



IOWA ADMINISTRATIVE BULLETIN

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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

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CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2014

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
16	Friday, January 17, 2014	February 5, 2014
17	Friday, January 31, 2014	February 19, 2014
18	Friday, February 14, 2014	March 5, 2014

PLEASE NOTE:

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

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

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

ACCOUNTANCY EXAMINING BOARD[193A]

Renewal cycle for reinstated licensees, 10.5(7) IAB 1/8/14 ARC 1284C	Board Office, Suite 350 200 E. Grand Ave. Des Moines, Iowa	January 28, 2014 9 a.m.
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ARCHITECTURAL EXAMINING BOARD[193B]

Description of organization, 1.1(4), 1.2 to 1.4 IAB 12/25/13 ARC 1251C	Board Offices, Suite 350 200 E. Grand Ave. Des Moines, Iowa	January 14, 2014 9 a.m.
Registration—retired status, 2.5, 2.11 IAB 1/8/14 ARC 1282C	Board Offices, Suite 350 200 E. Grand Ave. Des Moines, Iowa	January 28, 2014 9 a.m.

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Teacher intern license—minimum grade point average, 13.9(3) IAB 1/8/14 ARC 1272C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	February 5, 2014 1 p.m.
School counselors—licensure and practice, 13.15, 13.28, 27.3 IAB 12/11/13 ARC 1236C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 8, 2014 1 p.m.
Family and consumer sciences endorsements, 13.28(9), 17.1 IAB 12/11/13 ARC 1235C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 8, 2014 1 p.m.
Initial administrator license, 18.4 IAB 12/11/13 ARC 1234C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 8, 2014 1 p.m.
Paraeducators—competencies for generalists and special needs concentration, 24.3, 24.4(2) IAB 12/11/13 ARC 1233C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 8, 2014 1 p.m.

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Transition to computer-based testing, 3.2, 4.1 IAB 12/25/13 ARC 1254C	Professional Licensing Bureau, Suite 350 200 E. Grand Ave. Des Moines, Iowa	January 15, 2014 9 to 11 a.m.
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Group trusts; contribution rates; refunds; retirement, disability and death benefits; same gender spouse; alternate payee; domestic relations orders, amendments to chs 2, 4, 9, 11 to 14, 16 IAB 12/25/13 ARC 1256C	IPERS 7401 Register Dr. Des Moines, Iowa	January 14, 2014 9 a.m.
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Respiratory care practitioners—practice, continuing education, 262.3(2), 265.5 IAB 12/25/13 ARC 1255C	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	January 14, 2014 9 to 9:30 a.m.
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Continuing education for manufactured home installers, 374.7(1) IAB 12/11/13 ARC 1239C	First Floor Conference Room 125 Oran Pape State Office Bldg. 215 E. 7th St. Des Moines, Iowa	January 21, 2014 10 a.m.
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Aviation programs—eligibility; funding; application process; project review, approval, and administration, amendments to chs 700, 710, 715 to 717 IAB 1/8/14 ARC 1270C	First Floor South Conference Room DOT Administration Bldg. 800 Lincoln Way Ames, Iowa	January 30, 2014 10 a.m. (If requested)
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WORKFORCE DEVELOPMENT DEPARTMENT[871]

Vacation pay deductible from unemployment, 24.13(3), 24.16(1) IAB 1/8/14 ARC 1286C	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	January 29, 2014 1 p.m. (If requested)
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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 1284C

ACCOUNTANCY EXAMINING BOARD[193A]

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 542.4, the Accountancy Examining Board hereby gives Notice of Intended Action to amend Chapter 10, “Continuing Education,” Iowa Administrative Code.

The proposed amendment provides a reinstated licensee or a licensee who changes status from “inactive” to “active” the ability to take advantage of the alternate renewal cycle immediately at the next renewal cycle. Without this amendment, the licensee would not be qualified to use the alternate continuing education cycle until four years after reinstatement or a change of status. The proposed amendment is consistent with how all other licensees are expected to maintain continuing education. The amendment eliminates the four years of progressive educational requirements that a reinstated licensee now has to complete and also removes unnecessary complexity in the renewal process. The Accountancy Examining Board also has the support of the Iowa Society of CPAs in this amendment.

Consideration will be given to all written suggestions or comments on the proposed amendment received no later than 4:30 p.m. on January 28, 2014. Comments should be addressed to Toni Bright, Accountancy Examining Board, 200 E. Grand, Suite 350, Des Moines, Iowa 50309. E-mail may be sent to accountancyboard@iowa.gov.

A public hearing will be held on January 28, 2014, at 9 a.m. in the Board office, 200 E. Grand, Suite 350, Des Moines, Iowa, at which time persons may present their views on the proposed amendment either orally or in writing. At the hearing, any person who wishes to speak will be asked to give the person’s name and address for the record and to confine remarks to the subject of the proposed amendment.

This amendment does not have any fiscal impact to the state of Iowa.

This amendment is subject to waiver or variance pursuant to 193—Chapter 5.

After analysis and review of this rule making, there is a positive impact on jobs. A licensee who reinstates will now be able to take advantage of the alternate renewal cycle effective immediately at the next renewal cycle. The amendment also eliminates the cumbersome tracking of the four years of progressive educational requirements and removes unnecessary complexity in the renewal process.

This amendment is intended to implement Iowa Code chapters 17A, 272C and 546 and Iowa Code section 542.20.

The following amendment is proposed.

Amend subrule 10.5(7) as follows:

10.5(7) Licensees who apply to reinstate a lapsed or inactive certificate or license to active status pursuant to 193A—subrule 5.6(3) or 5.9(7) shall satisfy the basic requirement of 120 hours of continuing professional education earned in the preceding three-year period prior to the date of the application, including all required mandatory education described in rule 193A—10.7(542), to reinstate on an annual renewal schedule, modified as needed to incorporate the phase-in schedule for initial licensees described in subrules 10.5(1) to 10.5(3). Once the certificate or license is reinstated, the ~~following schedule shall apply:~~ basic requirement shall apply at each subsequent renewal.

~~a.—No continuing professional education shall be required on the first annual renewal after reinstatement of a lapsed or inactive certificate or license to active status.~~

~~b.—40 hours of continuing professional education that has not previously been reported shall be required in the one-year period ending December 31 prior to the second July 1 annual renewal date following reinstatement to active status. In the second and subsequent renewals following~~

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

~~reinstatement, the applicant must demonstrate compliance with the mandatory education described in rule 193A—10.7(542).~~

~~e.—80 hours of continuing professional education that has not previously been reported shall be required in the two-year period ending December 31 prior to the third July 1 annual renewal date following reinstatement to active status.~~

~~d.—120 hours of continuing professional education shall be required in the three-year period ending December 31 prior to the fourth and subsequent July 1 annual renewal dates following reinstatement to active status.~~

ARC 1280C**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 203.2 and 203C.5(1), the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 90, “State Licensed Warehouses and Warehouse Operators,” and Chapter 91, “Licensed Grain Dealers,” Iowa Administrative Code.

The amendments specifically add to the rules a provision contained in the Iowa Code that requires a grain warehouse operator or a grain dealer to submit additional financial statements upon the Department’s request. The amendments set out what would be included in the additional financial information and when the information would be due. A technical correction is also made.

Any interested persons may make written suggestions or comments on the proposed amendments on or before January 28, 2014. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to Margaret.Thomson@IowaAgriculture.gov.

The proposed amendments are subject to the Department’s general waiver provisions.

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

These amendments are intended to implement Iowa Code sections 203.3 and 203C.6.

The following amendments are proposed.

ITEM 1. Renumber subrule **90.8(13)** as **90.8(14)**.

ITEM 2. Adopt the following **new** subrule 90.8(13):

90.8(13) Other financial statements. The bureau chief may require a warehouse operator to submit financial statements on a monthly or quarterly basis to verify the operator’s financial status or compliance with Iowa Code section 203C.6. These financial statements shall be filed with the bureau by the end of the next month and by the end of every month thereafter until no longer required by the bureau. These financial statements shall contain a minimum of a balance sheet and statement of income and shall be prepared in accordance with generally accepted accounting principles.

ITEM 3. Amend subrule 91.8(8), introductory paragraph, as follows:

91.8(8) Appraisals. Competent appraisals on file with the bureau shall be valid for use in determining asset value for a maximum period of three years. Thereafter, a new appraisal for asset valuation shall be required and shall be used for a like period of time. In the event the certified public accountant expresses doubt as to the licensee’s ability to continue as a going concern, the bureau shall not allow an appraisal to be used to meet net worth requirements. The bureau shall not allow an appraisal to be used to determine the percentage of total liabilities to total assets as it relates to subrule ~~91.17(2)~~ 91.17(3), paragraph “e,”

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

concerning the suspension of a licensee's authorization to use credit-sale contracts. All assets included in the appraisal shall be depreciated by the bureau using the following schedule:

ITEM 4. Renumber subrule **91.8(13)** as **91.8(14)**.

ITEM 5. Adopt the following **new** subrule 91.8(13):

91.8(13) Other financial statements. The bureau chief may require a grain dealer to submit financial statements on a monthly or quarterly basis to verify the grain dealer's financial status or compliance with Iowa Code section 203C.6. These financial statements shall be filed with the bureau by the end of the next month and by the end of every month thereafter until no longer required by the bureau. These financial statements shall contain a minimum of a balance sheet and statement of income and shall be prepared in accordance with generally accepted accounting principles.

ARC 1282C**ARCHITECTURAL EXAMINING BOARD[193B]****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 544A.29, the Architectural Examining Board hereby gives Notice of Intended Action to amend Chapter 2, “Registration,” Iowa Administrative Code.

The rules in Chapter 2 describe the process for registration and renewal of certificates of registration to authorize the practice of architecture in Iowa. These amendments remove the biennial renewal requirement and fee for those registrants in retired status.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 28, 2014. Such written materials should be directed to Lori SchraderBachar, Iowa Architectural Examining Board, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa 50309. E-mail may be sent to lori.schraderbachar@iowa.gov. Persons who wish to convey their views orally should contact Lori SchraderBachar, Iowa Architectural Examining Board, at (515)725-9030 or at the Board offices, 200 E. Grand Avenue, Suite 350, Des Moines.

Also, there will be a public hearing on January 28, 2014, at 9 a.m. at the Board offices, 200 E. Grand Avenue, Suite 350, Des Moines, 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 amendments.

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

These proposed amendments are subject to waiver or variance pursuant to 193—Chapter 5.

These amendments were approved by the Board on November 12, 2013.

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

These amendments are intended to implement Iowa Code chapter 544A.

The following amendments are proposed.

ITEM 1. Amend paragraph **2.5(2)“c”** as follows:

c. Permitted practices. A person may, while registered as inactive, perform for a client, business, employer, government body, or other entity those services which may lawfully be provided by a person to whom a certificate of registration has never been issued. Such services may be performed as long as the person does not in connection with such services use the title “architect” or any other title restricted for use only by architects pursuant to Iowa Code section 544A.15 (with or without additional designations such as “inactive” or “retired”). Restricted titles may be used only by active architects who are subject

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

to continuing education requirements to ensure that the use of such titles is consistently associated with the maintenance of competency through continuing education.

ITEM 2. Amend subrule 2.5(3) as follows:

2.5(3) Retired status. A person ~~registered as retired~~ who held a registration as an architect and who does not reasonably expect to return to the workforce in any capacity for which a certificate of registration is required due to bona fide retirement or disability may apply to the board for retired status and, if granted, may use the title “architect retired” in the context of non-income-producing personal activities. If the board determines an applicant is eligible, the retired status would become effective on the first scheduled registration renewal date. Applicants do not need to reinstate an expired registration to be eligible for retired status. Applicants may apply for retired status on forms provided by the board. The board will not provide a refund of biennial registration fees if an application for retired status is granted in a biennium in which the applicant has previously paid the biennial fees for either active or inactive status. Persons registered in retired status are exempt from the renewal requirement.

a. Affirmation. ~~The renewal retired status application form shall contain a statement in which the applicant affirms that the applicant will not engage in any of the practices in Iowa that are listed in Iowa Code section 544A.16 without first complying with all rules governing reinstatement to active status. A person in retired status may reinstate to active status at any time pursuant to rule 193B—2.8(544A).~~

b. Renewal. ~~A person registered as retired may renew the person’s certificate of registration on the biennial schedule described in rule 193B—2.5(17A,272C,544A). This person shall be exempt from the continuing education requirements and will be charged a reduced renewal fee as provided in rule 193B—2.11(544A,17A). A retired certificate of registration shall lapse if not timely renewed. However, the board will accept an otherwise sufficient renewal application that is untimely if the board receives the application and late fee within 30 days of the date of expiration.~~

b. Permitted practices. Persons registered in retired status may engage in the practices identified in paragraph 2.5(2)“c.” Such persons may also provide services as technical experts before a court, including prelitigation preparation, discovery, and testimony, on matters directly related to architectural services provided by such persons prior to registering with the board in retired status.

c. Exemption. A person whose registration as an architect has been placed on probation, suspended, revoked, or voluntarily surrendered in connection with a disciplinary investigation or proceeding shall not be eligible for retired status unless, upon appropriate application, the board first reinstates the registration to good standing.

ITEM 3. Amend rule 193B—2.11(544A,17A) as follows:

193B—2.11(544A,17A) Fee schedule. Under the authority provided in Iowa Code chapter 544A, the following fees are hereby adopted:

Examination fees:

Fees for examination subjects shall be paid directly to the testing service selected by NCARB

Initial registration fee	\$ 50
(plus \$5 per month until renewal)	
Reciprocal application and registration fee	\$200
Biennial renewal fee	\$200

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

Biennial renewal fee (inactive)	\$100
Biennial renewal fee (retired) Retired status	\$50 <u>None</u>
Reinstatement of lapsed individual registration (per month)	\$ 25
Duplicate wall certificate fee	\$ 50
Late renewal fee	\$ 25

(for renewals postmarked on or after July 1 and before July 31)

ARC 1285C

CHILD ADVOCACY BOARD[489]**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 237.18, the Child Advocacy Board hereby gives Notice of Intended Action to renumber Chapter 4, “Public Records and Fair Information Practices,” as Chapter 5 and to adopt a new Chapter 4, “Court Appointed Special Advocate Program,” Iowa Administrative Code.

The new Chapter 4 establishes standards for the Court Appointed Special Advocate (CASA) Program as directed by Iowa Code sections 237.18(2) and 237.18(7). The CASA Program provides advocates for children who have been abused or neglected, are under court jurisdiction and are often placed in out-of-home care. The new chapter formalizes requirements for the selection and screening of volunteers, preservice training, ongoing education, and assignment and supervision of volunteers who serve as court appointed special advocates (CASAs).

Additionally, the new chapter addresses the requirement in Iowa Code section 237.18 that rules be written to address expansion of the CASA Program to additional areas of the state and to formalize the volunteer position of court appointed special advocate coach. This volunteer position may be filled by a CASA who has at least two years of successful case experience or equivalent experience in a substantially similar role and additional specialized training. The volunteer coach will extend the capacity of Child Advocacy Board staff to provide oversight and supervision to a far larger number of children. The current staffing and volunteer service model is sufficient to provide CASAs for only about 1,000 of the more than 5,000 abused and neglected Iowa children in out-of-home care at any given time. Implementation of the coach position will promote expansion of the program’s capacity exponentially. Jurisdictions in other states that have implemented similar staffing and volunteer service models have more than tripled their capacity to provide oversight and coaching to CASAs without decreasing the quality of their programs.

Finally, the proposed rules:

- Designate the program certification standards of the National Court Appointed Special Advocate Association as the national guidelines to which the Iowa CASA Program will adhere,
- Delineate the children eligible for CASA Program service, and
- Set forth basic requirements for an annual program report to the General Assembly, Governor and Supreme Court.

The proposed rules were approved by the Child Advocacy Board at its November 8, 2013, meeting. In addition to this rule making, the Board intends to initiate rule making to amend its other chapters of administrative rules over the next several months. These additional amendments will incorporate Iowa Code revisions that have occurred since the rules were last amended.

CHILD ADVOCACY BOARD[489](cont'd)

Any interested person may make written suggestions or comments on the proposed amendments on or before January 28, 2014. Such written materials should be addressed to Administrator, Child Advocacy Board, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)281-5975; or e-mailed to Jim.Hennessey@dia.iowa.gov.

This rule making does not provide for waivers in specified situations but does permit the administrator of the Iowa Child Advocacy Board to determine that a CASA coach candidate meets alternate experience requirements and to make limited exceptions to negative background check findings for court appointed special advocates and coaches when the negative finding poses no risk to the safety or well-being of children.

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

These amendments are intended to implement Iowa Code section 237.18.

The following amendments are proposed.

ITEM 1. Renumber ~~489—Chapter 4~~ as ~~489—Chapter 5~~.

ITEM 2. Adopt the following new ~~489—Chapter 4~~:

CHAPTER 4
COURT APPOINTED SPECIAL ADVOCATE

489—4.1(237) Purpose. The child advocacy board is required by Iowa Code section 237.18 to establish procedures and protocols for administering the court appointed special advocate program.

4.1(1) Definitions.

“Administrator” means the person selected by the child advocacy board to lead, direct and manage the staff and programs established by the board.

“Certified,” when used as a descriptor of a court appointed special advocate, means that an applicant has been determined by the child advocacy board to have the required qualifications to become a court appointed special advocate and has completed the application requirements, background checks, screening and selection process and training established pursuant to the rules in this chapter.

“Coordinator” means the staff member of the child advocacy board who is responsible for planning and implementation of the court appointed special advocate program in a county or cluster of counties in the state.

“Court appointed special advocate” or *“CASA”* or *“advocate”* means a person who has volunteered and is duly certified by the child advocacy board for participation in the court appointed special advocate program and appointed by the court to represent the interest of a child in any judicial proceeding to which the child is a party or is called as a witness or relating to any dispositional order involving the child resulting from the proceeding. Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the duties of a court appointed special advocate with respect to a child pursuant to Iowa Code section 232.2(22) *“b”* shall include the following:

1. Conducting in-person interviews with the child, if the child’s age is appropriate for the interview, and interviewing each parent, guardian, or other person having custody of the child, if authorized by counsel.
2. Conducting interviews with the child, if the child’s age is appropriate for the interview, prior to any court-ordered hearing.
3. Visiting the home, residence, or both home and residence of the child and any prospective home or residence of the child, including each time placement is changed.
4. Interviewing any person providing medical, mental health, social, educational, or other services to the child, before any hearing referred to in paragraph “2” of this definition.
5. Obtaining firsthand knowledge, if possible, of the facts, circumstances, and parties involved in the matter in which the person is appointed.
6. Attending any hearings in the matter in which the person is appointed.

CHILD ADVOCACY BOARD[489](cont'd)

7. If the child is required to have a transition plan developed in accordance with the child's case permanency plan and subject to review and approval of a transition committee under Iowa Code section 235.7, assisting the transition committee in development of the transition plan.

4.1(2) *Program mission.* The court appointed special advocate (CASA) program certifies and guides trained community volunteers to serve as an effective voice in court for abused and neglected children, strengthening efforts to ensure that each child is living in a safe, permanent and nurturing home.

4.1(3) *Program goal.* The CASA program shall develop and expand effective advocacy by certified advocates for every abused and neglected child in Iowa.

This rule is intended to implement Iowa Code sections 17A.3 and 237.18.

489—4.2(237) Program requirements.**4.2(1) *Operation requirements.***

a. The state board delegates responsibility to the administrator to hire, train and manage sufficient CASA coordinators throughout the state to plan and coordinate a CASA program in every county of the state. The administrator shall determine the number of court appointed special advocates or coaches an individual coordinator may supervise and coach.

b. The coordinator is responsible for recruiting, screening, selecting, training and supervising a sufficient number of court appointed special advocates to serve every child for whom a district court judge assigns the coordinator to provide a CASA.

c. If the number of CASA volunteers required for the county or counties for which the coordinator is responsible exceeds the number approved pursuant to paragraph 4.2(1) "a," the coordinator shall recruit a sufficient number of CASA coaches to supervise and coach the CASA volunteers needed to meet the court's requirements.

d. A CASA coach shall supervise and coach up to ten CASA volunteers at any given time. If the CASA coach has an individual CASA assignment, the coordinator may further limit the number of CASA volunteers supervised by the coach.

e. The coordinator accepts case appointments from the local judge and assigns an advocate to each case to which a CASA is appointed. When the local organizational structure includes a CASA coach, the coach is consulted in the decision about the appointment.

f. The CASA selection is made in a manner that provides the best match available between the knowledge, skills, abilities, availability and preferences of the advocate and the needs and preferences of the child. The assignments shall be made in a manner that avoids conflicts of interest, risk to the child's or advocate's safety and jeopardy to the program's integrity.

g. Upon selection of the CASA who will serve on an individual case, the court and all interested parties are notified of the selection.

h. The selected CASA continues to serve on the case until the assignment is terminated by the court.

4.2(2) *CASA advocate and coach qualifications.* Potential coaches and advocates shall meet the following qualifications:

a. Have a genuine interest in advocating for children and their rights and needs.

b. Have time available and a schedule which allows completion of mandatory duties.

c. Commit initially to a one-year case assignment as a CASA and understand that a CASA is expected to continue case responsibilities until the case or the assignment is terminated by the court.

d. Have the ability to interact with people involved in the child welfare system.

e. Have the ability to communicate effectively both in verbal and written presentations.

f. Be at least 19 years of age or older.

g. Not be a person employed by the state board or the department of human services, the department of inspections and appeals, the district court, or an agency with which the department of human services contracts for services for children.

4.2(3) *Additional qualifications for CASA coaches.* In addition to meeting all requirements in subrule 4.2(2), a CASA coach shall have served for two years as a CASA advocate on assigned cases and shall be in good standing. The administrator may approve comparable alternate experience for a coach.

CHILD ADVOCACY BOARD[489](cont'd)

4.2(4) Application requirements. A CASA coach candidate is invited by a coordinator to serve in the role of coach. A coach candidate who is in good standing as a CASA has no additional application requirements. A coach candidate who has received approval for alternate comparable experience and any CASA applicant shall complete the following requirements:

- a. Submit a program application to the program office.
- b. Provide the names and addresses of at least three nonrelative personal references.
- c. Participate in at least one personal interview with the local coordinator.
- d. Complete mandatory CASA preservice training, consisting of a minimum of 30 hours of course time.

e. Take a confidentiality oath, administered by the presiding juvenile court judge, or designee, for whom the CASA will be performing official duties.

f. Authorize a release of information for the CASA program to conduct a complete criminal history check of the applicant's background, including division of criminal investigation, Federal Bureau of Investigation, motor vehicles division, child abuse registry and sex offender registry checks. Applicants who refuse to sign required background check releases will not be considered for acceptance into the CASA program. The following criteria are applied when a background check yields a finding:

(1) Any applicant found to have been convicted of, or having charges pending for, a felony or misdemeanor involving a sex offense, child abuse or neglect or related acts that would pose a risk to children or to program credibility is not accepted as an advocate.

(2) An applicant with a documented criminal domestic abuse, child physical abuse, or child sexual abuse offense or child physical or sexual abuse documented on the abuse will not be approved.

(3) An applicant found to be convicted of other types of misdemeanors or felonies that would not pose a risk to children or program credibility may be approved by the administrator after review in consultation with the coordinator.

(4) A coordinator may request an exception from the administrator if an applicant has a negative background check finding. Examples of offenses that may qualify for an exception include an operating while intoxicated offense older than four years, with documented completion of successful treatment; a drug offense older than eight years, with documented completion of successful treatment; and a felony conviction of truth and veracity offenses more than ten years old.

4.2(5) Volunteer selection protocol. The state board delegates responsibility to the administrator to establish in the program's policy and procedures manual complete direction for weighing all application qualifications and requirements to determine final selection of applicants to become CASA and CASA coach volunteers.

4.2(6) Staff responsibilities specific to the court appointed special advocate program.

a. The program administrator reports to the child advocacy board, is responsible for the following duties, and may delegate the duties to designated staff:

- (1) Manage the program statewide.
- (2) Establish and modify the program policy and procedures manual and the program training curriculum and resources needed for program operation.
- (3) Supervise local programs operated by the program coordinators.
- (4) Prepare program reports and updates, including expansion recommendations for the state board.
- (5) Prepare annual program reports to the governor, general assembly and courts.
- (6) Initiate and maintain contact with judicial districts regarding a change in or expansion of the CASA program.

b. The program liaison, under the direction of the administrator, directs and coordinates implementation of the program by carrying out the following duties:

- (1) Supervise and evaluate the work of program coordinators and field support staff and administer personnel and related policies and procedures for the field.
- (2) Represent the best interests of the program with the department of human services, the courts, and allied agencies on behalf of the CASA program.
- (3) Develop performance standards for program coordinators and field support staff.

