



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXXIX
February 1, 2017

NUMBER 16
Pages 1479 to 1580

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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.

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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 2017

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
18	Friday, February 10, 2017	March 1, 2017
19	Friday, February 24, 2017	March 15, 2017
20	Friday, March 10, 2017	March 29, 2017

PLEASE NOTE:

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Friday, February 9, 2017, at 9 a.m. in Room 103, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Dairy inspection manuals—adoption by reference, 68.13 Notice **ARC 2894C** 1/18/17

DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Dental assistant radiology qualification examinations, 22.5 Notice **ARC 2923C** 2/1/17

Principles of professional ethics; retirement or discontinuance of practice, 27.1, 27.10

Notice **ARC 2919C** 2/1/17

ECONOMIC DEVELOPMENT AUTHORITY[261]

Iowa tourism grant board, amendments to ch 42 Notice **ARC 2893C** 1/18/17

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Air quality—permit application process, 22.1(3), 22.105(1) Notice **ARC 2895C** 1/18/17

Water quality—criteria for copper, 61.3 Filed **ARC 2911C** 1/18/17

HUMAN SERVICES DEPARTMENT[441]

Emergency assistance, amendments to ch 58 Notice **ARC 2898C** 1/18/17

Medicaid waiver services—assessment tool, case management, definition of “brain injury,”

amendments to chs 77, 78, 83 Notice **ARC 2920C** 2/1/17

Reimbursement—drugs, Indian health facility services, 77.45, 78.2(4)“b,” 79.1 Filed **ARC 2930C** 2/1/17

Rate increases, annual limit—HCBS and intellectual disability (ID) waiver services,

specialized medical equipment, amendments to chs 78, 79, 83 Filed **ARC 2936C** 2/1/17

Home health services; medical social services, amendments to ch 78 Notice **ARC 2897C** 1/18/17

Home health low utilization payment adjustment (LUPA)—rate increase, 79.1(2) Filed **ARC 2932C** 2/1/17

Medical assistance advisory council, 79.7 Notice **ARC 2899C** 1/18/17

HAWK-I—covered services, poverty limit adjustments, 86.8(7), 86.14(1), 86.20(3) Filed **ARC 2912C** 1/18/17

Certification standards for children’s residential facilities, ch 106 Notice **ARC 2918C** 2/1/17

IOWA FINANCE AUTHORITY[265]

General revenue bond procedures—public hearing and approval, rescind 4.5 Filed **ARC 2924C** 2/1/17

IOWA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM[495]

Organization; benefits advisory committee; protection occupations; employers; coverage;

benefits; beneficiary designations; rule making, amendments to chs 1, 3 to 6, 10 to 12,

14, 19, 20, 31, 33 Notice **ARC 2892C** 1/18/17

IOWA PUBLIC INFORMATION BOARD[497]

Complaints; injunction request procedure, 2.1(1), ch 10 Filed **ARC 2913C** 1/18/17

Complaints—administrative resolution, 2.1(6), 2.2(4) Filed **ARC 2914C** 1/18/17

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Drugs in emergency medical service programs, amendments to ch 11 Notice **ARC 2904C** 1/18/17

Iowa prescription monitoring program, amendments to ch 37 Notice **ARC 2905C** 1/18/17

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Employee organizations; administrative remedies; state employee appeals, amendments to

chs 8, 9, 11 Filed **ARC 2916C** 1/18/17

PUBLIC HEALTH DEPARTMENT[641]

Reporting of communicable and infectious diseases, poisonings, and conditions, amendments

to ch 1 Filed **ARC 2935C** 2/1/17

Iowa newborn screening program, 4.3, 4.11 Filed **ARC 2929C** 2/1/17

Human immunodeficiency virus (HIV) infection and acquired immune deficiency syndrome

(AIDS), amendments to ch 11 Filed **ARC 2934C** 2/1/17

Plumbing and mechanical systems professionals—licensee application, examination,

licensure, continuing education, fees, amendments to chs 23, 27 to 30 Notice **ARC 2903C** 1/18/17

State plumbing code—update of references to 2015 edition of Uniform Plumbing Code,

25.1, 25.4 Notice **ARC 2900C** 1/18/17

Handheld x-ray equipment for intraoral radiography, 41.1 Notice **ARC 2901C** 1/18/17
 Vital records, 95.2, 95.7, 95.10 Filed **ARC 2933C** 2/1/17
 Trauma registry, amendments to ch 136 Notice **ARC 2902C** 1/18/17
 Governmental public health advisory council, amendments to ch 186 Filed **ARC 2931C** 2/1/17

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]“umbrella”

Persons subject to gaming board authority; medical personnel; mobile pari-mutuel wagering;
 partnerships; grounds for sanction; horse racing; gambling games; accounting and cash
 control, amendments to chs 1, 4 to 6, 10 to 12 Filed **ARC 2927C** 2/1/17

REVENUE DEPARTMENT[701]

Forms and communications, amendments to ch 8 Filed **ARC 2915C** 1/18/17
 Renewable fuels tax credits and rebates, amend chs 12, 42, 52; adopt ch 250 Notice **ARC 2896C** 1/18/17
 Solar energy system tax credit, 42.48, 52.44 Filed **ARC 2925C** 2/1/17
 Historic preservation and cultural and entertainment district tax credit, 42.54, 42.55, 52.47,
 52.48 Filed **ARC 2928C** 2/1/17

STATE PUBLIC DEFENDER[493]

INSPECTIONS AND APPEALS DEPARTMENT[481]“umbrella”

Claims for indigent defense services—timely submittal of adult claims, 12.2(3) Filed **ARC 2926C** 2/1/17

TRANSPORTATION DEPARTMENT[761]

Public records and fair information practices, 4.4(2)“b,” 4.9 Notice **ARC 2922C** 2/1/17
 Iowa transportation map, 28.1 to 28.3 Notice **ARC 2906C** 1/18/17
 Autocycles, amendments to chs 400, 401, 425, 602, 604 Notice **ARC 2908C** 1/18/17
 Transportation network companies, ch 540 Notice **ARC 2907C** 1/18/17
 Sanctions—service of notice, 615.37 Notice **ARC 2921C** 2/1/17

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]“umbrella”

Energy efficiency planning and reporting for non-rate-regulated gas and electric utilities,
 36.1 to 36.5, 36.7 Notice **ARC 2910C** 1/18/17
 Electric interconnection of distributed generation facilities, amendments to ch 45 Filed **ARC 2917C** 1/18/17

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Senator Mark Costello
37265 Rains Avenue
Imogene, Iowa 51645

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

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

DENTAL BOARD[650]

Dental assistant radiology
qualification examinations, 22.5
IAB 2/1/17 **ARC 2923C**

Board Office, Suite D
400 S.W. 8th St.
Des Moines, Iowa

February 21, 2017
2 p.m.

Principles of professional ethics;
retirement or discontinuance of
practice, 27.1, 27.10
IAB 2/1/17 **ARC 2919C**

Board Office, Suite D
400 S.W. 8th St.
Des Moines, Iowa

February 21, 2017
2 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality—permit application
process, 22.1(3), 22.105(1)
IAB 1/18/17 **ARC 2895C**

Conference Rooms, Air Quality Bureau
7900 Hickman Rd.
Windsor Heights, Iowa

February 20, 2017
1 p.m.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Organization; benefits advisory
committee; protection
occupations; employers;
coverage; benefits; beneficiary
designations; rule making,
amendments to chs 1, 3 to 6, 10
to 12, 14, 19, 20, 31, 33
IAB 1/18/17 **ARC 2892C**

IPERS
7401 Register Drive
Des Moines, Iowa

February 7, 2017
9 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Plumbing and mechanical systems
professionals—licensee application,
examination, licensure, continuing
education, fees, amendments to chs
23, 27 to 30
IAB 1/18/17 **ARC 2903C**

Conference Room 518
Lucas State Office Bldg.
Des Moines, Iowa

February 7, 2017
1 p.m.

State plumbing code—update of
references to 2015 edition of
Uniform Plumbing Code, 25.1,
25.4
IAB 1/18/17 **ARC 2900C**

Conference Room 518
Lucas State Office Bldg.
Des Moines, Iowa

February 7, 2017
1 p.m.

TRANSPORTATION DEPARTMENT[761]

Public records and fair
information practices,
4.4(2)"b," 4.9
IAB 2/1/17 **ARC 2922C**

South Conference Room, First Floor
Administration Bldg.
800 Lincoln Way
Ames, Iowa

February 23, 2017
1 p.m.
(If requested)

Iowa transportation map, 28.1 to
28.3
IAB 1/18/17 **ARC 2906C**

Second Floor Conference Room
Administration Bldg.
800 Lincoln Way
Ames, Iowa

February 9, 2017
10 a.m.
(If requested)

Autocycles, amendments to chs
400, 401, 425, 602, 604
IAB 1/18/17 **ARC 2908C**

Motor Vehicle Division Offices
6310 SE Convenience Blvd.
Ankeny, Iowa

February 9, 2017
2 p.m.
(If requested)

Transportation network
companies, ch 540
IAB 1/18/17 **ARC 2907C**

Motor Vehicle Division Offices
6310 SE Convenience Blvd.
Ankeny, Iowa

February 9, 2017
1 p.m.
(If requested)

Sanctions—service of notice,
615.37
IAB 2/1/17 **ARC 2921C**

Motor Vehicle Division Offices
6310 SE Convenience Blvd.
Ankeny, Iowa

February 23, 2017
10 a.m.
(If requested)

The following list will be updated as changes occur.

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

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

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

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ARC 2923C

DENTAL BOARD[650]**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 147.34 and 153.39, the Dental Board hereby gives Notice of Intended Action to amend Chapter 22, “Dental Assistant Radiography Qualification,” Iowa Administrative Code.

The purpose of the proposed amendment is to increase the availability of examinations and testing locations for applicants seeking the dental assistant radiography qualification. The amendment sets 50 as the minimum number of questions for the examinations, specifies that the examinations must be administered in a proctored setting, and sets a minimum pass rate of 75 percent or better.

This amendment would allow outside training entities to develop and submit their own dental assistant radiography qualification examinations for Board approval.

Any interested person may make written comments on the proposed amendment on or before February 21, 2017. Such written materials should be directed to Phil McCollum, Associate Director, Iowa Dental Board, 400 S.W. Eighth Street, Suite D, Des Moines, Iowa 50309; or sent by e-mail to phil.mccollum@iowa.gov.

There will be a public hearing on February 21, 2017, at 2 p.m. in the Board office, 400 S.W. Eighth Street, Suite D, Des Moines, Iowa, at which time persons may present their views orally or in writing.

The proposed amendment is subject to waiver or variance pursuant to 650—Chapter 7.

After analysis and review of this rule making, there is a positive impact on jobs, as opportunity is provided for outside training entities to both develop and administer a dental radiography examination.

This amendment is intended to implement Iowa Code sections 147.34 and 153.39.

The following amendment is proposed.

Amend rule 650—22.5(136C,153) as follows:

650—22.5(136C,153) Examination requirements. An applicant for dental assistant radiography qualification shall successfully pass a board-approved examination in dental radiography.

22.5(1) ~~Examinations approved by the board are those administered by the board or board’s approved testing centers or, if taken after January 1, 1986, the Dental Assisting National Board Dental Radiation Health and Safety Examination.~~ Examinations must be prior approved by the board and must be administered in a proctored setting. All board-approved examinations must have a minimum of 50 questions. The Dental Assisting National Board Radiation Health and Safety Examination is an approved examination.

22.5(2) A score of 75 percent or better on ~~the board~~ a board-approved examination shall be considered successful completion of the examination. The board accepts the passing standard established by the Dental Assisting National Board for applicants who take the Dental Assisting National Board Radiation Health and Safety Examination.

22.5(3) Information on taking ~~the~~ a board-approved examination may be obtained by contacting the board office at 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687.

22.5(4) A dental assistant must meet such other requirements as may be imposed by the board’s approved dental assistant testing centers.

22.5(5) A dental assistant who fails to successfully complete ~~the~~ a board-approved examination after two attempts will be required to submit, prior to each subsequent examination attempt, proof of additional

DENTAL BOARD[650](cont'd)

formal education in dental radiography in a program approved by the board or sponsored by a school accredited by the Commission on Dental Accreditation of the American Dental Association.

ARC 2919C**DENTAL BOARD[650]****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 153.32, 153.33(1)“e,” and 153.34, the Dental Board hereby gives Notice of Intended Action to amend Chapter 27, “Standards of Practice and Principles of Professional Ethics,” Iowa Administrative Code.

The purposes of the proposed amendments are to update references to the code of ethics for each profession and to specify the criteria, specify the mode of communication and define a permanent practice location for retirement or discontinuation-of-practice notices.

These amendments update language to reflect that practitioners should refer to the most updated version of their respective code of professional ethics.

These amendments would require any dentist who retires or leaves a permanent practice location to notify any patient treated within the previous two-year period, in writing, informing the patient of the location of the patient’s record and options for future care.

These amendments define a permanent practice location as any location at which a dentist has regularly practiced for a period of six consecutive months, on a full- or part-time basis.

Any interested person may make written comments on the proposed amendments on or before February 21, 2017. Such written materials should be directed to Phil McCollum, Associate Director, Iowa Dental Board, 400 S.W. Eighth Street, Suite D, Des Moines, Iowa 50309; or sent by e-mail to phil.mccollum@iowa.gov.

There will be a public hearing on February 21, 2017, at 2 p.m. in the Board office, 400 S.W. Eighth Street, Suite D, Des Moines, Iowa, at which time persons may present their views orally or in writing.

These amendments are subject to waiver or variance pursuant to 650—Chapter 7.

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

These amendments are intended to implement Iowa Code sections 153.32, 153.33(1)“e,” and 153.34. The following amendments are proposed.

ITEM 1. Amend rule 650—27.1(153) as follows:

650—27.1(153) General.

27.1(1) Dental ethics. The following principles relating to dental ethics are compatible with the most recent version of the Code of Professional Ethics and advisory opinions published ~~in August 1998~~ by the American Dental Association. These principles are not intended to provide a limitation on the ability of the board to address problems in the area of ethics but rather to provide a basis for board review of questions concerning professional ethics. The dentist’s primary professional obligation shall be service to the public with the most important aspect of that obligation being the competent delivery of appropriate care within the bounds of the clinical circumstances presented by the patient, with due consideration being given to the needs and desires of the patient. Unprofessional conduct includes, but is not limited, to, any violation of these rules.

27.1(2) Dental hygiene ethics. The following principles relating to dental hygiene ethics are compatible with the most recent version of the Code of Ethics of the American Dental Hygienists’ Association ~~published in 1995. Standards of practice for dental hygienists are compatible with the~~

DENTAL BOARD[650](cont'd)

~~Iowa dental hygienists' association dental hygiene standards of practice adopted in May 1993. These principles and standards are not intended to provide a limitation on the ability of the dental hygiene committee to address problems in the area of ethics and professional standards for dental hygienists but rather to provide a basis for committee review of questions regarding the same. The dental hygienist's primary responsibility is to provide quality care and service to the public according to the clinical circumstances presented by the patient, with due consideration of responsibilities to the patient and the supervising dentist according to the laws and rules governing the practice of dental hygiene.~~

27.1(3) Dental assistant ethics. Dental assistants shall utilize the most recent version of the principles of professional dental and dental hygiene ethics for guidance, and the laws and rules governing the practice of dental assisting Principles of Professional Ethics as adopted by the American Dental Assistants Association. These principles and standards are not intended to provide a limitation on the ability of the board to address problems in the area of ethics and professional standards for dental assistants but rather to provide a basis for board review of questions regarding the same. The dental assistant's primary responsibility is to provide quality care and service to the public according to the clinical circumstances presented by the patient, with due consideration being given to the needs and desires of the patient.

ITEM 2. Amend rule 650—27.10(153) as follows:

650—27.10(153) Retirement or discontinuance of practice.

27.10(1) A licensee dentist, upon retirement, or upon ~~discontinuance of the practice of dentistry, or upon leaving or moving from a community~~ leaving a permanent practice location, shall notify ~~all active patients in writing~~ any patient whom the dentist has examined, treated, cared for, or otherwise consulted with during the previous two-year period. Such notification shall be in writing, mailed to the patient's last-known mailing address, or by publication once a week for three consecutive weeks in a newspaper of general circulation in the community, ~~that the licensee intends to discontinue the practice of dentistry in the community, and shall encourage patients to seek the services of another licensee.~~ The notification must inform the patient of the retirement or discontinuation of practice at that practice location and shall inform the patient of the location of the patient's record and options for continued care. The licensee ~~parting dentist~~ shall make reasonable arrangements ~~with active~~ for the care of such patients and for the transfer of patient records, or copies thereof, to the succeeding licensee dentist. "Active patient" means a person whom the licensee has examined, treated, cared for, or otherwise consulted with during the two-year period prior to retirement, ~~discontinuance of the practice of dentistry, or leaving or moving from a community.~~ A permanent practice location is defined as any location at which a dentist regularly practices dentistry for a period of six consecutive months, on either a part-time or full-time basis.

27.10(2) Nothing herein provided shall prohibit a licensee dentist from conveying or transferring the licensee's patient records to another licensed dentist who is assuming a practice or remaining at the practice, provided that written notice is furnished to all patients as hereinbefore specified.

ARC 2920C

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 hereby gives Notice of Intended Action to amend Chapter 77, "Conditions of Participation for Providers of

HUMAN SERVICES DEPARTMENT[441](cont'd)

Medical and Remedial Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

Iowa’s Medicaid program is evolving to create a single system of care to address the health care needs of the whole person, including the physical health, behavioral health, and long-term care services and supports. The purposes of these proposed amendments are to deliver quality, patient-centered care and to create efficiencies. On April 1, 2016, the majority of Medicaid members began having their services coordinated through managed care organizations (MCOs). Members in the following programs are not included in this transition: the Health Insurance Premium Payment (HIPP) Program, programs for the medically needy, and programs for all-inclusive care for the elderly (PACE) enrollees, as well as members who are American Indian or Alaskan natives, or those who participate in the Medicare Savings Program.

These proposed amendments are intended to implement changes related to managed care and provide technical clarification. Changes include:

- Replacing references to “service worker” with references to “designated case manager” as members of the AIDS/HIV, health and disability (H&D) and physical disability (PD) waivers will have community-based case managers through their MCOs or through fee-for-service Medicaid.
- Replacing outdated references to “Case Management Comprehensive Assessment” under the brain injury (BI), elderly, and children’s mental health (CMH) waivers with references to a department-approved comprehensive functional assessment tool that meets the requirements of Section 10202 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148) to enable MCOs and Iowa Medicaid Enterprise (IME) to utilize the interRAI assessment tool or another department-approved standardized assessment tool for level of care determinations for the six home- and community-based services (HCBS) waiver programs and the needs-based eligibility determinations for the HCBS habilitation program.
- Replacing outdated references to “service worker assessment” under the AIDS/HIV, H&D and PD waivers with references to Form 470-4694 for children under the age of four and, for all others, a department-approved comprehensive functional assessment tool that meets the requirements of Section 10202 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148) to enable MCOs and IME to utilize the interRAI assessment tool or another department-approved standardized assessment tool.
- Adding completion of Form 470-4694 for children under the age of five for the intellectual disability waiver.
- Adding three diagnoses for brain injury: cerebral edema, cerebral palsy, and status epilepticus.
- Adding definitions for “integrated health home” and “care coordinator” to the CMH waiver.

