision for padlocking at the drawn-out position satisfies the requirement for an isolation device. A distributed generation facility placed in service after July 1, 2015, is required to have installed a disconnection device. The disconnection device shall be installed, owned, and maintained by the owner of the distributed generation facility and shall be easily visible and adjacent to an interconnection customer’s electric meter at the facility. Disconnection devices are considered easily visible and adjacent: for a home or business, up to ten feet away from the meter and within the line of sight of the~~

## UTILITIES DIVISION[199](cont'd)

meter, at a height of 30 inches to 72 inches above final grade; or for large areas with multiple buildings that require electric service, up to 30 feet away from the meter and within the line of sight of the meter, at a height of 30 inches to 72 inches above final grade. The disconnection device shall be labeled with a permanently attached sign with clearly visible letters that gives procedures/directions for disconnecting the distributed generation facility.

(1) If an interconnection customer with distributed generation facilities installed prior to July 1, 2015, adds generation capacity to its existing system that does not require upgrades to the electric meter or electrical service, a disconnection device is not required, unless required by the electric utility's tariff. The customer must notify the electric utility before the generation capacity is added to the existing system.

(2) If an interconnection customer with distributed generation facilities installed prior to July 1, 2015, upgrades or changes its electric service, the new or modified electric service must meet all current utility electric service rule requirements.

b. For all distributed generation installations, the customer shall be required to provide and place a permanent placard no more than ten feet away from the electric meter. The placard must be visible from the electric meter. The placard must clearly identify the presence and location of the disconnection device for the distributed generation facilities on the property. The placard must be made of material that is suitable for the environment and must be designed to last for the duration of the anticipated operating life of the distributed generation facility. If no disconnection device is present, the placard shall state "no disconnection device".

If the distributed generation facility is not installed near the electric meter, an additional placard must be placed at the electric meter to provide specific information regarding the distributed generation facility and the disconnection device.

~~b. c.~~ The interconnection shall include overcurrent devices on the facility to automatically disconnect the facility at all currents that exceed the full-load current rating of the facility.

~~e. d.~~ Facilities Distributed generation facilities with a design capacity of 100 kilowatts or less must be equipped with automatic disconnection upon loss of electric utility-supplied voltage.

~~d. e.~~ Those facilities that produce a terminal voltage prior to the closure of the interconnection shall be provided with synchronism-check devices to prevent closure of the interconnection under conditions other than a reasonable degree of synchronization between the voltages on each side of the interconnection switch.

15.10(4) Access. If an isolation device is required by the utility, both the operator of the qualifying facility or AEP facility and the utility shall have access to the isolation device at all times. An If a disconnection device is required, the operator of the distributed generation facility, the utility, and emergency personnel shall have access to the disconnection device at all times. For distributed generation facilities installed prior to July 1, 2015, an interconnection customer may elect to provide the utility with access to ~~an isolation~~ a disconnection device that is contained in a building or area that may be unoccupied and locked or not otherwise accessible to the utility by installing a lockbox provided by the utility that allows ready access to the ~~isolation~~ disconnection device. The lockbox shall be in a location determined by the utility, in consultation with the customer, to be accessible by the utility. The interconnection customer shall permit the utility to affix a placard in a location of the utility's choosing that provides instructions to utility operating personnel for accessing the ~~isolation~~ disconnection device. If the utility needs to isolate the distributed generation facility, the utility shall not be held liable for any damages resulting from the actions necessary to isolate the generation facility.

15.10(5) Inspections and testing. The operator of the ~~qualifying facility or AEP~~ distributed generation facility shall adopt a program of inspection of the generator and its appurtenances and the interconnection facilities in order to determine necessity for replacement and repair. Such a program shall include all periodic tests and maintenance prescribed by the manufacturer. If the periodic testing of interconnection-related protective functions is not specified by the manufacturer, periodic testing shall occur at least once every five years. All interconnection-related protective functions shall be periodically tested, and a system that depends upon a battery for trip power shall be checked and logged. The operator shall maintain test reports and shall make them available upon request by the electric

## UTILITIES DIVISION[199](cont'd)

utility. Representatives of the utility shall have access at all reasonable hours to the interconnection equipment specified in subrule 15.10(3) for inspection and testing with reasonable prior notice to the applicant.

**15.10(6) *Emergency disconnection.*** In the event that an electric utility or its customers experience problems of a type that could be caused by the presence of alternating currents or voltages with a frequency higher than 60 Hertz, the utility shall be permitted to open and lock the interconnection switch pending a complete investigation of the problem. Where the utility believes the condition creates a hazard to the public or to property, the disconnection may be made without prior notice. However, the utility shall notify the operator of the ~~qualifying facility or AEP~~ distributed generation facility by written notice and, where possible, verbal notice as soon as practicable after the disconnections.

**15.10(7) *Notification.*** When the distributed generation facility is placed in service, owners of interconnected distributed generation facilities are required to notify local fire departments via U.S. mail of the location of distributed generation facilities and the associated disconnection device(s). The owner is required to provide any information related to the distributed generation facility as reasonably required by that local fire department including but not limited to:

a. A site map showing property address; service point from utility company; distributed generation facility and disconnect location(s); location of rapid shutdown and battery disconnect(s), if applicable; property owner's or owner's representative's emergency contact information; utility company's emergency telephone number; and size of the distributed generation facility.

b. Information to access the disconnection device.

c. A statement from the owner verifying that the distributed generation facility was installed in accordance with the current state-adopted National Electrical Code.

**15.10(8) *Disconnections.*** If an interconnection customer fails to comply with the foregoing requirements of this rule, the electric utility may require disconnection of the applicant's distributed generation facility until the facility complies with this rule. The disconnection process shall be specified in individual electric utility tariffs or in the interconnection agreement. If separate disconnection of only the distributed generation facility is not feasible or safe, the customer's electric service may be disconnected as provided in 199—Chapter 20.

**15.10(9) *Reconnections.*** If a customer's distributed generation facility or electric service is disconnected due to noncompliance with this rule, the customer shall be responsible for payment of any costs associated with reconnection once the facility is in compliance with the rules.

## ARC 3548C

## HUMAN SERVICES DEPARTMENT[441]

## Adopted and Filed

Pursuant to the authority of Iowa Code sections 249A.4 and 249N.2, the Department of Human Services hereby amends Chapter 74, "Iowa Health and Wellness Plan," Iowa Administrative Code.

These amendments change the definition of "medical home" and add definitions of "personal provider," "primary care provider" and "primary medical provider" to rules pertaining to the Iowa Health and Wellness Program (IHAWP). The clarification of these terms will allow Iowa Health and Wellness members to access a personal provider who will be able to coordinate care to meet the member's medical needs.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3375C** on October 11, 2017. The Department received no comments during the public comment period. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on December 13, 2017.

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

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

These amendments are intended to implement Iowa Code sections 249A.4 and 249N.2.

These amendments will become effective February 7, 2018.

The following amendments are adopted.

ITEM 1. Amend rule **441—74.1(249A,85GA,SF446)**, definition of "Medical home," as follows:

"Medical home" means a provider contracted with the department through Form 470-5177, Agreement for Participation as a Patient Manager in the Iowa Health and Wellness Plan (Wellness Plan) team approach to providing health care that originates in a primary care setting; fosters a partnership among the patient, the personal provider, and other health care professionals, and where appropriate, the patient's family; utilizes the partnership to access and integrate all medical and nonmedical health-related services across all elements of the health care system and the patient's community as needed by the patient and the patient's family to achieve maximum health potential; maintains a centralized, comprehensive record of all health-related services to promote continuity of care; and has all of the following characteristics:

1. A personal provider.
2. A provider-directed team-based medical practice.
3. Whole person orientation.
4. Coordination and integration of care.
5. Quality and safety.
6. Enhanced access to health care.
7. A payment system that appropriately recognizes the added value provided to patients who have a patient-centered medical home.

ITEM 2. Adopt the following **new** definitions of "Personal provider," "Primary care provider" and "Primary medical provider" in rule **441—74.1(249A,85GA,SF446)**:

*"Personal provider"* means the patient's first point of contact in the health care system with a primary care provider who identifies the patient's health-related needs and, working with a team of health care professionals and providers of medical and nonmedical health-related services, provides for and coordinates appropriate care to address the health-related needs identified.

*"Primary care provider"* includes but is not limited to any of the following licensed or certified health care professionals who provide primary care:

1. A physician who is a family or general practitioner, a pediatrician, an internist, an obstetrician, or a gynecologist.
2. An advanced registered nurse practitioner.
3. A physician assistant.

HUMAN SERVICES DEPARTMENT[441](cont'd)

## 4. A chiropractor.

“*Primary medical provider*” means a personal provider trained to provide first contact and continuous and comprehensive care to a member, chosen by a member or to whom a member is assigned under the Iowa health and wellness plan as the member’s primary medical provider.

[Filed 12/13/17, effective 2/7/18]

[Published 1/3/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/3/18.

**ARC 3549C****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(c), the Department of Human Services amends Chapter 74, “Iowa Health and Wellness Plan,” Chapter 75, “Conditions of Eligibility,” and Chapter 76, “Enrollment and Reenrollment,” Iowa Administrative Code.

These amendments eliminate the three-month retroactive Medicaid coverage benefit provisions for initial applications and applications to add new household members. Pursuant to 2017 Iowa Acts, House File 653, as passed during the 87th Session of the General Assembly, the Department requested a waiver from the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services to eliminate the retroactivity provisions. Upon federal approval, elimination of three-month retroactive eligibility for Medicaid applicants began on November 1, 2017.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3355C** on October 11, 2017. The proposed amendments were also Adopted and Filed Emergency and published as **ARC 3353C** on the same date and became effective October 1, 2017.

The Department received comments from four respondents during the public comment period. A summary of the respondents’ comments and the Department’s responses is as follows:

**Comment 1:** Two respondents expressed vehement opposition to the emergency rules. All respondents requested that the Department suspend or delay implementation of the policy to eliminate retroactive Medicaid. Three respondents requested a delay until after the 2018 Legislative Session, and a fourth respondent requested a delay until after the Department has determined the true impact of the policy and explored exceptions to policy for patient populations receiving care at Iowa’s hospitals. One respondent requested that the rules be modified to allow retroactive Medicaid for patients who face an unexpected and undue hardship and are truly prevented from applying for Medicaid within the three-month time period.

**Department response 1:** The Department needs legislative authority and CMS approval to suspend or delay implementation of the policy to eliminate retroactive Medicaid or to make an exception for a specific population, except as authorized by CMS for pregnant women and infants (see Department response 2).

**Comment 2:** Three respondents stated that they were aware of the provision to eliminate retroactive Medicaid included in House File 653 but believed that the provision to eliminate retroactive Medicaid applied only to the Medicaid expansion population.

**Department response 2:** Conversations with all providers and advocacy groups occurred with as much transparency as possible as the legislation was developing.

The provision in House File 653 related to elimination of retroactive coverage does not specify populations, such as the Medicaid expansion population. The legislation mandates that the Department seek a waiver from CMS to implement the strategy to eliminate retroactive coverage for Medicaid applicants.

Iowa Medicaid Enterprise sent an Informational Letter (1808-MC-FFS-D) to all Medicaid providers on June 30, 2017. The letter explained that House File 653 contained a number of legislatively mandated

HUMAN SERVICES DEPARTMENT[441](cont'd)

cost-containment initiatives and specified that one such initiative was to eliminate retroactive benefits for all Iowa Medicaid eligibility groups.

In accordance with the legislative mandate in House File 653, the Department filed for a waiver to eliminate retroactive benefits for all Iowa Medicaid eligibility groups. CMS approved the waiver to eliminate the three-month retroactive period for all Medicaid applicants with the exception that Iowa must continue to provide three months of retroactive Medicaid to pregnant women and infants (under the age of one) who otherwise qualify.

In the Adopted and Filed Emergency rule making, the amendments revised, renumbered or amended the rules to remove the retroactive benefit for Medicaid for all populations. After publication of the Adopted and Filed Emergency rule making, CMS instructed the Department to reinstate retroactive Medicaid benefits for pregnant women and infants (under the age of one). Therefore, the amendments in this rule making reinstate retroactive Medicaid eligibility for pregnant women and infants (under the age of one).

**Comment 3:** All respondents expressed concerns regarding the populations that their organizations serve and the ability of their organizations to continue to serve Medicaid patients. Specifically, respondents' comments are as follows:

• **Elderly and disabled persons needing postacute and chronic care:** The Department included its rationale for this amendment request which is founded on the fact that the commercial market does not allow for retroactive coverage. However, Medicaid is the payor for an entirely separate and unique population than the commercial market. Many aged and disabled will be left without coverage even though they meet the eligibility requirements.

This change will have a large impact on the amount of money seniors or their families pay for a hospital stay, residence in a skilled nursing facility, etc. For many aging individuals, the need for nursing facility care can come on suddenly. For example, a fall may result in a broken hip from which a frail senior may never fully recover. A sudden need does not allow for preplanning. Retroactive Medicaid coverage would allow a window of opportunity to get one's Medicaid coverage in order. With nursing home care costing \$5,000 to \$8,000/month, a 90-day bill can run \$15,000 to \$25,000. If a senior in such a situation is determined Medicaid-eligible in the application month, the senior is not in the financial situation to be able pay for the health care services received prior to the application month, creating a significant financial hardship for the senior and increased uncompensated care costs for the provider.

If this rule advances, Iowa health care system members will have to carefully consider whether they can continue to admit Medicaid-eligible Iowans into their nursing facilities.

• **Persons with catastrophic injuries and traumatic brain injuries:** Special consideration should be made for those individuals who experience a catastrophic injury or event such as a traumatic brain injury or stroke. For these individuals and their families, eliminating the retroactive period would be devastating. Survivors of catastrophic injury are first and foremost focused on survival, and then on rehabilitation. Such individuals are now unable to work, are likely to lose their jobs, and must apply for social security disability, which takes six months for approval. With no job and no income, many will lose their insurance and be at high risk of having a gap in health coverage. Nevertheless, they have to be treated.