CHILD ADVOCACY BOARD[489](cont'd)

(4) Analyze data and prepare local and statewide reports on CASA program performance in the field and take corrective action as needed to resolve problems and achieve goals.

c. The coordinator shall recruit, screen, interview, train and support sufficient CASA coaches and advocates to meet the requirements of the courts for the counties in which the coordinator operates the program. Upon receipt of court authorization to designate a CASA coach and advocate to serve a child, the coordinator shall carry out the following duties related to providing oversight of a coach responsible for overseeing an advocate assigned to serve a child:

(1) Meet with coaches at least monthly to review cases and, as needed, to assign each case to an advocate.

(2) Organize discovery on a new case and set up a file for the coach and advocate.

(3) Meet with coaches to discuss any problems and plans involving advocates.

(4) Conduct 60-day and annual reviews of coaches' work.

(5) Notify coaches of conferences, seminars and meetings that will provide developmental opportunities.

(6) Provide ongoing coaching, support and encouragement to coaches, who in turn will assist the advocates in working with the children to whom they are assigned.

(7) Before distributing them to the appropriate parties, complete the final edit of court reports written by advocates and edited by coaches.

(8) Attend court hearings as needed by coaches or advocates.

(9) Provide help as needed to coaches and advocates when they are closing a case.

(10) Become a subject matter expert in one specialized area and provide assistance statewide to coaches and advocates who have questions about the topic.

(11) Maintain professional relationships with the court, the department of human services, attorneys, and other service providers.

(12) Provide the link between administrator and program liaison and local coaches and advocates.

d. Upon receipt of court authorization to designate an advocate only to serve a child, the coordinator shall carry out the following duties related to oversight of the advocate:

(1) Assign the advocate to the case.

(2) Inform the advocate of the assignment and verify the advocate's acceptance of the case.

(3) Prepare initial discovery documents and review them with the advocate, making note of important documents.

(4) Track court hearings and confirm the advocate's attendance.

(5) Maintain familiarity with CASA policies and procedures.

(6) Obtain case updates from and address any issues for advocates; maintain monthly contact with advocates who have cases; remind advocates to keep their contact log entries and training hours up to date and to timely submit court reports.

(7) Maintain log of current cases and contacts with advocates.

(8) On a daily basis, check e-mails for updates and give timely approval to pending contact logs and court reports.

(9) Review and edit court reports and send to interested parties.

(10) Be available to attend court hearings with advocates or on their behalf, and document actions taken.

(11) Attend required training and educational opportunities to enhance skills.

e. When a CASA coach has been assigned to oversee an advocate, the coach provides coaching and support to the advocate to ensure that each child involved receives sound advocacy and early permanency planning. The responsibilities of the coach include:

(1) Support and coach up to ten advocates in their work with children.

(2) Together with the coordinator, assign advocates to cases.

(3) Inform advocates of assignment and verify their acceptance of the case.

(4) Receive initial discovery documents from the coordinator and review them with advocates, making note of important documents.

CHILD ADVOCACY BOARD[489](cont'd)

- (5) Report to the coordinator monthly, or as needed, to discuss advocate progress, cases and other issues that have arisen.
 - (6) Notify the coordinator of critical events in a case.
 - (7) Track court hearings and confirm advocates' attendance.
 - (8) Consult with the coordinator regarding any advocate performance concerns.
 - (9) Maintain familiarity with CASA policies and procedures.
 - (10) Obtain case updates from and address any issues for advocates; maintain monthly contact with advocates who have cases; remind advocates to keep their contact log entries and training hours up to date and to timely submit court reports.
 - (11) Maintain log of current cases and contacts with advocates.
 - (12) On a daily basis, check e-mails for updates and give timely approval to pending contact logs and court reports.
 - (13) Review and edit court reports and send them to the coordinator for final review and dissemination.
 - (14) Be available to attend court hearings with advocates or on their behalf, and document actions taken.
 - (15) If unavailable, schedule coverage by contacting the coordinator, who can provide assistance.
 - (16) Attend required training and educational opportunities to enhance skills.
- f.* A CASA advocate is a trained community volunteer appointed by the court to speak in the best interests of children who have been neglected or abused. The CASA has the following responsibilities:
- (1) Agree to take a case as recommended by the coordinator or coach and to maintain confidentiality of all information regarding the case.
 - (2) Independently review all documents and records for the case and interview the child, parents, social workers, teachers and others to gain an understanding of the situation and the child's needs.
 - (3) Observe the child at least once a month; if this is not feasible, document the reason.
 - (4) Maintain regular contact with the child's legal counsel, department of human services workers and other persons with personal knowledge or direct involvement in the child's case; advise the child's legal counsel, or any other legal party, of any changes that might require modification of a court order.
 - (5) When feasible, attend all preplacement and placement review staffings regarding the child.
 - (6) Identify and request appropriate evaluation, examinations, and testing of the child.
 - (7) Write a report of findings and make fact-based recommendations in a court report. The report shall include the results of the CASA's initial investigation of the child's case, including but not limited to recommendations regarding placement of the child and other recommendations based on the best interests of the child. The CASA shall submit subsequent reports detailing the continuing situation of the child's case as long as the child remains under the jurisdiction of the court. The CASA shall prepare other reports as required by the court and submit them to the coordinator or coach, who will make suggestions for improvement. Final review of the advocate's report is completed by the coordinator prior to dissemination of the report to the court and all interested parties.
 - (8) Review motions, pleadings, court orders and notices, prior to attending a hearing.
 - (9) Attend court hearings to advocate for the child's best interests and provide testimony when necessary.
 - (10) Inform the court promptly of important developments in the case.
 - (11) Maintain complete records of the case, including appointments, interviews and information gathered about the child and the child's environment.
 - (12) Submit monthly case updates to the coach or coordinator.
 - (13) Return case files to the program upon case closure.
 - (14) Seek ways to continually improve knowledge and skills.

4.2(7) Establishing additional procedures and protocols.

a. The state board is responsible under the statute for establishment of procedures and protocols which must be consistent with the provisions of the statute.

b. Responsibility is delegated by the state board to the administrator to establish and submit to the board for approval a program policy and procedures manual which provides detailed guidance to

CHILD ADVOCACY BOARD[489](cont'd)

child advocacy board staff and volunteers on application of these rules and the statutes that govern the operation of the court appointed special advocate program.

c. Child advocacy board staff and volunteers are required to comply with the protocols and procedures established by the state board and the provisions of the policy and procedures manual established by the administrator and approved by the board.

d. Day-to-day implementation of program policy is delegated by the state board to administrative staff. Staff is responsible for bringing questions about policy issues to the state board for clarification or changes of state policy.

This rule is intended to implement Iowa Code sections 17A.3 and 237.18.

489—4.3(237) Training. All child advocacy board staff, state board members, court appointed special advocates, and court appointed special advocate coaches shall complete preservice and ongoing in-service training.

4.3(1) Preservice training. Court appointed special advocates and CASA coaches shall complete successfully a minimum of 30 hours of preservice training prior to final selection as a child advocacy volunteer. The training shall include, but is not limited to, the following content areas:

- a.* The role of the volunteer CASA coach and advocate;
- b.* The applicable laws, the child protection system and the role of the court;
- c.* Cultural awareness when working with vulnerable children and families;
- d.* Understanding family factors that affect safety, permanency and well-being of children in need of assistance;
- e.* Understanding of child development and the social, emotional, psychological, educational, attachment, transition and resiliency needs of children and youth;
- f.* Communication, collaboration and dealing with conflict as a CASA program volunteer;
- g.* Gathering of information in the CASA program volunteer role;
- h.* Meeting expectations for case monitoring and reporting; and
- i.* Use of supervision, coaching and other supports to enable effective practice.

4.3(2) Ongoing education. Every CASA and CASA coach shall complete a minimum of 12 hours of in-service training or education annually. This training or education shall include required training sessions for all volunteers whenever it is determined essential to achieve program goals or individual child outcomes by the state board or administrator. The local coordinator shall require specific training sessions or courses for an individual CASA or CASA coach volunteer whenever doing so is necessary to meet the volunteer's development needs or the needs of a specific child being served. Each volunteer may select the remaining portion of the required annual training hours from a list of training offerings approved by the coordinator or from alternative offerings provided that prior approval by the coordinator is obtained.

This rule is intended to implement Iowa Code sections 17A.3 and 237.18.

489—4.4(237) Adherence to national guidelines. The National Court Appointed Special Advocate Association has established a national quality assurance system for CASA programs. The primary goal of the system is to strengthen CASA organizations and support their efforts to provide high-quality child advocacy and achieve the maximum level of excellence. The national CASA self-assessment tools, one for state organizations and another for local programs, are used once every four years to measure compliance with quality standards. The quality standards cover organizational mission; governance, ethics and compliance with laws and regulations; planning, assessment and evaluation; human resource management; financial and risk management; public relations; quality assurance; national CASA affiliation; new organization development; and inclusiveness and diversity. The child advocacy board has participated in this rigorous self-assessment process and has obtained certification of compliance with the standards. The board shall continue to maintain compliance with the standards and, within the limits of available funding, shall deploy resources to maintain compliance in the future.

This rule is intended to implement Iowa Code sections 17A.3 and 237.18.

CHILD ADVOCACY BOARD[489](cont'd)

489—4.5(237) Children eligible for assignment of a court appointed special advocate. The court appointed special advocate program serves any child for whom the court appoints a court appointed special advocate. The court may appoint an advocate to represent the interests of a child in any judicial proceeding to which the child is a party or is called as a witness or relating to any dispositional order involving the child resulting from the proceeding. The court may appoint an advocate in a delinquency, child in need of assistance, or family in need of assistance proceeding. If the plan for the child's transition from foster care to adulthood identifies services or other support needed to assist the child when the child becomes an adult and the court deems it beneficial to the child, the court may authorize the court appointed special advocate to continue a relationship with and provide advice to the child for a period of time beyond the child's eighteenth birthday.

This rule is intended to implement Iowa Code sections 17A.3 and 237.18.

489—4.6(237) Annual program report. The child advocacy board shall issue an annual report to the general assembly, the governor and the supreme court. The report shall provide information about the number of volunteers providing service through the court appointed special advocate program, the number of children served by the program, and the benefits children and their families have obtained from the program.

This rule is intended to implement Iowa Code sections 17A.3 and 237.18.

ARC 1272C**EDUCATIONAL EXAMINERS BOARD[282]****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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 13, “Issuance of Teacher Licenses and Endorsements,” Iowa Administrative Code.

Current Board rules state that there is a minimum bachelor's degree grade point average requirement in order for the teacher intern license to be issued. Department of Education rules in 281—Chapter 77 address grade point average requirements for candidates' admission to the program, and the rules make an allowance that candidates may be admitted conditionally if they have not met the minimum grade point average. This proposed amendment will allow board rules to mirror the Department of Education language.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, February 5, 2014, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, February 7, 2014. Written comments and suggestions should be addressed to Kim

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by e-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

This amendment is subject to waiver pursuant to 282—Chapter 6.

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

This amendment is intended to implement Iowa Code section 272.2(1)“a.”

The following amendment is proposed.

Amend subrule 13.9(3) as follows:

13.9(3) *Teacher intern requirements.* A teacher intern license shall be issued upon application, provided that the following requirements have been met. The applicant shall:

a. Hold a baccalaureate degree with a minimum cumulative grade point average of 2.50 on a 4.0 scale from a regionally accredited institution or meet the admission criteria set forth in 281—subrule 77.11(2).

b. Meet the requirements of at least one of the board’s secondary (5-12) teaching endorsements listed in rule 282—13.28(272).

c. Possess a minimum of three years of postbaccalaureate work experience. An authorized official at a college or university with an approved teacher intern program will evaluate this experience.

d. Successfully complete the teacher intern program requirements listed in subrule 13.9(4) and approved by the state board of education.

e. Successfully pass a basic skills test at the level approved by the teacher education institution.

ARC 1269C

EMPLOYMENT APPEAL BOARD[486]

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 10A.601(6), the Employment Appeal Board hereby gives Notice of Intended Action to amend Chapter 2, “General Rules of Procedure,” and Chapter 3, “Unemployment Insurance Appeals,” Iowa Administrative Code.

These amendments will permit parties to file unemployment insurance appeals online using a form developed by the Iowa Workforce Development Department and made available through the Department’s Web site.

The Board does not believe that the proposed amendments impose any financial hardship on any regulated entity, body, or individual.

A waiver provision is not contained in this rule making as the proposed amendments provide a benefit to individuals seeking to file an appeal with the Board.

Any interested party may make written suggestions or comments on the proposed amendments on or before January 28, 2014. Such written materials should be addressed to Chairperson, Employment Appeal Board, Fourth Floor, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319; faxed to (515)281-7191; or e-mailed to rick.austry@dia.iowa.gov.

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

These amendments are intended to implement Iowa Code section 10A.601(6).

The following amendments are proposed.

ITEM 1. Amend rule **486—2.2(10A)**, definitions of “Appeal” and “Filing date,” as follows:

“Appeal” means any instrument, including an online appeal submitted through the online appeal form available on the Iowa workforce development Web site, used to notify the employment appeal board that the an aggrieved individual wishes to appeal a decision of an administrative law judge.

EMPLOYMENT APPEAL BOARD[486](cont'd)

The instrument must be in writing and signed by the individual or an authorized representative. ~~If the instrument is signed by an authorized representative, the person or party filing the appeal must be designated in the document.~~

"Filing date" means the date prescribed by statute or rule for an action required to be taken. The filing date will be the date the document is postmarked, if filed by U.S. Postal Service; the date of the faxed document, if filed by facsimile transmission; the date of the document, if the postmark is illegible; the earliest date the transmission indicates that it was submitted if filed via the online appeal form; or the date received, if filed by any other means. If filed by fax, the original copy of the document shall be mailed to the employment appeal board. If the document is filed by U.S. Postal Service and the document contains both a postal meter mark and a U.S. Postal Service postmark, the U.S. Postal Service postmark shall be used to determine the filing date.

ITEM 2. Amend subrule 3.1(2) as follows:

3.1(2) Form and time of appeal. A party aggrieved by a decision of an administrative law judge may appeal to the employment appeal board within 15 days from the date of the decision. The appeal shall state the grounds for the appeal. ~~The~~ If sent by mail or courier, the appeal shall be addressed to Employment Appeal Board, Lucas State Office Building, Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319. The appeal may also be filed in any office maintained by the workforce development department which processes claims for unemployment insurance. Appeals may also be filed by facsimile transmission (fax). If the appeal is filed by fax, the original copy shall be mailed to the employment appeal board at the above address. The date of the appeal is the date of the fax transmission. Appeals may also be filed online by completing and submitting an online appeal form available on the Iowa workforce development Web site.

ARC 1267C

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 and 2013 Iowa Acts, Senate File 446, section 14(2) and (3), the Department of Human Services gives Notice of Intended Action to amend Chapter 51, "Eligibility," and Chapter 52, "Payment," Iowa Administrative Code.

These amendments allow the state to meet the maintenance of fiscal effort requirement of the Social Security Act in the State Supplementary Assistance Program.

Effective January 1, 2014, the SSI benefit is increased according to the increase in the consumer price index from October 1, 2012, through September 30, 2013. The Social Security Administration has announced that this increase will be 1.5 percent. In order to comply with the federal pass-along requirement in calendar year 2014 using the payment levels method of compliance, Iowa must increase the payment amounts and income limits for each State Supplementary Assistance category (except in-home health-related care (IHHRC) provider rates and the supplement for Medicare and Medicaid eligibles) effective January 1, 2014, to equal the minimum levels required by the federal government. The minimum levels are increased each time the SSI benefit is increased. Also, the Iowa General Assembly has directed the Department to increase the personal needs allowance of clients in the residential care facility program by the same percentage and at the same time as the SSI cost-of-living increase.

Any interested person may make written comments on the proposed amendments on or before January 28, 2014. Comments should be directed to Harry Rossander, Bureau of Policy Coordination,

HUMAN SERVICES DEPARTMENT[441](cont'd)

Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may also be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations since the increases are required by federal and state law.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 1268C**. The purpose of this Notice is to solicit public comment on that submission, the subject matter of which is incorporated by reference.

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

These amendments are intended to implement Iowa Code section 217.3(6) and 2013 Iowa Acts, Senate File 446, section 14, subsections 2 and 3.

ARC 1265C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

This rule making reinstates the rule governing the Iowa Medicaid “lock-in” program that was inadvertently omitted from recently adopted Chapter 76.

Federal Medicaid regulations allow for “lock-in” of beneficiaries who overutilize Medicaid services, restricting the beneficiaries to obtaining services from designated providers; see 42 CFR § 431.54. Iowa Code section 249A.4(7)“a” also provides that the Department may restrict Medicaid recipients’ selection of providers to control overuse of care and services and that the Department “shall promulgate rules for determining the overuse of services, including rights of appeal by the recipient.” Consistent with the federal regulations and Iowa Code, Iowa’s state plan for medical assistance, approved by the Centers for Medicare and Medicaid Services as a condition of federal funding, provides an exception to recipients’ free choice of providers for lock-in; see Iowa State Plan for Medical Assistance, sec. 4.10(b)(1).

As of September 2013, the Department had a long-standing administrative rule at 441—76.9(249A) establishing and governing the Iowa Medicaid lock-in program. In amending its rules to comply with the federal Affordable Care Act, the Department intended to move its lock-in rule from Chapter 76 (on enrollment procedures) to Chapter 75 (on eligibility for services). However, the lock-in rule was inadvertently omitted from new Chapter 76 (see **ARC 1069C**, IAB 10/2/13, effective 10/1/13) and not included in revised Chapter 75 (see **ARC 1134C**, IAB 10/30/13, effective 10/2/13). Thus, the Notice of Intended Action (**ARC 0908C**, IAB 8/7/13) and Adopted and Filed Emergency After Notice (**ARC 1069C**, IAB 10/2/13) for new Chapter 76 made no mention of the fact that the lock-in rule was omitted.

This rule making reinstates the lock-in rule and places the rule in Chapter 75. The term “recipient” is updated to “member” throughout, and cross references are updated. No other substantive changes are made to the rule as it existed prior to October 1, 2013.

Any interested person may make written comments on the proposed amendment on or before January 28, 2014. 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 also be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

This amendment does not provide for waivers in specified situations since the provisions are required by federal and state law.

HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 1266C**. The purpose of this Notice is to solicit public comment on that submission, the subject matter of which is incorporated by reference.

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

This amendment is intended to implement Iowa Code section 249A.4.

ARC 1283C

LOTTERY AUTHORITY, IOWA[531]

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 99G.9, 17A.3 and 17A.4, the Iowa Lottery Authority hereby gives Notice of Intended Action to amend Chapter 12, “Licensing,” Iowa Administrative Code.

The rules in Chapter 12 describe licensing standards and requirements for retailers licensed by the Iowa Lottery Authority. This amendment provides discretion to the Iowa Lottery Authority on the decision to suspend a retailer for selling lottery tickets to a person under the age of 21. Because retailers are, many times, the source of the Lottery’s information on such a sale, the Lottery intends to change the mandatory-suspension language to provide the Lottery with discretion as to whether a retailer must be suspended. Thus, the retailer will not be deterred from cooperating with the Lottery and will more likely report these incidents.

Any interested person may make comments on this proposed amendment on or before January 28, 2014. Such written materials should be directed to the Rules Coordinator at the Iowa Lottery Authority, 2323 Grand Avenue, Des Moines, Iowa 50312. Persons who wish to convey their views orally should contact the Iowa Lottery Authority at (515)725-7851 or visit the Iowa Lottery Authority at 2323 Grand Avenue, Des Moines, Iowa.

The Iowa Lottery Authority does not intend to grant waivers under the provisions of these rules.

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

This amendment is intended to implement Iowa Code sections 99G.24 and 99G.27.

The following amendment is proposed.

Amend subrule 12.12(4) as follows:

12.12(4) Upon suspicion that a retailer has sold a ticket to an underage player, the lottery will investigate and provide a written warning to the retailer describing the report of the event and of the potential violation of Iowa Code Supplement section 99G.30(3). In the event a retailer sells a ticket to an underage player and the lottery can substantiate the claim, the lottery ~~shall~~ may suspend the retailer’s license for 7 days. When a retailer sells a ticket to an underage player and the lottery can substantiate the claim a second time in a period of one year from the date of the first event, the lottery ~~shall~~ may suspend the retailer’s license for a period of 30 days. When a retailer sells a ticket to an underage player and the lottery can substantiate the claim a third time in a period of one year from the date of the first event as described in this rule, the retailer’s license ~~shall~~ may be suspended for one year.

ARC 1270C**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 307.10 and 307.12, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 700, "Aeronautics Administration," Chapter 710, "Airport Improvement Program," Chapter 715, "Commercial Air Service Marketing Program," Chapter 716, "Commercial Air Service Vertical Infrastructure Program," and Chapter 717, "General Aviation Airport Vertical Infrastructure Program," Iowa Administrative Code.

The Department is proposing changes to five chapters concerning aviation. Generally, these proposed amendments make the following changes: update the contact information, provide updates to reflect current practices, and provide consistency in documenting eligibility, funding, application processes, review and approval of projects and project administration.

The following summarizes the proposed changes for each chapter:

Chapter 700: The definition of "sponsor" is clarified.

Chapter 710: The Web site addresses are corrected; application instructions and procedures are updated to reflect current processes and for consistency with other grant programs; "airport enhancements" is added to the list of eligible projects; funding information is included; "emergency operations project" is changed to "immediate safety enhancement project" to reflect current program terminology; two additional factors in reviewing the applications are added to reflect current practice; and an implementation sentence is corrected.

Chapter 715: The name of the program is changed to reflect current practice; the purpose of the program is expanded to place more emphasis on sustaining and enhancing air service; and the application instructions, procedures, types of eligible project activities, selection criteria and project administration are updated to reflect current practices.

Chapter 716: The name of the program is changed to reflect current practice; citations to the Iowa Code are corrected; funding information is added; and application instructions, procedures and project administration are updated to reflect current processes and for consistency with other grant programs.

Chapter 717: The name of the program is changed to reflect current practice; citations to the Iowa Code are corrected; application instructions, procedures, applicant eligibility, funding information, and project administration are updated to reflect current processes and for consistency with other grant programs; and the items the Department shall consider when selecting projects are updated to reflect current procedure.

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, Iowa Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; e-mail tracy.george@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than January 28, 2014.

A meeting to hear requested oral presentations is scheduled for Thursday, January 30, 2014, at 10 a.m. at the Iowa Department of Transportation's Administration Building, First Floor South Conference Room, Department of Transportation, 800 Lincoln Way, Ames, Iowa.

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

TRANSPORTATION DEPARTMENT[761](cont'd)

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 sections 8.57B, 328.12 and 330.13.

The following amendments are proposed.

ITEM 1. Amend rule 761—700.1(328) as follows:

761—700.1(328) Definitions. The definitions in Iowa Code section 328.1 and the following definitions shall apply to 761—Chapters 700 to 799.

“FAA:” ~~The~~ means the Federal Aviation Administration.

“Sponsor:” ~~The~~ means the person or governmental subdivision responsible that has the authority for improving, maintaining and operating an aviation facilities facility.

This rule is intended to implement Iowa Code section 328.1.

ITEM 2. Amend rule 761—700.2(17A) as follows:

761—700.2(17A) ~~Location and submission of documents~~ Information and forms. Program information, forms and application instructions are available on the department's Web site at www.iowadot.gov/aviation. Requests for information, assistance or forms and all submissions shall be sent to: such materials or assistance may also be made by calling the office of aviation at (515)239-1048. Submission of application materials shall be made according to the annual application instructions included in the application materials. The office of aviation mailing address is: Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1694. Information and forms are also available through the Internet at <http://www.iawings.com>.

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

ITEM 3. Amend rule 761—710.3(17A) as follows:

761—710.3(17A) ~~Location and information~~ Information and forms. Program information, forms and application instructions are available on the department's Web site at www.iowadot.gov/aviation. Requests for information, forms or assistance in completing the forms, and all submissions shall be sent to: such materials or assistance may also be made by calling the office of aviation at (515)239-1048. Submission of application materials shall be made according to the annual application instructions included in the application materials. The office of aviation mailing address is: Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1875. Information and forms are also available through the Internet at <http://www.iawings.com>.