The Department implemented the IA Health Link Program on April 1, 2016. The majority of HCBS waiver members receive comprehensive care coordination through an MCO.

For state fiscal year 2017, funds were appropriated to be used to support the development and implementation of standardized assessment tools for persons with mental illness, an intellectual disability, a developmental disability, or a brain injury.

These proposed amendments allow for use of Form 470-4694 for children under the age of four and, for all others, the interRAI assessment tool in the AIDS/HIV, BI, CMH, elderly, H&D and PD waiver programs and the HCBS habilitation program, bringing the Department’s rules into compliance with the 2013 legislative mandate, the recommendations of the redesign stakeholder groups, current practice, and Iowa’s Balancing Incentive Program application.

Authorized by Section 10202 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148), the Balancing Incentive Program provides enhanced Federal Medical Assistance Percentages (FMAP) to states that spend less than 50 percent of long-term care dollars on care provided in home- and community-based settings. To qualify for these funds, states must implement three structural changes in their systems of community-based long-term services and supports (LTSS): a no wrong door/single entry point (NWD/SEP) eligibility determination and enrollment system; core standardized assessment instruments; and conflict-free case management. The Balancing Incentive Program requires the following of participating states: “development of core standardized assessment

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instruments for determining eligibility for non-institutionally-based long-term services and supports described in subsection (f)(1)(B), which shall be used in a uniform manner throughout the State, to determine a beneficiary's needs for training, support services, medical care, transportation, and other services, and develop an individual service plan to address such needs."

The IME and MCOs will use Form 470-4694 for children under the age of four and, for all others, the interRAI assessment tool for initial and annual assessments. The interRAI is a nationally recognized assessment tool that was developed for use with adults in home- and community-based settings. The instrument is generally used with the frail elderly or persons with disabilities who are seeking or receiving formal health care and supportive services. The interRAI was first developed in 1994. Initially, it was designed to be compatible with the long-term care facilities system and was implemented in nursing homes.

The decision to use the interRAI was highly vetted by the Department. The development, selection, and use of a core standardized assessment (CSA) were part of the Balancing Incentive Program in Iowa. The CSA selection process started in May 2015, with statewide Webinars and in-person listening and learning sessions designed to seek input from members, advocates, providers, and case managers. These listening and learning sessions were used to educate and inform individuals about various CSAs. After reviewing feedback and comments from the sessions, the Department selected the interRAI assessment tool for use with HCBS waiver and habilitation program members. The interRAI best matched the core domains of the Balancing Incentive Program criteria and included superior inter-rater reliability.

Any interested person may make written comments on the proposed amendments on or before February 21, 2017. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

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

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

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Amend subrule 77.25(5) as follows:

77.25(5) Case management. ~~The department of human services, a county or consortium of counties, or a provider under subcontract to the department or to a county or consortium of counties is~~ A provider is eligible to participate in the home- and community-based habilitation services program as a provider of case management services provided that the agency meets the standards in if accredited as a case management provider pursuant to 441—Chapter 24.

ITEM 2. Amend subrule 77.29(1) as follows:

77.29(1) Standards in 441—Chapter 24. ~~Providers shall meet the standards in~~ be accredited as case management providers pursuant to 441—Chapter 24 ~~when they are the department of human services, a county or consortium of counties, or an agency or provider under subcontract to the department or a county or consortium of counties as a condition of providing case management services to persons with mental retardation~~ an intellectual disability, developmental disabilities or chronic mental illness.

ITEM 3. Amend paragraph **78.27(2)"d"** as follows:

d. Needs assessment. ~~The member's case manager or integrated health home care coordinator has completed an assessment of the member's need for service, and~~ A department-approved comprehensive functional assessment tool that meets the requirements of Section 10202 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148) has been completed, and based on that assessment, the IME medical services unit has determined that the member is in need of home- and community-based habilitation services. The designated case manager or integrated health home care coordinator shall:

(1) ~~Complete a needs-based evaluation that meets the standards for assessment established in 441—subrule 90.5(1) before~~ Before services begin and annually thereafter, arrange for the completion

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of a department-approved comprehensive functional assessment tool that meets the requirements of Section 10202 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148).

(2) ~~Use~~ Before services begin and annually thereafter, use the ~~evaluation~~ assessment results to develop a comprehensive service plan as specified in subrule 78.27(4).

ITEM 4. Amend paragraph **83.2(1)“d”** as follows:

d. The person must be certified as being in need of nursing facility or skilled nursing facility level of care or as being in need of care in an intermediate care facility for persons with an intellectual disability, based on ~~information submitted on Form 470-4392, Level of Care Certification for HCBS Waiver Program~~ a completed Form 470-4694 for children under the age of four and, for all others, a department-approved comprehensive functional assessment tool that meets the requirements of Section 10202 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148).

(1) A physician, doctor of osteopathy, registered nurse practitioner, or physician assistant shall complete Form 470-4392 when the person applies for waiver services, upon request to report a change in the person's condition, and annually for reassessment of the person's level of care. The member's designated case manager shall use the completed assessment to develop the comprehensive service plan as specified in rule 441—90.5(249A).

(2) to (4) No change.

ITEM 5. Amend paragraph **83.2(2)“a”** as follows:

a. The member shall have a service plan approved by the department which is developed by the ~~service worker or targeted designated case manager identified by the county of residence~~. This service plan must be completed prior to services provision and annually thereafter.

The ~~service worker or targeted designated~~ case manager shall establish the interdisciplinary team for the member and, with the team, identify the member's need for service based on the member's needs and desires as well as the availability and appropriateness of services, using the following criteria:

(1) This service plan shall be based, in part, on ~~information in the completed Service Worker Comprehensive Assessment, Form 470-5044~~ a completed Form 470-4694 for children under the age of four and, for all others, a department-approved comprehensive functional assessment tool that meets the requirements of Section 10202 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148), which shall be completed annually. The ~~service worker or targeted designated~~ case manager shall have a face-to-face visit with the member at least ~~annually~~ quarterly.

(2) Service plans for persons aged 20 or under shall be developed to reflect use of all appropriate nonwaiver Medicaid services and so as not to replace or duplicate those services. The ~~service worker or targeted designated~~ case manager shall list all nonwaiver Medicaid services in the service plan.

(3) No change.

ITEM 6. Amend paragraph **83.3(3)“a”** as follows:

a. Applications for the HCBS health and disability waiver program shall be processed in 30 days unless one or more of the following conditions exist:

(1) to (3) No change.

(4) The application is pending because a level of care determination has not been made although the ~~completed Form 470-4392, Level of Care Certification for HCBS Waiver Program~~, required assessment has been submitted to the IME medical services unit.

(5) The application is pending because the required assessment, ~~Form 470-4392, or the service plan~~ has not been completed. When a determination is not completed 90 days from the date of application due to the lack of a completed assessment, ~~Form 470-4392, or service plan~~, the application shall be denied.

ITEM 7. Amend paragraph **83.3(3)“c”** as follows:

c. An applicant must be given the choice between HCBS health and disability waiver services and institutional care. The applicant, parent, guardian, or attorney in fact under a durable power of attorney for health care shall sign ~~Form 470-5044, Service Worker Comprehensive Assessment~~, the assessment and indicate that the applicant has elected home- and community-based services.

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ITEM 8. Amend paragraph **83.8(2)“d”** as follows:

d. The member receives health and disability waiver services and the physical or mental condition of the member requires more care than can be provided in the member's own home as determined by the ~~service worker or targeted~~ designated case manager.

ITEM 9. Amend paragraph **83.22(1)“d,”** introductory paragraph, as follows:

d. Certified as being in need of the intermediate or skilled level of care based on information submitted on ~~Form 470-4392, Level of Care Certification for HCBS Waiver Program~~ the department-approved comprehensive functional assessment tool that meets the requirements of Section 10202 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148).

ITEM 10. Amend subparagraph **83.22(1)“d”(1)** as follows:

(1) ~~A physician, doctor of osteopathy, registered nurse practitioner, or physician assistant shall complete Form 470-4392~~ The assessment shall be completed when the person applies for waiver services, upon request to report a significant change in the person's condition, and annually for reassessment of the person's level of care. The IME medical services unit shall be responsible for determination of the initial level of care.

ITEM 11. Amend paragraph **83.22(2)“a”** as follows:

a. *Case management.* Consumers under the elderly waiver shall receive case management services from a provider qualified pursuant to ~~441—subrule 77.33(21) rule 441—77.29(249A)~~. Case management services shall be provided as set forth in rules ~~441—90.5(249A) and 441—90.8(249A)~~.

ITEM 12. Amend paragraph **83.23(3)“c”** as follows:

c. An applicant must be given the choice between elderly waiver services and institutional care. The applicant, guardian, or attorney in fact under a durable power of attorney for health care shall sign ~~Form 470-4694, Case Management Comprehensive Assessment~~ the department-approved comprehensive functional assessment tool that meets the requirements of Section 10202 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148), indicating that the applicant has elected waiver services.

ITEM 13. Amend paragraph **83.42(1)“b”** as follows:

b. Be certified in need of the level of care that, but for the waiver, would otherwise be provided in a nursing facility or hospital based on information submitted on ~~Form 470-4392, Level of Care Certification for HCBS Waiver Program~~ a completed Form 470-4694 for children under the age of four and, for all others, the department-approved comprehensive functional assessment tool that meets the requirements of Section 10202 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148).

(1) ~~A physician, doctor of osteopathy, registered nurse practitioner, or physician assistant shall complete Form 470-4392~~ Form 470-4694 for children under the age of four and, for all others, the department-approved comprehensive functional assessment tool that meets the requirements of Section 10202 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148) shall be completed when the person applies for waiver services, upon request to report a significant change in the person's condition, and annually for reassessment of the person's level of care.

(2) and (3) No change.

ITEM 14. Amend paragraph **83.42(2)“a”** as follows:

a. The ~~department service worker~~ designated case manager shall ~~perform an~~ review the assessment of the person's need for waiver services and determine the availability and appropriateness of services. This ~~assessment review~~ shall be based, in part, on information in the completed ~~Service Worker Comprehensive Assessment, Form 470-5044~~ Form 470-4694 for children under the age of four and, for all others, the department-approved comprehensive functional assessment tool that meets the requirements of Section 10202 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148). ~~Form 470-5044 shall be completed annually.~~

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ITEM 15. Amend subparagraph **83.43(3)“a”(2)** as follows:

(2) The application is pending because a level of care determination has not been made although the completed Form 470-4392, Level of Care Certification for HCBS Waiver Program, assessment has been submitted to the IME medical services unit.

ITEM 16. Amend paragraph **83.43(3)“c”** as follows:

c. An applicant must be given the choice between HCBS AIDS/HIV waiver services and institutional care. The applicant, parent, guardian, or attorney in fact under a durable power of attorney for health care shall sign Form 470-5044, Service Worker Comprehensive Assessment, the assessment and indicate that the applicant has elected home- and community-based services.

ITEM 17. Amend paragraph **83.61(2)“a”** as follows:

a. Applicants currently receiving Medicaid case management shall have the applicable staff coordinate with the department to arrange completion of Form 470-4694 for children under the age of five and, for all others, an SIS assessment.

ITEM 18. Amend subparagraph **83.61(2)“b”(1)** as follows:

(1) Arrange for completion of Form 470-4694 for children under the age of five and, for all others, an SIS assessment for the initial level of care determination;

ITEM 19. Amend paragraph **83.61(2)“f”** as follows:

f. The case manager shall coordinate with the department for completion of Form 470-4694 for children under the age of five and, for all others, to arrange an SIS assessment for the initial level of care determination within 30 days from the date of the HCBS application unless the worker case manager can document difficulty in locating information necessary to arrange the SIS assessment or other circumstances beyond the worker's case manager's control.

ITEM 20. Amend subparagraph **83.61(2)“g”(1)** as follows:

(1) The assessment shall be based on the results of the most recent Form 470-4694 for children under the age of five and, for all others, the SIS assessment or of the SIS contractor's off-year review.

ITEM 21. Amend rule 441—83.64(249A) as follows:

441—83.64(249A) Redetermination. A redetermination of nonfinancial eligibility for HCBS intellectual disability waiver services shall be completed at least once every 12 months. In years in which an SIS assessment is not completed for an individual five years of age or older, the SIS contractor shall conduct a review in collaboration with the case manager, documenting any changes in the member's functional status since the previous SIS or other full assessment. Form 470-4694 shall be completed annually for children under the age of five.

A redetermination of continuing eligibility factors shall be made when a change in circumstances occurs that affects eligibility in accordance with rule 441—83.61(249A).

83.64(1) and 83.64(2) No change.

ITEM 22. Amend rule **441—83.81(249A)**, definition of “Brain injury,” as follows:

“*Brain injury*” means clinically evident damage to the brain resulting directly or indirectly from trauma, infection, anoxia, vascular lesions or tumor of the brain, not primarily related to degenerative or aging processes, which temporarily or permanently impairs a person's physical, cognitive, or behavioral functions. The person must have a diagnosis from the following list:

Malignant neoplasms of brain, cerebrum.

Malignant neoplasms of brain, frontal lobe.

Malignant neoplasms of brain, temporal lobe.

Malignant neoplasms of brain, parietal lobe.

Malignant neoplasms of brain, occipital lobe.

Malignant neoplasms of brain, ventricles.

Malignant neoplasms of brain, cerebellum.

Malignant neoplasms of brain, brain stem.

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Malignant neoplasms of brain, other part of brain, includes midbrain, peduncle, and medulla oblongata.

Malignant neoplasms of brain, cerebral meninges.

Malignant neoplasms of brain, cranial nerves.

Secondary malignant neoplasm of brain.

Secondary malignant neoplasm of other parts of the nervous system, includes cerebral meninges.

Benign neoplasm of brain and other parts of the nervous system, brain.

Benign neoplasm of brain and other parts of the nervous system, cranial nerves.

Benign neoplasm of brain and other parts of the nervous system, cerebral meninges.

Encephalitis, myelitis and encephalomyelitis.

Intracranial and intraspinal abscess.

Anoxic brain damage.

Subarachnoid hemorrhage.

Intracerebral hemorrhage.

Other and unspecified intracranial hemorrhage.

Occlusion and stenosis of precerebral arteries.

Occlusion of cerebral arteries.

Transient cerebral ischemia.

Acute, but ill-defined, cerebrovascular disease.

Other and ill-defined cerebrovascular diseases.

Fracture of vault of skull.

Fracture of base of skull.

Other and unqualified skull fractures.

Multiple fractures involving skull or face with other bones.

Concussion.

Cerebral laceration and contusion.

Cerebral edema

Cerebral palsy.

Subarachnoid, subdural, and extradural hemorrhage following injury.

Other and unspecified intracranial hemorrhage following injury.

Intracranial injury of other and unspecified nature.

Poisoning by drugs, medicinal and biological substances.

Toxic effects of substances.

Effects of external causes.

Drowning and nonfatal submersion.

Asphyxiation and strangulation.

Child maltreatment syndrome.

Adult maltreatment syndrome.

Status epilepticus.

ITEM 23. Amend paragraph **83.83(2)“c”** as follows:

c. An applicant shall be given the choice between waiver services and institutional care. The applicant or legal representative shall ~~complete and sign Form 470-4694, Case Management Comprehensive Assessment~~ the assessment, indicating that the applicant has elected home- and community-based services. This shall be arranged by the medical facility discharge planner or case manager.

ITEM 24. Amend paragraph **83.83(2)“d”** as follows:

d. The medical facility discharge planner, if there is one involved, shall contact the ~~appropriate case manager for the consumer's county of residence~~ managed care organization or the designated case manager to initiate development of the consumer's service plan and initiation of waiver services.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 25. Amend subrule 83.87(3) as follows:

83.87(3) Annual assessment. The IME medical services unit shall assess the member annually and certify the member's need for long-term care services. The IME medical services unit shall be responsible for determining the level of care based on the completed ~~Form 470-4694, Case Management Comprehensive Assessment~~, assessment and supporting documentation as needed.

a. and b. No change.

ITEM 26. Amend paragraph **83.102(1)“h”** as follows:

h. Be in need of skilled nursing or intermediate care facility level of care based on information submitted on ~~Form 470-4392, Level of Care Certification for HCBS Waiver Program~~ the department-approved comprehensive functional assessment tool that meets the requirements of Section 10202 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148).

~~(1) A physician, doctor of osteopathy, registered nurse practitioner, or physician assistant shall complete Form 470-4392 when the person applies for waiver services, upon request to report a change in the person's condition, and annually for reassessment of the person's level of care.~~

~~(2) (1)~~ Initial decisions on level of care shall be made for the department by the IME medical services unit within two working days of receipt of medical information. The IME medical services unit determines whether the level of care requirement is met based on medical necessity and the appropriateness of the level of care under 441—subrules 79.9(1) and 79.9(2).

~~(3) (2)~~ Adverse decisions by the IME medical services unit may be appealed to the department pursuant to 441—Chapter 7.

ITEM 27. Amend subparagraph **83.102(2)“a”(1)** as follows:

~~(1) The service worker designated case manager shall identify the need for service based on the needs of the applicant, as documented in Form 470-5044, Service Worker Comprehensive Assessment in the assessment, as well as the availability and appropriateness of services.~~

ITEM 28. Amend subrule 83.103(2) as follows:

83.103(2) Approval of application for eligibility.

a. Applications for this waiver shall be initiated on behalf of the applicant who is a resident of a medical institution with the applicant's consent or with the consent of the applicant's legal representative by the discharge planner of the medical facility where the applicant resides at the time of application.

~~(1) The discharge planner shall have the applicant's primary care provider complete Form 470-4392, Level of Care Certification for HCBS Waiver Program, and submit it to the IME medical services unit contact the member's managed care organization or designated case manager to arrange for completion of the department-approved comprehensive functional assessment tool that meets the requirements of Section 10202 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148).~~

~~(2)~~ No change.

b. Applications for this waiver shall be initiated by the applicant, the applicant's parent or legal guardian, or the applicant's attorney in fact under a durable power of attorney for health care on behalf of the applicant who is residing in the community.

~~(1) The applicant's primary care provider shall complete Form 470-4392, Level of Care Certification for HCBS Waiver Program, managed care organization or the designated case manager shall arrange for the completion of the assessment and submit it to the IME medical services unit.~~

~~(2)~~ No change.

c. No change.

d. An applicant shall be given the choice between waiver services and institutional care. The applicant or the applicant's parent, legal guardian, or attorney in fact under a durable power of attorney for health care shall sign ~~Form 470-5044, Service Worker Comprehensive Assessment~~ the assessment, indicating that the applicant has elected home- and community-based services.

e. The applicant, the applicant's parent or guardian, or the applicant's attorney in fact under a durable power of attorney for health care shall cooperate with the ~~service worker or~~ designated case manager in the development of the service plan prior to the start of services.

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f. and *g.* No change.