Persons with catastrophic injury may not be able to apply for Medicaid on their own and may not have a legal representative to assist. This would lead to gaps in health coverage if there is no retroactive Medicaid period.

This organization has served persons whose insurance premiums were not paid while they were in acute care settings. Insurance may lapse retroactively, and the lapse may not be discovered immediately. Again, without retroactive Medicaid benefits, there would be a lapse in coverage. Currently, if an injured individual misses a deadline in providing information to the Department, the Medicaid application is closed and a new application has to be started. This is often the case when essential documents, such as 401(k) statements, are not able to be secured on Medicaid's timeline. Again, this would cause a lapse in coverage for the individual if there are not retroactive Medicaid benefits.

• **Patients receiving hospital care, including emergency care:** The rule change will bring extreme financial strain and liability on Medicaid beneficiaries for their cost of care prior to enrollment. Medicaid

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

patients often have significant financial needs; therefore, this rule will place an additional financial burden on hospitals and safety-net providers and will reduce their ability to serve Medicaid patients.

Hospitals are already struggling to cope with Medicaid changes and additional cost-containment strategies implemented in the last Legislative Session. Hospitals are seeing an increase in administrative expense, increased difficulty finding long-term placement options and an increase in charity care and bad debt that affects the financial stability of Iowa's hospitals, especially in rural communities.

Iowa's hospitals care for all patients in need of emergency care, at all hours of the day, regardless of ability to pay and cannot deny emergency services to those without an insurance card. Hospitals are required by federal law to provide emergency care. The Iowa Hospital Association's members have expressed concern regarding the financial liability of Medicaid eligible patients, whether behavioral health patients whose illness impacts their ability to move forward with a Medicaid application or a trauma patient who has lost the ability to communicate and needs additional time to work through the application process. While these cases may not happen every day, when they do, these are cases of a high level of care at extraordinary expense. Iowa's hospitals will no longer be able to rely on retroactive enrollment to ensure payment for care in these situations. The results of this policy decision are possibly catastrophic to these patients and the hospitals that assist them.

• **Persons with behavioral health needs (substance use disorders/addictions, mental health):** Patients who qualify for Medicaid, in addition to having significant financial needs, also commonly have behavioral health needs. Their needs prevent them from being able to fully comprehend the need for and timelines to apply for coverage. Additionally, the Department's rationale for the change is to align Medicaid more closely with the commercial insurance market, but Medicaid is the payor for an entirely separate and unique population than the commercial market. This shift will remove an important safety net and directly shifts the financial burden to providers and medical facilities and ultimately reduces their ability to serve Medicaid patients.

**Department response 3:** The Department needs legislative authority and CMS approval to make an exception and continue to allow the three-month retroactive period for a specific population, except as authorized by CMS for pregnant women and infants (see Department response 2).

There are other ways an applicant can get Medicaid coverage retrospectively without applying the three-month retroactive period:

- Eligibility for applicants who are determined eligible for Medicaid will continue to be effective as of the first of the month of application, regardless of when the decision is made. For example, if an application is filed on December 29 and in March, the Department determines that the applicant is Medicaid-eligible for the months of December through March and ongoing, Medicaid is approved effective December 1. Any unpaid medical bills incurred on or after December 1 will be covered as long as the service is a Medicaid-covered service.

- The 90-day reconsideration period allows a former Medicaid member to submit a Medicaid review up to 90 days past the expiration of the member's 12-month eligibility period without needing to submit a new application. If the person is determined eligible, the effective date of the new eligibility period goes back to the first of the month after the previous eligibility period ended and there is no lapse in coverage.

**Comment 4:** If facilities become hesitant to admit individuals who have suffered a catastrophic injury since there would no longer be "presumptive Medicaid," individuals would be forced to stay in the hospital and acute care settings until their Medicaid was active and verified or until they receive approval for disability, which takes six months to determine. Acute hospital stays are considerably more expensive than the next level of service.

**Department response 4:** These rule changes do not impact presumptive Medicaid. Hospitals and other providers that are designated as a "presumptive provider organization" can make a presumptive Medicaid eligibility determination for persons seeking services. "Presumptive Medicaid" is available to applicants who are children, pregnant women, parents and caretakers, persons aged 19 to under age 65, persons in need of treatment for breast or cervical cancer, and certain former foster care children.

If the provider determines an applicant eligible for presumptive Medicaid, eligibility begins as of the date the presumptive provider makes the eligibility determination and enters the data into the

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

Department's system. Presumptive Medicaid eligibility continues until the last day of the month following the month of the presumptive determination or until the Department makes a formal Medicaid decision, whichever occurs earlier.

**Comment 5:** Without the retroactive period, there will likely be more individuals forced to stay in acute care until Medicaid coverage can be verified instead of transitioning to a lower level of care. This will result in significantly higher costs and less effective care. Additionally, because of the process of applying for Medicaid, there will be a lapse between private insurance and Medicaid benefits in many cases. This could result in:

- Uninsured individuals with medically complex situations who have nowhere to turn for treatment, which is putting extreme undue hardships on the individuals and their families.
- Limited admissions to rehabilitation providers who are unable to take on the risk of uninsured individuals without the retroactive coverage.
- Delaying individuals the right to crucial rehabilitation at the time that recovery and successful outcomes are most likely.

**Department response 5:** The Department needs legislative authority and CMS approval to make an exception and continue to allow the three-month retroactive period for a specific population, except as authorized by CMS for pregnant women and infants (see Department response 2).

The Department believes many in this situation may be eligible under presumptive Medicaid and eligible for retroactive benefits as of the first of the month of application (see Department responses 3 and 4).

**Comment 6:** Iowa will be the first state in the nation to eliminate retroactive coverage for the traditional Medicaid population (non-expansion population, including the disabled).

Another respondent commented similarly saying "no other state is advancing this type of cost-shift to private-pay residents."

**Department response 6:** The Department proposed these amendments to align Medicaid policy with that of the commercial market, which does not allow for an individual to apply for retroactive insurance coverage.

The Department needs legislative authority and CMS approval to suspend or delay implementation of the policy to eliminate retroactive Medicaid or to make an exception and allow the three-month retroactive period for a specific population, except as authorized by CMS for pregnant women and infants (see Department response 2).

**Comment 7:** With a lack of consistent reporting from the Iowa jails to Iowa Medicaid Enterprise, it is often impossible to know if a Medicaid patient has lost coverage due to being incarcerated for over 30 days. Providers rely upon the state's eligibility line for verification, and unfortunately, it is not real time. Thus, treatment is provided based upon inaccurate eligibility data, and in the end, the provider is stuck with the cost and repayment of any funds received for this service.

**Department response 7:** The Department acknowledges this comment and that there are issues with the Department's receipt of timely and accurate incarceration data. However, the Department does not see this issue as relevant to the elimination of the three-month retroactive period.

**Comment 8:** All the respondents expressed concerns about costs shifting to providers and Medicaid members, and some respondents believe that the Department underestimated the fiscal impact of the rule change.

**Department response 8:** There continues to be strong opposition to and disagreement with the Department's assessment of the overall fiscal impact of these amendments and the impact as it relates to the long-term care data.

The Department received an approval from CMS to implement elimination of retroactive coverage strategy for all Medicaid applicants, except for pregnant women and infants under the age of one, and as a result, the Department recalculated the fiscal impact to exclude the two populations:

- o Total annual Medicaid savings = \$26,956,724. Reduced from \$37,086,260.
- o Annual State savings = \$5,586,234. Reduced from \$9,835,575.
- o Savings for the following eligibility groups remain unchanged from the September calculations:



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

- Elderly: Total = \$262,791; State = \$110,241
- Disabled: Total = \$4,368,799; State = \$1,832,711
- Long-term care facility: Total = \$334,478; State = \$140,314

As previously stated, there are other ways for an applicant to obtain Medicaid coverage retrospectively without application of the three-month retroactive period (see Department response 3). The Department thinks there may be a misunderstanding of the situations that actually meet the criteria of the three-month retroactive coverage as opposed to retroactive benefits applied for other reasons. The Department is willing to meet with the providers individually to discuss the situations that meet the definition of the three-month retroactive period in order to understand the discrepancies.

As explained in Department response 2, these adopted amendments have been changed from those published under Notice of Intended Action and Adopted and Filed Emergency to reinstate retroactive eligibility for pregnant women and infants (under the age of one).

The Council on Human Services adopted these amendments on December 13, 2017.

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

After analysis and review of this rule making, it was determined that Medicaid providers may experience financial loss due to nonpayment of unpaid medical bills incurred in the three months prior to a Medicaid applicant's filing of an application.

These amendments are intended to implement Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(7).

These amendments will become effective February 7, 2018.

The following amendments are adopted.

ITEM 1. Adopt the following **new** subrule 74.5(4):

**74.5(4) Retroactive enrollment.** Medical assistance shall be available to a pregnant woman or an infant (under one year of age) for all or any of the three months preceding the month in which an application is filed when eligibility requirements are met in accordance with 441—subrule 76.13(3).

ITEM 2. Adopt the following **new** subparagraph **75.1(35)“d”(5)**:

(5) The income for the retroactive certification period shall be determined by adding each month of the retroactive period to arrive at a total.

ITEM 3. Amend paragraph **75.1(35)“e”** as follows:

*e. Medically needy income level (MNIL).*

(1) and (2) No change.

(3) The MNIL for the certification period shall be determined by adding both months' MNIL to arrive at a total. The MNIL for the retroactive certification period, when applicable, shall be determined by adding each month of the retroactive period to arrive at a total.

(4) No change.

(5) Effective date of approval. Eligibility during the certification period or the retroactive certification period when applicable shall be effective as of the first day of the first month of the certification period or the retroactive certification period when the medically needy income level (MNIL) is met.

ITEM 4. Amend subparagraph **75.1(35)“g”(1)** as follows:

(1) Medical expenses that are incurred during the certification period may be used to meet spenddown. Medical expenses incurred prior to a certification period shall be used to meet spenddown if not already used to meet spenddown in a previous certification period and if all of the following requirements are met. The expenses:

1. Remain unpaid as of the first day of the certification period.

2. Are not Medicaid-payable in a previous certification period or the retroactive certification period.

3. Are not incurred during any prior certification period with the exception of the retroactive period in which the person was conditionally eligible but did not meet spenddown.

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

Notwithstanding numbered paragraphs “1” through “3,” paid medical expenses from the retroactive period can be used to meet spenddown in the retroactive period or in the certification period for the two months immediately following the retroactive period.

ITEM 5. Adopt the following **new** subparagraph **75.11(2)“c”(3)**:

(3) Retroactive eligibility pursuant to 441—subrule 76.13(3) is available only after documentation of citizenship or nationality has been provided pursuant to paragraph 75.11(2)“d,” “e,” or “i.” The retroactive months are outside the “reasonable period” during which Medicaid coverage may be provided without required documentation of citizenship or nationality.

ITEM 6. Adopt the following **new** paragraph **75.19(1)“e”**:

e. Children who are eligible only in a retroactive month.

ITEM 7. Amend rule **441—75.25(249A)**, definition of “Incurred medical expenses,” as follows:

“*Incurred medical expenses*” for medically needy shall mean (1) medical bills paid by a client, responsible relative, or state or political subdivision program other than Medicaid during the retroactive certification period or the certification period, or (2) unpaid medical expenses for which the client or responsible relative remains obligated.

ITEM 8. Adopt the following **new** definitions of “Retroactive certification period” and “Retroactive period” in rule **441—75.25(249A)**:

“*Retroactive certification period*” for medically needy shall mean one, two, or three calendar months prior to the date of application. 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 calendar months immediately preceding the month in which an application is filed.

ITEM 9. Adopt the following **new** subrule 76.4(6):

**76.4(6)** Retroactive enrollment is available pursuant to subrule 76.13(3) for any of the three months before the month of the child’s food assistance effective date when the child was an infant (under the age of one) during any of the three months and the child:

- a. Has medical bills for covered services that were received in that period; and
- b. Would have been eligible for medical assistance benefits in the month services were received if the application for medical assistance had been made in that month and the eligibility determination was made without regard to food assistance eligibility.

ITEM 10. Adopt the following **new** subrule 76.13(3):

**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) during any of the three months and who:

- (1) Has medical bills for covered care or services received during the three-month retroactive period; and
- (2) Would have been eligible for medical assistance in the month services were received if the application for medical assistance had been made in that month.

b. The applicant need not be eligible in the month of application to be eligible in any of the three months prior to the month of application.

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 if the conditions in paragraph 76.13(3)“a” are met.

d. Persons enrolled in Medicaid based on receipt of supplemental security income benefits who wish to make application for Medicaid benefits for the three months preceding the month of application shall complete SSI Medicaid Information, Form 470-0364, 470-0364(S), 470-0364(M), or 470-0364(MS).

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

*e.* Exceptions to retroactive enrollment. This subrule does not apply to the following persons who are otherwise eligible for retroactive enrollment:

- (1) Persons whose citizenship or alien status has not been verified even though they are eligible during a 90-day reasonable opportunity period.
- (2) Persons determined eligible only under presumptive Medicaid benefits.
- (3) Persons eligible for Medicaid only under the qualified Medicare beneficiary program.
- (4) Persons eligible only under the home- and community-based waiver services program.

[Filed 12/13/17, effective 2/7/18]

[Published 1/3/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/3/18.

**ARC 3550C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 91, the Department of Human Services hereby amends Chapter 75, "Conditions of Eligibility," and Chapter 76, "Enrollment and Reenrollment," Iowa Administrative Code.

These amendments remove references to medical assistance for family planning services which refer to Medicaid under the Family Planning Network waiver. The state of Iowa will no longer provide Medicaid under the Family Planning Network waiver. The state of Iowa will continue to provide family planning services through the new state-funded Family Planning Program (FPP) pursuant to 2017 Iowa Acts, House File 653, section 90, as passed during the 87th Session of the General Assembly. Administrative rules for the new FPP are located at 441—Chapter 87.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3356C** on October 11, 2017. These amendments were also Adopted and Filed Emergency and published as **ARC 3354C** on the same date and became effective October 1, 2017. The Department received no comments during the public comment period. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted these amendments on December 13, 2017.