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

ITEM 4. Amend rule 761—710.4(330) as follows:

761—710.4(330) Federal airport improvement funds.

710.4(1) Applicant eligibility. A governmental subdivision owning a public airport that is listed in the Federal Aviation Administration's (FAA) National Plan of Integrated Airport Systems (NPIAS) is eligible to apply for federal funds. The NPIAS published report is available at the FAA Web site: ~~www.faa.gov/arp/planning/npia~~ www.faa.gov/airports. An airport that receives federal primary commercial service entitlement funds is not required to submit preapplications ~~through the department~~.

710.4(2) Project eligibility. Projects must meet the FAA eligibility guidelines for federal airport improvement projects. Federal airport improvement program guidelines are available at the FAA Web site: ~~www.faa.gov/arp/ace/air/aip-guide.cfm~~ www.faa.gov/airports.

710.4(3) Preapplication.

a. No change.

TRANSPORTATION DEPARTMENT[761](cont'd)

b. The completed preapplication for federal airport improvement funds shall be ~~sent~~ submitted to the department at the address in rule 710.3(17A) according to the method and time frame specified in the annual application instructions.

710.4(4) Project prioritization.

a. and b. No change.

c. The department shall ~~send~~ submit the preapplications with priorities identified to the FAA, and the FAA will contact the applicant directly concerning all subsequent action on the preapplication.

This rule is intended to implement Iowa Code section 330.13.

ITEM 5. Amend rule 761—710.5(328) as follows:

761—710.5(328) State airport improvement funds.

710.5(1) No change.

710.5(2) Project eligibility and funding.

a. No change.

b. Airport projects may include, but are not limited to: runway, taxiway, and apron surfaces; lighting and navigational aids; obstruction removal; grading, drainage, and surfacing airfield surfaces and protection areas; signage, security access control and lighting; ~~and~~ planning; and other airport enhancements. A project that involves airfield infrastructure shall comply with the airport master plan or airport layout plan as adopted by the governmental subdivision.

c. The department establishes the maximum percentage of state share of eligible projects. The department may annually set a maximum dollar amount per award. Funding criteria are included in application instructions provided to airport sponsors.

710.5(3) Application for funding.

a. The department shall ~~distribute~~ make available the application instructions and forms annually to each publicly owned airport in Iowa. A complete application will include all materials identified in the annual application instructions.

b. Project applications shall be submitted to the ~~office of aviation~~ department by the due date specified in the instructions.

c. ~~Emergency operations~~ Immediate safety enhancement project applications may be submitted at any time during the year to the ~~office of aviation~~ department according to instructions that are part of the application form.

d. The department shall ~~send~~ make available applications for any special projects to all eligible airports. Airport sponsors shall submit applications for special projects to the department as specified in the application instructions.

710.5(4) Review and approval. The department shall review each completed application and evaluate the impact of the project on the aviation system considering the following factors: state system plan airport roles, goals and objectives; justification provided in the application; ~~and~~ ability to enhance aeronautical activity for the airport and system; local participation; and multijurisdictional support of the airport. The department shall recommend projects to the transportation commission for approval. The commission is responsible for approving the projects to be funded.

710.5(5) Project agreement and responsibilities administration.

a. and b. No change.

c. The department may inspect the improvement for compliance with the agreement and may audit all project costs incurred ~~before sending the final payment to the governmental subdivision~~.

710.5(6) No change.

This rule is intended to implement Iowa Code ~~chapters chapter 328 and 329 and sections 384.95 to 384.103 and 573.12~~.

ITEM 6. Amend **761—Chapter 715**, title, as follows:

COMMERCIAL AIR SERVICE MARKETING DEVELOPMENT PROGRAM

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 7. Amend rule 761—715.1(328) as follows:

761—715.1(328) Purpose. ~~The purpose of the commercial air service marketing development program is to provide funding for marketing, advertising and public relations programs to improve scheduled air service and increase passenger traffic at Iowa's commercial service airports help commercial service airports sustain and enhance available air service options for the traveling public.~~

ITEM 8. Amend rule 761—715.3(328) as follows:

761—715.3(328) Program administration Eligibility and funding.

715.3(1) Participation in the ~~commercial air service marketing development~~ program shall be limited to airports currently receiving scheduled ~~commercial~~ air service and designated as ~~Level I~~ commercial service airports in the Iowa aviation system plan.

715.3(2) The transportation commission shall establish annually:

a. The maximum amount of funds to be allocated to the ~~air service marketing development~~ program for the program year.

b. The amount to be allocated to each ~~commercial service~~ airport for sustainment project activities.

c. ~~The funding ratio to be used to reimburse airport sponsors for eligible project costs~~ The amount of funds that will be added to the enhancement fund pool.

715.3(3) ~~The program shall be administered by the department's office of aviation.~~ Information Program information, instructions and application forms may be obtained from the department's Web site at www.iowadot.gov/aviation. Requests for such materials or assistance may also be made by calling the office of aviation at (515)239-1689. Submission of application materials shall be made according to the annual application instructions included in the application materials. The office of aviation mailing address is: Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1691; or through the Internet at <http://www.iawings.com>.

715.3(4) Allocated program funds shall be available to each commercial service airport ~~until the end of the state's fiscal year~~ for the time period specified in the application instructions and in the agreement.

ITEM 9. Amend rule 761—715.4(328) as follows:

761—715.4(328) Eligible project activities. Activities that are eligible for reimbursement include, but are not limited to, the following:

~~715.4(1) Advertising.~~

715.4(2) 715.4(1) ~~Public relations activities~~ Activities to sustain or improve air service, which include, but are not limited to, marketing, advocacy, educational efforts and leveraging local and federal funds in collection of data, studies or other efforts.

~~715.4(3) 715.4(2)~~ Service improvement enhancement activities—including, which include, but are not limited to, route analyses, service studies, airline presentations and other activities targeted at increasing air service from an existing or new entry airline market entry support, financial incentives and data analysis studies to help airports enhance service on new routes, provide for entry of a new carrier, or achieve an increase in seat capacity on existing routes.

ITEM 10. Rescind and reserve rule **761—715.5(328).**

ITEM 11. Amend rule 761—715.6(328) as follows:

761—715.6(328) Project selection criteria. ~~Projects~~ Sustainment projects at each commercial service airport that meet the eligibility criteria ~~will~~ may be funded up to the limit of each airport's allocation. Enhancement project requests that meet program requirements may be funded if funding is available in the enhancement fund pool.

ITEM 12. Amend rule 761—715.7(328) as follows:

761—715.7(328) Application. ~~Completed applications shall be submitted to the office of aviation and shall contain:~~ department and include the information requested in the annual application instructions.

TRANSPORTATION DEPARTMENT[761](cont'd)

~~715.7(1) General information, including the airport sponsor's name, contact person, mailing address and telephone number.~~

~~715.7(2) A detailed description of the project, including its purpose.~~

~~715.7(3) Cost information, including the estimated total cost of the project and an itemized breakdown of project components.~~

~~715.7(4) The amount of funds requested for the project.~~

~~715.7(5) Rescinded IAB 1/7/04, effective 2/11/04.~~

~~715.7(6) A resolution from the airport sponsor endorsing the proposal and stating that local matching funds are or will be available.~~

ITEM 13. Amend rule 761—715.8(328) as follows:

761—715.8(328) Project administration.

~~715.8(1) *Agreement.* After a funding commitment has been made for a project application has been approved, the department shall enter into a project agreement with the airport sponsor that specifies the responsibilities of the sponsor. The agreement shall specify the amount of state funds, the contract period, the payment process, and the responsibilities for project planning, development, and reporting. The department may inspect the improvement for compliance with the agreement and may audit all project costs.~~

~~715.8(2) No change.~~

~~715.8(3) *Remedies for noncompliance with project agreement.* The department may revoke the funding commitment and require repayment of funds if the terms of the project agreement are not fulfilled.~~

~~715.8(4) *Cost overruns.* Funds committed for a project are for a maximum dollar amount. Cost overruns shall be the responsibility of the airport sponsor.~~

ITEM 14. Amend **761—Chapter 716**, title, as follows:

COMMERCIAL AIR SERVICE VERTICAL INFRASTRUCTURE PROGRAM

ITEM 15. Amend rule 761—716.2(328) as follows:

761—716.2(328) Definitions. The definitions in Iowa Code section 328.1 and rule 761—700.1(328) apply to these rules. Also, In addition:

“Vertical infrastructure” is means the same as defined in Iowa Code section 8.57, subsection 5 8.57B.

ITEM 16. Amend rule 761—716.3(328) as follows:

~~**761—716.3(328) Information and forms.** Program information, instructions, and forms may be obtained from are available on the department's Web site at www.iowadot.gov/aviation. Requests for such materials or assistance may also be made by calling the office of aviation at (515)239-1048. Submission of application materials shall be made according to the annual application instructions included in the application materials. The office of aviation mailing address is: Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1691; or through the Internet at <http://www.iawings.com>.~~

ITEM 17. Amend rule 761—716.7(328) as follows:

761—716.7(328) Work plan Project application and review.

~~**716.7(1)** Each airport shall develop a work plan of submit an application with the project or projects it intends to accomplish under the program with the allocated funding. A work plan shall contain: The completed application shall include the information and documents identified in the application instructions. The complete application shall be submitted to the department according to the annual application instructions.~~

~~*a.* General information, including the airport sponsor's name, contact person, mailing address and telephone number.~~

TRANSPORTATION DEPARTMENT[761](cont'd)

~~b. A brief description of each project, including its purpose.
c. Cost information for each project, including total project cost and an itemized breakdown of project components.~~

~~d. A resolution from the airport sponsor endorsing the work plan.~~

~~716.7(2) Completed work plans shall be submitted to the office of aviation. The department shall review projects for eligibility and recommend projects and funding levels to the transportation commission. Funding criteria are included in application instructions provided to airport sponsors.~~

~~716.7(3) The transportation commission shall determine the eligibility of projects contained in work plans is responsible for approving the projects to be funded.~~

ITEM 18. Amend rule 761—716.8(328) as follows:

761—716.8(328) Project administration.

~~716.8(1) *Agreement.* After the eligibility of projects in a work plan has been determined the projects are approved by the commission, the department shall enter into an agreement with the airport sponsor that specifies the responsibilities of the sponsor. The agreement shall specify the amount of state funds, the contract period, the payment process, and the responsibilities for project planning, development, and reporting. The department may inspect the improvement for compliance with the agreement and may audit all project costs.~~

~~716.8(2) *Payments.* Payments to the airport sponsor for eligible project costs shall be made on a cost reimbursement basis. Engineering fees are an eligible project expense and shall be reimbursed in compliance with the agreement.~~

~~716.8(3) *Cost overruns.* Rescinded IAB 1/7/04, effective 2/11/04.~~

ITEM 19. Amend **761—Chapter 716**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~8.57~~ 8.57B and 328.12.

ITEM 20. Amend **761—Chapter 717**, title, as follows:

GENERAL AVIATION AIRPORT VERTICAL INFRASTRUCTURE PROGRAM

ITEM 21. Amend rule 761—717.1(328) as follows:

761—717.1(328) Purpose. The purpose of the general aviation ~~airport~~ vertical infrastructure program is to provide funding for improvements to the vertical infrastructure at Iowa's general aviation airports.

ITEM 22. Amend rule 761—717.2(328) as follows:

761—717.2(328) Definitions. The definitions in Iowa Code section 328.1 and rule 761—700.1(328) apply to these rules. In addition:

~~“Vertical infrastructure” is~~ means the same as defined in Iowa Code section ~~8.57, subsection 6~~ 8.57B.

ITEM 23. Amend rule 761—717.3(328) as follows:

761—717.3(328) Information and forms. ~~Information~~ Program information, instructions, and application forms may be obtained from the department's Web site at www.iowadot.gov/aviation. Requests for such materials or assistance may also be made by calling the office of aviation at (515)239-1048. Submission of application materials shall be made according to the annual application instructions included in the application materials. The office of aviation mailing address is: Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; ~~telephone~~ (515)239-1875.

ITEM 24. Amend rule 761—717.4(328) as follows:

761—717.4(328) Applicant eligibility. ~~Eligible airports are those general aviation airports that are in compliance with minimum state safety standards (see 761—Chapter 720). The applicant must be the governmental subdivision charged with managing the general aviation airport. An airport sponsor, as~~

TRANSPORTATION DEPARTMENT[761](cont'd)

defined in rule 761—700.1(328), of a publicly owned general aviation airport is eligible to apply for funding.

ITEM 25. Amend rule 761—717.7(328) as follows:

761—717.7(328) Funding. ~~The department may fund up to 85 percent~~ establishes the maximum percentage of state share of an eligible project projects. The department may annually set a maximum dollar amount per award. Funding criteria are included in application instructions provided to airport sponsors.

ITEM 26. Amend rule 761—717.8(328) as follows:

761—717.8(328) Project priorities. ~~The department shall consider the following in project selection: airport role and objectives defined in the state aviation system plan; demonstration of increased aeronautical activity; and justification showing the ability to produce additional income for the airport for the project; local participation; and multijurisdictional support of the airport.~~

ITEM 27. Amend rule 761—717.9(328) as follows:

761—717.9(328) Project applications.

717.9(1) ~~The department shall make available application instructions and forms to each publicly owned airport in Iowa. Project applications shall be submitted to the office of aviation department as directed in the annual application instructions.~~

717.9(2) ~~Each application shall contain:~~ include the information and forms identified in the annual application instructions.

a. ~~General information, including the airport sponsor's name, contact person, mailing address and telephone number.~~

b. ~~A capital improvement program (CIP) data sheet. The CIP data sheet shall include a sketch of the project, a brief description of the project and its purpose, and cost information including total project cost and an itemized breakdown of project components.~~

c. ~~A resolution from the airport sponsor endorsing the project and authorizing the necessary local match funding.~~

ITEM 28. Amend rule 761—717.11(328) as follows:

761—717.11(328) Project agreement and administration.

717.11(1) Agreement. ~~After a project has been approved by the commission, the department shall enter into an agreement with the airport sponsor that specifies the responsibilities of the sponsor. The agreement shall specify the amount of state funds, the contract period, the payment process, and the responsibilities for project planning, development, and reporting. The department may inspect the improvement for compliance with the agreement and may audit all project costs.~~

717.11(2) Payments. ~~Payments to the airport sponsor for eligible project costs shall be made on a cost reimbursement basis. Engineering fees are an eligible project expense and shall be reimbursed in compliance with the agreement.~~

~~**717.11(3) Cost overruns.** Rescinded IAB 11/14/01, effective 12/19/01.~~

ITEM 29. Amend **761—Chapter 717**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~8.57~~ 8.57B and 328.12.

USURY

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

USURY(cont'd)

January 1, 2013 — January 31, 2013	3.75%
February 1, 2013 — February 28, 2013	3.75%
March 1, 2013 — March 31, 2013	4.00%
April 1, 2013 — April 30, 2013	4.00%
May 1, 2013 — May 31, 2013	4.00%
June 1, 2013 — June 30, 2013	3.75%
July 1, 2013 — July 31, 2013	4.00%
August 1, 2013 — August 31, 2013	4.25%
September 1, 2013 — September 30, 2013	4.50%
October 1, 2013 — October 31, 2013	4.75%
November 1, 2013 — November 30, 2013	4.75%
December 1, 2013 — December 31, 2013	4.50%
January 1, 2014 — January 31, 2014	4.75%

ARC 1281C**VOTER REGISTRATION COMMISSION[821]****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 47.1 and 17A.3, the Voter Registration Commission hereby gives Notice of Intended Action to amend Chapter 2, “Voter Registration Forms, Acceptability, Registration Dates, and Effective Dates,” Iowa Administrative Code.

This amendment is necessary because the Commission has determined that the voter registration application approved by the Commission and effective August 1, 2013, is in need of clarification for individuals who have been convicted of felonies.

Any interested person may obtain paper or electronic copies of the revised application or make written suggestions or comments on the revised application on or before January 28, 2014, by contacting Sarah Reisetter, Director of Elections, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Secretary of State’s office by telephone at (515)281-0145 or in person at the Secretary of State’s office on the first floor of the Lucas State Office Building.

Requests for a public hearing must be received by January 28, 2014.

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

This amendment is intended to implement Iowa Code sections 47.8(2) and 48A.11.

The following amendment is proposed.

Amend rule 821—2.16(47,48A) as follows:

821—2.16(47,48A) Form of official Iowa voter registration application. The official Iowa voter registration application pursuant to Iowa Code section 48A.11 shall be the State of Iowa Official Voter Registration Form Revised ~~8/1/2013~~ 4/9/2014.

ARC 1286C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 96.11, the Director of the Workforce Development Department hereby gives Notice of Intended Action to amend Chapter 24, “Claims and Benefits,” Iowa Administrative Code.

The proposed amendments to subrules 24.13(3) and 24.16(1) are intended to clarify that paid time off, annual leave, and excused personal leave are included in the term “vacation pay” and are likewise deductible from unemployment. The policy of the Department was adopted before the deductibility of vacation pay was provided in the law, and the policy has not yet been changed.

If requested in accordance with Iowa Code section 17A.4(1)“b” by 4:30 p.m. on January 28, 2014, a public hearing will be held on January 29, 2014, at 1 p.m. in the Stanley Room at 1000 East Grand Avenue, 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)281-5915 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 not later than January 28, 2014, to Joseph Bervid, Workforce Development Department, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to joseph.bervid@iwd.iowa.gov.

The Workforce Development Department does not intend to grant waivers under the provisions of these rules, other than as may be allowed under the Department’s general rules regarding waivers found at 871—Chapter 41.

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

These amendments are intended to implement Iowa Code sections 96.3(3), 96.5(5), 96.5(7), 96.11(1) and 96.19(38).

The following amendments are proposed.

ITEM 1. Amend subrule 24.13(3) as follows:

24.13(3) Fully deductible payments from benefits. The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

a. No change.

b. Excused personal leave. Excused personal leave, also referred to as casual pay or random pay, is personal leave with pay granted to an employee for absence from the job because of personal reasons. It shall be ~~fully deductible only when taken in conjunction with a scheduled period of vacation in which case it shall be treated as vacation and be fully deductible in the manner prescribed in rule 871—24.16(96).~~

c. to e. No change.

ITEM 2. Amend subrule 24.16(1) as follows:

24.16(1) If the employer properly notifies the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, a sum equal to the wages of the individual for a normal workday shall be applied to the first and each subsequent workday of the designated vacation period until the amount of the vacation pay is exhausted. For the purposes of this rule, rule 871—24.13(96), and rule 871—24.17(96), the term “vacation pay” shall include paid time off and annual leave payments.

ARC 1268C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6 and 2013 Iowa Acts, Senate File 446, section 14(2) and (3), the Department of Human Services amends Chapter 51, "Eligibility," and Chapter 52, "Payment," Iowa Administrative Code.

These amendments allow the state to meet the maintenance of fiscal effort requirement of the Social Security Act in the State Supplementary Assistance Program.

Effective January 1, 2014, the SSI benefit is increased according to the increase in the consumer price index from October 1, 2012, through September 30, 2013. The Social Security Administration has announced that this increase will be 1.5 percent. In order to comply with the federal pass-along requirement in calendar year 2014 using the payment levels method of compliance, Iowa must increase the payment amounts and income limits for each State Supplementary Assistance category (except in-home health-related care (IHHRC) provider rates and the supplement for Medicare and Medicaid eligibles) effective January 1, 2014, to equal the minimum levels required by the federal government. The minimum levels are increased each time the SSI benefit is increased. Also, the Iowa General Assembly has directed the Department to increase the personal needs allowance of clients in the residential care facility program by the same percentage and at the same time as the SSI cost-of-living increase.

The Council on Human Services adopted these amendments on December 11, 2013.

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

In compliance with 2013 Iowa Acts, House File 586, section 1, the Administrative Rules Review Committee at its December 10, 2013, meeting reviewed the Department findings and the amendments and approved the Emergency adoption.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective January 1, 2014. These amendments confer a benefit on the public and are in compliance with 2013 Iowa Acts, Senate File 446, section 14(2) and (3).

These amendments are also published herein under Notice of Intended Action as **ARC 1267C** to allow for public comment.

These amendments do not provide for waivers in specified situations since the increases are required by federal and state law.

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

These amendments are intended to implement Iowa Code section 217.3(6) and 2013 Iowa Acts, Senate File 446, section 14, subsections 2 and 3.

These amendments became effective January 1, 2014.

The following amendments are adopted.

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

51.4(1) Income. Income of a dependent relative shall be less than \$364 370. When the dependent's income is from earnings, an exemption of \$65 shall be allowed to cover work expense.

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

441—51.7(249) Income from providing room and board. In determining profit from furnishing room and board or providing family life home care, \$364 370 per month shall be deducted to cover the cost, and the remaining amount treated as earned income.

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 3. Amend subrule 52.1(1) as follows:

52.1(1) Protective living arrangement. The following assistance standards have been established for state supplementary assistance for persons living in a family life home certified under rules in 441—Chapter 111.

<u>\$774 783</u>	Care allowance
<u>\$98 100</u>	Personal allowance
<u>\$872 883</u>	Total

ITEM 4. Amend subrule 52.1(2) as follows:

52.1(2) Dependent relative. The following assistance standards have been established for state supplementary assistance for dependent relatives residing in a recipient’s home.

a. Aged or disabled client and a dependent relative	<u>\$1,074 1,091</u>
b. Aged or disabled client, eligible spouse, and a dependent relative	<u>\$1,430 1,452</u>
c. Blind client and a dependent relative	<u>\$1,096 1,113</u>
d. Blind client, aged or disabled spouse, and a dependent relative	<u>\$1,452 1,474</u>
e. Blind client, blind spouse, and a dependent relative	<u>\$1,474 1,496</u>

ITEM 5. Amend subrule 52.1(3) as follows:

52.1(3) Residential care. Payment to a recipient in a residential care facility shall be made on a flat per diem rate of \$17.86 or on a cost-related reimbursement system with a maximum per diem rate of ~~\$29.30~~ 29.66. The department shall establish a cost-related per diem rate for each facility choosing this method of payment according to rule 441—54.3(249).

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

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

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

- (1) No change.
 - (2) An allowance of ~~\$98~~ 100 to meet personal expenses and Medicaid copayment expenses.
 - (3) to (6) No change.
- b. to g. No change.

[Filed Emergency 12/11/13, effective 1/1/14]
[Published 1/8/14]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/14.

ARC 1266C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

This rule making reinstates the rule governing the Iowa Medicaid “lock-in” program that was inadvertently omitted from recently adopted Chapter 76.

Federal Medicaid regulations allow for the “lock-in” of beneficiaries who overutilize Medicaid services, restricting the beneficiaries to obtaining services from designated providers; see 42 CFR § 431.54. Iowa Code section 249A.4(7)“a” also provides that the Department may restrict Medicaid recipients’ selection of providers to control overuse of care and services and that the Department “shall

HUMAN SERVICES DEPARTMENT[441](cont'd)

promulgate rules for determining the overuse of services, including rights of appeal by the recipient.” Consistent with the federal regulations and the Iowa Code, Iowa’s state plan for medical assistance, approved by the Centers for Medicare and Medicaid Services as a condition of federal funding, provides an exception to recipients’ free choice of providers for lock-in; see Iowa State Plan for Medical Assistance, sec. 4.10(b)(1).

As of September 2013, the Department had a long-standing administrative rule at 441—76.9(249A) establishing and governing the Iowa Medicaid lock-in program. In amending its rules to comply with the federal Affordable Care Act, the Department intended to move its lock-in rule from Chapter 76 (on enrollment procedures) to Chapter 75 (on eligibility for services). However, the lock-in rule was inadvertently omitted from new Chapter 76 (see **ARC 1069C**, IAB 10/2/13, effective 10/1/13) and not included in revised Chapter 75 (see **ARC 1134C**, IAB 10/30/13, effective 10/2/13). Thus, the Notice of Intended Action (**ARC 0908C**, IAB 8/7/13) and Adopted and Filed Emergency After Notice (**ARC 1069C**, IAB 10/2/13) for new Chapter 76 made no mention of the fact that the lock-in rule was omitted.

This rule making reinstates the lock-in rule and places the rule in Chapter 75. The term “recipient” is updated to “member” throughout, and cross references are updated. No other substantive changes are made to the rule as it existed prior to October 1, 2013.