ITEM 29. Amend rule 441—83.107(249A), introductory paragraph, as follows:

441—83.107(249A) Individual service plan. An individualized service plan shall be prepared and used for each HCBS physical disability waiver consumer. The service plan shall be developed and approved by the consumer, the consumer's interdisciplinary team and the ~~DHS service worker~~ designated case manager prior to services beginning and payment being made to the provider. ~~The plan shall be reviewed by the consumer and the service worker annually, and the current version approved by the service worker.~~

ITEM 30. Amend subrule 83.107(2) as follows:

83.107(2) Annual assessment. The IME medical services unit shall review the member's need for continued care annually and recertify the member's need for long-term care services, pursuant to paragraph 83.102(1)“*h*” and the appeal process at rule 441—83.109(249A), based on the completed ~~Form 470-4392, Level of Care Certification for HCBS Waiver Program~~, department-approved comprehensive functional assessment tool that meets the requirements of Section 10202 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148) and on supporting documentation as needed.

a. and *b.* No change.

ITEM 31. Adopt the following new definitions of “Care coordinator” and “Integrated health home” in rule **441—83.121(249A)**:

“*Care coordinator*” means the professional who assists members in care coordination as described in 441—paragraph 78.53(1)“*b.*”

“*Integrated health home*” means the provision of services to enrolled members as described in 441—subrule 78.53(1).

ITEM 32. Amend subrule 83.122(3) as follows:

83.122(3) Level of care. The applicant must be certified as being in need of a level of care that, but for the waiver, would be provided in a psychiatric hospital serving children under the age of 21. The IME medical services unit or a managed care organization shall certify the applicant's level of care annually based on Form 470-4694, ~~Case Management Comprehensive Assessment for children under the age of four and, for all others, the department-approved comprehensive functional assessment tool that meets the requirements of Section 10202 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148).~~

ITEM 33. Amend subrule 83.122(5) as follows:

83.122(5) Choice of program. The applicant must choose HCBS children's mental health waiver services over institutional care, as indicated by the signature of the applicant's parent or legal guardian on ~~Form 470-4694, Case Management Comprehensive Assessment~~ the assessment.

ITEM 34. Amend paragraph **83.122(6)“a”** as follows:

a. The consumer must be a recipient of ~~targeted~~ case management or integrated health home services or be identified to receive ~~targeted~~ case management or integrated health home services immediately following program enrollment.

ITEM 35. Amend paragraph **83.123(1)“a”** as follows:

a. The local office shall determine if a payment slot is available by the end of the fifth working day after receipt of:

(1) A completed Form 470-2297, Health Services Application, from a consumer who is not currently a Medicaid member; or

~~(2) Form 470-4694, Case Management Comprehensive Assessment, with HCBS waiver choice indicated by signature of a Medicaid member's parent or legal guardian; or~~

~~(3) (2)~~ (2) A written request signed and dated by a Medicaid member's parent or legal guardian.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 36. Amend rule 441—83.127(249A), introductory paragraph, as follows:

441—83.127(249A) Service plan. The consumer's case manager or integrated health home care coordinator shall prepare an individualized service plan for each consumer that meets the requirements set for case plans in rule 441—130.7(234).

ITEM 37. Amend subrule 83.127(3) as follows:

83.127(3) The service plan shall be based on information in Form 470-4694, Case Management Comprehensive Assessment for children under the age of four and, for all others, the department-approved comprehensive functional assessment tool that meets the requirements of Section 10202 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148).

ITEM 38. Amend paragraph **83.128(2)“d”** as follows:

d. The physical or mental condition of the consumer requires more care than can be provided in the consumer's own home, as determined by the consumer's case manager or integrated health home care coordinator.

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HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 234.6 and 237C.4, the Department of Human Services hereby gives Notice of Intended Action to rescind Chapter 106, “Safety Standards for Children’s Centers,” and to adopt a new Chapter 106, “Certification Standards for Children’s Residential Facilities,” Iowa Administrative Code.

These proposed rules describe the certificate of approval process for a new children’s residential setting created in 2016 Iowa Acts, Senate File 2304, which also enacted Iowa Code chapter 237C, “Children’s Residential Facilities — Certification and Inspection,” and repealed Iowa Code chapter 237B.

These rules will provide governmental oversight to entities that operate residential-based programs serving children not under the jurisdiction of the Department of Human Services, juvenile court, or any other governmental entity but that do not have governmental oversight today. These rules address the basic health and educational needs of children; protection of children from mistreatment, abuse, and neglect; background and records checks of persons providing care to children in facilities certified under this chapter; the use of seclusion, restraint, or other restrictive interventions; health; safety; emergency; and the physical premises.

Any interested person may make written comments on the proposed rules on or before February 21, 2017. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These rules 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 rules are intended to implement Iowa Code section 234.6 and chapter 237C.

The following amendment is proposed.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Rescind 441—Chapter 106 and adopt the following **new** chapter in lieu thereof:

CHAPTER 106
CERTIFICATION STANDARDS FOR CHILDREN'S RESIDENTIAL FACILITIES

PREAMBLE

It is the policy of this state to provide appropriate protection for children who are separated from the direct personal care of their parents, relatives, or guardians. Therefore, the intent of this chapter is to establish certification standards for facilities that meet the definition of “children’s residential facility” pursuant to Iowa Code chapter 237C. Iowa Code chapter 237C requires the department to establish standards that shall, at a minimum, address the basic health and educational needs of children; protection of children from mistreatment, abuse, and neglect; background and records checks of persons providing care to children in facilities certified under this chapter; the use of seclusion, restraint, or other restrictive interventions; health; safety; emergency; and the physical premises on which care is provided by a children’s residential facility.

Iowa Code chapter 237C specifies that the standards established by the department shall not regulate religious education curricula at children’s residential facilities.

These rules cover definitions, application of the standards, the certification process, and provisions to address basic needs; educational programs and services; protection of children from mistreatment, abuse, and neglect; discipline; background and records checks of persons providing care to children in facilities certified under this chapter; the use of seclusion, restraint, or other restrictive interventions; health; safety; emergencies; the physical premises where care is provided by a children’s residential facility; sanitation, water, and waste disposal; staffing; and reports and inspections.

441—106.1(237C) Definitions.

“Administrator” means the administrator of that division of the department designated by the director of human services to administer this chapter or the administrator’s designee.

“Agency,” unless otherwise provided by law, means an individual, corporation, limited liability company, business trust, estate, trust, partnership or association, or any other legal entity which provides care as a children’s residential facility.

“Chemical restraint” means the use of chemical agents, including psychotropic drugs, as a form of restraint.

“Child” or *“children”* means an individual or individuals less than 18 years of age.

“Children’s residential facility” means a private facility designed to serve children who have been voluntarily placed for reasons other than an exclusively recreational activity outside of their home by a parent or legal guardian and who are not under the custody or authority of the department of human services, juvenile court, or another governmental agency, that provides 24-hour care, including food, lodging, supervision, education, or other care on a full-time basis by a person other than a relative or guardian of the child, but does not include an entity providing any of the following:

1. Care furnished by an individual who receives the child of a personal friend as an occasional and personal guest in the individual’s home, free of charge and not as a business.
2. Care furnished by an individual with whom a child has been placed for lawful adoption, unless that adoption is not completed within two years after placement.
3. Child care furnished by a child care facility as defined in Iowa Code section 237A.1.
4. Care furnished in a hospital licensed under Iowa Code chapter 135B or care furnished in a health care facility as defined in Iowa Code section 135C.1.
5. Care furnished by a juvenile detention home or juvenile shelter care home approved under Iowa Code section 232.142.
6. Care furnished by a child foster care facility licensed under Iowa Code chapter 237.
7. Care furnished by an institution listed in Iowa Code section 218.1.
8. Care furnished by a facility licensed under Iowa Code chapter 125.

HUMAN SERVICES DEPARTMENT[441](cont'd)

9. Care furnished by a psychiatric medical institution for children licensed under Iowa Code chapter 135H.

“Control room” means a locked room used for treatment purposes.

“Department” means the Iowa department of human services.

“Mechanical restraint” means restriction of a child’s mobility or ability to use the child’s hands, arms, or legs by the use of a mechanical device.

“Physical restraint” means direct physical contact required on the part of a staff member to prevent a child from hurting self, others, or property.

“Prone restraint” means a physical restraint in which a child is held face down on the floor.

“Staff” means any person providing care or services to or on behalf of the facility whether the person is an employee of the facility, an independent contractor or any other person who contracts with the facility, an employee of an independent contractor or any other person who contracts with the facility, or a volunteer.

441—106.2(237C) Application of the standards. These rules shall apply to all facilities that meet the definition of “children’s residential facility” pursuant to Iowa Code chapter 237C. In the event that a children’s residential facility is also subject to licensure, certification, registration, or regulation pursuant to another provision of law, those legal requirements shall take precedence over these rules.

441—106.3(237C) Application for a certificate of approval. A person shall not operate a children’s residential facility without a certificate of approval to operate issued by the administrator.

106.3(1) Right to apply.

a. Any adult individual or agency may apply for a certificate of approval.

b. Parties wishing to apply for certification as a children’s residential facility shall contact the department using the department’s Web site or by contacting the Iowa Department of Human Services, Division of Adult, Children and Family Services, Attn: children’s residential facility certification, 1305 East Walnut Street, Des Moines, Iowa 50319-0114.

106.3(2) Application. An applicant shall complete Form 470-0723, Application for License or Certificate of Approval.

106.3(3) Withdrawal of an application. The applicant shall report the withdrawal of an application promptly to the department.

106.3(4) Evaluation of the application. Each application will be evaluated by the department to ensure that all standards are met.

a. Before it results in adverse action, a founded abuse report on a director, a sole proprietor involved in the facility’s operation, or any facility staff shall be evaluated by the department to determine if the abuse merits prohibition of employment, volunteer work, or certification.

b. The department shall evaluate all founded child abuse on a case-by-case basis. Considerations shall include, but not be limited to:

(1) The applicant’s or certified entity’s response (e.g., immediate termination of involved staff).

(2) Whether the abuse was an isolated incident or is symptomatic of a broader, systemic problem.

106.3(5) Reports and information. The applicant shall furnish requested reports and information relevant to the certification determination to the department.

106.3(6) Applications for renewal of certificate of approval.

a. The department or its agent shall send the certificate of approval holder an application for renewal 90 days before the certificate expires. Applications for certificate renewal shall be made on the form specified in subrule 106.3(2).

b. Applications for certificate renewal shall be made at least 30 days but no more than 90 days before the certificate of approval expires. Applications for renewal of a children’s residential facility certificate of approval shall be submitted to the address listed in paragraph 106.3(1) “b.”

106.3(7) Notification. The department shall notify a children’s residential facility of approval or denial of a certificate within 90 days of the department’s receipt of complete application or reapplication information.

HUMAN SERVICES DEPARTMENT[441](cont'd)

106.3(8) *Fire inspection.*

a. Before the administrator issues or reissues a certificate of approval to a children's residential facility, the facility shall comply with standards adopted by the state fire marshal under Iowa Code chapter 100.

b. Each children's residential facility shall procure an annual fire inspection approved by the state fire marshal and shall meet the recommendations thereof.

c. In the case of a conflict between rules and standards adopted pursuant to this chapter and local rules and standards, the more stringent requirement applies.

This rule is intended to implement Iowa Code sections 237C.4 and 237C.6.

441—106.4(237C) Certificate of approval.

106.4(1) A new certificate of approval shall be obtained when the certified location moves or the facility is remodeled.

106.4(2) The certificate of approval shall state on its face the name of the holder of the certificate, the particular premises for which the certificate is issued, and the number of children who may be cared for by the children's residential facility on the premises at one time under the certificate of occupancy issued by the state fire marshal or the state fire marshal's designee. The certificate of approval shall be posted in a conspicuous place in the children's residential facility.

106.4(3) A children's residential facility shall operate only in a building or on premises designated in the certificate of approval.

106.4(4) A new certificate of approval shall be requested when the children's residential facility wishes to be certified for a different number of children.

106.4(5) The department shall issue Form 470-0620, Certificate of Approval, without cost to any children's residential facility that meets the standards. The department may offer consultation to assist applicants in meeting the standards.

106.4(6) Children's residential facilities shall be certified for a term of one year.

This rule is intended to implement Iowa Code sections 237C.6 and 237C.7.

441—106.5(237C) Denial, suspension, or revocation.

106.5(1) The administrator may deny an application for issuance or reissuance of a certificate of approval if:

a. The applicant or certificate holder, as applicable, fails to comply with these rules or knowingly makes a false statement concerning a material fact or conceals a material fact on the application for the issuance or reissuance of a certificate of approval or in a report regarding operation of the children's residential facility submitted to the administrator.

b. The applicant or any person residing in the children's residential facility or any facility staff has a record of founded child abuse unless an evaluation of the founded abuse has been made by the department which concludes that the abuse does not merit prohibition of employment, volunteer work, or certification.

106.5(2) The administrator may suspend a certificate of approval if:

a. The applicant or certificate holder, as applicable, fails to comply with these rules or knowingly makes a false statement concerning a material fact or conceals a material fact on the application for the issuance or reissuance of a certificate of approval or in a report regarding operation of the children's residential facility submitted to the administrator.

b. A children's residential facility's failure to meet the certification requirements poses a danger to the health, safety, or well-being of the children being served.

c. A children's residential facility fails to comply with Iowa Code section 282.34.

106.5(3) All operations of a children's residential facility shall cease during a period of suspension or revocation of a certificate of approval, including during an appeal. A suspension of a certificate of approval shall not extend beyond six months and the existence of the condition requiring suspension shall be corrected within six months and documented in the record of the holder of the certificate of approval.

HUMAN SERVICES DEPARTMENT[441](cont'd)

106.5(4) Effective period of suspension. A suspension shall be effective on the date the notice is received by the holder of the certificate of approval and shall remain in effect until one of the following occurs:

- a. The department withdraws the suspension due to a change in conditions in the children's residential facility.
- b. The court orders the certificate of approval reinstated.
- c. The action is reversed by a final decision in accordance with 441—Chapter 7.
- d. The certification period expires.

106.5(5) Method and content of notice. The notice of suspension shall be sent by restricted certified mail or personal service and shall include the following:

- a. The condition requiring the suspension.
- b. The specific law or rule violated.

106.5(6) The administrator may revoke a certificate of approval if:

a. The applicant or certificate holder, as applicable, fails to comply with these rules or knowingly makes a false statement concerning a material fact or conceals a material fact on the application for the issuance or reissuance of a certificate of approval or in a report regarding operation of the children's residential facility submitted to the administrator.

b. The conditions requiring suspension are not corrected within six months.

c. A children's residential facility fails to comply with Iowa Code section 282.34.

106.5(7) Right to appeal suspension or revocation. The holder of the certificate of approval has the right to appeal a suspension or revocation of the certificate of approval, but initiation of an appeal does not alter the suspension or revocation. Notices of adverse actions and the right to appeal shall be given to applicants and certificate of approval holders in accordance with 441—Chapter 7.

106.5(8) Corrective action. The facility shall furnish the department with a plan of action to correct deficiencies that resulted in the suspension or revocation of a certificate of approval. The plan shall give specific dates upon which the corrective action will be completed.

This rule is intended to implement Iowa Code section 237C.6.

441—106.6(237C) Providing for basic needs.

106.6(1) A children's residential facility shall provide the following for children in its care:

- a. Adequate shelter.
- b. Nourishing food and water.
- c. Opportunities for adequate sleep, exercise, cleanliness, and health maintenance.

106.6(2) A children's residential facility shares responsibility for meeting these basic needs with the children's parents, guardians, or other primary caretakers.

106.6(3) A children's residential facility shall have written policies related to:

a. Children's communication with their parents or guardians.

b. Children's ability to receive visitors who have been approved by their parents or guardians.

c. Confidentiality and reasonable privacy for children. The children's residential facility shall afford children and their families privacy and confidentiality unless doing so would jeopardize a child's health or safety.

d. Children's ability to keep personal belongings such as clothing, pictures, and other items.

e. Children's ability to participate in normal community activities.

106.6(4) A children's residential facility shall not impose rules and restrictions that prevent communication with parents, guardians, other family members, or others.

106.6(5) A children's residential facility shall share its written policies related to communication, visitors, personal belongings, and participation in community activities with a child's parents or guardians before a child is admitted to the children's residential facility.

441—106.7(237C) Educational programs and services. A children's residential facility operating under a certificate of approval issued under Iowa Code chapter 237C shall comply with rules adopted by the state board of education pursuant to Iowa Code section 282.34.

HUMAN SERVICES DEPARTMENT[441](cont'd)

441—106.8(237C) Protection from mistreatment, physical abuse, sexual abuse, and neglect.

106.8(1) The state of Iowa prohibits child abuse as defined in Iowa Code chapter 232, criminal assault, and other criminal acts of violence. A children's residential facility shall not use discipline that amounts to child abuse or a criminal act of assault or violence.

106.8(2) A children's residential facility's written policies shall:

a. Prohibit mistreatment, physical abuse, sexual abuse, and neglect of children.

b. Specify reporting and enforcement procedures for the children's residential facility. Alleged violations shall be reported immediately to the director of the facility and appropriate department of human services personnel.

c. Prohibit the use of corporal punishment. The facility's policies shall clearly prohibit staff or the children from utilizing corporal punishment as a method of discipline or correcting children.

d. These policies shall be communicated in writing to all staff of the facility.

This rule is intended to implement Iowa Code section 237C.3.

441—106.9(237C) Discipline.

106.9(1) Generally. The facility shall have written policies, which shall be available to all staff and to the child's family, regarding methods used for control and discipline of children. Agency staff shall be in control of and responsible for discipline at all times. Discipline shall not include the withholding of basic necessities such as food, clothing, or sleep.

106.9(2) Corporal punishment is prohibited. The facility shall have a policy that clearly prohibits staff or the children from utilizing corporal punishment as a method of disciplining or correcting children. This policy is to be communicated in writing to all staff of the facility.

106.9(3) The administration of discipline by a child to another child is prohibited.

106.9(4) Behavior expectations. The facility shall make available to the child and the child's parents or guardian written policies regarding the following areas:

a. The general expectation of behavior, including the facility's rules and practices.

b. The range of reasonable consequences that may be used to deal with inappropriate behavior.

106.9(5) Discipline policies shall be discussed with:

a. Staff, volunteers, or others who perform duties under a subcontract with the children's residential facility; and

b. Parents or guardians before children are admitted to the children's residential facility.

441—106.10(237C) Record checks.

106.10(1) A children's residential facility shall conduct record checks for:

a. Any owner, director, staff member, volunteer, or other person who performs duties under a subcontract with the children's residential facility and who:

(1) Has direct responsibility for children, or

(2) Has access to a child when the child is alone.

b. Anyone living in the children's residential facility who is 14 years of age or older.

106.10(2) The record checks shall be conducted to determine whether the person:

a. Has any founded child abuse reports.

b. Has any founded dependent adult abuse reports.

c. Has any criminal convictions.

d. Has been placed on the sex offender registry.

106.10(3) Every applicant for employment shall submit to the children's residential facility a written, signed and dated statement that discloses:

a. Any substantiated instances of child abuse, neglect, or sexual abuse committed by the person.

b. Any substantiated instances of dependent adult abuse committed by the person.

c. Any convictions of crimes involving the mistreatment or exploitation of a child.

106.10(4) A children's residential facility may request additional information from the central abuse registry or the Iowa department of public safety.