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

After analysis and review of this rule making, providers of family planning services may see an increase or decrease in staffing needs based on the number of individuals seeking family planning services from the providers' agencies.

These amendments are intended to implement Iowa Code chapter 249A and section 217.41B.

These amendments will become effective February 7, 2018, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Rescind and reserve subrule **75.1(41)**.

ITEM 2. Amend subparagraph **75.1(43)"d"(2)** as follows:

(2) Only those persons identified in subparagraph (1) shall be considered a member of the child's household. A person who receives medically needy coverage with a spenddown or limited benefits such as Medicare savings programs ~~or family planning services~~ only is not considered to be "receiving Medicaid" for the purposes of subparagraph (1). A child who lives alone or with persons not identified in subparagraph (1) shall be considered as having a household of one.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 3. Amend rule 441—75.70(249A) as follows:

**441—75.70(249A) Financial eligibility based on modified adjusted gross income (MAGI).** Notwithstanding any other provision of this chapter, effective January 1, 2014, financial eligibility for medical assistance shall be determined using “modified adjusted gross income” (MAGI) and “household income” pursuant to 42 U.S.C. § 1396a(e)(14), to the extent required by that section as a condition of federal funding under Title XIX of the Social Security Act. For this purpose, financial eligibility for medical assistance includes any applicable purpose for which a determination of income is required, including the imposition of any premiums or cost sharing. ~~From January 1, 2014, through June 30, 2014, subject to a waiver of the requirements of 42 U.S.C. § 1396a(e)(14) by the federal Centers for Medicare and Medicaid Services, use of MAGI and “household income” shall not be considered to be required by that section for persons otherwise eligible for family planning services under subrule 75.1(41).~~

ITEM 4. Rescind subparagraph **76.2(1)“c”(3)**.

ITEM 5. Renumber subparagraph **76.2(1)“c”(4)** as **76.2(1)“c”(3)**.

ITEM 6. Rescind subparagraph **76.2(2)“c”(3)**.

ITEM 7. Amend subparagraph **76.14(2)“a”(2)** as follows:

(2) Information for the eligibility review shall be submitted on Review/Recertification Eligibility Document (RRED), Form 470-2881, 470-2881(M), 470-2881(S), or 470-2881(MS), with the following exceptions:

1. to 4. No change.

~~5. Members eligible for family planning services only shall complete Family Planning Medicaid Review, Form 470-4071. The member must submit the completed review form before the end of the eligibility period to any location specified in subparagraph 76.2(2)“c”(3).~~

ITEM 8. Amend subparagraph **76.14(2)“a”(5)** as follows:

(5) Reinstatement. When medical assistance has been canceled for failure to return a completed review form, assistance may be reinstated without a new application if the department receives the completed form within 14 calendar days of the effective date of cancellation. If the fourteenth calendar day falls on a weekend or state holiday, the member shall have until the next business day to provide the information. ~~EXCEPTION: Members eligible for family planning services only who fail to submit Family Planning Medicaid Review, Form 470-4071, before the end of the eligibility period must reapply as directed in rule 441—76.2(249A).~~

ITEM 9. Amend subparagraph **76.14(2)“b”(2)** as follows:

(2) When eligibility cannot be determined based on information in the electronic case record and data matches, the member will be provided with a prepopulated renewal form, ~~MAGI Medicaid Renewal, Form 470-5168 or Form 470-5168(S),~~ and will have 30 days from the date of the renewal form to sign and return the form with necessary information, ~~with the following exceptions:~~

1. ~~Members eligible for family planning services only shall complete Family Planning Medicaid Review, Form 470-4071 whose eligibility is based on the modified adjusted gross income methodology shall complete and return Medicaid/HAWK-I Review, Form 470-5168, 470-5168(S), 470-5168(M), or 470-5168(MS).~~

2. Members whose eligibility for Medicaid is not based on the modified adjusted gross income methodology shall complete and return Medicaid Review, Form 470-3118, ~~or 470-3118(S), 470-3118(M), or 470-3118(MS)~~ when requested to do so by the department. Members whose eligibility has been determined on the basis of age, blindness or disability must sign and return the notice within 30 days of the date on the notice and provide verification of income and resources before a determination of continued eligibility can be made.

ITEM 10. Amend subparagraph **76.14(2)“b”(3)** as follows:

(3) Enrollment will end when information or documentation necessary to complete the determination of continued eligibility is not returned within 30 days, ~~with the exception that members~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~eligible for family planning services only who fail to submit the completed Family Planning Medicaid Review, Form 470-4071, before the end of the eligibility period must reapply as directed in rule 441—76.2(249A). The department shall notify the member on Notice of Action, Form 470-0485 or Form 470-0485(S).~~

[Filed 12/13/17, effective 2/7/18]

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**ARC 3551C****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments reflect the new accreditation standards in rule 441—24.21(225C) for crisis response services. Iowa Medicaid currently covers crisis response services; however, these amendments will clarify services covered and provide standards for operation for Medicaid crisis response service providers.

These amendments also establish the process by which the Department of Human Services' Iowa Medicaid Enterprise (IME) will enroll and reimburse qualified subacute mental health facility providers.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3439C** on November 8, 2017. The Department received no comments during the public comment period. These amendments are identical to those published under Notice of Intended Action, except that a sentence has been added at the end of each of the new rules to cite the Iowa Code section implemented by the rules.

The Council on Human Services adopted these amendments on December 13, 2017.

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

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

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

These amendments will become effective February 7, 2018.

The following amendments are adopted.

ITEM 1. Adopt the following **new** rule 441—77.55(249A):

**441—77.55(249A) Crisis response services.**

**77.55(1) Definitions.** The terms used in this rule shall have the same meaning as set out in 441—Chapter 24, Division II.

**77.55(2) Eligible providers.** Agencies which are accredited under the mental health service provider standards established by the mental health and disability services commission, set forth in 441—Chapter 24, Division II, are eligible to participate in the program by providing crisis response services, crisis stabilization community-based services, and crisis stabilization residential services.

**77.55(3) Provider standards.** All providers of crisis response services, crisis stabilization community-based services, and crisis stabilization residential services shall meet the standards criteria as set forth in 441—Chapter 24, Division II.

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

ITEM 2. Adopt the following **new** rule 441—77.56(249A):

**441—77.56(249A) Subacute mental health services.**

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

**77.56(1) Definitions.** The terms used in this rule shall have the same meaning as set out in Iowa Code section 135G.1.

**77.56(2) Subacute mental health services.** Subacute mental health services are intended to be short-term, intensive, recovery-oriented services designed to stabilize an individual who is experiencing a decreased level of functioning due to a mental health condition.

**77.56(3) Eligible provider.** Subacute mental health care facilities which are licensed by the department of inspections and appeals in accordance with 481—Chapter 71 are eligible to participate in the program by providing subacute mental health services.

**77.56(4) Provider standards.** All providers of subacute mental health services shall meet the standards criteria as set forth in 481—Chapter 71.

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

ITEM 3. Adopt the following **new** rule 441—78.60(249A):

**441—78.60(249A) Crisis response services.** Payment will be made to providers (eligible pursuant to rule 441—77.55(249A)) of crisis response services, crisis stabilization community-based services, and crisis stabilization residential services delivered as set forth in 441—Chapter 24, Division II.

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

ITEM 4. Adopt the following **new** rule 441—78.61(249A):

**441—78.61(249A) Subacute mental health services.** Payment will be made to providers (eligible pursuant to rule 441—77.56(249A)) for the provision of subacute mental health care facility services that meet the standards outlined in 481—Chapter 71.

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

ITEM 5. Adopt the following **new** provider categories in subrule **79.1(2)**:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Crisis response services	Fee schedule	Fee schedule in effect 2/1/18.
Crisis stabilization community-based services	Fee schedule	Fee schedule in effect 2/1/18.
Crisis stabilization residential services	Fee schedule	Fee schedule in effect 2/1/18.
Subacute mental health facility	Fee schedule	Fee schedule in effect 2/1/18.

ITEM 6. Adopt the following **new** subparagraph **79.3(2)“d”(44)**:

(44) Crisis response services, crisis stabilization community-based services and crisis stabilization residential services.

1. Physician orders or court orders.
2. Independent assessment.
3. Individual treatment plan.
4. Service notes or narratives (history and physical, therapy records, discharge summary).
5. Medication administration records (residential services).

ITEM 7. Adopt the following **new** subparagraph **79.3(2)“d”(45)**:

(45) Subacute mental health services.

1. Assessment.
2. Individual stabilization plan.
3. Service notes or narratives (history and physical, therapy records, discharge summary).
4. Medication administration records (residential services).

[Filed 12/13/17, effective 2/7/18]

[Published 1/3/18]

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## ARC 3552C

## HUMAN SERVICES DEPARTMENT[441]

## Adopted and Filed

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

These amendments revise the language used to describe the home- and community-based services (HCBS) home-delivered meal benefit in order to provide greater clarity regarding how the benefit is to be administered.

These amendments will assist the Department in ensuring that delivery of excess meals is curtailed. These amendments provide a greater understanding to meal providers regarding the definition of service for HCBS home-delivered meals. This improved understanding will in turn assist in curtailing the delivery of meals considered to be outside of the benefit. A member will still have the ability to receive up to two meals per day if that number of meals is authorized in the member's individualized service plan.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3374C** on October 11, 2017. The Department received no comments during the public comment period. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on December 13, 2017.

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

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

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

These amendments will become effective February 7, 2018.

The following amendments are adopted.

ITEM 1. Amend subrule 78.34(11) as follows:

**78.34(11) Home-delivered meals.** Home-delivered meals are meals prepared elsewhere and delivered to a member at the member's residence.

*a. and b.* No change.

*c.* ~~A maximum of two meals is allowed per day.~~ A unit of service is a meal (morning, noon, evening, or liquid supplement). Any maximum combination of any two meals (morning, noon, evening, or liquid supplement) is allowed per day. Duplication of a meal in any one day is not allowed. The number of approved meals (morning, noon, evening, or liquid supplement) is contained in the member's service plan.

*d.* The number of meals delivered for any morning, noon, evening, or liquid supplement meal cannot exceed the number of calendar days in a calendar month; nor can the number of delivered meals exceed the number of authorized days in a month. Meals billed in excess of the calendar days in a calendar month and those billed in excess of the number of authorized days in a month are subject to recoupment or denial of payment.

ITEM 2. Amend subrule 78.37(8) as follows:

**78.37(8) Home-delivered meals.** Home-delivered meals are meals prepared elsewhere and delivered to a member at the member's residence.

*a. and b.* No change.

*c.* ~~A maximum of two meals is allowed per day.~~ A unit of service is a meal (morning, noon, evening, or liquid supplement). Any maximum combination of any two meals (morning, noon, evening, or liquid supplement) is allowed per day. Duplication of a meal in any one day is not allowed. The number of approved meals (morning, noon, evening, or liquid supplement) is contained in the member's service plan.

*d.* The number of meals delivered for any morning, noon, evening, or liquid supplement meal cannot exceed the number of calendar days in a calendar month; nor can the number of delivered meals

HUMAN SERVICES DEPARTMENT[441](cont'd)

exceed the number of authorized days in a month. Meals billed in excess of the calendar days in a calendar month and those billed in excess of the number of authorized days in a month are subject to recoupment or denial of payment.

ITEM 3. Amend subrule 78.38(6) as follows:

**78.38(6) Home-delivered meals.** Home-delivered meals are meals prepared elsewhere and delivered to a member at the member's residence.

*a.* and *b.* No change.

*c.* ~~A maximum of two meals is allowed per day.~~ A unit of service is a meal (morning, noon, evening, or liquid supplement). Any maximum combination of any two meals (morning, noon, evening, or liquid supplement) is allowed per day. Duplication of a meal in any one day is not allowed. The number of approved meals (morning, noon, evening, or liquid supplement) is contained in the member's service plan.

*d.* The number of meals delivered for any morning, noon, evening, or liquid supplement meal cannot exceed the number of calendar days in a calendar month; nor can the number of delivered meals exceed the number of authorized days in a month. Meals billed in excess of the calendar days in a calendar month and those billed in excess of the number of authorized days in a month are subject to recoupment or denial of payment.

[Filed 12/13/17, effective 2/7/18]

[Published 1/3/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/3/18.

**ARC 3553C**

## **HUMAN SERVICES DEPARTMENT[441]**

### **Adopted and Filed**

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

This amendment will allow hospice agencies to use the Medicare election of hospice benefits as an alternative to using the election of Medicaid hospice benefits.

Medicaid members and hospice providers will benefit from this amendment. The Department will also be affected by a decrease in the number of exceptions to policy that are processed by the Department.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3419C** on October 25, 2017. The Department received no comments during the public comment period. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on December 13, 2017.

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

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

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

This amendment will become effective February 7, 2018.

The following amendment is adopted.

Amend subparagraph **78.36(4)“b”(1)** as follows:

(1) Election statement. An individual, or individual's representative, elects to receive the hospice benefit by filing an election statement, Form 470-2618, Election of Medicaid Hospice Benefit, or a Medicare election of hospice benefit form, with a particular hospice. The hospice may provide the individual with another election form to use provided the form includes the following information:



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

1. to 7. No change.

[Filed 12/13/17, effective 2/7/18]

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**ARC 3554C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 93, the Department of Human Services hereby amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments allow Medicaid providers, in addition to providing narrative documentation, to provide narrative documentation of service in a checkbox form format. This change is being made to assist Medicaid providers to have a consistent interpretation of the documentation requirements for services provided.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3357C** on October 11, 2017. These amendments were also Adopted and Filed Emergency and published as **ARC 3358C** on the same date and became effective October 1, 2017. The Department received no comments during the public comment period. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted these amendments on December 13, 2017.

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

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

These amendments are intended to implement Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 93.

These amendments will become effective February 7, 2018, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subparagraph **79.3(2)“c”(3)** as follows:

(3) Service documentation. The record for each service provided shall include information necessary to substantiate that the service was provided. Service documentation shall include narrative documentation and may also include documentation in checkbox format. The service record shall include the following:

1. to 9. No change.