The Council on Human Services adopted this amendment on December 11, 2013.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and opportunity for public comment prior to the adoption of this rule are unnecessary, impracticable, and contrary to the public interest because this rule making merely reinstates a long-standing, duly promulgated rule that is authorized by federal and state law but was inadvertently removed from the Iowa Administrative Code. A delay for notice and public comment would only continue a situation that was created without any notice or real opportunity for public comment on elimination of the lock-in program rule, thereby delaying a return to the rule that had been properly promulgated. Further, the absence of the lock-in rule from the Iowa Administrative Code calls into question the Department’s ongoing authority to deal with overuse of publicly funded Medicaid services by restricting the providers from whom an individual can receive services. Maintaining that uncertainty to allow for notice and public comment on the reinstatement of an inadvertently deleted rule would be contrary to the public interest.

In compliance with 2013 Iowa Acts, House File 586, section 1, the Administrative Rules Review Committee at its December 10, 2013, meeting reviewed the Department’s findings and the amendment and approved the Emergency adoption.

Pursuant to Iowa Code section 17A.5(2)“b”(2), the Department further finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective January 1, 2014. The reinstatement of the lock-in rule confers a benefit on the public by clearly reinstating the Department’s authority to administer the lock-in program. In addition to fiscal concerns, Medicaid member health and safety are at risk without clear rule authority to restrict usage of Medicaid services when the member has been determined to overuse services.

This amendment is also published herein under Notice of Intended Action as **ARC 1265C** to allow for public comment.

This amendment does not provide for waivers in specified situations because lock-in is based on individual determinations of overuse. Requests for 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 became effective January 1, 2014.

The following amendment is adopted.

Adopt the following **new** rule 441—75.30(249A):

441—75.30(249A) Member lock-in. In order to promote high-quality health care and to prevent harmful practices such as duplication of medical services, drug abuse or overuse, and possible drug interactions, members that utilize medical assistance services or items at a frequency or in an amount

HUMAN SERVICES DEPARTMENT[441](cont'd)

which is considered to be overuse of services as defined in subrule 75.30(7) may be restricted (locked-in) to receive services from a designated provider(s).

75.30(1) A lock-in or restriction shall be imposed for a minimum of 24 months with longer restrictions determined on an individual basis.

75.30(2) Provider selection. The member may select the provider(s) from which services will be received. The designated providers will be identified on the department's eligibility verification system (ELVS). Only prescriptions written or approved by the designated primary physician(s) will be reimbursed. Other providers of the restricted service will be reimbursed only under circumstances specified in subrule 75.30(3).

75.30(3) Payment will be made to provider(s) other than the designated (lock-in) provider(s) in the following instances:

a. Emergency care is required and the designated provider is not available. Emergency care is defined as care necessary to sustain life or prevent a condition which could cause physical disability.

b. The designated provider requires consultation with another provider. Reimbursement shall be made for office visits only. Prescriptions will be reimbursed only if written or approved by the primary physician(s). Referred physicians may be added to the designation as explained in subrule 75.30(5).

c. The designated provider refers the member to another provider. Reimbursement shall be made for office visits only. Prescriptions will be reimbursed only if written or approved by the primary physician(s). Referred physicians may be added to the designation as explained in subrule 75.30(5).

75.30(4) When the member fails to choose a provider(s) within 30 days of the request, the division of medical services will select the provider(s) based on previously utilized provider(s) and reasonable access for the member.

75.30(5) Members may change designated provider(s) when a change is warranted, such as when the member has moved, the provider no longer participates, or the provider refuses to see the patient. The worker for the member shall make the determination when the member has demonstrated that a change is warranted. Members may add additional providers to the original designation with approval of a health professional employed by the department for this purpose.

75.30(6) When lock-in is imposed on a member, timely and adequate notice shall be sent and an opportunity for a hearing given in accordance with 441—Chapter 7.

75.30(7) Overuse of services is defined as receipt of treatments, drugs, medical supplies or other Medicaid benefits from one or multiple providers of service in an amount, duration, or scope in excess of that which would reasonably be expected to result in a medical or health benefit to the patient.

a. Determination of overuse of service shall be based on utilization data generated by the Surveillance and Utilization Review Subsystem of the Medicaid Management Information System. The system employs an exception reporting technique to identify the members most likely to be program overutilizers by reporting cases in which the utilization exceeds the statistical average.

b. In addition to referrals from the Surveillance and Utilization Review Subsystem described in paragraph 75.30(7) "a," referrals for utilization review shall be made when utilization data generated by the Medicaid Management Information System reflects that utilization of Medicaid member outpatient visits to physicians, advanced registered nurse practitioners, federally qualified health centers, rural health centers, other clinics, and emergency rooms exceeds 24 visits in any 12-month period. This utilization review shall not apply to Medicaid members who are enrolled in the MediPASS program or a health maintenance organization or who are children under 21 years of age or residents of a nursing facility. For the purposes of this paragraph, the term "physician" does not include a psychiatrist.

c. An investigation process of Medicaid members determined in paragraph 75.30(7) "a" or "b" to be subject to a review of overutilization shall be conducted to determine if actual overutilization exists by verifying that the information reported by the computer system is valid and is also unusual based on professional medical judgment. Medical judgments shall be made by physicians, pharmacists, nurses and other health professionals either employed by, under contract to, or as consultants for the department. These medical judgments shall be made by the health professionals on the basis of the body

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of knowledge each has acquired which meets the standards necessary for licensure or certification under the Iowa licensing statutes for the particular health discipline.

[Filed Emergency 12/11/13, effective 1/1/14]

[Published 1/8/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/14.

ARC 1287C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 514I.1(2), the Department of Human Services amends Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," Iowa Administrative Code.

These amendments reflect programmatic changes affecting the HAWK-I Program as required by the federal Patient Protection and Affordable Care Act. These amendments specifically change the income guidelines to reflect the modified adjusted gross income (MAGI)-equivalent guidelines given to the state by the Centers for Medicare and Medicaid Services (CMS). MAGI is a national standard by which all states must consider family income when determining eligibility for participation in insurance affordability programs (Medicaid, Children's Health Insurance Program (CHIP), and plans offered through the Health Insurance Marketplace/Exchange). CMS took the Department's current income guidelines for eligibility and premiums and converted them to their MAGI-equivalent levels. The conversion took into account the deductions and disregards that were allowed under pre-MAGI rules but that are no longer allowed under the MAGI methodology.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin as **ARC 1183C** on November 13, 2013. The Department received no comments from the public concerning the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The HAWK-I Board adopted these amendments on December 18, 2013.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective January 1, 2014. These amendments confer a benefit on the public by bringing the HAWK-I Program into compliance with federal regulations, as required by Iowa Code section 514I.1(2).

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 514I.1(2).

These amendments became effective January 1, 2014.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 86**, preamble, as follows:

PREAMBLE

These rules define and structure the department of human services healthy and well kids in Iowa (HAWK-I) program and establish requirements for the third-party administrator responsible for the program administration and for the participating health and dental plans that will be delivering services to the enrollees. The purpose of this program is to provide transitional health and dental care coverage to children who are ineligible for Title XIX (Medicaid) assistance as set forth in this chapter. The program is implemented and administered in compliance with Title XXI of the federal Social Security Act. The rules establish requirements for the third-party administrator responsible for the program administration and for the participating health and dental plans that will be delivering services to the enrollees. This chapter shall be construed to comply with all requirements for federal funding under Title XXI of the Social Security Act or under the terms of any applicable waiver of Title XXI requirements granted by the Secretary of the U.S. Department of Health and Human Services. To the extent this chapter

HUMAN SERVICES DEPARTMENT[441](cont'd)

is inconsistent with any applicable federal funding requirement under Title XXI or the terms of any applicable waiver, the requirements of Title XXI or the terms of the waiver shall prevail.

ITEM 2. Amend paragraph **86.2(2)“a”** as follows:

a. Countable income. In determining initial and ongoing eligibility for the HAWK-I program, countable income shall not exceed ~~300~~ 302 percent of the federal poverty level for a family of the same size. Countable income shall be determined using the modified adjusted gross income methodology.

ITEM 3. Amend subrule 86.8(1) as follows:

86.8(1) Income considered. The income considered in determining the premium amount shall be the family's countable income ~~minus 20 percent of the family's earned income~~ using the modified adjusted gross income methodology.

ITEM 4. Amend subrule 86.8(2) as follows:

86.8(2) Premium amount. Except as specified for supplemental dental-only coverage in subrule ~~86.20(4)~~ 86.20(3), premiums under the HAWK-I program shall be assessed as follows:

a. No premium is charged if:

(1) The eligible child is an American Indian or Alaskan Native; or

(2) The family's countable income is less than ~~150~~ 181 percent of the federal poverty level for a family of the same size.

b. If the family's countable income is equal to or exceeds ~~150~~ 181 percent of the federal poverty level for a family of the same size but does not exceed ~~200~~ 242 percent of the federal poverty level for a family of that size, the premium is \$10 per child per month with a \$20 monthly maximum per family.

c. If the family's countable income is equal to or exceeds ~~200~~ 243 percent of the federal poverty level for a family of the same size, the premium is \$20 per child per month with a \$40 monthly maximum per family.

ITEM 5. Amend subrule 86.20(3) as follows:

86.20(3) Premiums. Premiums for participation in the supplemental dental-only plan are assessed as follows:

a. No premium is charged to families who meet the provisions of ~~paragraph 86.8(2)“a.”~~ subparagraph 86.8(2)“a”(1) or to families whose countable income is less than 152 percent of the federal poverty level for a family of the same size using the modified adjusted gross income methodology.

b. If the family's countable income is equal to or exceeds ~~150~~ 152 percent of the federal poverty level but does not exceed ~~200~~ 203 percent of the federal poverty level for a family of the same size, the premium is \$5 per child per month with a \$10 monthly maximum per family.

c. If the family's countable income exceeds ~~200~~ 203 percent of the federal poverty level but does not exceed ~~250~~ 254 percent of the federal poverty level for a family of the same size, the premium is \$10 per child per month with a \$15 monthly maximum per family.

d. If the family's countable income exceeds ~~250~~ 254 percent of the federal poverty level ~~but does not exceed 300 percent of the federal poverty level~~ for a family of the same size, the premium is \$15 per child per month with a \$20 monthly maximum per family.

e. and f. No change.

[Filed Emergency After Notice 12/18/13, effective 1/1/14]

[Published 1/8/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/14.

ARC 1278C**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 163.1(1), the Department of Agriculture and Land Stewardship hereby amends Chapter 65, “Animal and Livestock Importation,” Iowa Administrative Code.

The amendment requires trichomoniasis testing of bulls brought into Iowa from out of state. The testing requirement does not apply to rodeo bulls, bulls being sent to slaughter, and virgin bulls under 24 months of age.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1179C** on November 13, 2013. Comments in support of the amendment were received from the Iowa Cattlemen’s Association, the Iowa Veterinary Medical Association and the Iowa Livestock Marketing Association. The adopted amendment is identical to that published under Notice.

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

This amendment is intended to implement Iowa Code sections 163.1 and 163.14.

This amendment will become effective February 12, 2014.

The following amendment is adopted.

Adopt the following **new** paragraph **65.4(3)“c”**:

c. Trichomoniasis test. A bull must have a negative trichomoniasis test within 30 days prior to importation and have no subsequent sexual exposure. The trichomoniasis test is either one negative polymerase chain reaction (PCR) test or three consecutive weekly negative trichomoniasis foetus cultures. This testing requirement does not apply if the bull is:

- (1) Under the age of 24 months and listed on the Certificate of Veterinary Inspection as “virgin” or not having been sexually exposed to any female;
- (2) Being sent directly to slaughter or to an auction market and directly to slaughter; or
- (3) Temporarily in the state for a rodeo or exhibition and leaves after the event.

[Filed 12/18/13, effective 2/12/14]

[Published 1/8/14]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/14.

ARC 1261C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 7, “Appeals and Hearings,” Iowa Administrative Code.

These amendments implement provisions of the Patient Protection and Affordable Care Act of 2010 and the Health Care and Education Reconciliation Act of 2010 (collectively referred to as the Affordable Care Act), pursuant to federal regulations published July 15, 2013, at 78 Federal Register 42160, and of the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA).

The Affordable Care Act establishes an Exchange, which is a governmental agency or nonprofit entity that makes qualified health plans available to qualified individuals and qualified employers. The Exchange will have its own appeals process.

Based on the Affordable Care Act, changes are made to the appeals process for Medicaid and Healthy and Well Kids in Iowa (HAWK-I). The time frame to file an appeal is extended from 30 to 90 calendar days. This will allow more time to file an appeal regarding Medicaid and HAWK-I cases and matches the appeal time frames for filing an appeal with the Exchange.

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Also, changes are made to modernize the way an appellant or the appellant's representative may request an appeal and withdraw a request for hearing.

The amendments define the term "authorized representative" and describe who can be an authorized representative and that person's responsibilities. Other definitions are added to clarify new terms that are used based on the Affordable Care Act.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1129C** on October 16, 2013. The Department received comments from one respondent. Those comments and the Department's responses are as follows:

The respondent stated that in rule 441—7.1(17A), the proposed regulations added a new definition for "sent," which states that an item is delivered by first-class mail or posted to an individual's electronic account. The proposed regulations appear to infer that an appellant could begin counting the appellant's time frame to file a review request starting on the day after the proposed decision was delivered to the appellant's house via the United States Postal Service, not from the date it was actually deposited in the mail by the Department. Also, subrule 7.8(8) was revised based on changes required by the Affordable Care Act. One of those changes was to allow individuals to verbally request withdrawal of an appeal. The Child Support Recovery Unit has indicated that it would prefer that withdrawal requests for child support appeals be added to the general rule which has already been added for appeals dealing with child abuse and dependent adult abuse appeals.

The Department's response is as follows: The amendments implement provisions of the Patient Protection and Affordable Care Act of 2010 and the Health Care and Education Reconciliation Act of 2010 (collectively referred to as the Affordable Care Act), pursuant to federal regulations published July 15, 2013, at 78 Federal Register 42160, and of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA).

Based on the Affordable Care Act, the Department needed to adopt new definitions. One new definition that was proposed is for the word "sent." "Sent" is intended to mean when the item is deposited in the United States mail with first-class postage paid; however, this definition was not clear in the proposed amendments. Based on that reason, it was determined that the definition of the term "sent" should be revised; the adopted definition in rule 441—7.1(17A) now reads as follows:

"*Sent*" means deposited in the mail with first-class postage or posted to an individual's electronic account."

The Department understands the respondent's preference to require appellants to withdraw their appeals in writing; however, the Department believes that it is not appropriate to have standards for child support recovery that are different from those for the Department's other programs. This would be confusing for appellants who may have multiple appeals going for different programs with the Department. It is best to keep consistency among processes across the Department's programs.

Child abuse and dependent adult abuse appeals have a higher standard under the Iowa Code, which is why these programs must have their withdrawals in writing. This higher standard does not apply to child support appeals, and as a result, no changes were made to the proposed amendments to subrule 7.8(8).

The Council on Human Services adopted these amendments on December 11, 2013.

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

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

These amendments are intended to implement Iowa Code section 234.6.

These amendments will become effective March 1, 2014.

The following amendments are adopted.

ITEM 1. Amend the following definitions in rule **441—7.1(17A)**:

"*Aggrieved person*" means a person against whom the department has taken an adverse action. This includes a person who meets any of the following conditions:

1. and 2. No change.
3. For medical assistance, healthy and well kids in Iowa, IowaCare, family planning services, and waiver services, a person (see numbered paragraph "7" for providers):

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- Whose request to be given an application was denied.
- Whose application has been denied or has not been acted on in a timely manner.
- Whose eligibility has been terminated, suspended or reduced.
- Who has been notified that there will be a reduction in the level of benefits or services the person is eligible to receive.
 - Who has received a determination of the amount of medical expenses that must be incurred to establish income eligibility for the medically needy program or a determination of income for the purposes of imposing any premiums, enrollment fees or cost sharing.
 - Who has been notified that the level of services provided by a nursing facility is not needed based on a preadmission screening and resident review (PASRR) evaluation.
 - Who has been notified that level of care requirements have not been met.
 - Who has been aggrieved by a failure to take into account the appellant's choice in assignment to a coverage group.
 - Who contests the effective date of assistance, ~~or services, or premium payments.~~
 - Who contests the amount or effective date of health insurance premium payments, healthy and well kids in Iowa premium payments, Medicaid for employed people with disabilities premium payments, IowaCare premium payments, or the spenddown amount under the medically needy program.
 - Who contests the amount of client participation.
 - Whose claim for payment or prior authorization has been denied.
 - Who has been notified that the reconsideration process has been exhausted and who remains dissatisfied with the outcome.
 - Who has received notice from the medical assistance hotline that services not received or services for which an individual is being billed are not payable by medical assistance.
 - ~~Who has been notified that there will be a reduction or cancellation of assistance or waiver services.~~
 - Who has been notified that an overpayment of benefits has been established and repayment is requested.
 - Who has been denied requested nonemergency medical transportation services by the broker designated by the department pursuant to rule 441—78.13(249A) and has exhausted the grievance procedures established by the broker pursuant to 441—subrule 78.13(7).

4. to 13. No change.

“Department of inspections and appeals” means the state agency ~~which~~ that contracts with the department to conduct appeal hearings.

“Due process” denotes the right of a person affected by an agency decision to receive a notice of decision or notice of action and an opportunity to be heard at an appeal hearing and to present an effective defense.

“Informal conference” means a type of meeting between the appellant and the appellant's representative, unless precluded by federal law or state statute, and a representative of the department. The purpose of the informal conference is to provide information as to the reasons for the intended adverse action, to answer questions, to explain the basis for the adverse action, to provide an opportunity for the appellant to explain the appellant's action or position, and to provide an opportunity for the appellant to examine the contents of the case record, including any electronic case record, including plus all documents and records to be used by the department at the hearing in accordance with 441—Chapter 9.

“~~Joint or group~~ Group hearings” denotes an opportunity for ~~several~~ two or more persons to present their case jointly when all have the same complaint against agency policy.

“PROMISE JOBS displacement grievance” means any written complaint filed with a PROMISE JOBS contractee by regular employees or their representatives ~~which~~ that alleges that the work assignment of an individual under the PROMISE JOBS program violates any of the prohibitions against displacement of regular workers described in rule 441—93.17(239B).

“Timely notice period” is the time from the date a notice is ~~mailed~~ sent to the effective date of action. That period of time shall be at least ten calendar days, except in the case of probable fraud of ~~the appellant~~

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a beneficiary. When probable fraud of the appellant exists, “timely notice period” shall be at least five calendar days from the date a notice is sent ~~by certified mail~~.

ITEM 2. Rescind the definitions of “Issues of fact or judgment” and “Issues of policy” in rule **441—7.1(17A)**.

ITEM 3. Adopt the following new definitions in rule **441—7.1(17A)**:

“*Authorized representative*” means a person or organization designated by an appellant to act on the appellant’s behalf or who has legal authority to act on behalf of the appellant, such as a guardian or power of attorney.

“*Electronic account*” means a Web-based account established by the department for an applicant or member for communication between the department and the applicant or member.

“*Electronic case record*” means an electronic file that includes all information collected and generated by the department regarding each individual’s Medicaid or healthy and well kids in Iowa eligibility and enrollment, including all documentation required for eligibility and any information collected or generated as part of a fair hearing process conducted by the department or through the exchange appeals process.

“*Exchange*” means an American health benefit exchange established pursuant to Section 1311 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148). This entity makes qualified health plans available to qualified individuals and qualified employers.

“*Sent*” means deposited in the mail with first-class postage or posted to an individual’s electronic account.

ITEM 4. Amend rule 441—7.4(17A) as follows:

441—7.4(17A) Notification of hearing procedures. Hearing procedures shall be published in the form of rules and shall be made available to all applicants, recipients, appellants, and other interested groups and individuals. Procedures for hearings shall be identified in the notice of hearing issued to all parties as provided in subrule 7.10(7).

7.4(1) Hearing procedures must be furnished in electronic and paper format and orally as appropriate. The procedures must be written in plain language and in a manner that is accessible:

a. To individuals who are limited English proficient through oral interpretation, written translations, and taglines in non-English languages indicating the availability of language services. The services shall be at no cost to the individual.

b. To individuals living with disabilities through the provision of auxiliary aids in accordance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. The services shall be at no cost to the individual.

7.4(2) The department shall inform individuals of the availability of the services and how to access such services.

ITEM 5. Adopt the following new subparagraph **7.5(2)“a”(19)**:

(19) Notice was issued by the exchange regarding determination of eligibility for enrollment in a qualified health plan or for advance payment of the premium tax credit or cost-sharing reductions.

ITEM 6. Adopt the following new subparagraph **7.5(2)“a”(20)**:

(20) Notice has been issued regarding the completion of a family assessment that indicates no determination of child abuse or neglect has been made and no information has been reported to the child abuse registry.

ITEM 7. Amend subrule 7.5(4) as follows:

7.5(4) Time limit for granting hearing to an appeal. Subject to the provisions of subrule 7.5(1), when an appeal is made, the granting of a hearing to that appeal shall be governed by the following timeliness standards:

a. General standards. In general, a hearing shall be held if the appeal is made within 30 days after official notification of an action or before the effective date of action. When the appeal is made more

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than 30 days but less than 90 days after notification, the director shall determine whether a hearing shall be granted.

(1) and (2) No change.

(3) The day after the official notice is ~~mailed~~ sent is the first day of the period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

b. Food assistance, Medicaid or healthy and well kids in Iowa standard. For appeals regarding food assistance, Medicaid or the healthy and well kids in Iowa program, a hearing shall be held if the appeal is made within 90 days after official notification of an action.

c. Offset standards. For appeals regarding state or federal tax or debtor offsets, a hearing shall be held if the appeal is made within 15 days after official notification of the action. Counties have 30 days to appeal offsets, as provided in 441—paragraph 14.4(1)“e.” When the appeal is made more than 15 days but less than 90 days after notification, the director shall determine whether a hearing shall be granted.

(1) and (2) No change.

(3) The day after the official notice is ~~mailed~~ sent is the first day of the period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

d. Abuse standard.

(1) and (2) No change.

(3) The day after the official notice is ~~mailed~~ sent is the first day of the period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

e. and f. No change.

ITEM 8. Amend paragraph **7.5(6)“c”** as follows:

c. Subject to the time limits described in subrule 7.5(4), a person’s right to appeal the recovery of an overpayment through benefit reduction, as described at rule 441—46.25(239B), but not the existence, computation, or amount of an overpayment, begins when the person receives ~~Form 470-0485, 470-0485(S), 470-0486, or 470-0486(S),~~ Notice of Decision or Notice of Action, Form 470-0485, 470-0485(S), 470-0486, or 470-0486(S), informing the person that benefits will be reduced to recover a FIP or RCA overpayment.

ITEM 9. Amend paragraph **7.5(10)“b”** as follows:

b. Subject to the time limits described in subrule 7.5(4), a person’s right to appeal the recovery of an overpayment through benefit reduction, but not the existence, computation, or amount of an overpayment, begins when the person receives ~~Form 470-0485, 470-0485(S), 470-0486, or 470-0486(S),~~ Notice of Decision or Notice of Action, Form 470-0485, 470-0485(S), 470-0486, or 470-0486(S), informing the person that benefits will be reduced to recover a food assistance overpayment.

ITEM 10. Adopt the following **new** paragraph **7.6(1)“d”**:

d. Persons living with disabilities shall be provided assistance through the use of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

ITEM 11. Amend subrule 7.6(2) as follows:

7.6(2) Representation Authorized representation or responsible party. ~~All persons shall be advised that they~~ Persons may be represented at hearings for purposes of this chapter by others, including legal counsel, relatives, friends, or any other spokesperson of choice an authorized representative or an individual or organization recognized by the department as acting responsibly for an applicant or beneficiary pursuant to policy governing a particular program (hereinafter referred to as a “responsible party”), unless otherwise specified by statute or federal regulations. The department shall advise the persons of any legal services which may be available and that the person may be represented by counsel at the person’s own expense.