HUMAN SERVICES DEPARTMENT[441](cont'd)

106.10(5) If a record of criminal conviction or founded child abuse or founded dependent adult abuse exists, the children's residential facility shall evaluate the crime or founded child abuse or dependent adult abuse to determine whether or not the crime or founded child abuse or founded dependent adult abuse merits prohibition of employment or any voluntary or subcontracted position. The evaluation shall consider:

- a. The nature and seriousness of the crime or founded abuse in relation to the position sought,
- b. The time elapsed since the commission of the crime or founded abuse,
- c. The circumstances under which the crime or founded abuse was committed,
- d. The degree of rehabilitation,
- e. The number of crimes or founded abuses committed by the person involved, and
- f. The likelihood that the person will commit the crime or founded abuse again.

441—106.11(237C) Seclusion and restraints.

106.11(1) A children's residential facility shall not physically restrain a child unless necessary to prevent the child from hurting self, others, or property. Physical restraint must be conducted in a standing position whenever possible. Prone restraint is prohibited.

- a. No staff person shall use any restraint that obstructs the airway of a child.
- b. Staff persons who find themselves involved in the use of a prone restraint when responding to an emergency must take immediate steps to end the prone restraint.
- c. If a staff person physically restrains a child who uses sign language or an augmentative mode of communication as the child's primary mode of communication, the child shall be permitted to have the child's hands free of restraint for brief periods unless the staff person determines that such freedom appears likely to result in harm to the child, others, or property.
- d. The rationale and authorization for the use of physical restraint and staff action and procedures carried out to protect the child's rights and to ensure safety shall be clearly set forth in the child's record by the responsible staff persons.

106.11(2) A children's residential facility shall not put a child into time-out seclusion for more than one hour. A child shall never be secluded in an area that is locked or out of the view of staff, volunteers, or others who perform duties under a subcontract with the children's residential facility.

106.11(3) At no time shall a children's residential facility use a control room, mechanical restraint, or chemical restraint.

441—106.12(237C) Health.

106.12(1) A children's residential facility shall obtain, store, prepare, and serve food and water free from contamination.

106.12(2) A children's residential facility shall have written health policies that describe how the facility will care for a sick child residing there.

106.12(3) A children's residential facility shall have written policies and procedures related to disease control and the use of universal precautions for handling of any bodily excrement or discharge, including blood and breast milk. A children's residential facility shall take precautions to prevent the spread of infectious and communicable disease.

106.12(4) A children's residential facility shall seek immediate medical attention for a child when it is necessary to ensure that the child remains healthy. There shall be 24-hour emergency and routine medical and dental services available and provided when prescribed. Provision of these services shall be documented.

106.12(5) A children's residential facility shall have written policies and procedures to ensure that staff, volunteers, or others who perform duties under a subcontract with the children's residential facility demonstrate clean personal hygiene sufficient to prevent or minimize the transmission of illness or disease and are certified in the provision of first aid and cardiopulmonary resuscitation.

106.12(6) A children's residential facility shall be required to report any reportable disease to the department of public health.

HUMAN SERVICES DEPARTMENT[441](cont'd)

106.12(7) A children's residential facility shall have written policies on physical examination reports or health status statements for all children in the facility's care.

106.12(8) A children's residential facility shall have written policies and procedures for the dispensing, storage, authorization, and recording of all prescription and nonprescription medications.

106.12(9) A children's residential facility shall ensure that a clearly labeled first-aid kit is available and easily accessible to staff, volunteers, or others who perform duties under a subcontract with the children's residential facility at all times when children are in the facility, in the outdoor play area, and on field trips. The first-aid kit shall be sufficient to address first aid related to minor injury or trauma and shall be stored in an area inaccessible to children.

106.12(10) A children's residential facility shall have written policies on reporting illness or injury to parents or guardians. These policies shall be shared with parents or guardians before a child is admitted to the children's residential facility. A significant change in health status or incidents resulting in a serious injury to or death of a child shall be reported immediately to the parent or guardian.

106.12(11) A children's residential facility shall have written policies on smoking and tobacco use that comply with Iowa state law.

441—106.13(237C) Safety.

106.13(1) A children's residential facility shall provide a sufficient number of staff to ensure safe practices that are based on the ages and needs of the children in care to ensure adequate supervision and child safety. This requirement applies to daytime and overnight hours.

106.13(2) Poison control centers' telephone numbers shall be posted in prominent locations and readily available. All poisonous or caustic drugs or materials shall:

- a. Be plainly labeled.
- b. Be stored separately from other drugs in a specific, well-illuminated cabinet, closet, or storeroom.
- c. Be stored in a manner that prevents accidental or intentional ingestion.
- d. Be accessible only to authorized persons.

106.13(3) A children's residential facility shall have written policies regarding fishing ponds, lakes, or any bodies of water located on or near the facility's grounds and accessible to children.

- a. All swimming pools shall conform to state and local health and safety regulations.
- b. Adult supervision shall be provided at all times when children are near or in the water.

106.13(4) A children's residential facility shall have written policies regarding transportation of a child that ensure compliance with Iowa Code section 321.446 regarding child restraint devices.

- a. Drivers of vehicles shall possess a valid driver's license.
- b. Drivers shall not operate a vehicle while under the influence of alcohol, illegal drugs, or prescription or nonprescription drugs that could impair the drivers' ability to operate a motor vehicle.
- c. All vehicles used for children's residential facility activities shall be maintained in safe operating condition.
- d. A children's residential facility shall have proof of current insurance that covers all vehicles and drivers used to transport children.

106.13(5) Animals kept on site shall:

- a. Be in good health with no evidence of disease.
- b. Be of such disposition as to not pose a safety threat to any person.
- c. Be maintained in a clean and sanitary manner.

106.13(6) Weapons and ammunition are prohibited on the premises of a children's residential facility.

441—106.14(237C) Emergencies.

106.14(1) A children's residential facility shall have written emergency plans for responding to evacuations, fires, tornadoes, floods, blizzards, other weather incidents, power failures, bomb threats, chemical spills, earthquakes, or other natural or man-made disasters that could create structural damage to the children's residential facility or pose health or safety hazards.

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. The emergency plans shall include guidelines for responding to situations involving intruders within the children's residential facility and grounds, intoxicated persons, lost or abducted children, and evacuations.

b. Emergency plans shall be coordinated with county emergency planning agencies.

c. Evacuations and how to seek protective shelter shall be practiced periodically.

106.14(2) The emergency plans shall include procedures for annual training regarding the contents and implementation of the plans for staff, volunteers, or others who perform duties under a subcontract with the children's residential facility.

106.14(3) A children's residential facility shall have:

a. Written policies and procedures for medical and dental emergencies.

b. Sufficient information and authorization to meet the medical and dental needs or emergencies of children.

106.14(4) Emergency telephone numbers shall be readily available, including emergency telephone numbers for parents or guardians.

441—106.15(237C) Buildings and physical premises. A children's residential facility shall ensure that the facility and grounds, playground surfaces and other areas, and all related equipment are safe and free from hazards.

106.15(1) A children's residential facility shall comply with requirements established by the fire marshal for the applicable type of occupancy and shall comply with any applicable additional fire safety requirements established by local ordinance, including fire inspections.

106.15(2) A children's residential facility shall be structurally sound. Any new facility or existing facility that is extensively renovated shall be constructed in compliance with applicable requirements of the state of Iowa building code established pursuant to Iowa Code chapter 103A and with any local building code in force at the time of construction.

106.15(3) A children's residential facility located in a building built before 1960 shall conduct a visual assessment for lead hazards that exist in the form of peeling or chipping paint.

a. If the presence of peeling or chipping paint is found, the paint shall be presumed to be lead-based paint unless a certified inspector as defined in department of public health rules at 641—Chapter 70 determines that the paint is not lead-based.

b. In the absence of the determination that peeling or chipping paint is not lead-based, a children's residential facility shall use safe work methods as defined by the state department of public health to eliminate human exposure or likely exposure to lead-based paint hazards.

106.15(4) Living areas.

a. All living areas shall:

(1) Have screens on windows used for ventilation.

(2) Be maintained in clean, sanitary conditions, free from vermin, rodents, dampness, noxious gases and objectionable odors.

(3) Be in safe repair.

(4) Provide for adequate lighting when natural sunlight is inadequate.

(5) Have heating and storage areas separated from sleeping or play areas.

(6) Have walls and ceiling surfaced with materials that are asbestos-free.

b. All sleeping rooms shall:

(1) Provide a minimum of 60 square feet per child for multiple occupancy.

(2) Provide a minimum of 80 square feet per child for single occupancy.

(3) Not sleep more than four children per room.

(4) Be of finished construction.

c. Rooms aboveground shall:

(1) Have a ceiling height of at least 7 feet, 6 inches.

(2) Have a window area of at least 8 percent of the floor area unless mechanical ventilation is provided that is capable of removing dampness and odors.

d. Rooms belowground shall:

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- (1) Have a ceiling height of at least 6 feet, 8 inches.
- (2) Have a window area of at least 2 percent of the floor area unless mechanical ventilation is provided that is capable of removing dampness and odors.
- (3) Have floor and walls constructed of concrete or other materials with an impervious finish and free from groundwater leakage.

106.15(5) Bedrooms.

- a. Each child in care shall have a solidly constructed bed.
- b. Sheets, pillowcases, and blankets shall be provided for each child and shall be kept clean and in good repair.
- c. Each child in care shall have adequate storage space for private use and a designated space for hanging clothing in proximity to the bedroom occupied by the child.
- d. No child over the age of five years shall occupy a bedroom with a member of the opposite sex.

106.15(6) Heating.

- a. The heating unit shall be located and operated to maintain the temperature in the living quarters at a minimum of 65 degrees Fahrenheit during the day and 55 degrees Fahrenheit during the night. Variances may be made in case of health problems. Temperature is measured at 24 inches above the floor in the middle of the room.
- b. All space heaters and water heaters involving the combustion of fuel, such as gas, oil or similar fuel, shall be vented to the outside atmosphere.
- c. Neither rubber nor plastic tubing shall be used as supply lines for gas heaters.
- d. The heating or cooling plant shall be checked at least annually and kept in safe working condition at all times.

These rules are intended to implement Iowa Code section 237C.3.

441—106.16(237C) Sanitation, water, and waste disposal. In the case of a conflict between rules and standards adopted pursuant to this chapter and local rules and standards, the more stringent requirement applies.

106.16(1) Bathroom facilities.

- a. Bathrooms shall have an adequate supply of hot and cold running water.
- b. Each bathroom shall be properly equipped with toilet tissue, towels, soap, and other items required for personal hygiene unless children are individually given these items. Paper towels, when used, and toilet tissue shall be in dispensers.
- c. Toilets and baths or showers shall provide for individual privacy.
- d. There shall be a shower or tub for each ten children or portion thereof.
- e. Tubs and showers shall have slip-proof surfaces.
- f. At least one toilet and one lavatory shall be provided for each six children or portion thereof.
- g. Toilet facilities shall be provided with natural or artificial ventilation capable of removing odors and moisture.
- h. Toilet facilities adjacent to a food preparation area shall be separated completely by an enclosed solid door.
- i. All toilet facilities shall be kept clean.
- j. When more than one stool is used in one bathroom, partitions providing privacy shall be used.
- k. Toilets, wash basins, and other plumbing or sanitary facilities shall be maintained in good operating condition.

106.16(2) Food preparation and storage.

- a. Cracked dishes and utensils shall not be used in the preparation, serving, or storage of food.
- b. Storage areas for perishable foods shall be kept at 45 degrees Fahrenheit or below.
- c. Storage areas for frozen foods shall be kept at 0 degrees Fahrenheit or below.
- d. Food that is to be served hot shall be maintained at 140 degrees Fahrenheit or above.
- e. Food that is to be served cold shall be maintained at 45 degrees Fahrenheit or below.
- f. The kitchen and food storage areas shall be kept clean and neat. Foods shall not be stored on the floor.

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g. The floor and walls shall be of smooth construction and in good repair.

106.16(3) *Personnel handling food.* Personnel who handle food shall:

- a. Be free of infection.
- b. Be clean and neatly groomed.
- c. Wear clean clothes.
- d. Not use tobacco in any form while preparing or serving food.

106.16(4) *Dishwashing facilities.*

- a. Manual dishwashing will be allowed in facilities that normally serve 15 or fewer people at one meal.
- b. Commercial dishwashers shall be used in facilities serving more than 15 people at one meal and shall meet the following criteria:
 - (1) When chemicals are added for sanitation purposes, they shall be automatically dispensed.
 - (2) Machines using hot water for sanitizing must maintain wash water at a temperature of at least 150 degrees Fahrenheit and rinse water at a temperature of at least 180 degrees Fahrenheit or a single temperature machine at 165 degrees Fahrenheit for both wash and rinse.
 - (3) All machines shall be thoroughly cleaned and sanitized at least once each day or more often if necessary to maintain satisfactory operating condition.
- c. Soiled and clean dish table areas shall be of adequate size to accommodate the dishes for one meal.
- d. All handheld food preparation and serving equipment shall be cleaned and sanitized following each meal. Dispensers, urns, and similar equipment shall be cleaned and sanitized daily.

106.16(5) *Foods not prepared at site of serving.*

- a. The place where food is prepared for off-site serving shall conform to all requirements for on-site food preparation.
- b. Food shall be transported in covered containers or completely wrapped or packaged so as to be protected from contamination.
- c. During transportation, and until served, hot foods shall be maintained at 140 degrees Fahrenheit or above and cold food shall be maintained at 45 degrees Fahrenheit or below.

106.16(6) *Milk supply.* When fluid milk is used, it shall be pasteurized Grade A.

106.16(7) *Public water supply.* The water supply is approved when the water is obtained from a public water supply system, as regulated by the department of natural resources.

106.16(8) *Private water supplies.* Any facility that serves at least 25 people for at least 60 days during the year and is supplied by its own well meets the definition of a public water supply and must be regulated by the department of natural resources.

a. Each privately operated water supply shall be maintained and operated in a manner that ensures safe drinking water. Each water supply used as part of a facility shall be annually inspected and evaluated for deficiencies that may allow contaminants access to the well interior. Items such as open or loose well caps, missing or defective well vents, poor drainage around the wells, and the nearby storage of potential contaminants shall be evaluated. All deficiencies shall be corrected within 30 days of discovery by a well contractor certified by the state.

b. Evaluation and water testing. As part of the inspection and evaluation, water samples shall be collected and submitted by the local health sanitarian or a well contractor certified by the state to the state hygienic laboratory or other laboratory certified for drinking water analysis by the department of natural resources. The minimum yearly water analysis shall include coliform bacteria and nitrate (NO₃-) content. Total arsenic testing shall be performed once every three years. The water shall be deemed safe when there are no detectable coliform bacteria, when nitrate levels are less than 10 mg/L as nitrogen, and when total arsenic levels are 10 µg/L or less. A copy of the laboratory analysis report shall be provided to the department within 72 hours of receipt by the water supply.

c. Multiple wells supplying water. When the water supply obtains water from more than one well, each well connected to the water distribution system shall meet all of the requirements of these rules.

d. Deficiencies. When no apparent deficiencies exist with the well or its operations and the water supply is proven safe by meeting the minimum sampling and analysis requirements, water

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safety requirements have been met. Wells with deficiencies that result in unsafe water analysis require corrective actions through the use of a well contractor certified by the state.

e. When water is proven unsafe. When the water supply is proven unsafe by sampling and analysis, the facility shall immediately provide a known source of safe drinking water for all water users and hang notification at each point of water use disclosing the water is not safe to consume. In addition, the facility shall provide a written statement to the department disclosing the unsafe result and detail a plan on how the water supply deficiencies will be corrected and the supply brought back into a safe and maintained condition. The statement shall be submitted to the department within 10 days of the laboratory notice. All corrective work shall be performed and the water supply sampled and analyzed again within 45 days from any water test analysis report that indicates the water supply is unsafe for drinking water uses.

f. Water obtained from another source through hauling and storage must meet the requirements of the department of natural resources.

106.16(9) *Heating or storage of hot water.* Each tank used for the heating or storage of hot water shall be provided with a pressure and temperature relief valve.

106.16(10) *Sewage treatment.*

a. A children's residential facility shall be connected to a public sewer system where available.

b. Private disposal systems shall be designed, constructed, and maintained so that no unsanitary or nuisance conditions exist, such as surface discharge of raw or partially treated sewage or failure of the sewer lines to convey sewage properly.

106.16(11) *Garbage storage and disposal.*

a. A sufficient number of garbage and rubbish containers shall be provided to properly store all material between collections.

b. Containers shall be insect-, rodent-, and leakproof and shall be maintained in a sanitary condition.

441—106.17(237C) Staffing.

106.17(1) Children's residential facility staff shall be 21 years of age or older with appropriate training and experience related to job duties.

106.17(2) A children's residential facility shall have written policies and procedures regarding staff supervision, development, training requirements, and orientation to children's residential facility policies and practices.

106.17(3) A children's residential facility shall provide a sufficient number of staff to ensure proper supervision and child safety at all times and at all activities conducted by a children's residential facility off its premises.

441—106.18(237C) Reports and inspections.

106.18(1) The administrator may require submission of reports by a certificate of approval holder and shall cause at least one annual unannounced inspection of a children's residential facility to assess compliance with applicable requirements and standards.

106.18(2) The inspections shall be conducted by the department of inspections and appeals in addition to initial, renewal, and other inspections that result from complaints or self-reported incidents.

106.18(3) The department of inspections and appeals and the department of human services may examine records of a children's residential facility and may inquire into matters concerning the children's residential facility and its employees, volunteers, and subcontractors relating to requirements and standards for children's residential facilities under this chapter.

These rules are intended to implement Iowa Code chapter 237C.

ARC 2922C**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 22.7(50), 307.12 and 307A.2, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 4, “Public Records and Fair Information Practices,” Iowa Administrative Code.

The proposed amendments:

- Change “citizens’ aide” to “ombudsman” to reflect current Iowa Code language.
- Add a new subrule concerning the confidentiality of the Department’s records relating to security, emergency preparedness or disaster recovery. This new subrule is needed to comply with Iowa Code section 22.7(50)“b.”

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

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Operations and Finance Division, 800 Lincoln Way, Ames, Iowa 50010; e-mail: tracy.george@iowadot.us.
5. Be received by the Department’s rules administrator no later than February 21, 2017.

A meeting to hear requested oral presentations is scheduled for Thursday, February 23, 2017, at 1 p.m. in the Administration Building, First Floor, South Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

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

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

These amendments are intended to implement Iowa Code section 22.7(50)“b.”

The following amendments are proposed.

ITEM 1. Amend paragraph **4.4(2)“b”** as follows:

- b.* To the ~~citizens’ aide~~ ombudsman pursuant to Iowa Code section 2C.9.

ITEM 2. Renumber subrule **4.9(23)** as **4.9(24)**.