ITEM 2. Amend subparagraph **79.3(2)“d”(6)** as follows:

(6) Other advanced registered nurse practitioner services:

1. and 2. No change.

3. Other service documentation as applicable.

ITEM 3. Amend subparagraph **79.3(2)“d”(8)** as follows:

(8) Psychologist services:

1. and 2. No change.

3. Other service documentation as applicable.

ITEM 4. Amend subparagraph **79.3(2)“d”(11)** as follows:

(11) Services provided by community mental health centers:

1. to 6. No change.

7. Other service documentation as applicable.

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

ITEM 5. Amend subparagraph **79.3(2)“d”(24)** as follows:

(24) Home- and community-based habilitation services:

1. to 3. No change.
4. Other service documentation as applicable.

ITEM 6. Amend subparagraph **79.3(2)“d”(25)** as follows:

(25) Behavioral health intervention:

1. to 3. No change.
4. Other service documentation as applicable.

ITEM 7. Amend subparagraph **79.3(2)“d”(33)** as follows:

(33) Case management services, including HCBS case management services:

1. to 7. No change.
8. Other service documentation as applicable.

ITEM 8. Amend subparagraph **79.3(2)“d”(35)** as follows:

(35) Home- and community-based waiver services, other than case management:

1. to 7. No change.
8. Other service documentation as applicable.

ITEM 9. Amend subparagraph **79.3(2)“d”(39)** as follows:

(39) Behavioral health services:

1. to 3. No change.
4. Other service documentation as applicable.

ITEM 10. Amend subparagraph **79.3(2)“d”(42)** as follows:

(42) Community-based neurobehavioral rehabilitation residential services and community-based neurobehavioral rehabilitation intermittent services:

1. to 9. No change.
10. Other service documentation as applicable.

[Filed 12/13/17, effective 2/7/18]

[Published 1/3/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/3/18.

**ARC 3555C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 237A.12, the Department of Human Services hereby amends Chapter 109, “Child Care Centers,” Iowa Administrative Code.

This amendment revises the definition of “child care” found in rule 441—109.1(237A) to provide allowable exemptions in accordance with 2017 Iowa Acts, House File 534. House File 534 modifies Iowa Code section 237A.1(3) to allow programs serving children who are at least three years of age and eligible for special education under Iowa Code chapter 256B to be exempt from child care facility licensing requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3438C** on November 8, 2017. The Department received no comments during the public comment period. This amendment is identical to the amendment published under Notice of Intended Action.

The Council on Human Services adopted this amendment on December 13, 2017.

This amendment does not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217). After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 237A.1(3).

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

This amendment will become effective March 1, 2018.

The following amendment is adopted.

Amend rule **441—109.1(237A)**, definition of “Child care,” as follows:

“*Child care*” means the care, supervision, or guidance of a child by a person other than the child’s parent, guardian, or custodian for periods of less than 24 hours per day per child on a regular basis in a place other than the child’s home, but does not include care, supervision, or guidance of a child by any of the following:

1. An instructional program for children who are attending prekindergarten as defined by the state board of education under Iowa Code section 256.11 or a higher grade level and are at least four years of age, or at least three years of age and eligible for special education under Iowa Code chapter 256B, and administered by a public or nonpublic school system accredited by the department of education or the state board of regents or a nonpublic school system which is not accredited by the department of education or the state board of regents.

2. to 13. No change.

[Filed 12/13/17, effective 3/1/18]

[Published 1/3/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/3/18.

**ARC 3556C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 237A.12, the Department of Human Services hereby amends Chapter 109, “Child Care Centers,” Chapter 110, “Child Development Homes,” and Chapter 120, “Child Care Homes,” Iowa Administrative Code.

The Department is required by federal legislation, CFR 45, Part 98, to implement professional development requirements for child care homes that are not registered but have a child care assistance provider agreement. Further, the Department is permitted to make exemptions for relatives that meet the federal definition of “relative.” These amendments provide consistency for requirements for professional development training entities and topics. These amendments also make enhancements to sleep practices to ensure that children who are sleeping in child care facilities are using items designed for sleeping which meet Consumer Product Safety Commission (CPSC) or American Society for Testing and Materials (ASTM) requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3436C** on November 8, 2017. The Department received 19 comments from ten respondents on this rule making. A summary of the respondent’s comments and the Department’s responses are as follows:

**Comment 1:** Twelve comments were made in support of the recommended changes.

**Department response 1:** The Department appreciates the support of the respondents in this rule-making process.

**Comment 2:** Two comments were made suggesting that an approximate amount of time to check on children be added or that more guidance be provided regarding the expectation for sight and sound observation.

**Department response 2:** The Department recognizes the potential benefit of this addition. It is noted that expectations for observation times may vary for specific children, by age of child and location of sleeping. The Department and resource and referral agencies are available to provide feedback to child care providers on what may be appropriate expectations for their specific programs. At this time, the Department will not promulgate rules to require specific time frames.

**Comment 3:** Three comments were made that in-home day care providers should be required to follow the same requirements as child care centers and that they should receive training before the

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

providers are able to keep children in their homes. It was requested that providers should have training regarding safe sleep practices.

**Department response 3:** The Department is responsible for promulgating administrative rules to implement Iowa Code section 237A.12. Iowa Code section 237A.3 permits child care homes to provide child care to five or fewer children without being required to register as a child development home. The provisions in the Iowa Code are enacted by the State Legislature, and any changes to the Iowa Code regarding an expansion of those who are required to abide by administrative rule requirements must go through the legislative process. Child development homes, child care homes with Child Care Assistance Provider Agreements and licensed child care center staff are currently required to complete preservice/orientation, which includes a module on safe sleep practices. No modifications to the rules will be made at this time.

**Comment 4:** Three comments were made to verify that children over one year of age would also be included in the prohibition from the use of restraint devices.

**Department response 4:** The rules are written to prohibit the allowance of restraint devices in cribs for any aged child. No change is needed to these amendments.

These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on December 13, 2017.

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

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

These amendments are intended to implement Iowa Code section 237A.12.

These amendments will become effective March 1, 2018.

The following amendments are adopted.

ITEM 1. Amend subparagraph **109.12(5)“e”(7)** as follows:

(7) If an alternate sleeping position is needed, a signed physician or physician assistant authorization with statement of medical reason is required.

ITEM 2. Adopt the following **new** paragraph **109.12(5)“i”**:

i. All items used for sleeping must be used in compliance with manufacturer standards for age and weight of the child.

ITEM 3. Rescind subrule 110.8(5) and adopt the following **new** subrule in lieu thereof:

**110.8(5) Safe sleep.**

a. The provider shall follow safe sleep practices as recommended by the American Academy of Pediatrics for infants under the age of one. Infant sleep shall conform to the following standards:

(1) Infants shall always be placed on their backs for sleep.

(2) Infants shall be placed on a firm mattress with a tight fitted sheet that meets U.S. Consumer Product Safety Commission federal standards.

(3) Infants shall not be allowed to sleep on a bed, sofa, air mattress or other soft surface.

(4) No toys, soft objects, stuffed animals, pillows, bumper pads, blankets, or loose bedding shall be allowed in the sleeping area with the infant.

(5) No co-sleeping shall be allowed.

(6) Sleeping infants shall be actively observed by sight and sound.

(7) If an alternate sleeping position is needed, a signed physician or physician assistant authorization with statement of medical reason is required.

b. No child shall be allowed to sleep in any item not designed for sleeping including, but not limited to, an infant seat, car seat, swing, or bouncy seat.

c. A crib or criblike furniture which has a waterproof mattress covering and sufficient bedding to enable a child to rest comfortably and which meets the current standards or recommendations from the Consumer Product Safety Commission or ASTM International for juvenile products shall be provided for each child under two years of age if developmentally appropriate. Crib railings shall be fully raised and secured when the child is in the crib. A crib or criblike furniture shall be provided for the number

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

of children present at any one time. The home shall maintain all cribs or criblike furniture and bedding in a clean and sanitary manner. There shall be no restraining devices of any type used in cribs.

*d.* All items used for sleeping must be used in compliance with manufacturer standards for age and weight of the child.

ITEM 4. Rescind paragraph **110.10(1)“e.”**

ITEM 5. Reletter paragraphs **110.10(1)“f”** and **“g”** as **110.10(1)“e”** and **“f.”**

ITEM 6. Adopt the following **new** paragraph **110.10(1)“g”**:

*g.* A provider who has completed training through a child care resource and referral agency or community college within six months prior to initial registration shall be permitted to count the training toward the provider’s total training required during the initial registration.

ITEM 7. Adopt the following **new** definition of “Relative” in rule **441—120.1(237A)**:

“*Relative*” means grandparents, great grandparents, aunts, uncles, and siblings living in a separate residence.

ITEM 8. Rescind subrule 120.8(5) and adopt the following **new** subrule in lieu thereof:

**120.8(5) Safe sleep.**

*a.* The provider shall follow safe sleep practices as recommended by the American Academy of Pediatrics for infants under the age of one. Infant sleep shall conform to the following standards:

- (1) Infants shall always be placed on their backs for sleep.
- (2) Infants shall be placed on a firm mattress with a tight fitted sheet that meets U.S. Consumer Product Safety Commission federal standards.
- (3) Infants shall not be allowed to sleep on a bed, sofa, air mattress or other soft surface.
- (4) No toys, soft objects, stuffed animals, pillows, bumper pads, blankets, or loose bedding shall be allowed in the sleeping area with the infant.
- (5) No co-sleeping shall be allowed.
- (6) Sleeping infants shall be actively observed by sight and sound.
- (7) If an alternate sleeping position is needed, a signed physician or physician assistant authorization with statement of medical reason is required.

*b.* No child shall be allowed to sleep in any item not designed for sleeping including, but not limited to, an infant seat, car seat, swing, or bouncy seat.

*c.* A crib or criblike furniture which has a waterproof mattress covering and sufficient bedding to enable a child to rest comfortably and which meets the current standards or recommendations from the Consumer Product Safety Commission or ASTM International for juvenile products shall be provided for each child under two years of age if developmentally appropriate. Crib railings shall be fully raised and secured when the child is in the crib. A crib or criblike furniture shall be provided for the number of children present at any one time. The home shall maintain all cribs or criblike furniture and bedding in a clean and sanitary manner. There shall be no restraining devices of any type used in cribs.

*d.* All items used for sleeping must be used in compliance with manufacturer standards for age and weight of the child.

ITEM 9. Adopt the following **new** subrule 120.10(6):

**120.10(6)** During each two-year provider agreement period, the provider shall receive a minimum of six hours of training. A provider shall not use a specific training or class to meet minimum continuing education requirements more than one time every five years.

*a.* Training shall be completed from one or more of the following content areas.

- (1) Planning a safe, healthy learning environment (includes nutrition).
- (2) Steps to advance children’s physical and intellectual development.
- (3) Positive ways to support children’s social and emotional development (includes guidance and discipline).
- (4) Strategies to establish productive relationships with families (includes communication skills and cross-cultural competence).
- (5) Strategies to manage an effective program operation (includes business practices).

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

- (6) Maintaining a commitment to professionalism.
- (7) Observing and recording children's behavior.
- (8) Principles of child growth and development.

*b.* Training identified in subrule 120.10(1) may be counted toward the total six hours of required training only at the initial time in which the training is received.

*c.* A child care home provider operating under this chapter that meets the definition of "relative" as defined in rule 441—120.1(237A) shall be exempt from the training requirements under this subrule.

ITEM 10. Adopt the following new subrule 120.10(7):

**120.10(7)** Approved training.

*a.* The training must be conducted by a trainer who is employed by or under contract with one of the following entities or who uses curriculum or training materials developed by or obtained with the written permission of one of the following entities:

- (1) An accredited university or college.
- (2) A community college.
- (3) Iowa State University Extension.
- (4) A child care resource and referral agency.
- (5) An area education agency.
- (6) The regents' center for early developmental education at the University of Northern Iowa.
- (7) A hospital (for health and safety, first-aid, and CPR training).
- (8) The American Red Cross, American Heart Association, National Safety Council, American Safety and Health Institute or MEDIC First Aid (for first-aid and CPR training).
- (9) An Iowa professional association, including the Iowa Association for the Education of Young Children (Iowa AEYC), the Iowa Family Child Care Association (IFCCA), the Iowa After School Alliance, and the Iowa Head Start Association.
- (10) A national professional association, including the National Association for the Education of Young Children (NAEYC), the National Child Care Association (NCCA), the National Association for Family Child Care (NAFCC), the National After School Association, and the American Academy of Pediatrics.
- (11) The Child and Adult Care Food Program (CACFP) and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).
- (12) The Iowa department of public health, department of education, or department of human services.
- (13) Head Start agencies or the Head Start technical assistance system.
- (14) Organizations that are certified by the International Association for Continuing Education and Training (IACET).

*b.* Training received in a group setting must follow a presentation format that incorporates a variety of adult learning methods. The material or content of the training must be obtained from one of the entities listed in paragraph 120.10(7)"a" or an entity approved under paragraph 120.10(7)"h."

*c.* Approved training shall be made available to Iowa child care providers through the child care provider training registry.

*d.* Training received in a group setting may include distance learning opportunities, such as training conducted over the Iowa communications network, online courses, or web conferencing (webinars) if:

- (1) The training meets the requirements in subrule 120.10(8);
- (2) The training is taught by an instructor and requires interaction between the instructor and the participants, such as required chats or message boards; and
- (3) The training organization meets the requirements listed in this subrule or is approved by the department.

*e.* The department will not approve more than eight hours of training delivered in a single day.

*f.* The department may randomly monitor any state-approved training for quality control purposes.

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

*g.* Training conducted with the provider either during the hours of operation of the facility, provider lunch hours, or while children are resting must not diminish the required ratio coverage. The provider shall not be actively engaged in care and supervision and simultaneously participate in training.

*h.* A training organization not approved by the department may submit a request for review to the department on Form 470-4528, Request for Child Care Training Approval. All approvals, unless otherwise specified, shall be valid for five years. The department shall issue its decision within 30 business days of receipt of a complete request.