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a. The designation of an authorized representative must be in writing and include the signature of the person designating the authorized representative. Legal documentation of authority to act on behalf of a person, such as a court order establishing legal guardianship or a power of attorney, shall serve in place of a signed designation by the person.

b. An authorized representative or responsible party must agree to maintain, or be legally bound to maintain, the confidentiality of any information regarding an applicant or beneficiary provided by the department.

c. A provider or staff member or volunteer of an organization serving as an authorized representative or responsible party must sign an agreement that such provider, staff member or volunteer will adhere to the regulations in Part 431, Subpart F, of 42 CFR Chapter IV and in 45 CFR 155.260(f) (relating to confidentiality of information), § 447.10 of 42 CFR Chapter IV (relating to the prohibition against reassignment of provider claims as appropriate for a health facility or an organization acting on the facility's behalf), as well as other relevant state and federal laws concerning conflict of interest and confidentiality of information.

d. An authorized representative or responsible party may file an appeal on the appellant's behalf, receive copies of appeal correspondence, and act on behalf of the appellant in all other matters regarding the appeal.

e. The authorized representative or responsible party is responsible for fulfilling all responsibilities encompassed within the scope of the authorized representation to the same extent as the individual the authorized representative or responsible party represents.

f. The power to act as an authorized representative is valid until the appellant modifies the authorization or notifies the department that the representative is no longer authorized to act on the appellant's behalf, or the authorized representative informs the agency that the authorized representative is no longer acting in such capacity, or there is a change in the legal authority upon which the individual's or organization's authority was based. Such notice must be in writing and include the appellant's, authorized representative's or responsible party's signature as appropriate.

g. Designations of authorized representatives, legal documentation of authority to act on behalf of a person, and modifications or terminations of designations or legal authority may be submitted online via the department's Web site, by mail, by electronic mail, by facsimile transmission or in person.

h. For purposes of this rule, the department shall accept electronic, including telephonically recorded, signatures and handwritten signatures transmitted by facsimile or other electronic transmission.

i. Designations of authorized representatives, legal documentation of authority to act on behalf of a person, and modifications or terminations of designations or legal authority previously submitted to the department that comply with the requirements of this rule will continue to apply for purposes of appeals, consistent with their terms.

ITEM 12. Amend subrule 7.7(1) as follows:

7.7(1) Notification.

a. to c. No change.

d. "Timely" means that the notice is ~~mailed~~ sent at least ten calendar days before the date the action would become effective. The timely notice period shall begin on the day after the notice is ~~mailed~~ sent.

e. "Adequate" means a written notice that includes:

(1) A statement of what action is being taken,

(2) The effective date of such action,

~~(2)~~ (3) The A clear statement of the specific reasons for supporting the intended action,

~~(3)~~ (4) The manual chapter number and subheading supporting the action and the corresponding rule reference,

(4) (5) An explanation of the appellant's right to appeal, and

(5) (6) The circumstances under which assistance is continued when an appeal is filed.

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ITEM 13. Amend paragraph 7.7(2)“c” as follows:

c. The recipient has been admitted or committed to an institution ~~which~~ that does not qualify for payment under an assistance program.

ITEM 14. Adopt the following **new** paragraph 7.7(2)“j”:

j. The notice involves an adverse determination made with regard to the preadmission screening requirements.

ITEM 15. Amend subrule 7.7(3) as follows:

7.7(3) Action due to probable fraud. When the agency obtains facts indicating that assistance should be canceled, suspended, or reduced because of the probable fraud of the recipient, and, where possible, the facts have been verified through collateral sources, notice of the action shall be timely when ~~mailed~~ sent at least five calendar days before the action would become effective. The notice shall be sent by certified mail, return receipt requested.

ITEM 16. Amend subrule 7.8(1) as follows:

7.8(1) Initiating an appeal. To initiate an appeal, a person, ~~or~~ the person’s authorized representative or an individual or organization recognized by the department as acting responsibly for the person pursuant to policy governing a particular program must state in writing that the person disagrees with a decision, action, or failure to act on the person’s case.

a. All appeals shall be made in writing, except for food assistance, Medicaid and healthy and well kids in Iowa appeals, which may be made ~~orally~~ by telephone or in person.

b. ~~The~~ A written request may be ~~sent~~ submitted via the department’s Web site or may be delivered by ~~any means~~ mail, electronic mail, facsimile transmission or personal delivery to the appeals section, to the local office, or to the department office that took the adverse action.

c. ~~The oral~~ A request by telephone or in person may be made to the appeals section or to the department office that took the adverse action.

ITEM 17. Amend subrule 7.8(2) as follows:

7.8(2) Filing the appeal. The appellant shall be encouraged, but not required, to make written appeal on Form 470-0487 or 470-0487(S), Appeal and Request for Hearing, and the worker shall provide any instructions or assistance required in completing the form. When the appellant is unwilling to complete or sign this form, nothing in this rule shall be construed to preclude the right to perfect the appeal, as long as the appeal is in writing (except for food assistance, Medicaid and healthy and well kids in Iowa appeals) and has been communicated to the department by the appellant or appellant’s representative.

A written appeal submitted by mail is filed on the date postmarked on the envelope sent to the department, or, when the postmarked envelope is not available, on the date the appeal is stamped received by the agency. When an appeal is submitted through an electronic delivery method, such as electronic mail, submission of an online form, or facsimile, the appeal is filed on the date it is submitted. The electronic delivery method shall record the date and time the appeal request was submitted. If there is no date recorded by the electronic delivery method, the date of filing is the date the appeal is stamped received by the agency. Receipt date of all appeals shall be documented by the office where the appeal is received.

ITEM 18. Amend subrule 7.8(3) as follows:

7.8(3) Informal conference. When requested by the appellant, an informal conference with a representative of the department shall be held as soon as possible after the appeal has been filed. An appellant’s representative shall be allowed to attend and participate in the informal conference, unless precluded by federal rule or state statute.

An informal conference need not be requested for the appellant to ~~have access to the records~~ examine the contents of the case record, including any electronic case record, as provided in subrule 7.13(1) and 441—Chapter 9.

ITEM 19. Amend subrule 7.8(6) as follows:

7.8(6) Right of the department to deny or dismiss an appeal. The department or the department of inspections and appeals has the right to deny or dismiss the appeal when:

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- a. It has been withdrawn by the appellant ~~in writing~~ pursuant to subrule 7.8(8).
- b. The sole issue is one of state or federal law requiring automatic grant adjustments for classes of recipients.
- c. It has been abandoned.
- d. The agency, by written notice, withdraws the action appealed and restores the appellant's status ~~which~~ that existed before the action appealed was taken.
- e. The agency implements action and issues a notice of decision or notice of action to correct an error made by the agency which resulted in the appeal.

Abandonment may be deemed to have occurred when the appellant or the appellant's authorized representative fails, without good cause, to appear at the prehearing or hearing.

ITEM 20. Amend subrule 7.8(8) as follows:

7.8(8) *Withdrawal.* When the appellant desires to voluntarily withdraw an appeal, the worker, the presiding officer, or the appeals section shall ~~request a clear, written statement~~ accept a request from the appellant to withdraw the appeal by telephone, in writing or in person. A written request may be submitted in person, by mail or through an electronic delivery method, such as electronic mail, submission of an online form, or facsimile. The appellant may use Form 470-0492 or 470-0492(S), Request for Withdrawal of Appeal, for this purpose. For child abuse and dependent adult abuse appeals, the request to withdraw an appeal must be made in writing and signed by the appellant or the appellant's legal counsel.

ITEM 21. Amend subrule 7.9(1) as follows:

7.9(1) *When assistance continues.* Assistance shall not be suspended, reduced, restricted, or canceled, nor shall a license, registration, certification, approval, or accreditation be revoked, or other proposed adverse action be taken pending a final decision on an appeal when:

- a. An appeal is filed within the timely notice period.
- b. The appellant requests a hearing within ten days from ~~the date adequate notice is issued for receipt of a notice of~~ cancellation or reduction of food assistance, family investment program, or medical assistance benefits, based on the completed report form, including:

(1) Review/Recertification Eligibility Document, Form 470-2881, 470-2881(S), 470-2881(M), or 470-4083(MS).

(2) ~~Transitional Medicaid Notice of Decision/Quarterly Income Report, Form 470-2663, 470-2663(S), 470-2663(M), or 470-2663(MS)~~ Medicaid Review, Form 470-3118, 470-3118(S), 470-3118(M), or 470-3118(MS).

The date on which the notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period.

- c. If it is determined at a hearing that the issue involves only federal or state law or policy, assistance will be immediately discontinued.

ITEM 22. Amend subrule 7.9(2) as follows:

7.9(2) *When assistance does not continue.* The adverse action appealed to suspend, reduce, restrict, or cancel assistance; revoke a license, registration, certification, approval, or accreditation; or take other proposed action may be implemented pending a final decision on appeal when:

- a. An appeal is not filed within the timely notice period or within ten days from the date notice is received. The date on which notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period.

~~b. The appellant does not request a hearing within ten days from the date adequate notice is issued based on the completed monthly report.~~

- ~~e. b.~~ Benefits or services were time limited through a certification period or prior authorization for which notice was given when established or for which adequate notice was provided.

~~d. Rescinded IAB 4/30/03, effective 7/1/03.~~

~~e. Rescinded IAB 4/30/03, effective 7/1/03.~~

- ~~f. c.~~ The appellant directs the worker in writing to proceed with the intended action.

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ITEM 23. Amend paragraph **7.9(5)“a”** as follows:

a. The appeal is filed within the timely notice period of the notice of decision or notice of action establishing the beginning date of the LBP.

ITEM 24. Adopt the following **new** paragraph **7.10(2)“c”**:

c. The department shall advise the person of any legal services which may be available and that the person may be represented by counsel at the person's own expense.

ITEM 25. Amend subrule 7.16(3) as follows:

7.16(3) Proposed decision. Following the reception of evidence, the presiding officer shall issue a proposed decision, consisting of the issues of the appeal, the decision, the findings of fact and the conclusions of law. Each item shall be separately stated under individual headings. The proposed decision shall be ~~mailed~~ sent by first-class mail, postage prepaid, addressed to the appellant at the appellant's last-known address.

ITEM 26. Amend subrule 7.16(5) as follows:

7.16(5) Time limit for appeal of a proposed decision. Appeal for the director's review of the proposed decision must be made in writing to the director. ~~and~~ The written request must be mailed or submitted in person or through an electronic delivery method, such as electronic mail, submission of an online form, or facsimile. The request must be postmarked or date-stamped received within ten calendar days of the date on which the proposed decision was signed and mailed sent. The day after the proposed decision is ~~mailed sent~~ is the first day of the time period within which a request for review must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

ITEM 27. Amend subrule 7.16(6) as follows:

7.16(6) Appeal of the proposed decision by the department. The appeals advisory committee acts as an initial screening device for the director and may recommend that the director review a proposed decision. That recommendation is not binding upon the director, and the director may decide to review a proposed decision without that committee's recommendation.

When the director grants a review of a proposed decision on the department's request, the appeals section shall notify all other parties to the appeal of the review and send a copy of the request to all other parties. All other parties shall be provided ten calendar days from the date of notification to submit further written arguments or objections for consideration upon review.

Written arguments or objections must be mailed or submitted in person to the appeals section or submitted through an electronic delivery method, such as electronic mail, submission of an online form, or facsimile.

The day after the notification is ~~mailed sent~~ is the first day of the time period within which a response to the department's request for review must be filed. When the time limit for responding falls on a holiday or a weekend, the time will be extended to the next workday.

ITEM 28. Amend subrule 7.16(9) as follows:

7.16(9) Time limits.

~~a. A final decision on the appeal shall be issued within 90 days from the date of the appeal on all decisions except food assistance and vendors. Food assistance-only decisions shall be rendered in 60 days. PROMISE JOBS displacement grievance decisions shall be rendered within 90 days from the date the displacement grievance was filed with the PROMISE JOBS contractee. Failure to reach a decision within these time frames shall not affect the merits of the appellant's appeal. the following time frames:~~

(1) Appeals for all programs, except food assistance and vendors, shall be rendered within 90 days from the date of the appeal.

(2) Food assistance-only decisions shall be rendered within 60 days.

(3) PROMISE JOBS displacement grievance decisions shall be rendered within 90 days from the date the displacement grievance was filed with the PROMISE JOBS contractee.

~~a. Time frames may be extended based on continuances or additional time frames as approved by the presiding officer. Should the appellant request a delay in the hearing in order to prepare the case or for other essential reasons, reasonable time, not to exceed 30 days except with the approval of the~~

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~~administrative law judge, shall be granted and the extra time shall be added to the maximum for final administrative action.~~

~~b. For an appeal regarding child abuse, if the proposed decision is not appealed within 10 days from the date of the proposed decision, the proposed decision shall be the final agency action. If a party files an appeal within 10 days from the date of the proposed decision, the director has 45 days from the date of the proposed decision to issue a ruling. If the director does not rule within that 45-day period, the proposed decision becomes the final decision as provided in Iowa Code section 235A.19.~~

~~c. The department shall take prompt, definite and final administrative action to carry out the decision rendered within 7 calendar days of receipt of a copy of the final decision. When the final decision is favorable to the appellant, or when the department decides in favor of the appellant before the hearing, the department shall make any additional corrective payments due, retroactive to the date of the incorrect action.~~

~~b. Failure to reach a decision within the time frames set forth in paragraph 7.16(9) "a" shall not affect the merits of the appellant's appeal.~~

~~c. Time frames may be extended based on continuances or additional time frames as approved by the presiding officer. Should the appellant request a delay in the hearing in order to prepare the case or for other essential reasons, reasonable time, not to exceed 30 days except with the approval of the administrative law judge, shall be granted and the extra time shall be added to the maximum for final administrative action.~~

~~d. For an appeal regarding child abuse, if the proposed decision is not appealed within 10 days from the date of the proposed decision, the proposed decision shall be the final agency action. If a party files an appeal within 10 days from the date of the proposed decision, the director has 45 days from the date of the proposed decision to issue a ruling. If the director does not rule within that 45-day period, the proposed decision becomes the final decision as provided in Iowa Code section 235A.19.~~

~~e. The department shall take prompt, definite and final administrative action to carry out the decision rendered within seven calendar days of receipt of a copy of the final decision. When the final decision is favorable to the appellant, or when the department decides in favor of the appellant before the hearing, the department shall make any additional corrective payments due, retroactive to the date of the incorrect action.~~

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ARC 1262C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 217.6 and 252B.9A(7), the Department of Human Services amends Chapter 9, "Public Records and Fair Information Practices," and Chapter 97, "Collection Services Center," Iowa Administrative Code.

These amendments update rules to conform to Iowa statutory changes and federal regulations regarding the confidentiality of support payment records maintained by the Child Support Recovery Unit (CSRU) and the Collection Services Center (CSC). The statutory changes were adopted in 2012 to conform to federal safeguarding regulations effective December 30, 2010.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1045C** on October 2, 2013. The Department received no comments during the comment period. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on December 11, 2013.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments do not provide for waivers in specified situations because federal and state law requires the safeguarding of confidential child support information. However, 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 217.6 and 252B.9A(7).

These amendments will become effective March 1, 2014.

The following amendments are adopted.

ITEM 1. Amend rule **441—9.11(22)**, chart of department records, entries for “Collection service center payment records” and “Program records – Child support recovery,” as follows:

Abbreviations are used in the chart as follows:

Code	Meaning
O	The records are open for public inspection.
C	The records are confidential and are not open to public inspection.
O/C	The record is partly open and partly confidential.
PI	Personally identifiable information
NA	Not applicable

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
Collection service center payment records	O <u>C</u>	Iowa Code 252B.9(2); 42 U.S.C. §654a(d); 45 CFR §307.13	Yes	Iowa Code 252B.9, 252B.13A, 252B.16
Program records • Child support recovery	O/ <u>C</u> <u>C</u>	Iowa Code 252B.9 and 252G.5; 42 U.S.C. §654(26), 42 U.S.C. §654a(d); 45 CFR §303.21 and 307.13	Yes	Iowa Code 252A, 252B, 252C, 252D, 252E, 252F, 252G, 252H, 252I, 252J, 252K, and 144.13, 144.26, 232.147, 234.39, 595.4, 598.22B, and 600.16A

ITEM 2. Amend subrule 97.3(3) as follows:

97.3(3) Certified payment records. The unit shall provide certified copies of the official support payment records as defined in paragraph 97.3(1) “a” ~~to the public, upon request, as a public record in accordance with Iowa Code section 252B.9.~~

[Filed 12/11/13, effective 3/1/14]

[Published 1/8/14]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/14.

ARC 1264C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment provides clarification about services provided under the nonemergency medical transportation (NEMT) program. The amendment also identifies the conditions and limitations of the program. These clarifications are intended to assist the contracted NEMT broker to provide management and oversight of the NEMT program.

The number of NEMT trips has grown by 76 percent since October 2010. There has also been a big shift in the types of trips being taken by Medicaid members. The two primary types of trips reimbursed under NEMT are mileage reimbursement and provider rides. During the period from October 2009 to December 2010, approximately 73 percent of the trips reimbursed under NEMT were classified as mileage reimbursement trips. The percentage of mileage reimbursement trips during the recent period from January to March 2013 shows a significant reduction in mileage reimbursement trips to 46 percent. As a direct result, there has been a significant increase in the number of provider rides, which are, in turn, much more expensive. The goal of this amendment is to clarify administrative rules and implement changes to the program to continue to meet member needs while ensuring that the NEMT program remains cost-effective.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1161C** on October 30, 2013.

The Department received comments from two respondents. The comments and the corresponding Department responses are as follows:

Comment #1: Paragraph 78.13(1)“a” states, “Consistent with the member’s needs and subject to the limitations and restrictions set forth in this rule, subject to the advance approval of the broker, such transportation may include:” Is there a definition and process to determine “member needs”?

Department Response #1: The Department is not providing a definition of “member’s needs” because the term is incapable of being defined in a way that would apply to all members in all potential circumstances. Rather, application of the provision depends on the facts and circumstances in individual cases.

Comment #2: Subparagraph 78.13(1)“a”(4) states, “Public transportation when public transportation is reasonably available and the member’s condition does not preclude its use.” Are there time frames and expectations associated with being “reasonably available”?

Department Response #2: “Reasonably available” would depend on the circumstances in individual cases. For instance, a patient’s working vehicle might not be “reasonably available” to a patient who just underwent eye surgery. Therefore, whether or not transportation is reasonably available is based on the facts of individual cases.

Comment #3: Paragraph 78.13(2)“d” states, “Transportation of family members to visit or participate in therapy when the member is hospitalized or institutionalized.” Should there be an exception to this exclusion for situations such as parents of premature babies or mothers bringing breast milk to hospitalized children? The ability for a family member to secure transportation on his/her own is likely to be much more difficult over an extended period of time.

Department Response #3: The Department believes that exceptions to this rule such as transportation of “parents of premature babies or mothers bringing breast milk to hospitalized children” would overwhelm the rule. The rule is intended to limit transportation to transportation of the member and, if necessary, an escort, per federal requirements.

Comment #4: Paragraph 78.13(3)“g” states, “Member scheduling obligations. Members who require a ride will need to schedule medical appointments on days the transportation provider sends a shuttle to facilitate the provision of the most economical nonemergency medical transportation available, subject to reasonable medical exceptions.” It is very important that the availability of the specific provider be included as a reasonable medical exception, particularly in cases where an ongoing relationship exists and/or special expertise or experience resides with the specific provider.

Department Response #4: This comment does not take issue with the proposed rule; rather, the comment goes to the implementation of that rule, specifically, as it relates to the availability of the specific provider or physician. Members, or their representatives, may request a medical exception to the prescheduled shuttle route transportation based on the availability of the specific physician or specialist

HUMAN SERVICES DEPARTMENT[441](cont'd)

for appointments on the day(s) of the shuttle route days/times. The broker may contact the physician's office to verify the exception request.

Comment #5: This is a paper of rules in progress; similar wording is in older rules as well. Rule 441—78.13(249A) states that the most economical transportation appropriate to the needs of the member is to be used. TMS (Iowa Medicaid's nonemergency medical transportation broker) rules that the shortest possible distance, regardless of its economy, is to be used for mileage reimbursement. The respondent stated that the example given was if a gravel road is the shortest distance, that is what TMS will use in its calculations. It is rather clear that this would not be economical. TMS needs to update its policies to comply with this.

Department Response #5: This comment does not take issue with the proposed rule, which provides that the most economical transportation appropriate to the needs of the member is to be used. Rather, the comment goes to the implementation of that rule. The Department has discussed the implementation issue raised with the transportation broker and supports the broker's use of the shortest route for mileage reimbursement. If a member believes that a longer route is actually more economical for any reason, the member is free to take the longer route and keep the savings.

No changes were made to this amendment as the result of the comments received from respondents. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on December 11, 2013.

This amendment does not provide for waivers in specified situations because the brokerage system will apply to all Medicaid members who are eligible to receive nonemergency medical transportation services. However, 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, there is a potential impact to private sector jobs. The current broker employs 24 full-time staff in Iowa and has contracts with 69 transportation providers in and around Iowa.

This amendment is intended to implement Iowa Code section 249A.4.

This amendment will become effective March 1, 2014.

The following amendment is adopted.

Rescind rule 441—78.13(249A) and adopt the following **new** rule in lieu thereof:

441—78.13(249A) Nonemergency medical transportation. The department makes available nonemergency medical transportation through a transportation brokerage. Medicaid members who are eligible for full Medicaid benefits and need transportation services so that they can receive Medicaid-covered services from providers enrolled with the Iowa Medicaid program may obtain transportation services consistent with this rule.

78.13(1) Covered services. Nonemergency medical transportation services available are limited to:

a. The most economical transportation appropriate to the needs of the member, provided to members eligible for nonemergency transportation when those members need transportation to providers enrolled in the Iowa Medicaid program for the receipt of goods or services covered by the Iowa Medicaid program. Consistent with the member's needs and subject to the limitations and restrictions set forth in this rule, subject to the advance approval of the broker, such transportation may include:

- (1) Mileage reimbursement to the member, if the member is the driver.
- (2) Mileage reimbursement to a volunteer or other responsible person, if the volunteer or other responsible person is the driver.
- (3) Taxi service.
- (4) Public transportation when public transportation is reasonably available and the member's condition does not preclude its use.
- (5) Wheelchair and stretcher vans.
- (6) Airfare costs when the most appropriate mode of transport is by air, based on the member's medical condition.

HUMAN SERVICES DEPARTMENT[441](cont'd)

b. Reimbursement for costs of the member's meals necessary during periods of transportation and medical treatment.

c. Reimbursement of lodging expenses incurred by the member during periods of transportation and medical treatment.

d. Reimbursement of car rental costs incurred by the member during periods of transportation and medical treatment.

e. Reimbursement of a medically necessary escort's travel expenses when an escort is required because of the member's needs.

78.13(2) Exclusions. Nonemergency medical transportation is not available through the Iowa Medicaid program for:

a. Transportation to obtain services not covered by Iowa Medicaid;

b. Transportation to providers that are not enrolled in Iowa Medicaid;

c. Transportation for members residing in nursing facilities or ICF/ID facilities when such facilities provide the transportation (i.e., within 30 miles, one way, of the facility);

d. Transportation of family members to visit or participate in therapy when the member is hospitalized or institutionalized;

e. Transportation to durable medical equipment providers when such providers offer a delivery service that can be accessed at no cost to the member, unless the equipment requires a fitting that cannot be provided without transporting the member;

f. Reimbursement to HCBS and Medicaid providers for transportation provided as part of other covered services, such as personal care, home health, and supported community living services;

g. Transportation to a pharmacy that provides a free delivery service, with the exception of new prescription fills that are otherwise not available to the patient in the absence of nonemergency medical transportation services; and

h. Emergency transportation.

78.13(3) Conditions and limitations on covered services. Nonemergency medical transportation services are subject to the following limitations and conditions:

a. *Member request.* When a member needs nonemergency transportation to receive medical care provided by the Iowa Medicaid program, the member must contact the broker with as much advance notice as possible, but not more than 30 days' advance notice.

(1) Generally, the member must contact the broker at least two business days in advance of the member's appointment to schedule the transportation. For purposes of calculating the two-business-day notice obligation, the advance notice includes the day of the medical appointment but not the day of the telephone call.