ITEM 3. Adopt the following new subrule 4.9(23):

4.9(23) Records which contain information concerning security procedures, emergency preparedness, or disaster recovery related to the protection of property, facilities, and transportation infrastructure controlled, occupied, or owned by the department; employees of the department; visitors to the department’s facilities or offices; other persons on premises controlled or owned by the department; or information concerning security procedures, emergency preparedness, or disaster recovery related to persons or property owned by or under the control of another governmental agency or private entity if that information was obtained by the department in relation to planning for emergencies or developing security procedures. Records under this subrule include, but are not limited to, all that contain information relating to vulnerability or risk assessments; security measures, such as security and response plans, security codes and combinations, passwords, restricted area passes, keys,

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and security or response procedures; emergency response protocols; and information that, if disclosed, could significantly increase the vulnerability to attack of critical physical systems, infrastructures, or transportation critical assets, including information technology networks and systems. (Iowa Code section 22.7(50))

ARC 2921C**TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 615, "Sanctions," Iowa Administrative Code.

The Department proposes to update the rule regarding service of notice to further streamline the process of documenting when the Department mailed a notice by allowing the Department to confirm and certify under penalty of perjury that the mailing was properly sent and to remove unnecessary language related to what must occur if the Department determines it failed to send a notice since these requirements are already clearly outlined in statute.

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

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Operations and Finance Division, 800 Lincoln Way, Ames, Iowa 50010; e-mail: tracy.george@iowadot.us.
5. Be received by the Department's rules administrator no later than February 21, 2017.

A meeting to hear requested oral presentations is scheduled for Thursday, February 23, 2017, at 10 a.m. at the Iowa Department of Transportation's Motor Vehicle Division offices located at 6310 SE Convenience Boulevard, Ankeny, Iowa.

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

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

This amendment is intended to implement Iowa Code section 321.16.

The following amendment is proposed.

Amend rule 761—615.37(321) as follows:

761—615.37(321) Service of notice.

615.37(1) to 615.37(3) No change.

615.37(4) The department may prepare an affidavit of mailing verifying the fact that a notice was mailed by first-class mail. To verify the mailing of a notice, the department may use its records in conjunction with U.S. Postal Service records available to the department. The department's affidavit of mailing may be attested to and certified in accordance with Iowa Code section 622.1.

TRANSPORTATION DEPARTMENT[761](cont'd)

~~615.37(5) The department shall prepare an affidavit of mailing if the department determines, under Iowa Code section 321.211A, that it failed to serve a notice of suspension or revocation. The department shall send the affidavit to the court that rendered the conviction.~~

This rule is intended to implement Iowa Code sections 321.16, 321.211, 321.211A, 321.556, 321J.9, 321J.12, and 331.655.

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:

February 1, 2016 — February 29, 2016	4.25%
March 1, 2016 — March 31, 2016	4.00%
April 1, 2016 — April 30, 2016	3.75%
May 1, 2016 — May 31, 2016	4.00%
June 1, 2016 — June 30, 2016	3.75%
July 1, 2016 — July 31, 2016	3.75%
August 1, 2016 — August 31, 2016	3.75%
September 1, 2016 — September 30, 2016	3.50%
October 1, 2016 — October 31, 2016	3.50%
November 1, 2016 — November 30, 2016	3.75%
December 1, 2016 — December 31, 2016	3.75%
January 1, 2017 — January 31, 2017	4.25%
February 1, 2017 — February 28, 2017	4.50%

UTILITIES DIVISION

Notice of Potential Deregulation of Telecommunications Service

The Utilities Board (Board) hereby gives notice that on January 4, 2017, the Board issued an order in Docket No. INU-2016-0001, In re: Deregulation of Local Exchange Services, “Order Initiating Formal Notice and Comment Proceeding,” pursuant to Iowa Code section 476.1D, to consider whether retail local exchange service to customers in Iowa is subject to effective competition and should be deregulated.

Copies of the Board’s complete order initiating formal notice and comment proceeding may be obtained through the Board’s electronic filing system available from the Board’s Web page, <http://www.state.ia.us/iub>.

Any interested person may file on or before February 21, 2017, responses or statements of position concerning the questions and issues identified in the Board’s order regarding the possible deregulation of retail local exchange telecommunications services. Any person filing a response or statement of position may file a counterstatement replying to the comments of other participants on or before March 24, 2017.

All responses, statements, and counterstatements shall be accompanied by an affidavit attesting to the validity of the information.

An oral presentation is scheduled for the purpose of taking sworn testimony concerning the responses, statements, and counterstatements. The oral presentation shall be held at 1 p.m. on April 18, 2017, in the Board’s Hearing Room at 1375 E. Court Ave., Des Moines, Iowa. All persons filing responses or written statements shall have at least one witness available at the oral presentation who may be cross-examined on the subject matter of the written statements. Cross-examination may be by the Board, the Consumer Advocate, and other participants, as the Board may deem appropriate to

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fully develop the record. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515)725-7334 in advance of the scheduled date to request that appropriate arrangements be made.

ARC 2930C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

The federal Indian Health Service (IHS) approves encounter rates for inpatient and outpatient medical care provided by IHS and tribal facilities to American Indians or Alaskan natives who are beneficiaries of Medicare, Medicaid, or other federal programs. The Indian Health Facilities in Iowa requested that Iowa Medicaid adopt the encounter rate for prescribed drugs, in lieu of payment for the particular drugs provided.

The Centers for Medicare and Medicaid Services (CMS) released a final rule that implements provisions of the Patient Protection and Affordable Care Act of 2010 as amended by the Health Care and Education Reconciliation Act of 2010 (collectively referred to as the Affordable Care Act) pertaining to Medicaid reimbursement for covered outpatient drugs. Key aspects of the final rule require Medicaid agencies to comply by documenting the reimbursement methodology for specific entities in their state plan no later than April 1, 2017. Specific entities that must be addressed include: (1) a covered entity described in Section 1927(a)(5)(B) of the Social Security Act (“340B” entities), (2) a contract pharmacy under contract with a covered 340B entity, and (3) a facility authorized to purchase drugs through the federal supply schedule (FSS). Corresponding clarifications, which do not represent a change from current policy, are being made in the rules. Additionally, CMS has required that ingredient cost reimbursement for drugs acquired by providers at nominal prices and excluded from the calculation of the drug’s “best price” not exceed the provider’s actual acquisition cost. A terminology clarification is also being made by changing the term “maximum allowable cost” (MAC) to “federal upper limit” (FUL) to conform to the Code of Federal Regulations (CFR). Lastly, the final rule indicates states may, at their option, provide coverage of and receive federal financial participation for investigational drugs, under specific conditions. The amendment in Item 2 herein clarifies that Iowa Medicaid does not cover investigational drugs that are the subject of an investigational new drug (IND) application that has been allowed to proceed by the Food and Drug Administration (FDA) but that do not meet the definition of a covered outpatient drug as set forth in 42 U.S.C. 1396r-8(k)(2)-(4).

These amendments change the outpatient prescribed drug reimbursement methodology for drugs provided to Medicaid recipients who are American Indians or Alaskan natives by health facilities that are operated by IHS or under the Indian Self-Determination and Education Assistance Act (P.L. 93-638) by an “Indian tribe,” “tribal organization,” or “urban Indian organization” as those terms are defined in 25 U.S.C. 1603 (referred to as Indian Health Facilities). Such drugs will be reimbursed through an outpatient encounter rate per day rather than through reimbursement for each individual prescription provided. The amendments also clarify the facilities that will receive this encounter rate for drugs. Because Medicaid reimbursement for services provided to Medicaid recipients who are American Indians or Alaskan natives by these facilities are 100 percent federally funded, there is no state expenditure involved in this change of reimbursement methodology.

These amendments also change the outpatient prescribed drug reimbursement methodology for drugs acquired by providers at nominal prices and excluded from the calculation of the drug’s “best price” pursuant to 42 CFR 447.508. For such drugs, the ingredient cost may not exceed the provider’s actual acquisition cost (not to exceed the nominal price paid).

Additionally, these amendments clarify the following:

- The current reimbursement methodology utilized for covered outpatient drugs for 340B covered entities, 340B contract pharmacies, and facilities (such as Department of Veterans Affairs facilities) purchasing through the FSS under the General Services Administration.

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- The terminology of maximum allowable cost (MAC) by updating to the conventional label of federal upper limit (FUL) and maintaining the definition for the FUL in accordance with 42 CFR 447.514(a)-(c).
- Payment is not made for outpatient investigational drugs that are the subject of an IND application that has been allowed by the FDA to proceed, which is optional with the state.
- Insertion of the word “state” in the phrase “average actual acquisition cost (AAC)” so that the phrase reads “average state actual acquisition cost (AAC)” to distinguish that limit from the provider-specific actual acquisition costs that also limit reimbursement of 340B covered entities and FSS facilities.
- Separation in the drug reimbursement methodology of the “submitted charge” and the “providers’ usual and customary charge” to reflect that, if the amounts are different, the lower of the two is utilized for reimbursement.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2824C** on November 23, 2016. The Department received no comments during the public comment period. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on January 11, 2017.

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

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

These amendments are intended to implement Iowa Code section 249A.4.

These amendments will become effective April 1, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 441—77.45(249A) as follows:

441—77.45(249A) Indian health service-638 facilities. A health care facility ~~owned and operated by American Indian or Alaskan native tribes or tribal organizations with funding authorized by Title I or Title III of the U.S. Indian Health Service or under the Indian Self-Determination and Education Assistance Act (P.L. 93-638) by an “Indian tribe,” “tribal organization,” or “Urban Indian organization,” as those terms are defined in 25 U.S.C. 1603,~~ is eligible to participate in the medical assistance program if the following conditions are met:

77.45(1) and 77.45(2) No change.

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

ITEM 2. Adopt the following **new** subparagraph **78.2(4)“b”(12)**:

(12) Investigational drugs, including drugs that are the subject of an investigational new drug (IND) application allowed to proceed by the U.S. Food and Drug Administration (FDA) but that do not meet the definition of a covered outpatient drug in 42 U.S.C. 1396r-8(k)(2)-(4).

ITEM 3. Amend paragraph **79.1(1)“h”** as follows:

h. Indian health service-638 facilities.

(1) ~~Indian health service-638 facilities as defined at enrolled pursuant to rule 441—77.45(249A) are paid a special daily base encounter rate for all Medicaid-covered services rendered to American Indian or Alaskan native persons who are Medicaid-eligible at the current daily visit rates approved by the U.S. Indian Health Service (IHS) for services provided by IHS facilities to Medicaid beneficiaries, as published in the Federal Register. This rate is updated periodically and published in the Federal Register after being approved by the Office of Management and Budget. For services provided to American Indians or Alaskan natives, Indian health service-638 facilities may bill only one charge for one visit per patient per calendar day for medical services provided to American Indians or Alaskan natives (at the “outpatient per visit rate (excluding Medicare))”, which shall include constitute payment in full for all medical services provided on that day,~~ except as follows:

1. For services provided to American Indians and Alaskan natives, Indian health facilities may bill for multiple visits per patient per calendar day for medical services (at the “outpatient per visit rate (excluding Medicare))” only if medical services are provided for different diagnoses or if distinctly

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different medical services from different categories of services are provided for the same diagnoses in different units of the facility. For this purpose, the categories of medical services are vision services; dental services; mental health and addiction services; early and periodic screening, diagnosis, and treatment services for children; other outpatient services; and other inpatient services. A visit is a face-to-face contact between a patient and a health professional at or through the facility.

2. For services provided to American Indians or Alaskan natives, Indian health facilities may also bill for one visit per patient per calendar day for outpatient prescribed drugs provided by the facility (at the "outpatient per visit rate (excluding Medicare)"), which shall constitute payment in full for all outpatient prescribed drugs provided on that day.

(2) Services provided to Medicaid recipients who are not American Indians or Alaskan natives will be paid at the fee schedule reimbursement rate otherwise allowed by Iowa Medicaid for the services provided and will be billed separately by CPT code on the CMS-1500 Health Insurance Claim Form or through pharmacy point of sale. Claims for nonpharmacy services provided to Medicaid recipients who are not American Indians or Alaskan natives must be submitted by the individual practitioner enrolled in the Iowa Medicaid program, but may be paid to the facility if the provider agreement so stipulates.

ITEM 4. Amend subrule **79.1(2)**, provider category of "Indian health service 638 facilities," as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Indian health service 638 facilities	<p>1. Base rate as determined by the United States Office of Management and Budget for outpatient visits for American Indian and Alaskan native members. Daily visit rate approved by the U.S. Indian Health Service (IHS) for services provided to American Indian and Alaskan native members. See 79.1(1) "h."</p> <p>2. Fee schedule for service provided for all other Medicaid members.</p>	<p>1. Office of Management and Budget rate IHS-approved rate published in the Federal Register for as outpatient per visit rate (excluding Medicare).</p> <p>2. Fee schedule.</p>

ITEM 5. Rescind subrule 79.1(8) and adopt the following **new** subrule in lieu thereof:

79.1(8) Drugs.

a. Except as provided below in paragraphs 79.1(8) "d" through "i," all providers are reimbursed for covered drugs as follows:

(1) Reimbursement for covered generic prescription drugs and for covered nonprescription drugs shall be the lowest of the following, as of the date of dispensing:

1. The average state actual acquisition cost (AAC), determined pursuant to paragraph 79.1(8) "b," plus the professional dispensing fee determined pursuant to paragraph 79.1(8) "c."

2. The federal upper limit (FUL), defined as the upper limit for a multiple source drug established in accordance with the methodology of the Centers for Medicare and Medicaid Services as described in 42 CFR 447.514(a)-(c), plus the professional dispensing fee determined pursuant to paragraph 79.1(8) "c."

3. The total submitted charge.

4. Providers' usual and customary charge to the general public.

(2) Reimbursement for covered brand-name prescription drugs shall be the lowest of the following, as of the date of dispensing:

1. The average state AAC, determined pursuant to paragraph 79.1(8) "b," plus the professional dispensing fee determined pursuant to paragraph 79.1(8) "c."

2. The total submitted charge.

3. Providers' usual and customary charge to the general public.

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b. For purposes of this subrule, average state AAC is defined as retail pharmacies' average prices paid to acquire drug products. Average state AAC shall be determined by the department based on a survey of invoice prices paid by Iowa Medicaid retail pharmacies. Surveys shall be conducted at least once every six months, or more often at the department's discretion. The average state AAC shall be calculated as a statistical mean based on one reported cost per drug per pharmacy. The average state AAC determined by the department shall be published on the Iowa Medicaid enterprise Web site. If no current average state AAC has been determined for a drug, the wholesale acquisition cost (WAC) published by Medi-Span shall be used as the average state AAC.

c. For purposes of this subrule, the professional dispensing fee shall be a fee schedule amount determined by the department based on a survey of Iowa Medicaid participating pharmacy providers' costs of dispensing drugs to Medicaid beneficiaries. The survey shall be conducted every two years beginning in state fiscal year 2014-2015.

d. For an oral solid dispensed to a patient in a nursing home in unit dose packaging prepared by the pharmacist, an additional one cent per dose shall be added to reimbursement based on acquisition cost or FUL.

e. 340B-purchased drugs.

(1) Notwithstanding paragraph 79.1(8) "a" above, reimbursement to a covered entity as defined in 42 U.S.C. 256b(a)(4) for covered outpatient drugs acquired by the entity through the 340B drug pricing program will be the lowest of:

1. The submitted 340B covered entity actual acquisition cost (not to exceed the 340B ceiling price) plus the professional dispensing fee pursuant to paragraph 79.1(8) "c";
2. The average state AAC determined pursuant to paragraph 79.1(8) "b" plus the professional dispensing fee pursuant to paragraph 79.1(8) "c";
3. For generic prescription drugs and nonprescription drugs only, the FUL pursuant to 79.1(8) "a"(1)"2" plus the professional dispensing fee pursuant to paragraph 79.1(8) "c";
4. The total submitted charge; or
5. Providers' usual and customary charge to the general public.

(2) Reimbursement for covered outpatient drugs to a 340B contract pharmacy, under contract with a covered entity described in 42 U.S.C. 256b(a)(4), will be according to paragraph 79.1(8) "a" because covered outpatient drugs purchased through the 340B drug pricing program cannot be billed to Medicaid by a 340B contract pharmacy.

f. Federal supply schedule (FSS) drugs. Notwithstanding paragraph 79.1(8) "a" above, reimbursement for drugs acquired by a provider through the FSS program managed by the federal General Services Administration will be the lowest of:

- (1) The provider's actual acquisition cost, not to exceed the FSS price, plus the professional dispensing fee pursuant to paragraph 79.1(8) "c";
- (2) The average state AAC determined pursuant to paragraph 79.1(8) "b" plus the professional dispensing fee pursuant to paragraph 79.1(8) "c";
- (3) For generic prescription drugs and nonprescription drugs only, the FUL pursuant to 79.1(8) "a"(1)"2" plus the professional dispensing fee pursuant to paragraph 79.1(8) "c";
- (4) The total submitted charge; or
- (5) Providers' usual and customary charge to the general public.

g. Nominal-price drugs. Notwithstanding paragraph 79.1(8) "a" above, reimbursement for drugs acquired by providers at nominal prices and excluded from the calculation of the drug's "best price" pursuant to 42 CFR 447.508 will be the lowest of:

- (1) The provider's actual acquisition cost (not to exceed the nominal price paid) plus the professional dispensing fee pursuant to paragraph 79.1(8) "c";
- (2) The average state AAC determined pursuant to paragraph 79.1(8) "b" plus the professional dispensing fee pursuant to paragraph 79.1(8) "c";
- (3) For generic prescription drugs and nonprescription drugs only, the FUL pursuant to 79.1(8) "a"(1)"2" plus the professional dispensing fee pursuant to paragraph 79.1(8) "c";
- (4) The total submitted charge; or

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(5) Providers' usual and customary charge to the general public.

h. Indian health facilities enrolled pursuant to rule 441—77.45(249A). For all drugs provided to American Indians or Alaskan natives by Indian health facilities enrolled pursuant to rule 441—77.45(249A), reimbursement is one pharmacy encounter payment per date of service, notwithstanding paragraphs 79.1(8)“a” through “f.” The pharmacy encounter rate is the current “outpatient per visit rate (excluding Medicare)” approved by the U.S. Indian Health Service (IHS) for services provided by IHS facilities to Medicaid beneficiaries, as published in the Federal Register, and includes reimbursement for the dispensing fees, ingredient cost, and any necessary counseling by the pharmacist.

i. Vaccines for Children Program. All providers administering vaccines available through the Vaccines for Children Program to Medicaid members shall enroll in the Vaccines for Children Program. In lieu of payment, vaccines available through the Vaccines for Children Program shall be accessed from the department of public health for Medicaid members. Providers may receive Medicaid reimbursement for the administration of vaccines to Medicaid members through the otherwise applicable reimbursement for inpatient or outpatient services.

j. Physician-administered drugs. Notwithstanding paragraphs 79.1(8)“a” through “f,” payment to physicians for physician-administered drugs billed with healthcare common procedure coding system (HCPCS) Level II “J” codes, as a physician service, shall be pursuant to the physician payment policy under subrule 79.1(2).

k. Under this subrule, no payment shall be made for sales tax.

l. For purposes of this subrule, the Medicaid program relies on information published by Medi-Span to classify drugs as brand-name or generic.

[Filed 1/11/17, effective 4/1/17]

[Published 2/1/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/1/17.