ITEM 11. Adopt the following new subrule 120.10(8):

**120.10(8)** Elements of training. Training provided to Iowa child care providers shall offer:

- a.* Instruction that is consistent with:
- (1) Iowa child care regulatory standards;
  - (2) The Iowa early learning standards; and
  - (3) The philosophy of developmentally appropriate practice as defined by the National Association for the Education of Young Children, the Program for Infant/Toddler Care, and the National Health and Safety Performance Standards.
- b.* Content equal to at least one contact hour of training.
- c.* An opportunity for teacher-student interaction and timely feedback, including questions and answers and with evaluation of learning.
- d.* For each participant, a certificate of training that includes:
- (1) The name of the participant.
  - (2) The title of the training.
  - (3) The dates of training.
  - (4) The content area addressed.
  - (5) The name of the training organization.
  - (6) The name of the instructor.
  - (7) The number of contact hours.

[Filed 12/13/17, effective 3/1/18]

[Published 1/3/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/3/18.

**ARC 3557C**

**LABOR SERVICES DIVISION[875]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 88.5 and 2017 Iowa Acts, House File 529, the Labor Commissioner hereby amends Chapter 3, "Inspections, Citations and Proposed Penalties," Iowa Administrative Code.

The U.S. Department of Labor, Occupational Safety and Health Administration, implemented a federal law increasing the penalties for violations. In order to make Iowa's occupational safety and health penalties consistent with federal law, 2017 Iowa Acts, House File 529, was enacted. The amendment in Item 4 of this rule making is a direct result of House File 529. Additional amendments contained in this rule making consist of conforming amendments, editorial changes, and the removal of obsolete language.

The principal reasons for these amendments are to implement legislative intent, protect the safety and health of Iowa workers, and make Iowa's regulations current and consistent with federal regulations. Pursuant to Iowa Code section 88.14 as amended by 2017 Iowa Acts, House File 529, the Labor Commissioner shall adopt rules to align state and federal penalty amounts.

Notice of Intended Action was published in the October 25, 2017, Iowa Administrative Bulletin as **ARC 3415C**. No comments were received. The following changes from the Notice have been made. In Item 4, the date in subrule 3.11(1) was changed from January 27, 2018, to February 11, 2018. References

## LABOR SERVICES DIVISION[875](cont'd)

to 2017 Iowa Acts, House File 529, have been removed because the legislation has been codified in Iowa Code chapter 88.

No variance procedures are included in this rule. Variance procedures are set forth in 875—Chapter 5.

After analysis and review of this rule making, jobs could be impacted. However, these amendments are implementing federally mandated regulations, and the State of Iowa is only implementing the federal regulations. The requirements imposed on Iowa businesses by these regulations do not exceed those imposed by federal law.

These amendments are intended to implement Iowa Code chapter 88 as amended by 2017 Iowa Acts, House File 529.

These amendments shall become effective on February 11, 2018.

The following amendments are adopted.

ITEM 1. Amend **875—Chapter 3**, title, as follows:

**POSTING, INSPECTIONS, CITATIONS AND PROPOSED PENALTIES**

ITEM 2. Amend subrule 3.1(1) as follows:

**3.1(1)** Each employer shall post and keep posted a notice or notices informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact the employer or the department of workforce development, division of labor services. The notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced or covered by other materials. The notice or notices will be furnished by the ~~occupational safety and health bureau of the~~ division of labor services.

Reproductions or ~~facsimiles~~ facsimiles of the state poster shall constitute compliance with the posting requirements of Iowa Code section 88.6(3)“a” where such reproductions or ~~facsimiles~~ facsimiles are at least 8½ inches by 14 inches, and the printing size is at least 10 point. Whenever the size of the poster increases, the size of the print shall also increase accordingly. The caption or heading on the poster shall be in large type, generally not less than 36 point.

ITEM 3. Renumber subrules **3.11(1)** to **3.11(5)** as **3.11(2)** to **3.11(6)**.

ITEM 4. Adopt the following new subrule 3.11(1):

**3.11(1)** The civil penalties proposed by the labor commissioner on or after February 11, 2018, are as follows:

*a. Willful violation.* The penalty for each willful violation under Iowa Code section 88.14(1) shall not be less than \$8,908 and shall not exceed \$124,709.

*b. Repeated violation.* The penalty for each repeated violation under Iowa Code section 88.14(1) shall not exceed \$124,709.

*c. Serious violation.* The penalty for each serious violation under Iowa Code section 88.14(2) shall not exceed \$12,471.

*d. Other-than-serious violation.* The penalty for each other-than-serious violation under Iowa Code section 88.14(3) shall not exceed \$12,471.

*e. Failure to correct violation.* The penalty for failure to correct a violation under Iowa Code section 88.14(4) shall not exceed \$12,471 per day.

ITEM 5. Amend renumbered subrule 3.11(5) as follows:

**3.11(5)** Any employer failing to comply with the provisions of subrules ~~3.11(4)~~ 3.11(2) and ~~3.11(2)~~ 3.11(3) shall be subject to citation and penalty in accordance with the provisions of Iowa Code section 88.14.

ITEM 6. Amend rule **875—3.11(88)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~sections 88.7(3) and 88.8~~ chapter 88.



## LABOR SERVICES DIVISION[875](cont'd)

ITEM 7. Amend subrule 3.13(2) as follows:

**3.13(2)** A petition for modification of abatement date shall be in writing and shall include the following information:

*a.* All steps taken by the employer, and the dates of the action, in an effort to achieve compliance during the prescribed abatement period.

*b.* The specific additional abatement time necessary in order to achieve compliance.

*c.* The reasons the additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

*d.* All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

*e.* A certification that a copy of the petition and notice informing affected employees of their rights to party status has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with 3.13(3)“*a*” and a certification of the date upon which the posting and service was made. A notice in the following form shall be deemed to comply with this paragraph:

(Name of employer)

Your employer has been cited by the commissioner of labor for violation of the Iowa Occupational Safety and Health Act and has requested additional time to correct one or more of the violations. Affected employees are entitled to participate as parties under terms and conditions established by the Iowa employment appeal board in its rules of procedure. Affected employees or their representatives desiring to participate must file a written objection to the employer’s petition with the commissioner of labor. Failure to file the objection within ten working days of the first posting of the accompanying petition and this notice shall constitute a waiver of any further right to object to the petition or to participate in any proceedings related thereto. Objections shall be sent to the commissioner’s designee: ~~IOSH Administrator, Occupational Safety and Health Bureau, Iowa OSHA, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.~~ Iowa OSHA, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. All papers relevant to this matter may be inspected at: (place reasonably convenient to employees, preferably at or near workplace).

ITEM 8. Amend subrule 3.19(3) as follows:

**3.19(3)** *Abatement certification.*

*a.* to *c.* No change.

~~NOTE: Appendix A contains a sample abatement certification letter.~~

ITEM 9. Amend subrules 3.19(5) and 3.19(6) as follows:

**3.19(5)** *Abatement plans.*

*a.* and *b.* No change.

~~NOTE: Appendix B contains a sample abatement plan form.~~

**3.19(6)** *Progress reports.*

*a.* and *b.* No change.

~~NOTE: Appendix B contains a sample progress report form.~~

ITEM 10. Amend paragraph **3.19(9)“b”** as follows:

*b.* The employer must use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation issued. A sample tag is available at [osha.gov](http://osha.gov) as Appendix C to 29 CFR 1903.19.

~~NOTE: Appendix C (nonmandatory) contains a sample tag that employers may use to meet this requirement.~~

ITEM 11. Rescind and reserve rule **875—3.24(88)**.

ITEM 12. Amend **875—Chapter 3**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 17A and 88 ~~and sections 84A.1, 84A.2 and 88.2.~~

LABOR SERVICES DIVISION[875](cont'd)

ITEM 13. Amend **875—Chapter 3** by rescinding the Note and Appendices A through C at the end thereof.

[Filed 11/30/17, effective 2/11/18]

[Published 1/3/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/3/18.

**ARC 3558C**

**PROFESSIONAL LICENSURE DIVISION[645]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.7, 147.76 and 157.14, the Board of Cosmetology Arts and Sciences hereby amends Chapter 60, "Licensure of Cosmetologists, Electrologists, Estheticians, Manicurists, Nail Technologists, and Instructors of Cosmetology Arts and Sciences," Chapter 61, "Licensure of Salons and Schools of Cosmetology Arts and Sciences," and Chapter 64, "Continuing Education for Cosmetology Arts and Sciences," Iowa Administrative Code.

This rule making provides clarity on the licensure procedures for practitioners and establishments. These amendments update language to reflect provisions in the Iowa Code, clarify licensure requirements and remove temporary-permit requirements. The amendments align posting requirements for schools with those of salons and update curriculum requirements to include online coursework and allowable excused absences. These amendments update language to reflect provisions in the Iowa Code related to compliance with continuing education requirements for active duty military and extend continuing education protocols to the spouse of an active duty military service person. These amendments reduce the number of continuing education hours from eight hours biennially to reflect the minimum of six hours required by Iowa Code section 272C.2A to be earned during the two years immediately prior to a licensee's license renewal. These amendments further update the required number of continuing education hours for consistency across chapters and remove outdated language.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3372C** on October 11, 2017. A public hearing was held on October 31, 2017. No public comment was received. These amendments are identical to those published under Notice.

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Division of Professional Licensure are subject to the waiver provisions in 645—Chapter 18.

The Board of Cosmetology Arts and Sciences adopted these amendments on December 4, 2017.

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

These amendments are intended to implement Iowa Code chapters 147, 157, and 272C.

These amendments will become effective February 7, 2018.

The following amendments are adopted.

ITEM 1. Amend subrule 60.2(1) as follows:

**60.2(1) Requirements for licensure.** All persons providing services in one or more cosmetology arts and sciences disciplines shall hold a license issued by the board. The applicant shall:

*a.* Submit a completed, board-approved application for licensure online at [www.ibplicense.iowa.gov](http://www.ibplicense.iowa.gov). ~~Application~~ Paper application forms may be obtained from the board's ~~Web site~~ website ([www.idph.state.ia.us/licensure](http://www.idph.state.ia.us/licensure)) or directly from the board office. Completed paper applications and appropriate fees shall be sent to Board of Cosmetology Arts and Sciences, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

*b.* Direct the educational program to submit to the board a diploma or an official transcript indicating date of graduation and completion of ~~grades~~ required hours in each practice discipline for which the applicant is requesting licensure.

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

c. If the applicant graduated from a school that is not licensed by the board, ~~the applicant shall~~ direct the school to provide an official transcript showing completion of a course of study that meets the requirements of rule 645—61.14(157).

d. Foreign-trained applicants. If educated outside the United States, ~~the applicant shall~~ attach an original evaluation of the applicant's education from World Education Services (WES) or any other accredited evaluation service. An applicant may obtain an application for evaluation by contacting WES online at [www.wes.org](http://www.wes.org) or at (212)966-6311, or by writing to WES, P.O. Box 5087, Bowling Green Station, New York, New York 10274-5087.

e. e. Examination requirements. Pass a national examination as prescribed by the board for the particular practice discipline with a score of 75 percent or greater.

(1) ~~If applying for licensure by examination on or after January 1, 2008, submit the test registration and registration fee directly to the test service. The applicant shall submit the test registration fee directly to the test service PSI at [www.psiexams.com](http://www.psiexams.com). NIC examinations are administered according to guidelines set forth by the National-Interstate Council of State Boards of Cosmetology.~~

(2) If applying for licensure by endorsement, the applicant shall complete the requirements set forth in rule 645—60.7(157).

ITEM 2. Amend subrule 60.2(3) as follows:

**60.2(3) Conditions.** The following conditions apply for all cosmetology arts and sciences licenses.

a. Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed.

b. The licensure fee is nonrefundable.

c. Licensees who were issued their initial licenses within six months prior to the license renewal beginning date shall not be required to renew their licenses until the renewal month two years later.

d. ~~Beginning April 1, 2008, a~~ A new license granted by the board of cosmetology arts and sciences to an individual who holds multiple active licenses with the board shall have the same license expiration date as the licensee's existing license(s). If the licensee holds only one active license with the board, the license expiration date shall be in the current renewal period unless licensure is issued within six months of the end of the renewal cycle, in which case subrule 60.8(2) shall apply.

ITEM 3. Amend subrule 60.8(1) as follows:

**60.8(1)** Biennial license renewal period for a license to practice cosmetology arts and sciences.

~~a. Prior to April 1, 2008:~~

~~(1) The renewal period shall begin on April 1 of one year and end on March 31 two years later. All licensees shall renew on a biennial basis.~~

~~(2) The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license.~~

~~(3) The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.~~

~~b. Beginning April 1, 2008:~~

~~(1) A licensee who has a license due for renewal in an even-numbered year shall renew all active licenses with the board by April 1, 2008. If one or more licenses are due for renewal in an odd-numbered year, the renewal fee for those licenses shall be prorated. Such prorated license fees shall apply only during the April 1, 2008, renewal period.~~

~~(2) a. The renewal period shall begin on April 1 of one year and end on March 31 two years later. All licensees shall renew on a biennial basis.~~

~~(3) b. The board shall may send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license.~~

~~(4) c. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.~~

~~(5) Licensees who renew their licenses one year early shall be subject to continuing education requirements by April 1, 2010. This extension does not apply to a license(s) originally scheduled for renewal on April 1, 2008.~~

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

~~(6)~~ *d.* A new or reactivated license granted by the board to a licensee who holds a current license in another practice discipline in cosmetology shall have the same license expiration date as the licensee's other license(s). If the licensee does not have another active license with the board, the license expiration date shall be in the current renewal period unless the license is issued within six months of the end of the renewal cycle and subrule 60.8(2) applies.

ITEM 4. Amend subrule 60.8(3) as follows:

**60.8(3)** License renewal. A licensee seeking renewal shall:

*a.* Meet the continuing education requirements of rule 645—64.2(157). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

*b.* Submit the completed renewal application and renewal fee before the license expiration date.