(2) If the member's nonemergency transportation needs make the provision of two business days' notice impossible because of the member's urgent transportation need, the member must provide as much advance notice as is possible before the transportation need so that the broker can appropriately schedule the most economical form of transportation for the member. Urgent transportation needs are limited to unscheduled episodic situations in which there is no immediate threat to life or limb but which require that the broker schedule transportation with less than two business days' notice. Examples of urgent trips include, but are not limited to:

1. Postsurgical or medical follow-up care specified by a health care provider;

2. Unexpected preoperative appointments;

3. Hospital discharges;

4. Appointments for new medical conditions or tests; and

5. Dialysis.

b. *No free transportation alternatives available.* Member transportation through the nonemergency medical transportation broker is not available to the member when the member is capable of securing the member's own transportation at no cost to the member (e.g., free-gas voucher programs).

c. *No member transportation alternatives available.* Members who have their own transportation available to them are required to use their own vehicle and seek mileage reimbursement. For purposes

HUMAN SERVICES DEPARTMENT[441](cont'd)

of determining whether or not the member has the member's own transportation that is available to the member, the broker shall take into consideration:

- (1) Whether the member owns a vehicle;
- (2) Whether a member-owned vehicle is in working mechanical order and is licensed;
- (3) Whether the member has a valid driver's license and auto insurance;
- (4) Whether the member is unable to drive because of age, physical condition, cognitive impairment, or developmental limitations; and
- (5) Whether friends or family are available to transport the member to the member's medical appointment and receive mileage reimbursement.

d. Limitations on reimbursement for meals. Reimbursement for costs of members' meals necessary during periods of transportation and medical treatment is limited to situations in which:

- (1) The transportation being provided spans the entire meal period;
- (2) The one-way distance to or from the medical appointment is more than 50 miles;
- (3) The meal is necessary to satisfy the needs of the member or medically necessary escort; and
- (4) The meal reimbursement is limited to the subsistence allowance amounts applicable to state officers and state employees pursuant to Iowa Administrative Code rule 11—41.6(8A) and is supported by detailed receipts.

e. Limitations on reimbursement for lodging expenses. Reimbursement of lodging expenses incurred by members during periods of transportation and medical treatment is limited to reasonable reimbursement for expenses incurred by the member or the medically necessary escort, or both, during a nonemergency trip provided by the broker when the one-way distance to or from the medical appointment is more than 50 miles, supported by detailed receipts, and required for treatment.

f. Closest medical provider. Nonemergency medical transportation will only be provided to members to the closest qualified and enrolled Medicaid provider unless:

- (1) The difference between the closest qualified and enrolled Medicaid provider and the enrolled provider requested by the member is less than 10 miles one way; or
- (2) The additional cost of transportation to the enrolled provider requested by the member is medically justified based on:
 1. The member's previous relationship with the requested provider; or
 2. The member's prior experience with the requested provider; or
 3. The requested provider's special expertise or experience; or
 4. A referral requiring the member to be seen by the requested provider.

g. Member scheduling obligations. Members who require a ride will need to schedule medical appointments on days the transportation provider sends a shuttle to facilitate the provision of the most economical nonemergency medical transportation available, subject to reasonable medical exceptions.

h. Abusive behavior. Members who are abusive or inappropriate may be restricted by the department to only receiving mileage reimbursement. Such restricted members will be responsible for finding their own way to their medical appointments.

78.13(4) Grievance procedure. The broker shall establish an internal grievance procedure for members and transportation providers.

a. Members may appeal to the department pursuant to 441—Chapter 7 as an "aggrieved person."

b. Transportation providers.

(1) Consent for state fair hearing.

1. Transportation providers that are contracted with the broker and are in good standing with the broker may request a state fair hearing only for disputes regarding payment of claims, specifically, disputes concerning the denial of a claim or reduction in payment, and only when acting on behalf of the member.

2. The transportation provider requesting such a state fair hearing must have the prior, express, signed written consent of the member or the member's lawfully appointed guardian in order to request such a hearing. Notwithstanding any contrary provision in 441—Chapter 7, no state fair hearing will be granted unless the transportation provider submits a document providing such member approval with the request for a state fair hearing.

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3. The document must specifically inform the member that protected health information (PHI) may be discussed at the hearing and may be made public in the course of the hearing and subsequent administrative and judicial proceedings. The document must contain language that indicates the knowledge of the potential for PHI to become public and that the member knowingly, voluntarily and intelligently consents to the network provider's bringing the state fair hearing on the member's behalf.

(2) For all transportation provider grievances not addressed by paragraph 78.13(4)"b," the grievance process shall end with binding arbitration, with a designee of the Iowa Medicaid enterprise as arbitrator.

[Filed 12/11/13, effective 3/1/14]

[Published 1/8/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/14.

ARC 1263C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 217.6 and chapters 135B and 135C, the Department of Human Services amends Chapter 119, "Record Check Evaluations for Certain Employers and Educational Training Programs," Iowa Administrative Code.

These amendments allow for conditional employment in a hospital or a health care facility for up to 60 calendar days pending completion of a record check evaluation.

These amendments also allow for conditional participation in a training program for up to 60 days pending completion of a record check evaluation.

These amendments establish that if an evaluation was previously performed by the Department and the Department determined the person's criminal and abuse background did not warrant prohibition of employment, a person who is or was employed by a hospital and is hired by another hospital may commence employment without further action by the Department if the conditions specified in 2013 Iowa Acts, Senate File 347, are met.

These amendments also establish that if an evaluation was previously performed by the Department and the Department determined the person's criminal and abuse background did not warrant prohibition of employment, a new employee may commence employment after 30 days without further action by the Department if the conditions specified in 2013 Iowa Acts, Senate File 347, are met.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1046C** on October 2, 2013. The Department received no comments during the comment period. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on December 11, 2013.

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

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

These amendments are intended to implement Iowa Code section 217.6 and chapters 135B and 135C and 2013 Iowa Acts, Senate File 347.

These amendments will become effective March 1, 2014.

The following amendments are adopted.

ITEM 1. Amend rules **441—119.1(135C)** and **441—119.2(135C)**, parenthetical implementation statutes, as follows:

(135B,135C)

ITEM 2. Amend subrule 119.2(1) as follows:

119.2(1) *Record check evaluations on prospective employees and students.* A requesting entity shall request a record check evaluation prior to employment or enrollment of a person whose background

HUMAN SERVICES DEPARTMENT[441](cont'd)

check indicates a criminal or dependent adult abuse or child abuse record. Criminal, child abuse and dependent adult abuse background checks are required on all prospective employees or students, including employees or students who have terminated employment or participation in a training program for any reason or any length of time and wish to return to the same employment or training program, unless an exemption is provided in these rules.

a. A hospital or licensee of a health care facility may employ a person for up to 60 calendar days pending completion of the evaluation if all of the following criteria are met:

(1) The employment does not involve operation of a motor vehicle; and

(2) The person to be employed has been convicted of a simple misdemeanor offense (under Iowa Code section 123.47 or chapter 321) or a first offense of operating a motor vehicle while intoxicated (under Iowa Code section 321J.2(1)); and

(3) The person to be employed does not have a record of founded child or dependent adult abuse; and

(4) The hospital or licensee has requested an evaluation.

b. A training program in a facility licensed under Iowa Code chapter 135C may allow a student who is applying for, enrolled in, or returning to a certified nurse aide training program to participate in the clinical education component of the training program for up to 60 calendar days pending completion of the evaluation if all of the following criteria are met:

(1) The student's clinical education component of the training program involves children or dependent adults; and

(2) The program does not involve operation of a motor vehicle; and

(3) The student has been convicted of a simple misdemeanor offense (under Iowa Code section 123.47 or chapter 321) or a first offense of operating a motor vehicle while intoxicated (under Iowa Code section 321J.2(1)); and

(4) The student does not have a record of founded child or dependent adult abuse; and

(5) The training program has requested an evaluation.

ITEM 3. Amend subrule 119.2(4) as follows:

119.2(4) *Exceptions to record check evaluation requirements for employment under Iowa Code chapter 135B or 135C or participation in a training program in facilities licensed under Iowa Code chapter 135C.* If an evaluation was previously performed by the department and the department determined the person's criminal and abuse background did not warrant prohibition of employment, the person who is or was employed by a hospital licensed under Iowa Code chapter 135B and is hired by another hospital or the person who is or was employed by a facility licensed under Iowa Code section 135C.33 and is hired by another facility licensed under Iowa Code section 135C.33 may commence employment with a different licensed facility covered by Iowa Code section 135C.33 without further action by the department subject to the following conditions:

a. to c. No change.

d. The person subject to the record checks has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer, or the previous employer provides the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, a ~~current~~ new record check evaluation shall be performed.

e. and f. No change.

ITEM 4. Adopt the following new subrule 119.2(5):

119.2(5) *Exceptions to record check evaluation requirements for new employees under Iowa Code chapter 135B or 135C or participants in a training program in facilities licensed under Iowa Code chapter 135C.* If the person approved for employment or participation does not start employment or attend the training program, as defined in subrule 119.4(3), within 30 days from the notice of decision approving the person, the requesting entity must perform a new record check.

a. If the evaluation was previously performed by the department and the department determined the person's criminal and abuse background did not warrant prohibition of employment or participation

HUMAN SERVICES DEPARTMENT[441](cont'd)

in a training program, the person being considered for employment may commence employment without further action by the department subject to the following conditions:

(1) The record check performed by the employer does not indicate that a crime was committed or that a founded abuse record was entered subsequent to the previous evaluation.

(2) The position with the employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.

(3) Any restriction placed on the person's employment in the previous evaluation by the department shall remain applicable in the person's subsequent employment.

(4) The employer or person subject to the record checks has maintained a copy of the previous evaluation. If a physical copy of the previous evaluation is not maintained, a new record check evaluation shall be requested.

(5) Although an authorized new evaluation is not required, the subsequent employer may choose to request a reevaluation of the person's criminal and abuse background and may employ the person while the reevaluation is being performed.

(6) The employer must maintain the previous evaluation in the employee's or student's personnel file for verification of the exception to the requirement for a record check evaluation.

b. If the record check indicates that a crime was committed or that a founded abuse record was entered subsequent to the previous evaluation, a new record check evaluation shall be performed.

c. Record check evaluations completed in accordance with paragraph 119.4(3) "c" are valid for 30 days from the date the notice of decision is issued. If the person does not start employment or attend the training program within the 30-day time period, the conditions in subrule 119.2(5) shall apply. "Start employment or attend the training program" means to begin to receive a salary or take classes.

ITEM 5. Amend subrule 119.3(1) as follows:

119.3(1) Required documentation. The requesting entity and the prospective employee or student shall complete and submit ~~Form 470-2310, Record Check Evaluation~~, the record check evaluation form to the department to request an evaluation. The requesting entity shall submit the form and required documentation to the Department of Human Services, Central Abuse Registry, P.O. Box 4826, Des Moines, Iowa 50305-4826. The department shall not process evaluations that are not signed by the prospective employee or student. The position sought or held must be clearly written on the first page of ~~Form 470-2310, Record Check Evaluation~~ the record check evaluation form. ~~Form 470-2310~~ The form shall be accompanied by the following documents:

a. to d. No change.

ITEM 6. Amend rule **441—119.4(135C)**, parenthetical implementation statute, as follows:
(135B, 135C)

ITEM 7. Amend paragraph **119.4(3)"c"** as follows:

c. Record check evaluations are valid for 30 days from the date the notice of decision is issued. If the person does not start employment or attend the training program within the 30-day time period, ~~the requesting entity shall request another evaluation~~ conditions in subrule 119.2(5) shall apply. "Start employment or attend the training program" means to begin to receive a salary or take classes.

ITEM 8. Amend rule **441—119.5(135C)**, parenthetical implementation statute, as follows:
(135B, 135C)

[Filed 12/11/13, effective 3/1/14]

[Published 1/8/14]

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ARC 1279C

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 505.8 and 2013 Iowa Acts, Senate File 182, section 5, the Insurance Division hereby adopts amendments to Chapter 5, "Regulation of Insurers—General Provisions," Iowa Administrative Code.

The purpose of rule 191—5.33(510), Credit for Reinsurance, is to set forth the procedural requirements which the Insurance Commissioner deems necessary to carry out the provisions of 2013 Iowa Acts, Senate File 182, sections 1 to 6. The actions and information required by this rule are necessary and appropriate to the public interest and for the protection of the ceding insurers in this state. These amendments correct cross reference mistakes that were inadvertently overlooked in a previous rule making (see **ARC 1111C**, IAB 10/16/13).

These amendments were proposed and published in the November 13, 2013, Iowa Administrative Bulletin as **ARC 1178C**. A public hearing was held on December 4, 2013, at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, 5th Floor, Des Moines, Iowa. The Division also accepted written comments on the proposed amendments through December 3, 2013. Reinsurance Association of America provided support for the amendments. These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code chapter 521B.

These amendments will become effective February 12, 2014.

The following amendments are adopted.

ITEM 1. Amend subparagraph **5.33(10)“b”(3)** as follows:

(3) All assets in the trust account shall be held by the trustee at the trustee's office in the United States, except that a bank may apply for the commissioner's permission to use a foreign branch office of such bank as trustee for trust agreements established pursuant to this subrule. If the commissioner approves the use of such foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in subparagraph ~~5.33(9)“b”(4)~~ 5.33(10)“b”(4) must also be presentable, as a matter of legal right, at the trustee's principal office in the United States.

ITEM 2. Amend numbered paragraph **5.33(10)“b”(4)“4”** as follows:

4. It shall not contain references to any other agreements or documents except as provided for under subparagraph ~~5.33(9)“b”(4)~~ 5.33(10)“b”(11).

ITEM 3. Amend numbered paragraph **5.33(10)“b”(11)“3”** as follows:

3. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer, in any qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in subparagraph ~~5.33(9)“d”(1)~~ 5.33(10)“d”(1) as may remain executory after such withdrawal and for any period after the termination date.

ITEM 4. Amend subparagraph **5.33(10)“c”(3)** as follows:

(3) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in ~~5.33(9)“d”(1)“2.”~~ 5.33(10)“d”(1)“2.”

INSURANCE DIVISION[191](cont'd)

ITEM 5. Amend numbered paragraph **5.33(10)“d”(2)“2”** as follows:

2. Provide for:

- The return of any amount withdrawn in excess of the actual amounts required to comply with ~~5.33(9)“d”(1)“5,”~~ 5.33(10)“d”(1)“5,” first three ~~unnumbered~~ bulleted paragraphs, or in the case of ~~5.33(9)“d”(1)“5,”~~ last ~~unnumbered~~ 5.33(10)“d”(1)“5,” fourth bulleted paragraph, any amounts that are subsequently determined not to be due; and
- Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to ~~5.33(9)“d”(1)“5,”~~ 5.33(10)“d”(1)“5,” third ~~unnumbered~~ bulleted paragraph.

ITEM 6. Amend numbered paragraph **5.33(10)“d”(2)“3”** as follows:

3. Permit the award by any arbitration panel or court of competent jurisdiction of:

- Interest at a rate different from that provided in ~~5.33(9)“d”(2)“2”~~ 5.33(10)“d”(2)“2”;
- Court of arbitration costs;
- Attorney's fees;
- Any other reasonable expenses.

ITEM 7. Amend subparagraph **5.33(10)“d”(5)** as follows:

(5) The failure of any trust agreement to specifically identify the beneficiary as defined in ~~subparagraph 5.33(9)“a”(1)~~ paragraph 5.33(10)“a” shall not be construed to affect any actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

ITEM 8. Amend paragraph **5.33(11)“a”** as follows:

a. The letter of credit must be clean, irrevocable and unconditional and issued or confirmed by a qualified United States financial institution. The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in subparagraph ~~5.33(10)“i”(1)~~ 5.33(11)“i”(1). As used in this paragraph, “beneficiary” means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

ITEM 9. Amend numbered paragraph **5.33(11)“i”(1)“3”** as follows:

3. All of the provisions required by paragraph ~~5.33(10)“i”~~ 5.33(11)“i” should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

ITEM 10. Amend numbered paragraphs **5.33(11)“i”(2)“1”** and **“2”** as follows:

1. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to ~~5.33(10)“i”(1)“2,”~~ 5.33(11)“i”(1)“2,” third ~~unnumbered~~ bulleted paragraph.

2. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, in the event ~~5.33(10)“i”(1)“3,”~~ 5.33(11)“i”(1)“2,” fourth ~~unnumbered~~ bulleted paragraph, is applicable, any amounts that are subsequently determined not to be due.

ITEM 11. Amend subparagraph **5.33(11)“i”(3)** as follows:

(3) When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of ~~5.33(10)“i”(1)“2,”~~ 5.33(11)“i”(1)“2,” require that the parties enter into a “Trust Agreement” which may be incorporated into the reinsurance agreement or be a separate document.

[Filed 12/18/13, effective 2/12/14]

[Published 1/8/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/14.

ARC 1271C

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code section 73A.21, the Labor Commissioner hereby adopts a new Chapter 156, "Bidder Preferences in Government Contracting," Iowa Administrative Code.

This amendment adopts new rules concerning preferences for resident bidders on government construction projects. The new chapter sets forth requirements for a public body involved in a public improvement and sets forth enforcement procedures.

Notice of Intended Action was published in the October 30, 2013, Iowa Administrative Bulletin as **ARC 1160C**. Public comments regarding the proposed rules were received. Commenters stated that some of the rules could be misinterpreted and that some of the rules were beyond the statutory authority of Iowa Code section 73A.21. Commenters expressed ideas on how to make the bidding process more efficient. Commenters also questioned the constitutionality of Iowa Code section 73A.21. One commenter suggested adding compliance with Iowa Code chapter 91C as a basis to find that a company is authorized to transact business in Iowa.

These rules are not identical to those published under Notice of Intended Action. Some changes are technical; other more substantive changes are described below.

References to "domicile" were removed from several rules.

Subrule 156.2(1) was changed to clarify that the requirements apply only to a project to be awarded to the lowest responsible bidder; to clarify that only office addresses, not construction worksites, must be reported; to remove a reference to perjury; and to change the deadline for submitting a statement to the public body.

Paragraph 156.2(2)"b" was changed by deleting the phrase "under this Act."

Subrule 156.2(3) was changed by adding new paragraph "k" concerning construction contractor registration, and by clarifying that compliance with only one of the lettered paragraphs in the subrule is necessary.

Paragraph 156.2(4)"b" was changed by adding the phrase "if applicable."

In rule 875—156.3(73A), the term "public body" replaced the term "nonresident bidder."

A new rule 875—156.9(73A) containing a severability clause was added.

The principal reason for adoption of this amendment is to implement legislative intent. No variance procedures are included in these rules because variance provisions are set forth in 875—Chapter 1.

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

These rules are intended to implement Iowa Code section 73A.21.

These rules shall become effective on February 12, 2014.

The following amendment is adopted.

Adopt the following **new** 875—Chapter 156:

CHAPTER 156

BIDDER PREFERENCES IN GOVERNMENT CONTRACTING

875—156.1(73A) Purpose, scope and definitions. These rules institute administrative and operational procedures for enforcement of the Act. The definitions and interpretations contained in Iowa Code section 73A.21 shall be applicable to such terms when used in this chapter.

"Act" means Iowa Code section 73A.21.

"Affiliate," when used with respect to any specified person or entity, means another person or entity that, either directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control or ownership with, such specified person or entity.

"Commissioner" means the labor commissioner appointed pursuant to Iowa Code section 91.2, or the labor commissioner's designee.

"Division" means the division of labor of the department of workforce development.

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“*Nonresident bidder*” means a person or entity that does not meet the definition of a resident bidder, including any affiliate of any person or entity that is a nonresident bidder.

“*Parent*,” when used with respect to any specified person or entity, means an affiliate controlling such specified person or entity directly or indirectly through one or more intermediaries.

“*Public body*” means the state and any of its political subdivisions, including a school district, public utility, or the state board of regents.

“*Public improvement*” means a building or other construction work to be paid for in whole or in part by the use of funds of the state, its agencies, and any of its political subdivisions and includes road construction, reconstruction, and maintenance projects.

“*Public utility*” includes municipally owned utilities and municipally owned waterworks.

“*Resident bidder*” means a person or entity authorized to transact business in this state and having a place of business for transacting business within the state at which it is conducting and has conducted business for at least three years prior to the date of the first advertisement for the public improvement. If another state or foreign country has a more stringent definition of a resident bidder, the more stringent definition is applicable as to bidders from that state or foreign country.

“*Resident labor force preference*” means a requirement in which all or a portion of a labor force working on a public improvement is a resident of a particular state or country.

“*Subsidiary*,” when used with respect to any specified person or entity, is an affiliate controlled by such specified person or entity directly or indirectly through one or more intermediaries.

875—156.2(73A) Reporting of resident status of bidders.

156.2(1) *Reporting to public body.* When a contract for a public improvement is to be awarded to the lowest responsible bidder, the public body shall request a statement from each bidder regarding the bidder’s resident status. The statement shall be on the form designated by the commissioner. The statement shall require the bidder to certify whether the bidder is a resident bidder or a nonresident bidder. In the case of a resident bidder, the statement shall require the resident bidder to identify each office at which the resident bidder has conducted business in the state during the previous three years and the dates on which the resident bidder conducted business at each office. In the case of a nonresident bidder, the statement shall require the nonresident bidder to identify the nonresident bidder’s home state or foreign country as reported to the Iowa secretary of state, to identify each preference offered by the nonresident bidder’s home state or foreign country, and to certify that, except as set forth on the form, there are no other preferences offered by the nonresident bidder’s home state or foreign country. The statement shall include such additional information as requested by the commissioner. The statement must be signed by an authorized representative of the bidder. A fully completed statement shall be deemed to be incorporated by reference into all project bid specifications and contract documents with any bidder on a public improvement. Failure to provide the statement with the bid may result in the bid being deemed nonresponsive. This may result in the bid being rejected by the public body.

156.2(2) *Determining residency status.*

a. For purposes of the Act, a person or entity is a resident bidder if the person or entity:

(1) Is authorized to transact business in Iowa; and

(2) Has had one or more places of business in Iowa at which it is conducting or has conducted business in this state for at least three years immediately prior to the date of the first advertisement for the public improvement.

b. If the person or entity is a resident of a state or foreign country that has a more stringent definition than is set forth in paragraph 156.2(2)“*a*” for determining whether a person or entity in that state or country is a resident bidder, then the more stringent definition applies.

156.2(3) *Determining authorization to transact business.* A person or entity is authorized to transact business in the state if one or more of the following accurately describes the person or entity:

a. In the case of a sole proprietorship, the sole proprietor is an Iowa resident for Iowa income tax purposes;

b. In the case of a general partnership or joint venture, more than 50 percent of the general partners or joint venture parties are residents of Iowa for Iowa income tax purposes;

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- c. In the case of a limited liability partnership which has filed a statement of qualification in this state, the statement has not been canceled;
- d. In the case of a limited liability partnership whose statement of qualification is filed in a state other than Iowa, the limited liability partnership has filed a statement of foreign qualification in Iowa and a statement of cancellation has not been filed pursuant to Iowa Code section 486A.105(4);
- e. In the case of a limited partnership or limited liability limited partnership whose certificate of limited partnership is filed in this state, the limited partnership or limited liability limited partnership has not filed a statement of termination;
- f. In the case of a limited partnership or a limited liability limited partnership whose certificate of limited partnership is filed in a state other than Iowa, the limited partnership or limited liability limited partnership has received notification from the Iowa secretary of state that the application for certificate of authority has been approved and no notice of cancellation has been filed by the limited partnership or the limited liability limited partnership;
- g. In the case of a limited liability company whose certificate of organization is filed in this state, the limited liability company has not filed a statement of termination;
- h. In the case of a limited liability company whose certificate of organization is filed in a state other than Iowa, the limited liability company has received a certificate of authority to transact business in this state and the certificate has not been revoked or canceled;
- i. In the case of a corporation whose articles of incorporation are filed in this state, the corporation (1) has paid all fees required by Iowa Code chapter 490, (2) has filed its most recent biennial report, and (3) has not filed articles of dissolution;
- j. In the case of a corporation whose articles of incorporation are filed in a state other than Iowa, the corporation (1) has received a certificate of authority from the Iowa secretary of state, (2) has filed its most recent biennial report with the secretary of state, and (3) has neither received a certificate of withdrawal from the secretary of state nor had its authority revoked; or
- k. The person or entity is registered with the Iowa division of labor as a construction contractor pursuant to Iowa Code chapter 91C.

156.2(4) *Determining if bidder has conducted business in state.* In order to determine if a bidder has a place of business for transacting business within Iowa at which it is conducting and has conducted business for at least three years prior to the date of the first advertisement of the public improvement, the bidder shall meet the following criteria for the three-year period prior to the first advertisement for the public improvement:

- a. Continuously maintained a place of business for transacting business in Iowa that is suitable for more than receiving mail, telephone calls, and e-mails; and
- b. Conducted business in the state for each of those three years and filed an Iowa income tax return, if applicable, made payments to the Iowa unemployment insurance fund, if applicable, and maintained an Iowa workers' compensation policy, if applicable, in effect for each of those three years.