ARC 2936C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 2016 Iowa Acts, chapter 1139, section 27, the Department of Human Services hereby amends Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

These changes are being made to bring administrative rules into compliance with 2015 Iowa Acts, chapter 137, section 149, section (1)(q), as amended by 2016 Iowa Acts, chapter 1139 (House File 2460), section 27, which requires the Department of Human Services to increase the contractual managed care rate floors and the fee-for-service (FFS) rates and payment limits by 1 percent over the rates in effect April 1, 2016, for providers of home- and community-based service (HCBS) waiver services for which the managed care rate floor is based on the average aggregate reimbursement rate for the fiscal year beginning July 1, 2014.

The outdated language regarding encumbering a portion of the cost of home and vehicle modification over 12 months is also being removed as these paragraphs were to be stricken in a prior rule making that removed the cost of home and vehicle modification from the monthly cap under the waiver program.

These amendments increase FFS upper payment limits and reimbursement rates by 1 percent over the rates in effect June 30, 2016, for providers of HCBS waiver services for which the managed care rate floor is based on the average aggregate reimbursement rate for the fiscal year beginning July 1, 2014.

These amendments also increase managed care, the contractual reimbursement rate floor based on the average aggregate reimbursement rate for the fiscal year beginning July 1, 2014, by 1 percent over the rate floor in effect on April 1, 2016.

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The caps on the total monthly cost of HCBS waiver services for members under each waiver and the annual respite limit for the intellectual disability (ID) waiver are also being increased by 1 percent. The increases in the caps are put in place so that members may receive the same services after the rate increases.

Finally, these amendments correct the annual limit for specialized medical equipment in Chapter 78 to align with the limit listed in subrule 79.1(2).

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2849C** on December 7, 2016. These amendments were also Adopted and Filed Emergency and published as **ARC 2848C** on the same date and became effective November 15, 2016.

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

Comment 1: Two respondents commented that **ARC 2848C** fails to direct the managed care organizations (MCOs) to pay for the higher of the increased rate floors or the provider contracted rates. The respondents stated that their concern is that, without specific language in Chapter 79 directing the MCOs to pay providers the new increased rate floor, the MCOs will not adjust providers' rates and may pay providers less than the rate floor.

Department response 1: **ARC 2848C** is promulgated to implement the legislated 1 percent increase to the HCBS rates for which the rate floor is based on the average aggregate reimbursement rate for the fiscal year beginning July 1, 2014, and for managed care claims, the reimbursement rate floors shall be increased by 1 percent over the rate floor in effect on April 1, 2016. Under IA Health Link, providers establish negotiated reimbursement rates with the MCOs. If the provider negotiated a rate with an MCO that is more than 1 percent over the initial average aggregate rate, the 1 percent increase will not automatically be applied. Proposed directives for the MCOs are outside the scope of this legislation, and therefore the rule will not be amended at this time.

Comment 2: Two respondents commented that **ARC 2848C** fails to direct the MCOs to retroactively pay all claims since July 1, 2016, at the new increased rates. 2016 Iowa Acts, chapter 1139, states that the new increased floor rates apply starting July 1, 2016, if higher than the provider's current rates. The respondents expressed concern that, without specific language in Chapter 79 directing the MCOs to pay providers above their contracted rate if the floor rate in place April 1, 2016, plus 1 percent exceeds their contracted rate, it will result in the MCOs' paying providers less than the established rate floor.

Department response 2: Department response 1 above applies to Comment 2 as well.

Comment 3: In Item 9, the recoupment provisions for HCBS are amended in paragraph 79.1(15)"f." A respondent requested that paragraph 79.1(15)"f" be stricken in its entirety because the respondent believes that the paragraph is punitive to HCBS providers.

Department response 3: The amendment to the paragraph increases by 1 percent the amount of revenues able to be retained by providers when retrospective rate adjustments for FFS services are determined. The paragraph will not be amended at this time.

Comment 4: A respondent requested that the calculation in paragraph 83.2(2)"b" for nursing level of care be corrected to \$959.50 to accurately reflect the 1 percent increase.

Department response 4: The Department agrees with the respondent, and as a result, the nursing-level-of-care amount in paragraph 83.2(2)"b" has been changed from \$950.28 to \$959.50.

Two additional changes have been made since publication of the Notice of Intended Action:

The amount listed in the "upper limit" column as the full-day rate for adult day care under the intellectual disability waiver has been changed from \$70.06 to \$62.42 in subrule 79.1(2) to accurately reflect the 1 percent increase, and a technical correction has been made to the reimbursement methodology language for nursing services under the HCBS AIDS/HIV, health and disability, elderly and intellectual disability waivers. The purpose of the change is to remove the outdated reimbursement methodology and replace it with the reimbursement methodology that reflects current practice.

The Council on Human Services adopted these amendments on January 11, 2017.

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

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These amendments may increase private-sector wages for employees providing home- and community-based services under HCBS waiver programs.

These amendments are intended to implement Iowa Code section 249A.4 and 2016 Iowa Acts, chapter 1139, section 27.

These amendments will become effective March 8, 2017, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subparagraph **78.27(10)“e”(2)** as follows:

(2) In absence of a monthly cap on the cost of waiver services, the total monthly cost of all supported employment services may not exceed ~~\$3,029.00~~ \$3,059.29 per month.

ITEM 2. Amend paragraph **78.34(9)“g”** as follows:

g. Service payment shall be made to the enrolled home or vehicle modification provider. If applicable, payment will be forwarded to the subcontracting agency by the enrolled home or vehicle modification provider following completion of the approved modifications.

(1) Payment of up to \$6,366.64 per year may be made to certified providers upon satisfactory completion of the service.

~~(2) The case manager or service worker shall encumber a portion of the cost of a modification every month within the monthly dollar cap allowed for the member until the entire cost of the modification is encumbered within a consecutive 12-month period.~~

ITEM 3. Amend paragraph **78.41(2)“i”** as follows:

i. Payment for respite services shall not exceed ~~\$7,262~~ \$7,334.62 per the member's waiver year.

ITEM 4. Amend paragraph **78.43(5)“g”** as follows:

g. Service payment shall be made to the enrolled home or vehicle modification provider. If applicable, payment will be forwarded to the subcontracting agency by the enrolled home or vehicle modification provider following completion of the approved modifications. Payment of up to \$6,366.64 per year may be made to certified providers upon satisfactory completion of the service. ~~The case manager or service worker may encumber a portion of the cost of a modification every month within the monthly dollar cap allowed for the member until the entire cost of the modification is encumbered within a consecutive 12-month period.~~

ITEM 5. Amend paragraph **78.43(8)“c”** as follows:

c. Payment of up to ~~\$6,060~~ \$6,366.64 per year may be made to enrolled specialized medical equipment providers upon satisfactory receipt of the service. Each month within the 12-month period, the service worker shall encumber an amount within the monthly dollar cap allowed for the member until the amount of the equipment cost is reached.

ITEM 6. Amend paragraph **78.46(2)“g”** as follows:

g. Service payment shall be made to the enrolled home or vehicle modification provider. If applicable, payment will be forwarded to the subcontracting agency by the enrolled home or vehicle modification provider following completion of the approved modifications. Payment of up to \$6,366.64 per year may be made to certified providers upon satisfactory completion of the service. ~~The case manager or service worker shall encumber a portion of the cost of a modification every month within the monthly dollar cap allowed for the member until the entire cost of the modification is encumbered within a consecutive 12-month period.~~

ITEM 7. Amend paragraph **78.46(4)“c”** as follows:

c. Payment of up to ~~\$6,060~~ \$6,366.64 per year may be made to enrolled specialized medical equipment providers upon satisfactory receipt of the service. ~~Each month within the 12-month period, the service worker shall encumber an amount within the monthly dollar cap allowed for the member until the amount of the equipment cost is reached.~~

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ITEM 8. Amend subrule **79.1(2)**, provider category “HCBS waiver service providers,” as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
HCBS waiver service providers, including:		Except as noted, limits apply to all waivers that cover the named provider.
1. Adult day care	Fee schedule	Effective 7/1/13 <u>7/1/16</u> , for AIDS/HIV, brain injury, elderly, and ill and handicapped waivers: Provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute, half-day, full-day, or extended-day rate. If no 6/30/13 <u>6/30/16</u> rate: Veterans Administration contract rate or \$1.45 <u>\$1.47</u> per 15-minute unit, \$23.24 <u>\$23.47</u> per half day, \$46.26 <u>\$46.72</u> per full day, or \$69.37 <u>\$70.06</u> per extended day if no Veterans Administration contract. Effective 7/1/13 <u>7/1/16</u> , for intellectual disability waiver: County contract rate or, in the absence of a contract rate, provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute, half-day, full-day, or extended-day rate. If no 6/30/13 <u>6/30/16</u> rate, \$1.94 <u>\$1.96</u> per 15-minute unit, \$30.96 <u>\$31.27</u> per half day, \$61.80 <u>\$62.42</u> per full day, or \$78.80 <u>\$79.59</u> per extended day.
2. No change.		
3. Home health aides	Retrospective cost-related	For AIDS/HIV, elderly, and health and disability waivers effective 7/1/13 <u>7/1/16</u> : Lesser of maximum Medicare rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> or maximum Medicaid rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> . For intellectual disability waiver effective 7/1/13 <u>7/1/16</u> : Lesser of maximum Medicare rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> or maximum Medicaid rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to an hourly rate.
4. No change.		
5. Nursing care	For elderly and intellectual disability waivers: Fee schedule as determined by Medicare.	For <u>AIDS/HIV, health and disability, elderly and intellectual disability waiver</u> effective 7/1/13 <u>7/1/16</u> , provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> . If no 6/30/13 <u>6/30/16</u> rate: \$87.12 <u>\$87.99</u> per visit.

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<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
		For intellectual disability waiver effective 7/1/13: Lesser of maximum Medicare rate in effect 6/30/13 plus 3% or maximum Medicaid rate in effect 6/30/13 plus 3%, converted to an hourly rate.
	For AIDS/HIV and health and disability waivers: Agency's financial and statistical cost report and Medicare percentage rate per visit.	For AIDS/HIV and health and disability waivers effective 7/1/13, provider's rate in effect 6/30/13 plus 3%. If no 6/30/13 rate: \$87.12 per visit.
6. Respite care when provided by:		
Home health agency:		
Specialized respite	Cost-based rate for nursing services provided by a home health agency	Effective 7/1/13 7/1/16, provider's rate in effect 6/30/13 6/30/16 plus 3% 1%, converted to a 15-minute rate. If no 6/30/13 6/30/16 rate: Lesser of maximum Medicare rate in effect 6/30/13 6/30/16 plus 3% 1%, converted to a 15-minute rate, or maximum Medicaid rate in effect 6/30/13 6/30/16 plus 3% 1%, converted to a 15-minute rate, not to exceed \$311.97 \$315.09 per day.
Basic individual respite	Cost-based rate for home health aide services provided by a home health agency	Effective 7/1/13 7/1/16, provider's rate in effect 6/30/13 6/30/16 plus 3% 1%, converted to a 15-minute rate. If no 6/30/13 6/30/16 rate: Lesser of maximum Medicare rate in effect 6/30/13 6/30/16 plus 3% 1%, converted to a 15-minute rate, or maximum Medicaid rate in effect 6/30/13 6/30/16 plus 3% 1%, converted to a 15-minute rate, not to exceed \$311.97 \$315.09 per day.
Group respite	Fee schedule	Effective 7/1/13 7/1/16, provider's rate in effect 6/30/13 6/30/16 plus 3% 1%, converted to a 15-minute rate. If no 6/30/13 6/30/16 rate: \$3.45 \$3.49 per 15-minute unit, not to exceed \$311.97 \$315.09 per day.
Home care agency:		
Specialized respite	Fee schedule	Effective 7/1/13 7/1/16, provider's rate in effect 6/30/13 6/30/16 plus 3% 1%, converted to a 15-minute rate. If no 6/30/13 6/30/16 rate: \$8.87 \$8.96 per 15-minute unit, not to exceed \$311.97 \$315.09 per day.

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<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Basic individual respite	Fee schedule	Effective 7/1/13 <u>7/1/16</u> , provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute rate. If no 6/30/13 <u>6/30/16</u> rate: \$4.73 <u>\$4.78</u> per 15-minute unit, not to exceed \$311.97 <u>\$315.09</u> per day.
Group respite	Fee schedule	Effective 7/1/13 <u>7/1/16</u> , provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute rate. If no 6/30/13 <u>6/30/16</u> rate: \$3.45 <u>\$3.49</u> per 15-minute unit, not to exceed \$311.97 <u>\$315.09</u> per day.
Nonfacility care:		
Specialized respite	Fee schedule	Effective 7/1/13 <u>7/1/16</u> , provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute rate. If no 6/30/13 <u>6/30/16</u> rate: \$8.87 <u>\$8.96</u> per 15-minute unit, not to exceed \$311.97 <u>\$315.09</u> per day.
Basic individual respite	Fee schedule	Effective 7/1/13 <u>7/1/16</u> , provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute rate. If no 6/30/13 <u>6/30/16</u> rate: \$4.73 <u>\$4.78</u> per 15-minute unit, not to exceed \$311.97 <u>\$315.09</u> per day.
Group respite	Fee schedule	Effective 7/1/13 <u>7/1/16</u> , provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute rate. If no 6/30/13 <u>6/30/16</u> rate: \$3.45 <u>\$3.49</u> per 15-minute unit, not to exceed \$311.97 <u>\$315.09</u> per day.
Facility care:		
Hospital or nursing facility providing skilled care	Fee schedule	Effective 7/1/13 <u>7/1/16</u> , provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute rate. If no 6/30/13 <u>6/30/16</u> rate: \$3.45 <u>\$3.49</u> per 15-minute unit, not to exceed the facility's daily Medicaid rate for skilled nursing level of care.
Nursing facility	Fee schedule	Effective 7/1/13 <u>7/1/16</u> , provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute rate. If no 6/30/13 <u>6/30/16</u> rate: \$3.45 <u>\$3.49</u> per 15-minute unit, not to exceed the facility's daily Medicaid rate.

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<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Camps	Fee schedule	Effective 7/1/13 7/1/16, provider's rate in effect 6/30/13 6/30/16 plus 3% 1%, converted to a 15-minute rate. If no 6/30/13 6/30/16 rate: \$3.45 \$3.49 per 15-minute unit, not to exceed \$311.97 \$315.09 per day.
Adult day care	Fee schedule	Effective 7/1/13 7/1/16, provider's rate in effect 6/30/13 6/30/16 plus 3% 1%, converted to a 15-minute rate. If no 6/30/13 6/30/16 rate: \$3.45 \$3.49 per 15-minute unit, not to exceed rate for regular adult day care services.
Intermediate care facility for persons with an intellectual disability	Fee schedule	Effective 7/1/13 7/1/16, provider's rate in effect 6/30/13 6/30/16 plus 3% 1%, converted to a 15-minute rate. If no 6/30/13 6/30/16 rate: \$3.45 \$3.49 per 15-minute unit, not to exceed the facility's daily Medicaid rate.
Residential care facilities for persons with an intellectual disability	Fee schedule	Effective 7/1/13 7/1/16, provider's rate in effect 6/30/13 6/30/16 plus 3% 1%, converted to a 15-minute rate. If no 6/30/13 6/30/16 rate: \$3.45 \$3.49 per 15-minute unit, not to exceed contractual daily rate.
Foster group care	Fee schedule	Effective 7/1/13 7/1/16, provider's rate in effect 6/30/13 6/30/16 plus 3% 1%, converted to a 15-minute rate. If no 6/30/13 6/30/16 rate: \$3.45 \$3.49 per 15-minute unit, not to exceed daily rate for child welfare services.
Child care facilities	Fee schedule	Effective 7/1/13 7/1/16, provider's rate in effect 6/30/13 6/30/16 plus 3% 1%, converted to a 15-minute rate. If no 6/30/13 6/30/16 rate: \$3.45 \$3.49 per 15-minute unit, not to exceed contractual daily rate.
7. to 9. No change.		
10. Mental health outreach providers	Fee schedule	Effective 7/1/13 7/1/16, provider's rate in effect 6/30/13 6/30/16 plus 3% 1%. If no 6/30/13 6/30/16 rate: On-site Medicaid reimbursement rate for center or provider. Maximum of 1,440 units per year.
11. No change.		

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<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
12. Nutritional counseling	Fee schedule	Effective 7/1/13 <u>7/1/16</u> for non-county contract: Provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute rate. If no 6/30/13 <u>6/30/16</u> rate: \$8.67 <u>\$8.76</u> per 15-minute unit.
13. No change.		
14. Senior companion	Fee schedule	Effective 7/1/13 <u>7/1/16</u> for non-county contract: Provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute rate. If no 6/30/13 <u>6/30/16</u> rate: \$1.87 <u>\$1.89</u> per 15-minute unit.
15. Consumer-directed attendant care provided by:		
Agency (other than an elderly waiver assisted living program)	Fee agreed upon by member and provider	Effective 7/1/13 <u>7/1/16</u> , provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute rate. If no 6/30/13 <u>6/30/16</u> rate: \$5.30 <u>\$5.35</u> per 15-minute unit, not to exceed \$122.62 <u>\$123.85</u> per day.
Assisted living program (for elderly waiver only)	Fee agreed upon by member and provider	Effective 7/1/13 <u>7/1/16</u> , provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute rate. If no 6/30/13 <u>6/30/16</u> rate: \$5.30 <u>\$5.35</u> per 15-minute unit, not to exceed \$122.62 <u>\$123.85</u> per day.
Individual	Fee agreed upon by member and provider	Effective 7/1/13 <u>7/1/16</u> , \$3.54 <u>\$3.58</u> per 15-minute unit, not to exceed \$82.53 <u>\$83.36</u> per day. When an individual who serves as a member's legal representative provides services to the member as allowed by 79.9(7) "b," the payment rate must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department.
16. Counseling:		
Individual	Fee schedule	Effective 7/1/13 <u>7/1/16</u> , provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute rate. If no 6/30/13 <u>6/30/16</u> rate: \$11.34 <u>\$11.45</u> per 15-minute unit.