*c.* Licensees currently licensed in Iowa but practicing exclusively in another state or serving honorably as active duty military or the spouse of active duty military service personnel may comply with Iowa continuing education requirements for license renewal by meeting the continuing education requirements of the state where the licensee practices. Those licensees living and practicing exclusively in a state which has no continuing education requirement for renewal of a license shall not be required to meet Iowa's continuing education requirement but shall pay all renewal fees when due.

ITEM 5. Rescind and reserve rule **645—60.9(157)**.

ITEM 6. Amend subparagraph **60.17(3)“a”(2)** as follows:

(2) Verification of completion of ~~8~~ 6 hours of continuing education that meet the continuing education standards defined in rule 645—64.3(157,272C) within two years of application for reactivation.

ITEM 7. Amend subparagraph **60.17(3)“b”(2)** as follows:

(2) Verification of completion of ~~46~~ 12 hours of continuing education that meet the continuing education standards defined in rule 645—64.3(157,272C) within two years of application for reactivation.

ITEM 8. Amend subrule 60.17(4) as follows:

**60.17(4)** Licensees who are instructors of cosmetology arts and sciences shall obtain an additional ~~8~~ 6 hours of continuing education in teaching methodology as prescribed in 645—Chapter 64.

ITEM 9. Amend rule **645—61.1(157)**, definition of “Salon license,” as follows:

“*Salon license*” means a license issued to an Iowa establishment licensed to provide cosmetology arts and sciences services to paying customers.

ITEM 10. Amend rule 645—61.2(157), introductory paragraph, as follows:

**645—61.2(157) Salon licensing.** No person shall operate a salon unless the owner has obtained a license issued by the board. A separate enclosed area inside a salon that is operated as an independent business for the purpose of providing cosmetology services shall be considered its own salon and shall not operate unless a salon license is obtained. To determine what defines an independent contractor versus an employee, persons should contact the Iowa division of labor services.

ITEM 11. Amend subrule 61.2(2) as follows:

**61.2(2)** Each salon shall meet the requirements for sanitary conditions established in 645—Chapter 63 to be eligible for licensing. The salon ~~shall~~ may be inspected for compliance with sanitation rules within 12 months following the issuance of the salon license.

ITEM 12. Amend subrule 61.2(3) as follows:

**61.2(3)** Business may commence at the salon following ~~receipt~~ activation of the license.

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

ITEM 13. Amend paragraph **61.2(6)“e”** as follows:

*e.* The owner shall notify the board in writing of a change of name or address within 30 days after the occurrence and, in addition, shall return the current certificate and pay the reissued certificate fee as specified in rule ~~645—62.1(147,157)~~ 645—5.5(147,157).

ITEM 14. Amend subrule 61.3(2) as follows:

**61.3(2)** A renewal of license ~~application~~ notice shall be electronically mailed to the owner of the salon ~~at least 60 days~~ prior to the expiration of the license. Failure to receive the renewal ~~application~~ notice shall not relieve the owner of the obligation to pay the biennial renewal fee on or before the renewal date.

ITEM 15. Amend subrule 61.3(6) as follows:

**61.3(6)** If the renewal fee and renewal application are ~~postmarked~~ received in the office after the license expiration date, but within 30 days following the expiration date, the late fee for failure to renew before expiration shall be charged.

ITEM 16. Rescind rule 645—61.7(157) and adopt the following new rule in lieu thereof:

**645—61.7(157) Licensure for schools of cosmetology arts and sciences.**

**61.7(1)** An application for a school license shall be submitted 90 days prior to the anticipated opening day of the school to the Board of Cosmetology Arts and Sciences, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. Prior to board review, the application shall include:

- a.* A complete plan of the physical facilities and an explanation detailing how the facilities will be utilized relative to classrooms, clinic space, and a mentoring program;
- b.* A list of the names of licensed instructors including the school director(s) for the proposed school if the instructors and school director(s) have been hired by the school at the time of application;
- c.* Copies of the catalog, brochure, enrollment contract, student policies, and cancellation and refund policies that will be used by the school or distributed by the school to students and the public; and
- d.* The school's course of study and curriculum, which shall meet the course of study requirements outlined in rule 645—61.14(157).

**61.7(2)** Prior to issuance of the school license, the school shall:

- a.* Submit a final list of licensed instructors and director(s) hired for the school. The number of instructors must meet the requirement outlined in Iowa Code section 157.8, with the exception of instructors for the mentoring program; and
- b.* Meet the requirements of this chapter and 645—Chapter 63 and pass the board's inspection of the facility.

**61.7(3)** The school owner shall be interviewed by the board during the review of the application.

**61.7(4)** After all criteria have been met, the school license shall be granted for the location(s) identified in the school's application.

**61.7(5)** Instruction of students shall not begin until the school license is activated.

**61.7(6)** The school must provide proof of registration with the Iowa college student aid commission.

**61.7(7)** Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed. The records shall be maintained after two years only if the applicant submits a written request to the board.

**61.7(8)** Existing school license, new location. A change of location shall require submission of an application for a new school license and payment of the license fee 90 days in advance of the anticipated date of opening. A change of address without a change of actual location shall not be construed as a new site.

**61.7(9)** Existing school license, new name. The owner shall notify the board in writing of a change of name within 30 days after the occurrence. In addition, the owner shall return the current certificate and pay the reissued certificate fee as specified in rule 645—5.5(147,157).

**61.7(10)** Existing school license, change of ownership. A school license is not transferable. A change in ownership of a school shall require the issuance of a new license. "Change in ownership"

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

means any change of controlling interest in any corporation or any change of name of sole proprietorship or partnership.

- a. A school cannot be sold if disciplinary actions are pending.
- b. The board may request legal proof of the ownership transfer.
- c. If a school owner sells the school, that owner must send the license certificate and a report of the sale to the board within ten days of the date on which the sale is final. The owner of the school on record shall retain responsibility for the school until the new school owner has been issued an active school license.
- d. The new school owner shall follow all requirements as outlined in rule 645—61.7(157). This rule is intended to implement Iowa Code sections 147.80, 157.6 and 157.8.

ITEM 17. Amend subrule 61.8(4) as follows:

**61.8(4)** If the renewal fee and renewal application are ~~postmarked~~ received in the office after the license expiration date, but within 30 days following the expiration date, the late fee for failure to renew before expiration shall be charged.

ITEM 18. Amend subrule 61.9(1) as follows:

**61.9(1)** If the renewal application and fee are not ~~postmarked~~ received in the office within 30 days after the license expiration date, the school license is inactive. To reactivate the school license, the reactivation application and fee shall be submitted to the board.

ITEM 19. Amend rule 645—61.10(157) as follows:

**645—61.10(157) Display requirements for schools.**

**61.10(1)** Every school shall have a sign visible outside the entrance designating the place of business.

**61.10(2)** A school license and the current renewal card shall be posted ~~and visible to the public~~ in the ~~reception area at eye level~~ school's front entrance area to provide the public a full unobstructed view of the license. Photocopies and electronic copies are not acceptable.

**61.10(3)** The ~~original current license certificate, duplicate certificate, or reissued certificate~~ renewal card for each instructor working at the school shall be ~~visibly displayed~~ posted in the reception area at eye level school's front entrance area to provide the public a full unobstructed view of the license. Photocopies and electronic copies are not acceptable.

ITEM 20. Rescind rule 645—61.12(157) and adopt the following new rule in lieu thereof:

**645—61.12(157) Physical requirements for schools of cosmetology arts and sciences.** The school shall meet the following physical requirements:

**61.12(1)** The school premises shall have a minimum floor space of 3,000 square feet.

**61.12(2)** Each school shall provide a minimum of 100 square feet per student. When the enrollment in a school exceeds 30 students, additional floor space of 30 square feet shall be required for each additional student enrolled in the school.

**61.12(3)** Each licensed school offering a full cosmetology arts and sciences curriculum shall provide the following:

a. At least one clinic area where the paying public will receive services. The clinic area shall be confined to the premises occupied by the school.

b. A theory classroom(s) separate from the clinic area.

c. A library that is maintained for students and consists of textbooks, current trade publications and business management materials.

d. A separate area that shall be used as a dispensary. The dispensary shall be equipped with a lavatory, shelves or drawers for storing chemicals, cleansing agents and items, sterilization equipment and any other sanitation items required by 645—Chapter 63. Clean items and dirty items in the dispensary must be kept separated as required by 645—Chapter 63.

e. Two restrooms that are equipped with toilets, lavatories, soap and disposable paper towel dispensers.

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

*f.* A laundry room that is separated from the clinic area by a full wall or partition. Students may not lounge, eat, practice or study in the laundry room.

*g.* A separate room that is equipped for the practice of esthetics and electrology.

*h.* An administrative office.

**61.12(4)** Each licensed school offering a single discipline cosmetology arts and sciences curriculum shall provide the same physical space as outlined in 61.12(3). Single discipline schools are exempt from 61.12(3)“g” if the board did not originally approve an electrology or esthetics course of study in the curriculum.

This rule is intended to implement Iowa Code sections 157.6 and 157.8.

ITEM 21. Rescind rule 645—61.13(157) and adopt the following **new** rule in lieu thereof:

**645—61.13(157) Minimum equipment requirements.** Each school of cosmetology arts and sciences shall have the following minimum equipment:

1. Workstations equipped with chair, workstation, closed drawer or container for sanitized articles, and mirror (maximum of two students per unit);
2. Treatment room(s) when electrology or esthetics or both are offered;
3. One set of textbooks for each student and instructor;
4. Shampoo bowls located in the clinic area and readily accessible for students and clients if the school offers a curriculum course in cosmetology;
5. Audiovisual equipment available for each classroom;
6. Chair and table area for each student in the classroom; and
7. Labeled bottles and containers showing intended use of the contents.

This rule is intended to implement Iowa Code sections 157.6 and 157.8.

ITEM 22. Amend paragraph **61.14(2)“a”** as follows:

*a.* Theory instruction shall be taught from a standard approved textbook; but may be supplemented by other related textbooks. Online coursework is allowed for theory instruction.

ITEM 23. Amend paragraph **61.14(2)“d”** as follows:

*d.* Core life sciences curriculum hours shall be transferable in their entirety from one practice discipline to another practice discipline. Online coursework is allowed for core life sciences instruction.

ITEM 24. Rescind rule 645—61.15(157) and adopt the following **new** rule in lieu thereof:

**645—61.15(157) Instructors.** All instructors in a school of cosmetology arts and sciences shall be licensed by the department.

**61.15(1)** An instructor teaching a course in electrology, esthetics or nail technology shall also hold a license in that practice or hold a cosmetology license that shows proof of having completed training in those practices equivalent to that of a license holder in that practice.

**61.15(2)** An instructor teaching a course in microdermabrasion, chemical peels, intense pulsed lights (IPLs) and lasers shall be certified by the state of Iowa to provide each of the services, as set forth in rule 645—60.4(157).

**61.15(3)** A minimum of two instructors shall be employed on a full-time basis for up to 30 students and an additional instructor for each additional 15 students.

*a.* The number of instructors for each school of cosmetology arts and sciences shall be based upon total enrollment.

*b.* A student instructor shall not be used to meet licensed instructor-to-student ratios.

*c.* A school with less than 30 students enrolled may have one licensed instructor on site in the school if offering only clinic services or only theory instruction in a single classroom and less than 15 students are present.

*d.* If a school is offering clinic services and theory instruction simultaneously to less than 15 students, at least two licensed instructors must be on site.

*e.* Area community colleges operating a school prior to September 1, 1982, with only one instructor per 15 students are not subject to this subrule and may continue to operate with the ratio of one

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

instructor to 15 students. A student instructor shall not be used to meet licensed instructor-to-student ratios.

**61.15(4)** An instructor shall:

- a. Be responsible for and in direct charge of all physical and virtual core and theory classrooms and practical classrooms and clinics at all times;
- b. Familiarize students with the different standard supplies and equipment used in salons; and
- c. Not perform cosmetology services, with or without compensation, on the school premises except for demonstration purposes.

This rule is intended to implement Iowa Code chapter 157.

ITEM 25. Rescind rule 645—61.18(157) and adopt the following **new** rule in lieu thereof:

**645—61.18(157) Attendance requirements.**

**61.18(1)** A school of cosmetology arts and sciences shall have a written, published attendance policy.

**61.18(2)** Schools shall ensure:

- a. Students complete the hours required for each course of study set forth in rule 645—61.14(157).
- b. Student attendance policies are applied uniformly and fairly for all physical and virtual classes.
- c. Appropriate credit is given for all hours earned.
- d. All retake tests and projects to be redone are completed without benefit of additional hours earned. Time scheduled for such work will be scheduled at the school's discretion.
- e. Hours or credit is not added to the accumulative student record as an award or deducted from the accumulative student record as a penalty.
- f. Work that must be done for missed hours must be allowed. The student must be given full credit for hours earned.

**61.18(3)** Pursuant to the federal Department of Education and accrediting standards agency, the school may adopt an absence policy not to exceed 10 percent of required coursework for doctor's excuses and life events. In no way shall this policy create a penalty for the student nor excuse the student from the remaining 10 percent of required coursework.

This rule is intended to implement Iowa Code chapter 157.

ITEM 26. Amend rule **645—64.1(157)**, definition of "Hour of continuing education," as follows:

*"Hour of continuing education"* means at least 50 minutes spent by a licensee ~~in actual attendance at and completion of~~ completing an approved continuing education activity through live, virtual, online or prerecorded means where the instructor provides proof of completion by the licensee as set forth in these rules.

ITEM 27. Amend rule 645—64.2(157) as follows:

**645—64.2(157) Continuing education requirements.**

**64.2(1)** The biennial continuing education compliance period shall begin on April 1 of one year and end on March 31 two years later.