875—156.3(73A) Application of preference. When awarding a contract for a public improvement to the lowest responsible bidder, the public body shall allow a preference to a resident bidder as against a nonresident bidder that is equal to any preference given or required by the home state or foreign country in which the nonresident bidder is a resident without regard to whether such preferences are actually enforced by the applicable regulatory body in each state. If the bidder is a subsidiary of a parent that would be a nonresident bidder if such parent were to bid on the public improvement in its own name, then the public body shall allow a preference as against such bidder that is equal to the preference given or required by the home state or foreign country of the bidder's parent. In the instance of a labor force preference, a public body shall apply the same resident labor force preference to a public improvement in this state as would be required in the construction of a public improvement by the home state or foreign country of the nonresident bidder, or the parent of a resident bidder if the parent would qualify as a nonresident bidder if such parent were to bid on the public improvement in its own name.

A preference shall not be applied to a subcontractor unless the home state or foreign country of the nonresident bidder to whom the contract was awarded would apply a preference to the subcontractor.

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Specific methods of calculating and applying a preference shall mirror those that apply in the home state or foreign country of the nonresident bidder to whom the contract was awarded. In the event that the specific method used by the nonresident bidder's home state or foreign country cannot be determined, the calculation for a labor force preference shall include only the labor force working on the public improvement in Iowa on a regular basis calculated by pay period.

875—156.4(73A) Complaints regarding alleged violations of the Act.

156.4(1) *Complaints.* Any person with information regarding a violation of the Act may submit a written complaint to the commissioner. Any complaint must provide the information required pursuant to subrule 156.4(2) or as much of such information as is reasonably practicable under the circumstances. The completed written complaint form shall be submitted to the commissioner at Labor Services Division, 1000 East Grand Avenue, Des Moines, Iowa 50319.

156.4(2) *Written complaint form.* The commissioner shall prepare a written complaint form that a person with information regarding a potential violation of the Act may submit pursuant to subrule 156.4(1). The written complaint form shall request the following information: the name, address, telephone number, and e-mail address of the complainant; the name of the bidder that is believed to have violated the Act; a description of any relationships between the complainant and the bidder; an identification of the public body to which the bidder submitted a bid; the home state or foreign country of the bidder; a description of the goods and services provided under the bid; and such additional information as requested by the commissioner.

156.4(3) *Availability of written complaint form.* The written complaint form shall be available in all division offices and on the department of workforce development's Internet Web site.

875—156.5(73A) Nonresident bidder record-keeping requirements. While participating in a public improvement, a nonresident bidder from a home state or foreign country with a resident labor force preference shall make and keep, for a period of not less than three years, accurate records of all workers employed by the contractor or subcontractor on the public improvement. The records shall include each worker's name, address, telephone number if available, social security number, trade classification, and starting and ending date of employment.

875—156.6(73A) Investigations; determination of civil penalty. The commissioner or an authorized designee shall cause an investigation to be made into charges of violations of the Act, including allegations set forth in a written complaint.

156.6(1) *Investigative powers.* The commissioner or the authorized designee shall have the following powers:

a. Hearings. The commissioner may hold hearings and investigate charges of violations of the Act.

b. Entry into place of employment. The commissioner may, consistent with due process of law, enter any place of employment to inspect records concerning labor force residency, to question an employer or employee, and to investigate those facts, conditions, or matters as are deemed appropriate in determining whether any person has violated the provisions of the Act. The commissioner shall only make an entry into a place of employment in response to a written complaint.

c. Residency of workers. The commissioner may investigate and ascertain the residency of a worker engaged in any public improvement in this state.

d. Oaths; depositions; subpoenas. The commissioner may administer oaths, take or cause to be taken deposition of witnesses, and require by subpoena the attendance and testimony of witnesses and the production of all books, registers, payrolls, and other evidence relevant to a matter under investigation or hearing.

e. Employment of personnel. The commissioner may employ qualified personnel as are necessary for the enforcement of Iowa Code section 73A.21. The personnel shall be employed pursuant to the merit system provisions of Iowa Code chapter 8A, subchapter IV.

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f. Request for records. The commissioner shall require a contractor or subcontractor to file, within 10 days of receipt of a request, any records enumerated in rule 875—156.5(73A). If the contractor or subcontractor fails to provide the requested records within 10 days, the commissioner may direct, within 15 days after the end of the 10-day period, that the fiscal or financial office charged with the custody and disbursement of funds of the public body that contracted for construction of the public improvement or undertook the public improvement, to withhold immediately from payment to the contractor or subcontractor up to 25 percent of the amount to be paid to the contractor or subcontractor under the terms of the contract or written instrument under which the public improvement is being performed. The amount withheld shall be immediately released upon receipt by the public body of a notice from the commissioner indicating that the request for records as required by this paragraph has been satisfied.

156.6(2) Division determination. Upon conclusion of an investigation, the commissioner or an authorized designee shall issue a written determination to the party that was the subject of the investigation. The determination shall indicate whether or not the division finds a violation of the Act by the party. If the determination indicates that the party engaged in a violation of the Act, the determination shall also indicate the remedies the division intends to pursue as a result of the violation.

156.6(3) Informal conference. A party seeking review of the division's determination pursuant to this rule may file a written request for an informal conference. The request must be received by the division within 15 days after the date of issuance of the division's determination. During the conference, the party seeking review may present written or oral information and arguments as to why the division's determination should be amended or vacated. The division shall consider the information and arguments presented and issue a written decision advising all parties of the outcome of the informal conference.

875—156.7(73A) Remedies. Following the conclusion of the informal conference, or following the expiration of the time in which a party may file a written request for an informal conference, the division may pursue the following remedies.

156.7(1) Injunctive relief. If the division determines that a violation of the Act has occurred, the division may sue for injunctive relief against the awarding of a contract, the undertaking of a public improvement, or the continuation of a public improvement.

156.7(2) Civil penalty. Any person or entity that violates the provisions of this chapter is subject to a civil penalty in an amount not to exceed \$1,000 for each violation found in a first investigation by the division, not to exceed \$5,000 for each violation found in a second investigation by the division, and not to exceed \$15,000 for a third or subsequent violation found in any subsequent investigation by the division. Each violation of this chapter for each worker and for each day the violation continues constitutes a separate and distinct violation. In determining the amount of the penalty, the division shall consider the appropriateness of the penalty to the person or entity charged, upon determination of the gravity of the violation(s). The collection of these penalties shall be enforced in a civil action brought by the attorney general on behalf of the division.

875—156.8(73A) Compliance with federal law. If it is determined that application of this chapter and the Act may cause denial of federal funds which would otherwise be available for a public improvement, or would otherwise be inconsistent with requirements of any federal law or regulation, the application of this chapter shall be suspended to the extent necessary to prevent denial of the funds or to eliminate the inconsistency with federal requirements.

875—156.9(73A) Severability. If any rule under this chapter, any portion of a rule under this chapter, or the applicability of any rule under this chapter to any person or circumstance is held invalid by a

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court, the remainder of these rules or the rules' applicability to other persons or circumstances shall not be affected.

These rules are intended to implement Iowa Code section 73A.21.

[Filed 12/16/13, effective 2/12/14]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/14.

ARC 1274C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Mortuary Science hereby amends Chapter 100, "Practice of Funeral Directors, Funeral Establishments, and Cremation Establishments," and Chapter 101, "Licensure of Funeral Directors, Funeral Establishments, and Cremation Establishments," Iowa Administrative Code.

These amendments define an embalming record; require funeral directors to complete embalming records when applicable; identify funeral records that are to be created and maintained by the funeral director and funeral establishment of the licensed activity associated with a decedent; add a new subrule on intern training requirements and the number of procedures to be completed during an internship; require the preceptor to familiarize the intern with all aspects of funeral directing; provide for the loss of preceptor status upon failure to comply with Board rules; and clarify the endorsement process. All other changes are technical in nature.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 30, 2013, as **ARC 1163C**. A public hearing was held November 19, 2013, from 8 to 8:30 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building, Des Moines, Iowa. Public comment was received on the proposed amendments.

Since publication of the Notice, the following changes have been made as a result of comments received:

In Item 6, subparagraphs 101.5(2)"f"(2) and (4) have been revised to read as follows:

"(2) Be physically present and supervise the first five embalming cases, first five funeral arrangements, and first five funeral or memorial services;"

"(4) Read, add appropriate comments, and sign each of the 25 embalming reports and the 25 funeral directing reports completed by the intern;"

These amendments were adopted by the Board of Mortuary Science on December 12, 2013.

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

These amendments are intended to implement Iowa Code chapters 21, 147, 144C, 156 and 272C.

These amendments will become effective on February 12, 2014.

The following amendments are adopted.

ITEM 1. Adopt the following new definition of "Embalming record" in rule **645—100.1(156)**:

"*Embalming record*" means a record completed by the licensed funeral director or registered intern for each body embalmed in Iowa, or otherwise prepared for disposition by the licensee. "Embalming record" includes, at a minimum, a case analysis and a detailed listing of the procedures or treatments or both performed on the deceased.

ITEM 2. Amend paragraphs **100.2(1)"b"** and **"f"** as follows:

b. Embalming deceased human beings as specified in rule 645—100.6(156): and completing embalming records as specified in paragraph 100.11(2)"d."

f. Signing death certificates and performing associated duties under Iowa Code chapter 144.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 3. Amend subrule 100.2(2) as follows:

100.2(2) Registered interns. Registered interns may provide funeral director services identified in subrule 100.2(1), paragraphs “a” through “e *f*,” under the direct supervision of an Iowa-licensed preceptor. ~~Registered~~ However, registered interns shall not sign death certificates.

ITEM 4. Adopt the following new rule 645—100.11(156):

645—100.11(156) Records to be retained by a funeral establishment. To ensure a permanent record of the licensed activity relating to the custody of each decedent, each funeral director shall create and the funeral establishment shall maintain the records identified in this rule. Funeral directors and funeral establishments shall comply with the rules adopted by the department of public health under Iowa Code section 144.49.

100.11(1) At a minimum, the following information, if applicable, relating to each human remains which enters the custody of the establishment/licensee shall be maintained as the permanent record of licensed activity:

- a. Name of the deceased;
- b. Date, time, and place of death (institution or other place, city, state, zip);
- c. Name and address of the person or funeral establishment to whom the dead body or fetus is released;
- d. Date and from whom the funeral director assumed custody, including the name of the institution or other place of death releasing the dead human body or fetus;
- e. Date, time, and name of the licensed funeral director or registered intern completing embalming or other preparation for final disposition;
- f. Date, place and method of final disposition of the dead body or fetus.

100.11(2) Each funeral establishment shall create and maintain the following records for a period of ten years:

- a. General price list required by the funeral rule, beginning on the most recent effective date;
- b. Each completed statement of goods and services required by the funeral rule, beginning on the date the statement is signed;
- c. Cremation records (see 645—100.10(156));
- d. Embalming records;
- e. Each preneed contract (pursuant to Iowa Code chapter 523A), beginning on the date of death.

100.11(3) The funeral records maintained by the funeral establishment as required in 100.11(1) and 100.11(2) shall be made available by the manager, funeral director or owner of the funeral establishment to:

- a. Any person or entity assuming a new ownership interest or any person newly assuming the position of manager, at least ten days prior to a change in ownership or manager, unless otherwise mutually agreed upon by the parties;
- b. Any licensed funeral director who practiced funeral directing while under the employment of, or while acting as an agent of, the funeral establishment; and
- c. The state registrar of vital statistics and the board.

100.11(4) In the event a funeral establishment ceases to do business, the owner or manager of the funeral establishment shall identify the person or entity which will be responsible for records to be maintained by a funeral establishment as required in 100.11(1) and 100.11(2). The funeral establishment shall notify the board if funeral records are moved from the funeral establishment to another location and identify the person responsible for their safekeeping.

ITEM 5. Amend paragraph **101.5(1)“f”** as follows:

f. The intern shall, during the internship, complete the requirements outlined in 101.5(3), including to embalm not fewer than 25 human remains and direct or assist in the direction of not fewer than 25 funerals under the direct supervision of the certified preceptor and shall to submit reports on forms furnished by the department of public health. Work on the first 5 embalming cases and funeral cases, first 5 funeral arrangements, and first 5 funeral or memorial services must be completed in the

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physical presence of the preceptor. The first 12 embalming cases and the first 12 funeral case reports must be completed and submitted by the completion of the sixth month of the internship.

ITEM 6. Amend paragraph **101.5(2)“f”** as follows:

f. A preceptor's duties shall include the following:

(1) Ensure the intern completes the training program outlined in 101.5(3);

~~(1) (2)~~ Be physically present and supervise the first five ~~embalming~~ embalming cases, and first five funeral ~~eases~~ arrangements, and first five funeral or memorial services;

~~(2) (3)~~ Familiarize the intern in the areas specified by the preceptor training outline;

~~(3) (4)~~ Read, add appropriate comments, and sign each of the 25 embalming reports and the 25 funeral directing reports completed by the intern;

~~(4) (5)~~ Complete a written six-month report of the intern on a form provided by the board. This report is to be reviewed with and signed by the intern and submitted to the board before the end of the seventh month; and

~~(5) (6)~~ At the end of the internship, complete a confidential evaluation of the intern on a form provided by the board. This evaluation shall be submitted within two weeks of the end of the internship.

ITEM 7. Amend paragraph **101.5(2)“g”** as follows:

g. Failure of a preceptor to fulfill the requirements set forth by the board, including failure to remit the required six-month progress report, as well as the final evaluation, shall result in an investigation of the preceptor by the board and may result in actions which may include, but not be limited to, the loss of preceptor status for current and future interns or discipline or both.

ITEM 8. Adopt the following new subrule 101.5(3):

101.5(3) Intern training requirements.

a. The board-approved preceptor shall ensure that the intern is knowledgeable of each of the following items during the internship:

(1) The requirements of the Federal Trade Commission.

(2) The requirements of the Occupational Safety and Health Act.

(3) The requirements of the Americans With Disabilities Act.

(4) The benefits of the Social Security and Veterans Health Administrations.

(5) The requirements of Iowa funeral law and forms (for example, preneed in Iowa Code chapter 523A, death certificates and Iowa burial transit permits in Iowa Code chapter 144, authorized person in Iowa Code chapter 144C and the board's laws and rules).

b. The board-approved preceptor shall ensure that the intern performs each of the following under the preceptor's direct supervision:

(1) Assists with or performs a minimum of 10 transfers of human remains.

(2) Performs 25 embalming of human remains to include:

1. Obtaining permission to embalm.

2. Placement of human remains on preparation table.

3. Pre-embalming analysis.

4. Primary disinfection.

5. Setting features.

6. Selection of injection/drainage sites and raising those vessels.

7. Selection and mixing of embalming chemicals and operation of the embalming machine.

8. Injection and drainage methods.

9. Cavity treatment.

10. Suturing techniques.

(3) Prepares a minimum of 10 human remains for viewing to include:

1. Dressing.

2. Cosmetizing.

3. Casketing.

(4) Assists with cremation procedures to include:

1. Contacting medical examiner.

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2. Completing required cremation forms.
3. Preparing remains for cremation.
- (5) Makes complete funeral arrangements with a minimum of 10 families to include each of the following, as applicable:
 1. Presentation of funeral goods, products and services.
 2. Presentation of payment options for families.
 3. Contacting third-party suppliers of goods and services, such as clergy, cemetery personnel, outer burial container provider, crematory, florist, and musicians.
 4. Completing the obituary.
 5. Presentation of general price list and associated price lists.
 6. Preparation and presentation of statement of funeral goods and services.
- (6) Coordinates, at a minimum, 10 visitations to include:
 1. Preparing the chapel, visitation room or other facility.
 2. Setting up floral arrangements.
 3. Setting up register book and memorial folders or prayer cards.
- (7) Directs a minimum of 25 funerals or memorial services to include, as applicable:
 1. Greeting funeral attendees.
 2. Assisting casket bearers.
 3. Preparing for funeral procession.
 4. Driving a vehicle in procession.
 5. Assisting at graveside committal.
 6. Transporting flowers.
 7. Coordinating with officiant and family.

ITEM 9. Amend rule 645—101.8(156) as follows:

645—101.8(156) Licensure by endorsement. An applicant who has been a licensed funeral director under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office. Applicants licensed before 1980 are exempt from showing a passing grade on the national board examination. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

101.8(1) Submits to the board a completed application;

101.8(2) Pays the licensure fee;

101.8(3) Shows evidence of licensure requirements that are similar to those required in Iowa;

101.8(4) Provides official copies of the academic transcripts showing the completion of a mortuary science program accredited by the American Board of Funeral Service Education;

101.8(5) Provides official transcript of grades showing 60 semester hours from a regionally accredited college or university with a minimum of a 2.0 or “C” grade point average;

101.8(6) Completes a college course of at least one semester hour or equivalent in current Iowa law and rules covering mortuary science content areas, including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed;

101.8(7) Furnishes certified evidence of:

a. ~~two~~ Two or more years of actual practice as a licensed funeral director in the state from which the applicant desires to endorse; or

b. Having met requirements substantially equivalent to those in 101.5(1) “g” and 101.5(3).

101.8(8) Was issued the initial license by endorsement within six months of the birth month and will not be required to renew the license until the fifteenth day of the birth month two years later. The new licensee is exempt from meeting the continuing education requirement for the continuing education biennium in which the license was originally issued;

101.8(9) No change.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

101.8(10) Satisfies the provisions of 101.18(3), if the applicant is not actively licensed in another jurisdiction.

[Filed 12/16/13, effective 2/12/14]

[Published 1/8/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/14.

ARC 1275C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Mortuary Science hereby amends Chapter 100, "Practice of Funeral Directors, Funeral Establishments, and Cremation Establishments," and Chapter 101, "Licensure of Funeral Directors, Funeral Establishments, and Cremation Establishments," Iowa Administrative Code.

These amendments remove duplicative language that already exists in Iowa Code section 144C.5 that gives a more defined progression of who has the right to control the disposition of a decedent's remains. In addition, this rule making amends the requirement to send a renewal notice to funeral directors and funeral establishments to be consistent with legislative changes to Iowa Code section 147.10.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 30, 2013, as **ARC 1164C**. A public hearing was held on November 19, 2013, from 8:30 to 9 a.m. in Room 513, Lucas State Office Building, Des Moines, Iowa. No public comment was received on the proposed amendments. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Board of Mortuary Science on December 12, 2013.

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

These amendments are intended to implement Iowa Code chapters 21, 147, 144C, 156 and 272C.

These amendments will become effective on February 12, 2014.

The following amendments are adopted.

ITEM 1. Amend subrule 100.10(3) as follows:

100.10(3) *Authorizing person and preneed cremation arrangements.* The authorized person has legal authority and may make decisions regarding the final disposition of the decedent. ~~If the decedent in the decedent's lifetime requested that the decedent's body be cremated by signing a cremation authorization, the authorized person at the time of death may revoke the cremation authorization to cancel the cremation.~~

ITEM 2. Amend subrule 101.10(1) as follows:

101.10(1) The biennial license renewal period for a license to practice as a funeral director shall begin on the sixteenth day of the licensee's birth month and end on the fifteenth day of the licensee's birth month two years later. ~~The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to expiration of the license.~~ The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice from the board does not relieve the licensee of the responsibility for renewing the license. All licensees shall renew on a biennial basis.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 3. Amend subrule 101.13(2) as follows:

101.13(2) ~~A renewal of license application shall be mailed at least 60 days prior to the expiration of the license.~~ Failure to receive the notice from the board shall not relieve the license holder of the obligation to pay triennial renewal fees on or before the renewal date.

[Filed 12/16/13, effective 2/12/14]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/14.

ARC 1260C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Iowa Department of Transportation, on December 10, 2013, adopted new Chapter 144, "Automated Traffic Enforcement on the Primary Road System," Iowa Administrative Code.

Notice of Intended Action for these rules was published in the October 2, 2013, Iowa Administrative Bulletin as **ARC 1037C**.

This new chapter establishes the requirements, procedures, and responsibilities in the use of automated traffic enforcement systems, for fixed and mobile automated enforcement, on the primary road system and will ensure consistency statewide in the use of these systems.

The Department held a public hearing on October 30, 2013, where 13 people shared their comments. The Department also received 164 written comments during the public comment period that ended on October 31, 2013. Most of the comments received did not address any specific issues related to the proposed rules; rather, they either favored or opposed existing camera systems or addressed topics that were beyond the Department's authority. Based on the comments received, the following changes to the Notice of Intended Action were made:

1. Subparagraph 144.6(1)"b"(10) was added to paragraph 144.6(1)"b" to prevent automated traffic enforcement systems from being placed within the first 1,000 feet of a lower speed limit. This change provides drivers a reasonable distance to adjust their speed to a lower speed limit before encountering an automated speed camera.
2. Paragraph 144.6(1)"c" stating that mobile automated traffic enforcement systems in a vehicle shall be owned and operated by a law enforcement agency, be marked with official decals and have an "official" license plate affixed to the vehicle was moved to new paragraph 144.6(3)"b" since it better fits under the subrule concerning enforcement.

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, it has been determined that a positive impact on private sector jobs is possible but not able to be determined, as it is not known how many jurisdictions may apply for automated traffic enforcement systems or how many will decide to have the reports completed by consultants. The impact on private sector jobs will be minimal.

These rules are intended to implement Iowa Code chapter 318 and sections 306.4, 307.12, 321.348 and 321.366.

These rules will become effective February 12, 2014.

The following rules are adopted.

Adopt the following **new** 761—Chapter 144:

CHAPTER 144

AUTOMATED TRAFFIC ENFORCEMENT ON THE PRIMARY ROAD SYSTEM

TRANSPORTATION DEPARTMENT[761](cont'd)

761—144.1(307) Purpose. The purpose of this chapter is to establish requirements, procedures, and responsibilities in the use of automated traffic enforcement systems on the primary road system. This chapter ensures consistency statewide in the use of automated traffic enforcement systems on the primary road system and pertains to fixed and mobile automated enforcement.

761—144.2(307) Contact information. Information relating to this chapter may be obtained from the Office of Traffic and Safety, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

761—144.3(307) Definitions. As used in this chapter:

“*Automated enforcement*” means the use of automated traffic enforcement systems for enforcement of laws regulating vehicular traffic.

“*Automated traffic enforcement system*” means a system that operates in conjunction with an official traffic-control signal, as described in Iowa Code section 321.257, or a speed measuring device to produce recorded images of vehicles being operated in violation of traffic or speed laws.

“*High-crash location*” means a location where data indicates a greater frequency or higher rate of crashes when compared with other similar locations within the local jurisdiction, other like jurisdictions, or larger metropolitan area.

“*High-risk location*” means a location where the safety of citizens or law enforcement officers would be at higher risk through conventional enforcement methods.

“*Interstate roads*” means the same as defined in Iowa Code section 306.3.

“*Local jurisdiction*” means a city or county.

“*Primary road system*” means the same as defined in Iowa Code section 306.3.

761—144.4(307) Overview.

144.4(1) General.

a. Automated enforcement shall only be considered after other engineering and enforcement solutions have been explored and implemented.

b. An automated traffic enforcement system should not be used as a long-term solution for speeding or red-light running.

c. Automated enforcement should only be considered in extremely limited situations on interstate roads because they are the safest class of any roadway in the state and they typically carry a significant amount of non-familiar motorists.

d. Automated enforcement shall only be considered in areas with a documented high-crash or high-risk location in any of the following:

(1) An area or intersection with a significant history of crashes which can be attributed to red-light running or speeding.

(2) A school zone.

144.4(2) Applicability.

a. These rules apply only to local jurisdictions using or planning to use automated enforcement on the primary road system.

b. The department does not have the authority to own or operate any automated traffic enforcement system.

c. The department shall not receive any financial payment from any automated traffic enforcement system owned or operated by a local jurisdiction.

144.4(3) Department approval. A local jurisdiction must obtain approval from the department prior to using an automated traffic enforcement system on the primary road system.

761—144.5(307) Automated traffic enforcement system request.

144.5(1) Justification report. A local jurisdiction requesting to use an automated traffic enforcement system on the primary road system shall provide the department a justification report. A licensed, professional engineer knowledgeable in traffic safety shall sign the justification report.