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<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Group	Fee schedule	
17. Case management	Fee for service with cost settlement. See 79.1(1)“d.”	Effective 7/1/13 <u>7/1/16</u> , provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute rate. If no 6/30/13 <u>6/30/16</u> rate: \$11.33 <u>\$11.44</u> per 15-minute unit. Rate is divided by six, or, if the number of persons who comprise the group exceeds six, the actual number of persons who comprise the group.
18. Supported community living	Retrospectively limited prospective rates. See 79.1(15)	For intellectual disability and brain injury waiver effective 7/1/13 <u>7/1/16</u> : \$9.19 <u>\$9.28</u> per 15-minute unit, not to exceed the maximum daily ICF/ID rate per day plus 3% <u>3.927%</u> .
19. Supported employment:		
Individual supported employment	Fee schedule	Fee schedule in effect May 4, 2016 <u>7/1/16</u> . Total monthly cost for all supported employment services not to exceed \$3,029.00 <u>\$3,059.29</u> per month.
Long-term job coaching	Fee schedule	Fee schedule in effect May 4, 2016 <u>7/1/16</u> . Total monthly cost for all supported employment services not to exceed \$3,029.00 <u>\$3,059.29</u> per month.
Small-group supported employment (2 to 8 individuals)	Fee schedule	Fee schedule in effect May 4, 2016 <u>7/1/16</u> . Maximum 160 units per week. Total monthly cost for all supported employment services not to exceed \$3,029.00 <u>\$3,059.29</u> per month.
20. No change.		
21. Behavioral programming	Fee schedule	Effective 7/1/13 <u>7/1/16</u> , provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> . If no 6/30/13 <u>6/30/16</u> rate: \$11.34 <u>\$11.45</u> per 15 minutes.
22. Family counseling and training	Fee schedule	Effective 7/1/13 <u>7/1/16</u> , provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute rate. If no 6/30/13 <u>6/30/16</u> rate: \$11.33 <u>\$11.44</u> per 15-minute unit.
23. Prevocational services, including career exploration	Fee schedule	Fee schedule in effect May 4, 2016 <u>7/1/16</u> .
24. Interim medical monitoring and treatment:		

HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Home health agency (provided by home health aide)	Cost-based rate for home health aide services provided by a home health agency	Effective 7/1/13 <u>7/1/16</u> : Lesser of maximum Medicare rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute rate, or maximum Medicaid rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute rate.
Home health agency (provided by nurse)	Cost-based rate for nursing services provided by a home health agency	Effective 7/1/13 <u>7/1/16</u> : Lesser of maximum Medicare rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute rate, or maximum Medicaid rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute rate.
Child development home or center	Fee schedule	Effective 7/1/13 <u>7/1/16</u> , provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute rate. If no 6/30/13 <u>6/30/16</u> rate: \$3.45 <u>\$3.49</u> per 15-minute unit.
Supported community living provider	Retrospectively limited prospective rate. See 79.1(15)	Effective 7/1/13 <u>7/1/16</u> , provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute rate. If no 6/30/13 <u>6/30/16</u> rate: \$9.49 <u>\$9.28</u> per 15-minute unit, not to exceed the maximum ICF/ID rate per day plus 3% <u>3.927%</u> .
25. Residential-based supported community living	Retrospectively limited prospective rates. See 79.1(15)	Effective 7/1/13 <u>7/1/16</u> : Not to exceed the maximum ICF/ID rate per day plus 3% <u>3.927%</u> .
26. Day habilitation	Fee schedule	Effective 7/1/13 <u>7/1/16</u> : County contract rate converted to a 15-minute or daily rate or, in the absence of a contract rate, provider's Provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute or daily rate. If no 6/30/13 <u>6/30/16</u> rate: \$3.47 <u>\$3.51</u> per 15-minute unit or \$67.55 <u>\$68.23</u> per day.
27. No change.		
28. Family and community support services	Retrospectively limited prospective rates. See 79.1(15)	Effective 7/1/13 <u>7/1/16</u> , provider's rate in effect 6/30/13 <u>6/30/16</u> plus 3% <u>1%</u> , converted to a 15-minute rate. If no 6/30/13 <u>6/30/16</u> rate: \$9.49 <u>\$9.28</u> per 15-minute unit.

HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
29. In-home family therapy	Fee schedule	Effective 7/1/13 7/1/16, provider's rate in effect 6/30/13 6/30/16 plus 3% 1%, converted to a 15-minute rate. If no 6/30/13 6/30/16 rate: \$24.60 <u>\$24.85</u> per 15-minute unit.
30. No change.		
31. Independent support broker	Rate negotiated by member	Effective 7/1/13 7/1/16, provider's rate in effect 6/30/13 6/30/16 plus 3% 1%. If no 6/30/13 6/30/16 rate: \$15.91 <u>\$16.07</u> per hour.
32. to 34. No change.		
35. Assisted living on-call service providers (elderly waiver only)	Fee agreed upon by member and provider.	\$25.75 <u>\$26.08</u> per day.

ITEM 9. Amend paragraph **79.1(15)“f”** as follows:

f. Retrospective adjustments.

(1) No change.

(2) ~~Revenues~~ For services provided from July 1, 2015, through June 30, 2016, revenues exceeding adjusted actual costs by more than 4.5 percent shall be remitted to the department. Payment will be due upon notice of the new rates and retrospective rate adjustment.

(3) ~~Providers~~ For services provided from July 1, 2015, through June 30, 2016, providers who do not reimburse revenues exceeding 104.5 percent of actual costs 30 days after notice is given by the department will have the revenues over 104.5 percent of the actual costs deducted from future payments.

(4) For services provided on or after July 1, 2016, revenues exceeding adjusted actual costs by more than 5.5 percent shall be remitted to the department. Payment will be due upon notice of the new rates and retrospective rate adjustment.

(5) For services provided on or after July 1, 2016, providers who do not reimburse revenues exceeding 105.5 percent of actual costs 30 days after notice is given by the department will have the revenues over 105.5 percent of the actual costs deducted from future payments.

ITEM 10. Amend paragraph **83.2(2)“b”** as follows:

b. Except as provided below, the total monthly cost of the health and disability waiver services, excluding the cost of home and vehicle modification services, shall not exceed the established aggregate monthly cost for level of care as follows:

Skilled level of care	Nursing level of care	ICF/ID
\$2,765 <u>\$2,792.65</u>	\$950 <u>\$959.50</u>	\$3,365 <u>\$3,742.93</u>

(4) For members eligible for SSI who remain eligible for health and disability waiver services until the age of 25 because they are receiving health and disability waiver services upon reaching the age of 21, these amounts shall be increased by the cost of services for which the member would be eligible under 441—subrule 78.9(10) if still under 21 years of age.

~~(2) If more than \$505 is paid for home and vehicle modification services, the service worker or targeted case manager shall encumber up to \$505 per month within the monthly dollar cap allowed for the member until the total amount of the modification is reached within a 12-month period.~~

ITEM 11. Amend subparagraph **83.22(2)“c”(2)** as follows:

(2) Services must be the least costly available to meet the service needs of the member. The total monthly cost of the elderly waiver services exclusive of case management services shall not exceed

HUMAN SERVICES DEPARTMENT[441](cont'd)

the established monthly cost of the level of care. Aggregate monthly costs, excluding the cost of case management and home and vehicle modifications, are limited as follows:

Skilled level of care	Nursing level of care
\$2,765 <u>\$2,792.65</u>	\$1,339 <u>\$1,365.78</u>

ITEM 12. Amend paragraph **83.42(2)“b”** as follows:

b. The total monthly cost of the AIDS/HIV waiver services shall not exceed the established aggregate monthly cost for level of care. The monthly cost of AIDS/HIV waiver services cannot exceed the established limit of ~~\$1,840~~ \$1,876.80.

ITEM 13. Amend paragraph **83.82(2)“d”** as follows:

d. The total cost of brain injury waiver services, excluding the cost of case management and home and vehicle modifications, shall not exceed ~~\$2,954~~ \$3,013.08 per month.

ITEM 14. Amend paragraph **83.102(2)“b”** as follows:

b. The total cost of physical disability waiver services, excluding the cost of home and vehicle modifications, shall not exceed ~~\$692~~ \$705.84 per month.

ITEM 15. Amend paragraph **83.122(6)“b”** as follows:

b. The total cost of children’s mental health waiver services needed to meet the member’s needs, excluding the cost of environmental modifications, adaptive devices and therapeutic resources, may not exceed ~~\$1,967~~ \$2,006.34 per month.

[Filed 1/11/17, effective 3/8/17]

[Published 2/1/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/1/17.

ARC 2932C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 2015 Iowa Acts, chapter 137, section 149(1)(f)(1), as amended by 2016 Iowa Acts, House File 2460, section 27, the Department of Human Services hereby amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

This amendment increases the home health low utilization payment adjustment (LUPA) rates by 2.93 percent. This is estimated to be the maximum possible increase within the \$1 million of state funding appropriated for this purpose, as required by 2015 Iowa Acts, chapter 137, section 149(1)(f)(1), as amended by 2016 Iowa Acts, House File 2460, section 27.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2847C** on December 7, 2016. This amendment was also Adopted and Filed Emergency and published as **ARC 2846C** on the same date and became effective November 15, 2016. The Department received no comments during the public comment period. This amendment is identical to that published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted this amendment on January 11, 2017.

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

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 and 2015 Iowa Acts, chapter 137, section 149(1)(f)(1), as amended by 2016 Iowa Acts, House File 2460, section 27.

This amendment will become effective March 8, 2017, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The following amendment is adopted.

Amend subrule **79.1(2)**, provider category “Home health agencies,” as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Home health agencies		
1. Skilled nursing, physical therapy, occupational therapy, speech therapy, home health aide, and medical social services; home health care for maternity patients and children	Fee schedule. See 79.1(26). For members living in a nursing facility, see 441—paragraph 81.6(11) “r.”	Effective 7/1/13: Medicare LUPA rates in effect on July 1, 2013, updated July 1 every two years. Effective 7/1/16: Medicare LUPA rates in effect on 6/30/16 plus a 2.93% increase.
2. Private-duty nursing and personal cares for members aged 20 or under	Retrospective cost-related. See 79.1(27)	Effective 7/1/13: Actual and allowable cost not to exceed a maximum of 133% of statewide average.
3. Administration of vaccines	Physician fee schedule	Physician fee schedule rate.

[Filed 1/11/17, effective 3/8/17]

[Published 2/1/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/1/17.

ARC 2924C

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(1)“r,” the Iowa Finance Authority hereby amends Chapter 4, “General Revenue Bond Procedures,” Iowa Administrative Code.

This amendment strikes rule 265—4.5(16), Public hearing and approval, because the rule is redundant as it relates to federal law, specifically Internal Revenue Code section 147(f), and is potentially inconsistent with a recent amendment to the Iowa Code (2016 Iowa Acts, Senate File 2257).

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 23, 2016, as **ARC 2828C**. The Authority did not receive any public comment on the proposed amendment and did not make any changes to the amendment as published under Notice.

The Iowa Finance Authority adopted this amendment on January 4, 2017.

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

This amendment is intended to implement Iowa Code sections 16.5(1)“r,” 16.26, 16.102, 16.105, 16.131 and 16.133.

This amendment will become effective on March 8, 2017.

The following amendment is adopted.

Amend rule 265—4.5(16) as follows:

265—4.5(16) Public hearing and approval. ~~In all cases where a public hearing, and the approval of an elected state official is required under the United States Internal Revenue Code and the regulations promulgated pursuant thereto, before the issuance of a tax-exempt bond by the authority, the following procedures apply.~~

4.5(1) Public hearing. ~~After January 1, 1983, the authority will not issue a bond for a specific project unless, prior to issuance, the authority has conducted a public hearing conforming to the applicable requirements of the United States Internal Revenue Code and the regulations promulgated thereunder. The hearing shall be preceded by a notice thereof published at least 14 days prior to the date of the hearing in a newspaper of general circulation in the county where the project is located. The notice shall~~

IOWA FINANCE AUTHORITY[265](cont'd)

~~include but not be limited to the date, time and place of the hearing, the name of the project sponsor, and a general description of the project.~~

~~The hearing shall be held at the authority's office in Des Moines, or other location stated in the notice, unless at or prior to the time scheduled for the hearing, the authority receives a written request that a local hearing be held. In the event a local hearing is requested, the previously scheduled hearing shall be canceled, and notice of a hearing in the local area shall be published in the time and manner stated above. The local hearing shall be held at the date, time and place specified in the new notice, which time and place shall be reasonably convenient to persons affected by the project.~~

~~The public hearing may be held by a staff member or board member of the authority or a hearing officer of another state agency working under an agreement with the authority.~~

~~**4.5(2) Approval of elected official.** After January 1, 1983, the authority will not issue a bond for a specific project unless, prior to issuance, the governor or another elected official of the state designated by the governor, shall approve the issuance of a bond. Following the public hearing opportunity referred to in subrule 4.5(1), the authority shall prepare and send to the governor's office, or the office of an elected official of the state designated by the governor, a statement describing each bond or series of bonds which it proposes to issue, along with a summary of the public comments received with respect thereto, if any.~~

~~This rule is intended to implement Iowa Code chapter 16 and Section 103(k), United States Internal Revenue Code and regulations promulgated thereunder.~~

[Filed 1/12/17, effective 3/8/17]

[Published 2/1/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/1/17.

ARC 2935C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 135.11(12) and 139A.21, the Iowa Department of Public Health hereby amends Chapter 1, "Reportable Diseases, Poisonings and Conditions, and Quarantine and Isolation," Iowa Administrative Code.

The current administrative rules in Chapter 1 direct hospitals, health care providers and clinical laboratories outside the state of Iowa to report to the Iowa Department of Public Health (the Department). The Department has established secure electronic connections with public health authorities in surrounding states as well as in other states where specimen testing is frequently performed for Iowa hospitals, health care providers, clinical laboratories, or residents. These amendments implement a change to subrule 1.4(3) by adding a new paragraph "d" to allow the Department to authorize out-of-state reporting entities to leverage existing secure electronic messaging connections between the reporting entity and the public health jurisdiction in which it is located to more efficiently comply with requirements for reporting to the Department. Paragraph "d" is intended to facilitate more efficient and timely reporting to the Department when such circumstances exist, but is not intended to create an additional reporting burden if such circumstances do not exist. Additional amendments to paragraph "c" of subrule 1.4(3) and to Appendices A and B are included for the purpose of updating language to align with current secure electronic reporting methods as well as clarifying condition-specific reporting requirements related to the location of the patient's residency, diagnosis, and treatment.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2814C** on November 23, 2016. No public comment was received. These amendments are identical to those published under Notice of Intended Action.

The State Board of Health adopted these amendments on January 11, 2017.

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

These amendments are intended to implement Iowa Code chapters 135 and 139A.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

These amendments will become effective March 8, 2017.

The following amendments are adopted.

ITEM 1. Amend rule **641—1.1(139A)**, definition of “IDSS,” as follows:

“IDSS” means the Iowa disease surveillance system, a secure ~~Web-based~~ electronic statewide disease reporting and surveillance system.

ITEM 2. Amend subrule 1.4(3) as follows:

1.4(3) How to report.

a. Immediate reporting by telephone of diseases identified in Appendix A as immediately reportable. A health care provider and a public, private, or hospital clinical laboratory shall immediately report any confirmed or suspected case of a disease identified in Appendix A as immediately reportable to the department’s disease notification hotline at 1-800-362-2736. The report shall include all information required by 1.4(2) and the following:

- (1) The stage of the disease process.
- (2) Clinical status.
- (3) Any treatment provided for the disease.
- (4) All household and other known contacts.
- (5) Whether household and other known contacts have been examined and the results of such examinations.

b. Other diseases that carry serious consequences or spread rapidly. A health care facility, health care provider and a public, private, or hospital clinical laboratory shall immediately report any confirmed or suspected case of a common source epidemic or disease outbreak of unusual numbers by telephone to the department’s 24/7 disease reporting telephone hotline at 1-800-362-2736.

c. Reporting of other reportable diseases. Cases of other reportable communicable or infectious diseases not included in 1.4(3) “a” shall be reported to the department in accordance with Appendix A by mail, telephone, facsimile, or other secure electronic means. The preferred method is secure ~~Web-based~~ electronic reporting when available. If the department determines that reporting by mail hinders the application of organized control measures to protect the public health, the department may require that the reportable disease be reported by telephone, facsimile or secure ~~Web-based~~ electronic reporting.

d. Reporting to other public health authorities. The department may authorize hospitals, health care providers or clinical laboratories outside the state of Iowa to report any confirmed or suspect case of a reportable disease, poisoning, or condition to another public health authority for the purpose of facilitating a report to the department.

ITEM 3. Amend **641—Chapter 1**, Appendix A, as follows:

APPENDIX A

Iowa Department of Public Health

Table of Reportable Communicable and Infectious Diseases

Report cases of the diseases listed in the following table to the department within the time frame specified in the When to Report column and by the reporting method in the How to Report column.

To report diseases immediately, use the 24/7 disease reporting telephone hotline: 1-800-362-2736.

IMMEDIATELY report diseases, syndromes, poisonings and conditions of any kind suspected or caused by a biological, chemical, or radiological agent or toxin when there is reasonable suspicion that the disease, syndrome, poisoning or condition may be the result of a deliberate act such as terrorism.

IMMEDIATELY report to the department outbreaks of any kind, diseases that occur in unusual numbers or circumstances, unusual syndromes, or uncommon diseases. Outbreaks may be

PUBLIC HEALTH DEPARTMENT[641](cont'd)

infectious, environmental or occupational in origin and include food-borne outbreaks or illness secondary to chemical exposure (e.g., pesticides, anhydrous ammonia).

Report diseases by:

Entering into the Iowa Disease Surveillance System (IDSS): For IDSS-related questions, call the Center for Acute Disease Epidemiology (CADE) at 1-800-362-2736.

Fax: (515)281-5698

Mail:

Iowa Department of Public Health
Center for Acute Disease Epidemiology
Lucas State Office Building
321 E. 12th Street
Des Moines, Iowa 50319

Isolates or specimens shall be sent to:
State Hygienic Laboratory at the University of Iowa (SHL)
U of I Research Park
2490 Crosspark Road
Coralville, Iowa 52241-4721

For specimen submission questions, call (319)335-4500 or go to <http://www.shl.uiowa.edu>.