~~**64.2(2)** Beginning April 1, 2008, a license that is renewed on April 1, 2008, that was originally scheduled to be renewed one year later as described in 645—paragraph 60.8(1)"b" shall not be required to meet continuing education requirements until April 1, 2010. This extension does not apply to a license(s) originally due for renewal on April 1, 2008.~~

**64.2(3) 64.2(2)** Each biennium:

a. A licensee in this state shall be required to complete a minimum of 8 6 hours of continuing education that meets the requirements of rule 645—64.3(157,272C). A minimum of 4 hours of the 8 6 hours shall be in the prescribed practice discipline and a minimum of 2 hours of the 8 6 hours shall be in the content areas of Iowa cosmetology law and rules and sanitation. Individuals holding more than one active license shall obtain 4 hours of continuing education in each prescribed practice discipline and an additional 2 hours in the content areas of Iowa cosmetology law and rules and sanitation.

b. A licensee who is an instructor of cosmetology arts and sciences shall obtain 8 6 hours in teaching methodology in addition to meeting all continuing education requirements for renewal of the



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

instructor's practice license. A licensee must comply with all conditions of licensure including obtaining a minimum of 2 hours each biennium specific to Iowa cosmetology law and administrative rules as specified in subrule 64.3(2), ~~paragraph "i."~~.

c. A licensee currently licensed in Iowa but practicing exclusively in another state may comply with Iowa continuing education requirements for license renewal by meeting the continuing education requirements of the state or states where the licensee practices. The licensee living and practicing in a state which has no continuing education requirement for renewal of a license shall not be required to meet Iowa's continuing education requirement but shall pay all renewal fees when due.

d. A licensee shall be deemed to have complied with the continuing education requirements of this state during periods that the licensee:

- (1) Serves honorably on active duty in the military services, or
- (2) Is the spouse of an active duty military service person, or
- (3) Is a government employee working in the person's licensed specialty and assigned to duty outside of the United States, or
- (4) Is engaged in active practice and absence from the state approved by the board.

~~64.2(4)~~ **64.2(3)** Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used.

~~64.2(5)~~ **64.2(4)** Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

~~64.2(6)~~ **64.2(5)** No hours of continuing education shall be carried over into the next biennium. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

~~64.2(7)~~ **64.2(6)** It is the responsibility of each licensee to finance the cost of continuing education.

ITEM 28. Amend subparagraph **64.3(1)"e"(1)** as follows:

- (1) Date, location, course title, presenter(s), sponsor(s);

ITEM 29. Rescind subrule 64.3(2) and adopt the following **new** subrule in lieu thereof:

**64.3(2) Specific criteria.** A licensee shall obtain a minimum of 6 hours of continuing education credit every two years. A minimum of 4 hours of the 6 hours of continuing education shall be in each prescribed practice discipline. Two hours of continuing education per biennium must be specific to Iowa cosmetology law and administrative rules including infection control.

a. The licensee may obtain continuing education hours of credit by:

- (1) Attending workshops, conferences or symposiums.
- (2) Accessing online training, such as viewing interactive conferences, attending webinars, or completing online training courses.

(3) Attending programs on product knowledge, methods and systems. Continuing education shall be directly related to the technique and theory specific to the practice of cosmetology arts and sciences. No direct selling of products is allowed as part of a continuing education offering.

(4) Attending business classes specific to owning or managing a salon are acceptable.

b. In addition to fulfilling the requirements in rule 645—64.2(157), those persons holding an instructor's license must complete a minimum of 6 hours of continuing education approved by the board in the area of teaching methodology.

c. Two hours of continuing education per biennium must be specific to Iowa cosmetology law and administrative rules.

d. The licensee shall obtain at least 4 hours in each area of prescribed practice for each cosmetology arts and sciences license held.

ITEM 30. Adopt the following **new** subrule 64.3(3):

**64.3(3) Specific criteria for providers and sponsors of continuing education.**

a. Continuing education shall be obtained by attending programs that meet the criteria in subrule 64.3(1). Individuals or groups may offer continuing education programs that meet the criteria in rule

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

645—64.3(157,272C) offered by or with express sponsorship in advance of delivery by the following organization(s).

- (1) National, state or local associations of cosmetology arts and sciences;
- (2) Schools and institutes of cosmetology arts and sciences;
- (3) Universities, colleges or community colleges;
- (4) National, state or local associations of barbers;
- (5) Barber schools or institutes;
- (6) Manufacturers of laser or microdermabrasion products;
- (7) Institutes of laser technology.

b. A licensee who is a presenter of a continuing education program that meets the criteria in rule 645—64.3(157,272C) may receive credit once per biennium for the initial presentation of the program. The presenter may receive the same number of hours granted the attendees.

[Filed 12/6/17, effective 2/7/18]

[Published 1/3/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/3/18.

**ARC 3559C**

**PROFESSIONAL LICENSURE DIVISION[645]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76 and chapters 154A and 272C, the Board of Hearing Aid Specialists hereby amends Chapter 121, "Licensure of Hearing Aid Specialists," Chapter 122, "Continuing Education for Hearing Aid Specialists," Chapter 123, "Practice of Hearing Aid Dispensing," and Chapter 124, "Discipline for Hearing Aid Specialists," Iowa Administrative Code.

This rule making discusses licensure procedures for practitioners. These amendments are mainly technical in nature, including updates to contact information for the Board's website, updates to definitions and clarification of references throughout the chapters.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3409C** on October 25, 2017. A public hearing was held on Wednesday, November 15, 2017. No public comment was received. These amendments are identical to those published under Notice.

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Division of Professional Licensure are subject to the waiver provisions accorded under 645—Chapter 18.

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

These amendments are intended to implement Iowa Code chapters 147, 154A and 272C.

These amendments will become effective February 7, 2018.

The following amendments are adopted.

ITEM 1. Amend rule **645—121.1(154A)**, definitions of "Department," "Dispense," "Hearing aid specialist" and "License," as follows:

"*Department*" means the Iowa department of public health.

"*Dispense*" or "*sell*" means a transfer of title or of the right to use by lease, bailment, or any other means, but excludes a wholesale transaction with a distributor or hearing aid specialist, and excludes the temporary, charitable loan or educational loan of a hearing aid without remuneration.

"*Hearing aid specialist*" means any person engaged in the fitting, dispensing and ~~the~~ sale of hearing aids and providing hearing aid services or maintenance by means of procedures stipulated by Iowa Code chapter 154A or the board.

"*License*" means a license issued by the state to a hearing aid specialist ~~specialist~~.

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

ITEM 2. Amend paragraphs **121.2(4)“b”** and **“c”** as follows:

- b. Evaluating the audiograms and determining which hearing aid and ear mold will best compensate for hearing loss of a particular person; ~~and~~
- c. Notifying the board within 15 days of the termination of the holder of a temporary permit; and

ITEM 3. Amend paragraphs **121.3(1)“e”** and **“f”** as follows:

- e. Provide direct supervision of the trainee before completion of the first 90 days for any client activity that would require dispensing of hearing aids, including evaluation, selection, fitting or selling of hearing aids; ~~and~~
- f. Cosign all audiometric evaluations and contracts processed by the trainee for the duration of the temporary permit; and

ITEM 4. Amend subrule 121.4(1) as follows:

**121.4(1)** The applicant shall complete a board-approved application packet. Application forms may be obtained from the board's Web site (~~http://www.idph.state.ia.us/licensure~~) website (www.idph.iowa.gov/licensure) or directly from the board office. All applications shall be sent to Board of Hearing Aid Specialists, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

ITEM 5. Amend subrule 121.5(2) as follows:

**121.5(2)** The applicant shall not take the examination more than three times. If the applicant fails a third examination, the applicant is required to submit a request to the board with a proposed course of study. The board ~~will~~ has discretion to determine whether if the request will be granted.

ITEM 6. Amend rule 645—121.6(154A), introductory paragraph, as follows:

**645—121.6(154A) Licensure by endorsement.** An applicant who has been a licensed hearing aid specialist under the laws of another jurisdiction and would like to be considered for licensure in Iowa 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:

ITEM 7. Amend subrule 121.9(3) as follows:

**121.9(3)** Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule ~~125.1(5) 5.7(5)~~. To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

ITEM 8. Amend subrule 121.14(2) as follows:

**121.14(2)** Pay the reactivation fee that is due as specified in 645—subrule ~~125.1(6) 5.7(6)~~.

ITEM 9. Amend rule **645—122.1(154A)**, definition of “Continuing education,” as follows:

*“Continuing education”* means planned, organized learning acts ~~acquired during initial licensure~~ designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

ITEM 10. Amend subrules 122.2(1) and 122.2(2) as follows:

**122.2(1)** The biennial continuing education compliance period shall extend for a two-year period beginning on January 1 of each odd-numbered year and ending on December 31 of the next even-numbered year. Each biennium, each person who is licensed to practice as a hearing aid specialist in this state shall be required to complete a minimum of 32 hours of continuing education approved by the board. ~~For the 2011-2012 compliance period for license renewal on January 1, 2013, and every renewal biennium thereafter, a~~ A minimum of 2 hours shall be in the content areas of Iowa hearing aid specialist law and rules, or ethics.

**122.2(2)** ~~Requirements for new licensees.~~ Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses.

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

Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 32 hours of continuing education per biennium for each subsequent license renewal.

ITEM 11. Amend rule 645—123.4(154A), introductory paragraph, as follows:

**645—123.4(154A) Requirements for record keeping.** A licensee shall keep and maintain records in the licensee's office or place of business at all times, and each such record shall be kept and maintained for a seven-year period.

ITEM 12. Amend subrule 124.2(3) as follows:

**124.2(3) Professional ~~incompetence~~ incompetency.** Professional ~~incompetence~~ incompetency includes, but is not limited to:

- a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice;
- b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other hearing aid specialists in the state of Iowa acting in the same or similar circumstances;
- c. ~~A failure~~ Failure to exercise the degree of care which is ordinarily exercised by the average hearing aid specialist acting in the same or similar circumstances;
- d. Failure to conform to the minimal standard of acceptable and prevailing practice of licensed hearing aid specialists in this state.
- e. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.
- f. Being adjudged mentally incompetent by a court of competent jurisdiction.

ITEM 13. Amend subrule 124.2(34) as follows:

**124.2(34) Unethical conduct.** In accordance with Iowa Code ~~section~~ sections 147.55(3) and 154A.24(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but is not limited to, the following:

- a. Verbally or physically abusing a patient, client, or coworker.
- b. Improper sexual contact with or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.
- c. Betrayal of a professional confidence.
- d. ~~Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.~~
- e. ~~Being adjudged mentally incompetent by a court of competent jurisdiction.~~

[Filed 12/12/17, effective 2/7/18]

[Published 1/3/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/3/18.

**ARC 3560C**

**PROFESSIONAL LICENSURE DIVISION[645]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 152D.5, the Board of Athletic Training hereby amends Chapter 351, "Licensure of Athletic Trainers," Iowa Administrative Code.

These amendments are mainly technical in nature and are related to the updating of current websites and contact information for the Division of Professional Licensure and for Board of Certification (BOC) examination services. The amendments also remove out-of-date language to reflect current licensure processes.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3363C** on October 11, 2017. A public hearing was held on October 31, 2017. No public comment was received. These amendments are identical to those published under Notice.

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Division of Professional Licensure are subject to the waiver provisions in 645—Chapter 18.

The Board of Athletic Training adopted these amendments on December 12, 2017.

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

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

These amendments will become effective February 7, 2018.

The following amendments are adopted.

ITEM 1. Amend subrule 351.2(1) as follows:

**351.2(1)** The applicant shall complete a board-approved application packet. Application forms may be obtained from the board's Web site (<http://www.idph.state.ia.us/licensure>) website ([idph.iowa.gov/Licensure/Iowa-Board-of-Athletic-Training](http://idph.iowa.gov/Licensure/Iowa-Board-of-Athletic-Training)) or directly from the board office. All applications shall be sent to Board of Athletic Training, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

ITEM 2. Rescind subrules 351.2(8) to 351.2(11) as follows:

~~**351.2(8)** An applicant for licensure who has not successfully completed the BOC examination by July 1, 2004, but who complies with subrules 351.2(1) through 351.2(4) shall be issued a temporary license to practice athletic training for a period not to extend beyond July 1, 2007, provided that the applicant satisfies all of the following requirements:~~

~~*a.*—Submits to the board a letter of recommendation from the applicant's most recent employer when the applicant was employed as an athletic trainer. The letter shall include the dates of employment and the employee's job description and shall provide the name of the physician or physician assistant responsible for direction of the care.~~

~~*b.*—Submits to the board a letter of recommendation from two licensed physicians who were responsible for the direction of care provided by the applicant attesting to the competency of the applicant. The letters of recommendation shall include the dates the physician was responsible for the direction of the care provided by the applicant and the athletic training service plan. The letter shall also include the name of the employer at the time the physician was responsible for direction of care.~~

~~*c.*—Submits to the board satisfactory evidence of current cardiopulmonary resuscitation and first-aid certification.~~

~~*d.*—Official academic transcripts sent directly from the school are received by the board showing applicant possesses a baccalaureate degree from an accredited college or university.~~

~~**351.2(9)** An applicant issued a temporary license must successfully complete the BOC examination by July 1, 2007, and satisfy licensure requirements specified in Chapter 351 in order to maintain licensure. The licensee will be issued an initial license following submission of proof of successful completion of the examination received directly from the BOC and satisfying licensure requirements. No fee will be assessed for this initial license. Once the initial license is issued, the licensee will be eligible for license renewal in the next biennial renewal period and shall be subject to requirements specified in 645—351.9(147), except as noted in 351.2(10).~~

~~**351.2(10)** A licensee who obtain an initial license following a temporary license as specified in subrule 351.2(8) is not eligible for the exception in 351.9(2), paragraph "b," and must pay the license renewal fee specified in 645—subrule 354.1(2) for the biennial license renewal.~~

~~**351.2(11)** As with licensed athletic trainers, applicants issued temporary licenses are accountable for meeting the criteria in Iowa Code chapters 147 and 152D and 645—Chapters 351 through 353, with the exception of 351.2(8), 351.2(9) and 351.2(10).~~

ITEM 3. Amend subrule 351.3(2) as follows:

**351.3(2)** Foreign-trained athletic trainers shall:

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

*a.* Provide an equivalency evaluation of their educational credentials by International Educational Research Foundations, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665; telephone (310)258-9451; ~~Web site; website~~ [www.ierf.org](http://www.ierf.org) or ~~E-mail~~ [email at info@ierf.org](mailto:info@ierf.org). The professional curriculum must be equivalent to that stated in these rules. A candidate shall bear the expense of the curriculum evaluation. An applicant who has passed the BOC examination is exempt from this requirement.