TRANSPORTATION DEPARTMENT[761](cont'd)

a. The justification report shall provide all necessary information and documentation to clearly define the area, provide evidence documenting why the area is a high-crash or high-risk location, and describe the process used to justify the automated traffic enforcement request.

b. At a minimum, the justification report shall:

(1) Document existing traffic speeds, posted speed limits, traffic volumes, and intersection or roadway geometry. Provide assurance that existing speed limits and traffic signal timings are appropriate and describe how they were established.

(2) Document applicable crash history, the primary crash types, crash causes, crash severity, and traffic violations. Only crashes attributable to speeding or the running of a red light shall be included in this report. Compare crash data with other similar locations within the local jurisdiction, other like jurisdictions, or larger metropolitan area.

(3) Identify the critical traffic safety issue(s) from the data in subparagraphs 144.5(1)“*b*”(1) and (2) above and provide a comprehensive list of countermeasures that may address the critical traffic safety issue(s).

(4) Document solutions or safety countermeasures that have been implemented along with those that have been considered but not implemented. These may include law enforcement, engineering, public education campaigns, and other safety countermeasures.

(5) Document discussions held and actions taken with partnering agencies that have resources which could aid in the reduction of crashes attributable to speeding or the running of a red light.

(6) Document why the local jurisdiction believes automated enforcement is the best solution to address the critical traffic safety issue(s).

c. If the request is for a mobile automated enforcement system, the justification report shall also:

(1) Include a description of the mobile unit.

(2) Include the proposed duration of use at each location and indicate where the unit will be physically placed relative to the curb, shoulder, median, etc.

144.5(2) Request to department. The local jurisdiction shall submit a request and a justification report to the appropriate district engineer.

144.5(3) Department review. Within 90 days of receipt of the request and a complete justification report, the department will either approve or deny specific automated enforcement locations. The department may need additional response time if collection of data is needed, such as conducting a speed study. Incomplete justification reports will be returned to the local jurisdiction. The department will review the request and justification report, evaluate the process used, and determine if the proposed automated traffic enforcement system is needed and warranted. If approval to proceed is granted to the local jurisdiction, the department shall prepare an agreement which will be signed by the department and the local jurisdiction.

144.5(4) Public notice. Once the department receives a request and a complete justification report from a local jurisdiction, the department may notify the public and include information on the department's Web site.

761—144.6(306,307,318,321) Minimum requirements for automated traffic enforcement systems. The following minimum requirements must be met for each automated traffic enforcement system.

144.6(1) Safe environment for motorists.

a. Any fixed or mobile automated traffic enforcement system must not create a potentially unsafe environment for motorists.

b. The system shall:

(1) Be installed and maintained in a safe manner.

(2) Be located where it does not impede, oppose or interfere with free passage along the primary highway right-of-way.

(3) Be located where it does not create a visual obstruction to passing motorists.

(4) Not be placed or parked on any shoulder or median of any interstate highway.

TRANSPORTATION DEPARTMENT[761](cont'd)

- (5) Not be placed or parked within 15 feet of the outside traffic lane of any interstate highway, unless shielded by a crashworthy barrier.
- (6) Not be placed or parked on the outside shoulder of any other primary highway for longer than 48 hours unless shielded by a crashworthy barrier.
- (7) Not be placed or parked within 2 feet of the back of the curb of a municipal extension of any primary road.
- (8) Be placed in a manner to avoid creating traffic backups or delays.
- (9) Not be placed nor operational within the defined limits of any construction or maintenance work zone.
- (10) Not be placed within the first 1,000 feet of a lower speed limit.

144.6(2) Signage.

- a. Permanent signs may be posted on primary access roads entering local jurisdictions that use automated enforcement technology.
- b. For all fixed automated traffic enforcement systems, permanent signs shall be posted in advance of the locations where enforcement systems are in use to advise drivers that cameras are in place.
- c. For mobile automated traffic enforcement systems, temporary or permanent signs advising that speed is monitored by automated traffic technology shall be posted in advance of the enforcement area as agreed to by the department and the local jurisdiction.
- d. All signing shall be in accordance with the “Manual on Uniform Traffic Control Devices,” as adopted in 761—Chapter 130.

144.6(3) Enforcement.

- a. If used, automated enforcement technology shall be used in conjunction with conventional law enforcement methods, not as a replacement for law enforcement officer contact.
- b. Mobile automated traffic enforcement systems in a vehicle shall be owned and operated by a law enforcement agency, be marked with official decals, and have an “official” license plate affixed to the vehicle.

144.6(4) Calibration. Automated traffic enforcement systems require periodic calibration to ensure accuracy and reliability. Calibration shall be conducted by a local law enforcement officer, trained in the use and calibration of the system, at least quarterly for fixed systems and prior to being used at any new location for mobile systems.

761—144.7(307) Evaluation and reporting.

144.7(1) Annual evaluation. Annually, each local jurisdiction with active automated enforcement on Iowa’s primary highway system shall evaluate the effectiveness of its use.

- a. At a minimum, the evaluation shall:
 - (1) Address the impact of automated enforcement technology on reducing speeds or the number of red-light running violations for those sites being monitored.
 - (2) Identify the number and type of collisions at the sites being monitored, listing comparison data for before-and-after years. If the system includes intersection enforcement, only the monitored approaches should be included in the evaluation.
 - (3) Evaluate and document the automated traffic enforcement system’s impact on addressing the critical traffic safety issue(s) listed in the justification report if a justification report was part of the system’s initial approval process.
 - (4) Provide the total number of citations issued for each calendar year the system has been in operation.
 - (5) Certify that the calibration requirements of subrule 144.6(4) have been met.
- b. Reserved.

144.7(2) Reporting requirements. The annual evaluation shall be reported to the department’s office of traffic and safety at the address listed in rule 761—144.2(307) by May 1 each year following a full calendar year of operation and shall be based on performance for the previous year.

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761—144.8(307) Continued use of automated traffic enforcement system.

144.8(1) *Reevaluation.* The department will utilize information collected from the annual evaluation reports from local jurisdictions to assist in evaluating the continued need for such systems at each location. Continued use will be contingent on the effectiveness of the system, appropriate administration of it by the local jurisdiction, the continued compliance with these rules, changes in traffic patterns, infrastructure improvements, and implementation of other identified safety countermeasures.

144.8(2) *Reserve the right.* The department reserves the right to require removal or modification of a system in a particular location, as deemed appropriate.

761—144.9(307) Appeal process. A local jurisdiction may appeal a decision made by the department as part of this chapter by submitting a written explanation of the issue and any supporting information to the director of transportation. Once the director receives the appeal, the director shall have 30 days to respond. The director's decision is final agency action.

These rules are intended to implement Iowa Code chapter 318 and sections 306.4, 307.12, 321.348 and 321.366.

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ARC 1259C

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code section 17A.4 and Iowa Code chapters 476 and 478, the Utilities Board (Board) gives notice that on December 2, 2013, the Board issued an order in Docket No. RMU-2012-0002, In re: Pole Attachments Rule Making [199 IAC Chapter 27] and Amendment to 199 IAC 15.5(2), "Order Adopting Amendments to 199 IAC 25.4." In this Adopted and Filed, the Board is adopting amendments to 199 IAC 25.4 to establish requirements for pole attachments installed by electric utilities, telecommunications carriers, cable system providers, video service providers, data service providers, wireless service providers, and similar persons and entities to poles owned by electric and telecommunications companies. Notice of Intended Action for the proposed amendments was published in IAB Vol. XXXV, No. 25 (6/12/13), p. 1941, as **ARC 0784C**.

In an order issued May 20, 2013, the Board decided not to adopt a new Chapter 27 that would assert jurisdiction over the rates, terms, and conditions of pole attachment agreements and certify that jurisdiction to the Federal Communications Commission (FCC). Instead, the Board gave notice of the proposed amendments to 199 IAC 25.4 that are being adopted herein, with certain revisions, amending the Iowa Electrical Safety Code to address pole attachments. The adopted amendments establish time frames for notice of violations of the Iowa Electrical Safety Code; the time within which to correct violations; penalties; dispute resolution procedures; and possible penalties if violations are not corrected.

In the May 20, 2013, order, the Board determined that adopting amendments to the Iowa Electrical Safety Code should accomplish the Board's objective of ensuring the safety of pole attachments without adding unnecessary regulations. In this determination, the Board no longer proposed to assert jurisdiction over the rates, terms, and conditions for pole attachment agreements and certification to the FCC. The Board stated that the proposed amendments did not require pole attachment agreements to be in writing and did not make any reference to rates, terms, or conditions in a pole attachment agreement. The Board pointed out that pole attachment agreements in Iowa would remain subject to the jurisdiction of the FCC. The Board stated that there appeared to be general consensus that the Board has jurisdiction over the safety of pole attachments.

On July 2, 2013, comments regarding the proposed amendments to 199 IAC 25.4 were filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate); Mediacom

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Communications Corporation (Mediacom); Cox Telecom, LLC (Cox); the Iowa Association of Electric Cooperatives (IAEC); AT&T Corp., Teleport Communications America, LLC, and New Cingular Wireless d/b/a AT&T Mobile (AT&T); and the Iowa Utilities Association (IUA).

On July 12, 2013, the Board conducted an oral presentation at which the Board asked several questions related to the written comments, and participants provided additional comments concerning the proposed amendments. One of the specific issues addressed at the oral presentation was whether there should be changes to the proposed amendments to address service drops and overloading.

After the oral presentation, the Board issued an order establishing a date for additional written comments. In the order, the Board requested that, in addition to any other issues a party wished to address, parties address (1) whether notice is required for service drops and overloading; (2) if notice is proposed, should the rules specify the type of notice; and (3) suggest language that will meet the requirements of the pole occupant for service drops and overloading and continue to ensure the safety of the service drop and overloading. Additional written comments were filed by Qwest Corporation d/b/a CenturyLink QC (CenturyLink), IUA, Mediacom, and AT&T.

A summary of the comments and the revisions to the proposed amendments can be found in the "Order Adopting Amendments to 199 IAC 25.4," which is accessible through the Board's electronic filing system (EFS) at the EFS Web site at <http://efs.iowa.gov>.

There were no comments, written or oral, concerning the proposed amendments in subrule 25.4(1) or in proposed paragraphs 25.4(2)"b," "d," "f," and "h." A nonsubstantive revision has been adopted in paragraph 25.4(2)"g."

A comment was made suggesting that the reference to "excess space" in subrule 25.4(2) be deleted, as it was confusing. The Board decided that the language should remain in the adopted amendment since the term "excess space" was added to clarify where pole attachments were to be installed.

Comments were made suggesting that the term "excess space" be added to the definition of "pole attachment" and that a definition of "service drop" be added. The Board decided not to adopt either suggestion. The Board did not consider the addition of the term "excess space" to be necessary, and the Board was concerned that any definition of "service drop" might limit the general industry understanding of the term.

Several comments with suggested changes were made regarding paragraph 25.4(2)"c." Comments suggested that the requirement for written requests could conflict with federal law concerning overloading and service drops. Commenters also pointed out that federal law allowed a pole occupant to install a service drop and overloading without the consent or approval of the pole owner. Language was suggested to ensure there would be no conflict with any federal law or regulations in the adopted amendments. It was also suggested that the paragraph be deleted since it arguably addressed more than the safety of pole attachments.

The Board considered these comments and agreed that language should be adopted in paragraph 25.4(2)"c" to exempt service drops and overloading from the prior request requirement but require notice to the pole owner of the installation of service drops and overloading. The Board decided not to adopt the other suggested changes since the Board considered the adopted language to be consistent with federal law and regulations and, without the prior request requirements for pole attachments, there would not be an adequate way to ensure that new pole attachments were made in compliance with the Iowa Electrical Safety Code.

There were also comments from the Iowa Association of Electrical Cooperatives that the requirement for nondiscriminatory access to poles owned by electric cooperatives and municipal utilities created a legal obligation for these utilities that is not found in current Iowa law. To address this concern, the Board adopted a provision in paragraph 25.4(2)"c" that creates an exception from the nondiscriminatory access requirement if the pole owner is not required by federal or state law to provide nondiscriminatory access.

With regard to paragraph 25.4(2)"e," comments suggested that more time be allowed incrementally for correcting violations based upon the number of pole violations that were received at one time by the pole occupant. Comments also suggested that the pole owner be required to give the pole occupant advance notice if 25 or more violations were to be sent at one time. The Board decided that no additional

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time needed to be provided and prior notice was not required. The amendment allows pole occupants and pole owners to agree to different notice and correction time periods which the Board considers a preferable way of addressing notices that include a listing of more than 25 violations. The requirements adopted provide a standard requirement where there is no agreement between the pole occupant and the pole owner.

The Board did adopt revisions to paragraph 25.4(2)“e” to simplify and clarify the time period to respond to violations and to correct violations. Where the proposed amendment established separate time periods for notice of fewer than 25 violations and notice of 25 or more violations, the adopted amendment extends the time period for responses to all violations to 60 days and for corrective action to 180 days. The Board decided that having one date for responses and one date to complete corrective action would reduce confusion about the time periods required by the amendment.

After analysis and review of the adopted amendments, the Board tentatively concludes that the amendments will have a beneficial effect on the safety and reliability of pole attachments to electric and telecommunications poles in Iowa. The safety and reliability of pole attachments that provide electric service and communications service to Iowa residents and businesses are necessities for economic development and the safety of the public and utility pole workers. Safe and reliable installation of pole attachments will have a beneficial effect on jobs in Iowa, although that effect cannot be quantified.

These amendments are intended to implement Iowa Code section 17A.4 and Iowa Code chapters 476 and 478.

These amendments will become effective February 12, 2014.

The following amendments are adopted.

Amend rule 199—25.4(476,478) as follows:

199—25.4(476,478) Correction of problems found during inspections and pole attachment procedures.

25.4(1) Corrective action shall be taken within a reasonable period of time on all potentially hazardous conditions, instances of safety code noncompliance, maintenance needs, potential threats to safety and reliability, or other concerns identified during inspections. Hazardous conditions shall be corrected promptly. In addition to the general requirements stated in this subrule, pole attachments shall comply with the specific requirements and procedures established in subrule 25.4(2).

25.4(2) To ensure the safety of pole attachments to poles owned by utilities in Iowa, this subrule establishes requirements for attaching electric lines, communications lines, cable systems, video service lines, data lines, wireless antennae and other wireless facilities, or similar lines and facilities that are attached to the excess space on poles owned by utilities.

a. Definitions. The following definitions shall apply to this rule.

“Pole” means any pole owned by a utility that carries electric lines, communications lines, cable systems, video service lines, data service lines, wireless antennae or other wireless facilities, or similar lines and facilities.

“Pole attachment” means any electric line, communication circuit, cable system, video service line, data service line, antenna and other associated wireless equipment, or similar lines and facilities attached to a pole or other supporting structure subject to the safety jurisdiction of the board pursuant to the Iowa electrical safety code, 199—25.2(476,476A,478).

“Pole occupant” means any electric utility, telecommunications carrier, cable system provider, video service provider, data service provider, wireless service provider, or similar person or entity that constructs, operates, or maintains pole attachments as defined in this chapter.

“Pole owner” means a utility that owns poles subject to the safety jurisdiction of the board pursuant to the Iowa electrical safety code, 199—25.2(476,476A,478).

b. Compliance with Iowa electrical safety code. Pole attachments to poles shall be constructed, installed, operated, and maintained in compliance with the Iowa electrical safety code, 199—25.2(476,476A,478), and the requirements and procedures established in this subrule.

c. Requests for access to poles; exceptions for service drops and overlashng.

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(1) A pole owner shall provide nondiscriminatory access to poles it owns, to the extent required by federal or state law. Requests for access to poles by an electric utility, telecommunications carrier, cable system operator, video service provider, data service provider, wireless service provider, or similar person or entity shall be made in writing or by any method as may be agreed upon by the pole owner and the person or entity requesting access to the pole. If access is denied, the pole owner shall explain in detail the specific reason for denial and how the denial relates to reasons of lack of capacity, safety, reliability, or engineering standards.

(2) Service drops are not subject to the notice and approval requirements in subparagraph 25.4(2)“c”(1). Instead, pole occupants shall provide notice to pole owners within 30 days of the installation of a new service drop, unless the pole occupant and pole owner have negotiated a different notification requirement.

(3) Overlapping of existing lines is not subject to the notice and approval requirements in subparagraph 25.4(2)“c”(1). Pole occupants shall provide notice to pole owners of proposed overlapping at least 7 days prior to installation of the overlapping, unless the pole occupant and pole owner have negotiated a different notification requirement.

d. Notification of violation. A pole owner shall notify in writing a pole occupant of an alleged violation of the Iowa electrical safety code by a pole attachment owned by the pole occupant or may provide notice by another method as may be agreed upon by the parties to a pole attachment agreement. The notice shall include the address and pole location where the alleged violation occurred, a description of the alleged violation, and suggested corrective action.

e. Corrective action.

(1) Upon receipt of notification from a pole owner that the pole occupant has one or more pole attachments in violation of the Iowa electrical safety code, the pole occupant shall respond to the pole owner within 60 days in writing or by another method as may be agreed upon by the pole occupant and the pole owner. The response shall provide a plan for corrective action, state that the violation has been corrected, indicate that the pole attachment is owned by a different pole occupant, or indicate that the pole occupant disputes that a violation has occurred. The violation shall be corrected within 180 days of the date notification is received unless good cause is shown for any delay in taking corrective action. A disagreement that a violation has occurred, a claim that correction is not possible within the specific time frames due to events beyond the control of the pole occupant, or a claim that a different pole occupant is responsible for the alleged violation will be considered good cause to extend the time for taking corrective action. The pole occupant and pole owner may also agree to an extension of the time for taking corrective action. The pole owner and pole occupant shall cooperate in determining the cause of a violation and an efficient and cost-effective method of correcting a violation.

(2) If the violation could reasonably be expected to endanger life or property, the pole occupant shall take the necessary action to correct, disconnect, or isolate the problem immediately upon notification. If immediate corrective action is not taken by the pole occupant for a violation that could reasonably be expected to endanger life or property, the pole owner may take the necessary corrective action and the pole occupant shall reimburse the pole owner for the actual cost of any corrective measures. If the pole owner is later determined to have caused the violation and the pole occupant has taken corrective action, the pole owner shall reimburse the pole occupant for the actual cost of the corrective action. Disputes concerning the ownership of the pole attachment should be resolved as quickly as possible.

f. Negotiated resolution of disputes. Parties to disputes over alleged violations of the Iowa electrical safety code, the cause of a violation, the pole occupant responsible for the violation, the cost-effective corrective action, or any other dispute regarding the provisions of subrule 25.4(2) shall attempt to resolve disputes through good-faith negotiations. Parties may file an informal complaint with the board pursuant to 199—Chapter 6 as part of negotiations.

g. Complaints. Complaints concerning the requirements or procedures established in subrule 25.4(2), including alleged violations of the Iowa electrical safety code, may be filed with the board by pole owners or pole occupants pursuant to the complaint procedures in 199—Chapter 6.

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h. Civil penalties. Persons found to have violated the provisions of subrule 25.4(2) may be subject to civil penalties pursuant to Iowa Code section 476.51 or to other action by the board.

[Filed 12/9/13, effective 2/12/14]

[Published 1/8/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/14.

ARC 1276C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Pursuant to the authority of Iowa Code section 96.11, the Director of the Workforce Development Department hereby amends Chapter 26, "Contested Case Proceedings," Iowa Administrative Code.

These amendments allow parties to file unemployment insurance appeals online using a form that is available on the Iowa Workforce Development Web site.

Notice of Intended Action was published in the October 16, 2013, Iowa Administrative Bulletin as **ARC 1094C**. No public comment was received. These amendments are identical to those published under Notice.

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

These amendments are intended to implement Iowa Code sections 96.6(3) and 96.7(4) and chapter 17A.

These amendments will become effective on February 12, 2014.

The following amendments are adopted.

ITEM 1. Amend rule 871—26.4(17A,96) as follows:

871—26.4(17A,96) Commencement of unemployment benefits contested case.

26.4(1) An unemployment benefits contested case is commenced with the filing, by mail, facsimile, online or in person, of a written appeal by a party with the appeals ~~section~~ bureau of the department. The appeal shall be addressed or delivered to: Appeals ~~Section~~ Bureau, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319. An online appeal is filed by completing and submitting an online appeal form available on the Iowa workforce development Web site.

26.4(2) An appeal from an initial decision concerning the allowance or denial of benefits shall be filed, by mail, facsimile, online, or in person, not later than ten calendar days, as determined by the postmark or the date stamp, after the decision was mailed to the party at its last-known address and shall state the following:

- a. The name, address and social security number of the claimant;
- b. A reference to the decision from which appeal is taken; and
- c. The grounds upon which the appeal is based.

26.4(3) and 26.4(4) No change.

26.4(5) Appeals transmitted by facsimile or online which are received by the appeals ~~section~~ bureau after 11:59 p.m. Central time shall be deemed filed as of the next regular business day.

ITEM 2. Amend rule 871—26.5(17A,96) as follows:

871—26.5(17A,96) Commencement of employer liability contested case.

26.5(1) An employer liability contested case is commenced with the filing of a written appeal with the appeals ~~section~~ bureau of the department by mail, facsimile, online, or in person. The appeal shall be addressed or delivered to: Appeals ~~Section~~ Bureau, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319. An online appeal is filed by completing and submitting an online appeal form available on the Iowa workforce development Web site.

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

26.5(2) An appeal from a decision of the tax section of the department concerning employer status and liability, assessments, contribution (tax) rate, successorship, workers' status, and all questions regarding coverage of a worker or group of workers shall be filed, by mail, facsimile, online, or in person, not later than 30 calendar days, as determined by the postmark or the date stamp, after the decision was mailed to the party at its last-known address and shall set forth the following:

- a. The name, address, and Iowa employer account number of the employer;
- b. The name and title of the person filing the appeal;
- c. A reference to the decision from which the appeal is taken; and
- d. The grounds upon which the appeal is based.

26.5(3) Appeals transmitted by facsimile or online which are received by the appeals ~~section~~ bureau after 11:59 p.m. Central time shall be deemed filed as of the next regular business day.

ITEM 3. Strike "appeals section" wherever it appears in rules **871—26.6(17A,96)**, **871—26.9(17A,96)** and **871—26.16(17A,96)** and insert "appeals bureau" in lieu thereof.

[Filed 12/17/13, effective 2/12/14]

[Published 1/8/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/14.

ARC 1277C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Pursuant to the authority of Iowa Code section 96.11, the Director of the Workforce Development Department hereby amends Chapter 26, "Contested Case Proceedings," Iowa Administrative Code.

The amendments to subrules 26.14(6) and 26.14(7) and the rescission of subrule 26.14(9) provide that a party who appeals a decision and then does not participate in the appeal hearing may have the appeal dismissed at the discretion of the presiding officer. The appealing party may request to reopen the hearing if that party had good cause for failing to appear.

Notice of Intended Action was published in the October 16, 2013, Iowa Administrative Bulletin as **ARC 1095C**. No public comment was received. These amendments are identical to those published under Notice.

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

These amendments are intended to implement Iowa Code sections 96.6(3) and chapter 17A.

These amendments will become effective on February 12, 2014.

The following amendments are adopted.

ITEM 1. Amend subrules 26.14(6) and 26.14(7) as follows:

26.14(6) In the event that one or more parties which have received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing. If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal. The hearing may be reopened if the absent party makes a request to reopen the hearing under subrule 26.8(3) and shows good cause for reopening the hearing.

a. If an absent party arrives for an in-person hearing while the hearing is in session, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing has departed, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire ex parte as to the reason the party was late. For good cause shown, the presiding officer shall cause notice of hearing to be issued to all parties of record and reopen the record. The record shall not be reopened if the presiding officer does not find a good cause for the party's late arrival.

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

26.14(7) If a party has not responded to a notice of telephone hearing by providing the appeals section bureau with the names and telephone numbers of its witnesses the persons who are participating in the hearing by the scheduled starting time of the hearing or is not available at the telephone number provided, the presiding officer may proceed with the hearing. If the appealing party fails to provide a telephone number or is unavailable for the hearing, the presiding officer may decide the appealing party is in default and dismiss the appeal as provided in Iowa Code section 17A.12(3). The record may be reopened if the absent party makes a request to reopen the hearing under subrule 26.8(3) and shows good cause for reopening the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire *ex parte* as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

ITEM 2. Rescind and reserve subrule **26.14(9)**.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/14.