*b.* Provide a notarized copy of the certificate or diploma awarded to the applicant from an athletic training program in the country in which the applicant was educated. An applicant who has passed the BOC examination is exempt from this requirement.

*c.* Receive a final determination from the board regarding the application for licensure.

*d.* Pass the BOC examination. Official results are to be submitted directly to the board from the BOC.

ITEM 4. Amend subrule 351.4(1) as follows:

**351.4(1)** The examination required by the board shall be the BOC examination. Application and information may be obtained from the BOC Offices, ~~4223 S. 143rd Circle~~ [1415 Harney Street, Suite 200, Omaha, NE ~~68137, 68102~~](http://1415HarneyStreet.com); telephone (402)559-0091; ~~Web site; website~~ [www.bocatc.org](http://www.bocatc.org) or email at [BOC@bocatc.org](mailto:BOC@bocatc.org).

[Filed 12/12/17, effective 2/7/18]

[Published 1/3/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/3/18.

**ARC 3561C****TRANSPORTATION DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 314.27, the Iowa Department of Transportation, on December 12, 2017, adopted amendments to Chapter 105, "Holiday Rest Stops," and Chapter 106, "Promotion of Iowa Agricultural Products at Rest Areas," and rescinded Chapter 123, "Rest Area Sponsorship Program," Iowa Administrative Code.

The amendments to Chapter 105 correct implementation statutes and the chapter's implementation sentence, add the Department's website, and eliminate unnecessary language.

The amendments to Chapter 106 add the Department's website and eliminate unnecessary language.

The Department is rescinding Chapter 123. The Department developed this chapter based on the Federal Highway Administration's allowing sponsorships of interstate rest areas. Once the rules were in place, the Department promoted the program and held a letting to secure sponsors. Only eight rest areas were adopted, resulting in only \$55,000 of sponsorship funds per year. The Department conducted additional promotions, held a second letting and received no bidders. Once the three-year term expired, none of the current sponsors were interested in future sponsorships. Other states have experienced the same lack of interest. The restrictions put on the program by the Federal Highway Administration severely limited the benefits that potential sponsors would receive.

Notice of Intended Action for these amendments was published in the October 11, 2017, Iowa Administrative Bulletin as **ARC 3366C**. These amendments are identical to those published under Notice of Intended Action.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

These amendments are intended to implement Iowa Code section 314.27 and 1995 Iowa Acts, chapter 18, section 2.

These amendments will become effective February 7, 2018.

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

The following amendments are adopted.

ITEM 1. Amend rule 761—105.1(307), parenthetical implementation statute, as follows:

**761—105.1(307,314) Purpose.**

ITEM 2. Amend paragraph **105.2(3)“a”** as follows:

a. ~~The Saturday, Sunday, and Monday~~ of Memorial Day weekend and Labor Day weekend, starting at noon on the preceding Friday and ending at midnight between Monday and Tuesday of the holiday weekend.

ITEM 3. Amend subrule 105.2(4) as follows:

**105.2(4) Information.** General information regarding holiday rest stops is available from the Office of Maintenance, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, or the department’s website at [www.iowadot.gov](http://www.iowadot.gov).

ITEM 4. Amend rule 761—105.3(321), parenthetical implementation statute, as follows:

**761—105.3(321 307,314) Conditions.**

ITEM 5. Amend subrule 105.3(1) as follows:

**105.3(1)** The sponsor shall not request or accept payment for the refreshments served. The sponsor may accept voluntary donations using containers clearly labeled with a sign stating “donations.” If donation containers are used, the sponsor shall place signs within the immediate area of the operation at locations designated by the department stating ~~the refreshments are free. An example of appropriate signing would be~~ “free refreshments.”

ITEM 6. Amend rule 761—105.4(321), parenthetical implementation statute, as follows:

**761—105.4(321 307,314) Holiday rest stops on interstate highways.**

ITEM 7. Amend subrule 105.4(3), introductory paragraph, as follows:

**105.4(3) Request.** A request to sponsor a holiday rest stop in an interstate rest area shall be made on Form 810023. This form is available from the department’s district offices, ~~or~~ the office of maintenance or the department’s website.

ITEM 8. Amend subrule 105.4(4), introductory paragraph, as follows:

**105.4(4) Approval of request.** The request is subject to the approval of the office of maintenance. ~~The request shall be approved unless there is good cause for denying it.~~

ITEM 9. Amend rule 761—105.5(307), parenthetical implementation statute, as follows:

**761—105.5(307,314) Holiday rest stops on primary highways.**

ITEM 10. Amend subrule 105.5(3), introductory paragraph, as follows:

**105.5(3) Request.** A request to sponsor a holiday rest stop along a noninterstate primary highway shall be made on Form 810023. This form is available from the department’s district offices, ~~or~~ the office of maintenance or the department’s website.

ITEM 11. Amend subrule 105.5(4), introductory paragraph, as follows:

**105.5(4) Approval of request.** The request is subject to the approval of the district engineer. ~~The request shall be approved unless there is good cause for denying it.~~

ITEM 12. Amend **761—Chapter 105**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 307.12 and 314.27 ~~and chapter 321~~.

ITEM 13. Amend rule 761—106.3(307) as follows:

**761—106.3(307) Information.** General information regarding agricultural promotions at interstate rest areas is available from the Office of Maintenance, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, or the department’s website at [www.iowadot.gov](http://www.iowadot.gov).

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

ITEM 14. Amend subrule 106.4(1), introductory paragraph, as follows:

**106.4(1)** A request to promote an Iowa agricultural product at an interstate rest area shall be made on Form 810059. This form is available from the department's district offices, ~~or~~ the office of maintenance or the department's website.

ITEM 15. Amend subrule 106.4(2), introductory paragraph, as follows:

**106.4(2)** Approval of request. The request is subject to the approval of the office of maintenance. ~~The request shall be approved unless there is good cause for denying it.~~

ITEM 16. Amend rule 761—106.5(307) as follows:

**761—106.5(307) Time frame.** Promotions shall be allowed only during daylight hours. Promotions shall be allowed year-round except for the following holiday periods:

1. ~~The Saturday, Sunday, and Monday~~ of Memorial Day weekend and Labor Day weekend, starting at noon on the preceding Friday and ending at midnight between Monday and Tuesday of the holiday weekend.

2. to 4. No change.

ITEM 17. Rescind and reserve **761—Chapter 123**.

[Filed 12/13/17, effective 2/7/18]

[Published 1/3/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/3/18.

**ARC 3562C**

**WORKFORCE DEVELOPMENT DEPARTMENT[871]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 96.11, the Director of the Department of Workforce Development hereby amends Chapter 23, "Employer's Contribution and Charges," and Chapter 24, "Claims and Benefits," Iowa Administrative Code.

These amendments update, clarify and simplify the procedures by which claimants and employers interact with Iowa Workforce Development.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 30, 2017, as **ARC 3280C**. The Notice was on the Administrative Rules Review Committee (ARRC) agenda on September 12, 2017. Comment was received from labor and business representatives at the ARRC meeting. Labor representatives were generally opposed to the Department's internal policy change and voiced opposition to that policy in connection with this rule making. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on October 11, 2017, as **ARC 3380C** to set a public hearing. Another Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on October 25, 2017, as **ARC 3432C**, which rescheduled the public hearing. Public comment was received in writing before the public hearing, and oral comment was received at the public hearing on November 21, 2017. Representatives from labor unions and trade organizations offered comment in opposition to rule 871—24.39(96) in Item 12 of the Notice of Intended Action. The Department determined that most of the comments in opposition to this rule were in fact in opposition to the internal policy for applying the rule and that no change from the Noticed rule was appropriate at this time. These amendments are identical to those published under Notice.

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

Waiver provisions do not apply to this rule making.

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

These amendments are intended to implement Iowa Code chapter 96.

These amendments will become effective February 7, 2018.

The following amendments are adopted.



## WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

ITEM 1. Amend rule 871—23.69(96), catchwords, as follows:

**871—23.69(96) Injunction for nonpayment or failure to ~~report~~ provide required information.**

ITEM 2. Amend subrule 23.69(1) as follows:

**23.69(1)** In addition or as an alternative to any other remedy provided in Iowa Code chapter 96 and this rule, the department may proceed to enjoin an employer who has refused or failed to pay any contributions, interest, or penalty or who has failed to file ~~any reports~~ or provide any information required by the department.

ITEM 3. Amend paragraph **23.69(3)“b”** as follows:

*b.* The period(s) for which there are delinquent contributions, interest, and penalty due or for which ~~returns have not been filed~~ required information has not been provided.

ITEM 4. Amend subrule 23.69(6) as follows:

**23.69(6)** Upon payment in full of the delinquent contributions, interest, and penalty, and the filing of all delinquent ~~reports~~ wage detail, the department shall have the injunction dissolved.

ITEM 5. Amend subrule 23.70(1) as follows:

**23.70(1)** Any nonprofit organization can be considered eligible to reimburse the Iowa unemployment compensation fund in lieu of paying contributions. Any nonprofit organization wishing to be considered as a reimbursable employer shall file as provided under Iowa Code section 96.7 the election to reimburse the fund ~~on Form 68-0463, Election to Make Payments in Lieu of Contributions~~, with the department for its consideration.

ITEM 6. Amend subrule 23.70(2), introductory paragraph, as follows:

**23.70(2)** ~~Election to Make Payments in Lieu of Contributions, Form 68-0463~~, The election to reimburse must be signed by an authorized official of the nonprofit organization and shall be accompanied by:

ITEM 7. Amend subrule 23.72(1), introductory paragraph, as follows:

**23.72(1)** Any governmental entity may elect to be a governmental contributory employer by filing a ~~written application known as “Election to Pay Contributions as a Government Contributory Employer,” Form 68-0053~~, for elective coverage as a governmental contributory employer. The rules governing the selection of coverage status for governmental entities shall apply to Indian tribes. Any governmental entity failing to file such an election will be considered as a governmental reimbursable employer. The ~~Form 68-0053~~ application must be signed by a duly constituted governmental official. The election shall be approved if the department finds that:

ITEM 8. Rescind and reserve subparagraph **24.1(25)“b”(20)**.

ITEM 9. Rescind subrule 24.1(26) and adopt the following **new** subrule in lieu thereof:

**24.1(26) Claimant.**

*a.* An individual who has filed a request for determination of insured status or a new claim, or

*b.* An individual who has filed an initial claim unless the claim is found to be invalid or the benefit year has expired.

ITEM 10. Rescind and reserve subrule **24.1(121)**.

ITEM 11. Rescind and reserve subrule **24.1(127)**.

ITEM 12. Rescind rule 871—24.39(96) and adopt the following **new** rule in lieu thereof:

**871—24.39(96) Department-approved training.** The intent of department-approved training is to allow for claimants to return to the labor market after attending vocational training while being paid unemployment insurance benefits. Vocational training is nonacademic, skill-oriented training that provides the student with job tools and skills that can be used in the workplace. Vocational training includes technical, skill-based, or job readiness training intended for pursuing a career. Upon approval from the department, the claimant shall be exempt from the work search requirement for continued

## WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

eligibility for benefits. In order to be eligible for department-approved training programs and to maintain continuing participation therein, the individual shall meet the following requirements:

**24.39(1)** The claimant must make application to the department setting out the following:

- a. The educational establishment at which the claimant would receive training.
- b. The estimated time required for such training.
- c. The date the training will be complete or the degree will be obtained.
- d. The occupation which the training is allowing the claimant to maintain or pursue.
- e. The training plan, indicating the requirements which must be met in order to complete the certification or degree.

**24.39(2)** A claimant may receive unemployment insurance while attending a training course approved by the department, under the following conditions:

- a. The educational establishment must be a college, university or technical training institution.
- b. The training must be completed 104 weeks or less from the start date.
- c. The individual must be enrolled and attending the training program as a full-time student.

While attending the approved training course, the claimant need not be available for work or actively seeking work. After completion of department-approved training, the claimant must, in order to continue to be eligible for unemployment insurance, place no restriction on employability. The claimant must be able to work, be available for work and be actively searching for work. In addition, the claimant may be subject to disqualification for any refusal of work without good cause after the claimant has completed the training.

**24.39(3)** The claimant must show satisfactory attendance and progress in the training course prior to being considered for a subsequent approval and must demonstrate that such claimant has the necessary finances to complete the training to substantiate the expenditure of unemployment insurance funds.

ITEM 13. Amend subrule 24.40(3), introductory paragraph, as follows:

**24.40(3)** The course or courses must be full-time enrollment for a high-demand or high-technology occupation. The department will make available to serve as a guide a list of high-demand, high-technology, and declining occupations. The lists shall be available on the department's Web site and at workforce centers.

ITEM 14. Amend subrule 24.40(4) as follows:

~~**24.40(4)** The individual must be enrolled in the training no later than the end of the benefit year which included the separation which made the individual eligible for training benefits or the week in which any federal benefit program based upon that benefit year is exhausted. Enrolled before the end of the benefit year means the individual has taken all steps available for entry into the training and has secured a reserved position in the training class. The individual has paid tuition or will pay tuition when the training starts. The training class may begin after the end of the benefit year. The application for training benefits must be received 30 days after the end of the benefit year or within 30 days after state or federal benefits are exhausted. The individual must be enrolled and making satisfactory progress to complete the training program in order to continue to be eligible for training extension benefits.~~

ITEM 15. Amend subrule 24.40(5) as follows:

~~**24.40(5)** Training benefits shall cease to be available if the training is completed; the individual quits the training course; the individual exhausts the training extension maximum benefit amount; or the individual fails to make satisfactory progress; and benefits shall cease no later than one calendar year following the end of the benefit year in which the individual became eligible for the benefits. Individuals must file and receive benefits under any federal or state unemployment insurance benefit program until the claim has expired or has benefits have been exhausted, in order to maintain eligibility for training extension benefits.~~

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