Diseases	When to Report	How to Report
Acquired immune deficiency syndrome (AIDS) and AIDS-defining conditions	7 days	Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. Report by one of the following methods: Phone (515)242-5141 or (515)281-6918 Mail <ul style="list-style-type: none"> Health care providers: use the Pediatric or Adult Confidential Case Report Form Laboratories: send copy of lab report or the Iowa Confidential Report of Sexually Transmitted Disease & HIV Infection. Mark envelope "Attention 03" For HIV/AIDS-related questions, call (515)242-5141
Anthrax	Immediately	Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736
Botulism (including infant botulism)	Immediately	Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736
Brucellosis (Brucella)	3 days	Report for Iowa residents. Phone, IDSS, fax or mail
Campylobacteriosis (Campylobacter)	3 days	Report for Iowa residents. Phone, IDSS, fax or mail
Chlamydia	3 days	Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. Report by one of the following methods: Secure electronic data system (as determined by the Department)

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Diseases	When to Report	How to Report
		Fax (515)725-1278 Phone (515)281-3031 Mail <ul style="list-style-type: none"> • Use the Iowa Confidential Report of Sexually Transmitted Disease • Mark envelope "Attention 00"
Cholera	Immediately	<u>Report for Iowa residents and for residents of other states diagnosed or treated in Iowa.</u> 24/7 disease reporting telephone hotline: 1-800-362-2736
Cryptosporidiosis	3 days	<u>Report for Iowa residents.</u> Phone, IDSS, fax or mail
Cyclospora	3 days	<u>Report for Iowa residents.</u> Phone, IDSS, fax or mail
Diphtheria	Immediately	<u>Report for Iowa residents and for residents of other states diagnosed or treated in Iowa.</u> 24/7 disease reporting telephone hotline: 1-800-362-2736
Escherichia coli shiga toxin-producing and related diseases (includes HUS and TTP)	3 days	<u>Report for Iowa residents.</u> Phone, IDSS, fax or mail Laboratories send isolate or specimen to the SHL
Giardiasis (Giardia)	3 days	<u>Report for Iowa residents.</u> Phone, IDSS, fax or mail
Gonorrhea	3 days	<u>Report for Iowa residents and for residents of other states diagnosed or treated in Iowa.</u> Report by one of the following methods: Secure electronic data system (as determined by the Department) Fax (515)725-1278 Phone (515)281-3031 Mail <ul style="list-style-type: none"> • Use the Iowa Confidential Report of Sexually Transmitted Disease • Mark envelope "Attention 00"
Haemophilus influenzae type B invasive disease	Immediately	<u>Report for Iowa residents and for residents of other states diagnosed or treated in Iowa.</u> 24/7 disease reporting telephone hotline: 1-800-362-2736 Laboratories send isolate or specimen to the SHL
Hansen's disease (leprosy)	3 days	<u>Report for Iowa residents.</u> Phone, IDSS, fax or mail
Hantavirus syndromes	3 days	<u>Report for Iowa residents.</u> Phone, IDSS, fax or mail
Hepatitis A	1 day	<u>Report for Iowa residents and for residents of other states diagnosed or treated in Iowa.</u> Phone, IDSS or fax
Hepatitis B, C, D, E	3 days	<u>Report for Iowa residents.</u> Phone, IDSS, fax or mail

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Diseases	When to Report	How to Report
Human immunodeficiency virus (HIV) cases Death of a person with HIV Perinatally exposed newborn and child (newborn and child who was born to an HIV-infected mother)	7 days	Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. Report by one of the following methods: Phone (515)242-5141 or (515)281-6918 Mail <ul style="list-style-type: none"> Health care providers: use the Pediatric or Adult Confidential Case Report Form Laboratories: send copy of lab report or the Iowa Confidential Report of Sexually Transmitted Disease & HIV Infection. Mark envelope "Attention 03" For HIV/AIDS-related questions, call (515)242-5141
Legionellosis (Legionella)	3 days	Report for Iowa residents. Phone, IDSS, fax or mail
Listeria monocytogenes invasive disease	1 day	Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. Phone, IDSS, or fax Laboratories send isolate or specimen to the SHL
Malaria	3 days	Report for Iowa residents. Phone, IDSS, fax or mail
Measles (rubeola)	Immediately	Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736
Meningococcal invasive disease	Immediately	Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736 Laboratories send isolate or specimen to the SHL
Mosquito-borne diseases (includes chikungunya, dengue, eastern equine encephalitis, La Crosse, St. Louis, Venezuelan equine encephalitis, West Nile, and western equine encephalitis)	3 days	Report for Iowa residents. Phone, IDSS, fax or mail
Mumps	3 days	Report for Iowa residents. Phone, IDSS, fax or mail
Pertussis	3 days	Report for Iowa residents. Phone, IDSS, fax or mail
Plague	Immediately	Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736
Poliomyelitis	Immediately	Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736
Psittacosis	3 days	Report for Iowa residents. Phone, IDSS, fax or mail
Q fever	3 days	Report for Iowa residents. Phone, IDSS, fax or mail
Rabies, animal	3 days	Report for Iowa residents. Phone, IDSS, fax or mail

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Diseases	When to Report	How to Report
Rabies, human	Immediately	Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736
Rubella (including congenital)	1 day	Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. Phone, IDSS, or fax
Salmonellosis (Salmonella)	3 days	Report for Iowa residents. Phone, IDSS, fax or mail Laboratories send isolate or specimen to the SHL
Severe acute respiratory syndrome (SARS)	Immediately	Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736
Shigellosis (Shigella)	3 days	Report for Iowa residents. Phone, IDSS, fax or mail Laboratories send isolate or specimen to the SHL
Smallpox	Immediately	Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736
Syphilis	3 days	Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. Report by one of the following methods: Secure electronic data system (as determined by the Department) Fax (515)725-1278 Phone (515)281-3031 Mail <ul style="list-style-type: none"> • Use the Iowa Confidential Report of Sexually Transmitted Disease • Mark envelope "Attention 00"
Tetanus	3 days	Report for Iowa residents. Phone, IDSS, fax or mail
Tickborne diseases (includes anaplasmosis, babesiosis, ehrlichiosis, Lyme disease, and Rocky Mountain spotted fever)	3 days	Report for Iowa residents. Phone, IDSS, fax or mail
Tuberculosis, pulmonary and laryngeal (infectious)	1 day	Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. Phone (515)281-7504 or fax to (515)281-4570
Tuberculosis, extrapulmonary	3 days	Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. Phone (515)281-7504 or fax to (515)281-4570
Tularemia	3 days	Report for Iowa residents. Phone, IDSS or fax
Typhoid fever	1 day	Report for Iowa residents and for residents of other states diagnosed or treated in Iowa.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Diseases	When to Report	How to Report
		Phone, IDSS or fax
Vancomycin intermediate Staphylococcus aureus (VISA) and vancomycin-resistant Staphylococcus aureus (VRSA)	1 day	Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. Phone, IDSS or fax Laboratories send isolate or specimen to the SHL
Viral hemorrhagic fever (VHF) (e.g., Lassa, Marburg, Ebola, and Crimean-Congo)	Immediately	Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736
Yellow fever	Immediately	Report for Iowa residents and for residents of other states diagnosed or treated in Iowa. 24/7 disease reporting telephone hotline: 1-800-362-2736

ITEM 4. Amend **641—Chapter 1**, Appendix B, as follows:

APPENDIX B
Iowa Department of Public Health
Table of Reportable Poisonings and Conditions

Report cases of the poisonings and conditions listed in the following table to the department within the time frame specified in the When to Report column and by the reporting method in the How to Report column.

To report diseases immediately, use the 24/7 disease reporting telephone hotline: 1-800-362-2736.

IMMEDIATELY report diseases, syndromes, poisonings and conditions of any kind suspected or caused by a biological, chemical, or radiological agent or toxin when there is reasonable suspicion that the disease, syndrome, poisoning or condition may be the result of a deliberate act such as terrorism.

IMMEDIATELY report to the department outbreaks of any kind, diseases that occur in unusual numbers or circumstances, unusual syndromes, or uncommon diseases. Outbreaks may be infectious, environmental or occupational in origin and include food-borne outbreaks or illness secondary to chemical exposure (e.g., pesticides, anhydrous ammonia).

Mailing address:

Bureau of Environmental Health Services
Iowa Department of Public Health
321 East 12th Street
Des Moines, Iowa 50319-0075

Telephone: 1-800-972-2026

Fax: (515)281-4529

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Poisoning or Condition	Cases to Report	When to Report	How to Report
Arsenic poisoning	Blood arsenic values equal to or greater than 70 µg/L Urine arsenic values equal to or greater than 100 µg/g of creatinine	Weekly	Format specified by department. Web-based Electronic reporting if available. Alternatives include by mail, telephone, and facsimile.
Blood lead testing	All analytical results greater than or equal to 20 micrograms per deciliter (µg/dL) in a child under the age of 6 years or a pregnant woman	Daily	By telephone: 1-800-972-2026
	All other analytical values for all blood lead analyses	Weekly	Electronic format specified by the department
Cadmium poisoning	Blood cadmium values equal to or greater than 5 µg/L Urine cadmium values equal to or greater than 3 µg/g of creatinine	Weekly	Format specified by department. Web-based Electronic reporting if available. Alternatives include by mail, telephone, and facsimile.
Carbon monoxide (CO) poisoning	Blood carbon monoxide level equal to or greater than 10% carboxyhemoglobin or its equivalent with a breath analyzer test, or a clinical diagnosis of CO poisoning regardless of any test results	Daily	By telephone: 1-800-972-2026
Hypersensitivity pneumonitis	All cases	Weekly	Format specified by department. Web-based Electronic reporting if available. Alternatives include by mail, telephone, and facsimile.
Mercury poisoning	Blood mercury values equal to or greater than 2.8 µg/dL Urine mercury values equal to or greater than 20 µg/L	Weekly	Format specified by department. Web-based Electronic reporting if available. Alternatives include by mail, telephone, and facsimile.

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Poisoning or Condition	Cases to Report	When to Report	How to Report
Methemoglobinemia	Blood analyses showing greater than 5% of total hemoglobin present as methemoglobin	Weekly	Format specified by department. Web-based Electronic reporting if available. Alternatives include by mail, telephone, and facsimile.
Microcystin toxin poisoning	All cases	Weekly	Format specified by department. Web-based Electronic reporting if available. Alternatives include by mail, telephone, and facsimile.
Noncommunicable respiratory illness	All cases	Weekly	Format specified by department. Web-based Electronic reporting if available. Alternatives include by mail, telephone, and facsimile.
Occupationally related asthma, bronchitis or respiratory hypersensitivity reaction	All cases	Weekly	Format specified by department. Web-based Electronic reporting if available. Alternatives include by mail, telephone, and facsimile.
Pesticide poisoning (including pesticide-related contact dermatitis)	All cases	Weekly	Format specified by department. Web-based Electronic reporting if available. Alternatives include by mail, telephone, and facsimile.
Severe skin disorder	All cases	Weekly	Format specified by department. Web-based Electronic reporting if available. Alternatives include by mail, telephone, and facsimile.
Toxic hepatitis	All cases	Weekly	Format specified by department. Web-based Electronic reporting if available. Alternatives include by mail, telephone, and facsimile.

[Filed 1/11/17, effective 3/8/17]

[Published 2/1/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/1/17.

ARC 2929C**PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 136A.8, the Iowa Department of Public Health hereby amends Chapter 4, “Center for Congenital and Inherited Disorders,” Iowa Administrative Code.

These amendments rescind the requirement of the Department to establish policies and procedures, including obtaining an informed consent for the release of residual newborn screening specimens for research, that would allow a parent or guardian the ability to provide informed consent prior to the release of a newborn’s residual newborn screening specimen for research purposes. The Department director has accepted a recommendation from the Congenital and Inherited Disorders Advisory Committee (CIDAC) to discontinue releasing specimens for external research use without informed consent and makes it the responsibility of the investigator of the proposed research to obtain informed consent from the parent or guardian for the release of the newborn’s specimen. Amendments to related subparagraphs support this change in policy.

These amendments will allow reporting requirements for newborn critical congenital heart disease (CCHD) screening to reflect the implementation of the Iowa Newborn Screening Information System (INSIS), thereby enabling newborn care providers to enter CCHD screening results. A portion of the fees from the Iowa Newborn Screening Program (INSP) and the Iowa Maternal Prenatal Screening Program (IMPSP) are currently distributed to the Department to support a percent of effort of the executive officer of the Center for Congenital and Inherited Disorders (CCID). These amendments will allow program fees distributed to the Department to be used for INSP and IMPSP activities.

The amendment in Item 9 corrects a typographical error.

These amendments have been reviewed by CIDAC and interested individuals within the field.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2819C** on November 23, 2016. Public comments were received from the Midwest Region of the March of Dimes in support of the proposed amendments. The public comments from the Midwest Region of the March of Dimes are summarized as, “Of particular note in the proposed regulation is the research and parental consent provision, which comports with our position.”

To clarify the intent of the amended rule, the Department removed the words “the practice of storing and” from the phrase “to discontinue the practice of storing and releasing specimens” in the second paragraph of the preamble. The original sentence read, “The Department director has accepted a recommendation from the Congenital and Inherited Disorders Advisory Committee (CIDAC) to discontinue the practice of storing and releasing specimens for external research use without informed consent, and makes it the responsibility of the investigator of the proposed research to obtain informed consent from the parent or guardian for the release of the newborn’s specimen.”

Upon review of comments by the public and by legislators and after discussion with Department legal counsel, the Department made the following changes from the published Notice of Intended Action:

- Added an amendment to change the first-year storage temperature in 4.3(8)“a”(2) from “–70 degrees C” to “–75 to –80 degrees C.”
- Added an amendment to 4.3(8)“c” to clarify that it is the responsibility of the researcher to obtain informed consent from the parents or guardians prior to the release of residual newborn screening specimens. The researcher can only ask for informed consent after approvals from the researcher’s institutional review board (IRB), CIDAC and the Department. In addition, the Department added 4.3(8)“c”(4) to clarify the parental options for samples collected prior to these amendments. The Department did not rescind 4.3(8)“c”(3) as proposed under Notice.
- Added new 4.3(8)“f” to provide instructions for a parent or guardian who wants the child’s residual newborn screening specimen returned to the parent or guardian or destroyed.
- Added an amendment to 4.3(9)“b”(3) to update the Web address of the CCID.

The changes required renumbering of some of the original Items from the Notice.

The State Board of Health adopted these amendments on January 11, 2017.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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

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

These amendments will become effective on March 8, 2017.

The following amendments are adopted.

ITEM 1. Rescind and reserve paragraph **4.3(2)“e.”**

ITEM 2. Amend subparagraph **4.3(8)“a”(2)** as follows:

(2) The residual DBS specimen shall be stored for the first year at ~~=70~~ -75 to -80 degrees C.

ITEM 3. Amend subparagraph **4.3(8)“b”(4)** as follows:

(4) ~~A researcher for research purposes, under the terms and conditions provided in this rule. A~~ researcher, upon documentation of parental consent obtained by the researcher, and only to the extent that the information is necessary to perform research authorized by the department.

ITEM 4. Amend paragraph **4.3(8)“c”** as follows:

c. Research. A residual newborn screening specimen may be released for research purposes only if written consent has been received by the researcher from a parent or guardian of the child, or the individual adult upon whom the screening was performed, and each of the following conditions is satisfied:

(1) Investigators shall submit proposals to use residual newborn screening specimens to the center. Any intended use of the requested specimens as part of the research study must be clearly delineated in the proposal.

(2) Before research can commence, proposals shall be approved by the researcher's institutional review board, the congenital and inherited disorders advisory committee, and the department.

(3) Research on ~~anonymized or identifiable~~ residual newborn screening specimens shall be allowed only in instances where research would further: newborn screening activities; the health of an infant or child for whom no other specimens are available or readily attainable; general medical knowledge for existing public health surveillance activities; public health purposes; or medical knowledge to advance the public health.

(4) For specimens collected prior to January 1, 2016, a parent or guardian may send a letter stating that the newborn's specimen is not to be released for research purposes. This letter shall include the parent's or guardian's name, the newborn's name at birth, and the newborn's date of birth. The letter of notice shall be sent to the State Hygienic Laboratory at Newborn Screening Program, State Hygienic Laboratory, 2220 S. Ankeny Blvd., Ankeny, Iowa 50023-9093.

ITEM 5. Adopt the following **new** paragraph **4.3(8)“f”**:

f. Return or destruction of specimens. A parent or guardian may request return or destruction of the parent's or guardian's newborn's residual newborn screening specimen by contacting the executive officer of the center for congenital and inherited disorders by calling 1-800-383-3826, or by mail to Executive Officer, Center for Congenital and Inherited Disorders, Iowa Department of Public Health, 321 E. 12th Street, Lucas State Office Building, Des Moines, Iowa 50319-0075.

ITEM 6. Amend subparagraph **4.3(9)“b”(3)** as follows:

(3) Newborn CCHD screening shall be conducted by pulse oximetry or other means in accordance with the most recently published guidelines, algorithms, and protocols as outlined by the American Academy of Pediatrics, the American College of Cardiology Foundation and the American Heart Association, or subsequent guidance by the organizations listed in this subparagraph. Materials are available on the CCID Web page at ~~http://idph.state.ia.us/genetics/newborn-screening.asp~~ http://idph.iowa.gov/genetics/public/newborn-screening.

ITEM 7. Amend paragraph **4.3(9)“e”** as follows:

e. ~~Reporting results of newborn CCHD screening. At such time as the CCHD reporting system is implemented, results~~ Results of newborn CCHD screening shall be reported in a manner consistent with other newborn screening (formerly referenced as metabolic screening) reporting.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 8. Amend paragraph **4.3(10)“f”** as follows:

f. Upon department approval of proposed budgets, a portion of INSP and IMPSP fees shall be distributed to the department to support ~~the percent of effort of the executive officer of~~ activities of the INSP and the IMPSP at the center for congenital and inherited disorders (CCID).

ITEM 9. Amend rule 641—4.11(136A) as follows:

641—4.11(136A) Purpose. CIDAC represents the interests of the people of Iowa and assists in the development of programs that ensure the availability of and access to quality genetic and genomic health care services by all residents. The committee advises the director regarding issues related to genetics and hereditary and ~~congenital~~ congenital disorders.

[Filed 1/11/17, effective 3/8/17]

[Published 2/1/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/1/17.

ARC 2934C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 135.11, 139A.19, 139A.35, 141A.3, 141A.4, 141A.6, 141A.7, 141A.10, and 915.40 to 915.43, the Iowa Department of Public Health hereby amends Chapter 11, “Human Immunodeficiency Virus (HIV) Infection and Acquired Immune Deficiency Syndrome (AIDS),” Iowa Administrative Code.

The rules in Chapter 11 describe procedures and programs related to HIV/AIDS, including testing and reporting requirements, HIV-related training programs, notification and testing of exposed persons, and the AIDS drug assistance program (ADAP). These amendments respond to previous changes to the Iowa Code that removed the state requirement for two hours of HIV-related training for emergency and nonemergency personnel and that altered language relating to the release of HIV-related test results under a court order. In addition, these amendments add definitions of “meningococcal disease” and “tuberculosis” to clarify the terms as they are used in 2014 Iowa Acts, Senate File 2297, which amended Iowa Code chapter 709D. The amendments also change the term “transplant center” to “organ procurement organization” in the definition of “health facility” and clarify the HIV-reporting requirements for these organizations. Testing requirements for pregnant women are also clarified. Finally, eligibility requirements for the two component programs within ADAP are made identical at less than or equal to 400 percent of the federal poverty level, and the assessment of income for ADAP enrollees is simplified by removing the requirement to calculate modified adjusted gross income. Costs for the additional participants will be covered by 340B Drug-Pricing Program rebates that ADAP receives directly from pharmaceutical manufacturers for people enrolled in the Insurance Assistance Program component of ADAP.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2820C** on November 23, 2016.

The Department received comments from a law enforcement officer working in a county sheriff’s office. The commenter expressed concerns that training emergency personnel on blood-borne pathogens before initial assignment was overly burdensome. The commenter also expressed concerns that the proposed amendments seemed to place limits on how prosecutors could use HIV test results. The Department responded that the blood-borne pathogen training requirements now align with federal requirements from the Occupational Safety and Health Administration and that the change in language for HIV test results was a conforming change that did not place limits on how prosecutors could use the test results. For these reasons, the Department did not make changes based upon the comments.

One change has been made from the Notice of Intended Action. In the second sentence of the definition of “meningococcal disease,” the word “it” has been changed to “meningococcal disease.”

PUBLIC HEALTH DEPARTMENT[641](cont'd)

The State Board of Health adopted these amendments on January 11, 2017.

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

These amendments are intended to implement Iowa Code sections 135.11, 139A.19, 139A.35, 141A.3, 141A.4, 141A.6, 141A.7, 141A.10, and 915.40 to 915.43.

These amendments will become effective March 8, 2017.

The following amendments are adopted.

ITEM 1. Amend rule **641—11.1(139A,141A)**, definitions of “Director of a plasma center, blood bank, clinical laboratory, or public health laboratory” and “Health facility,” as follows:

“Director of a plasma center, blood bank, clinical laboratory, organ procurement organization, or public health laboratory” means the person responsible for direction and operation of the facility, the medical director, or the person designated by the director or medical director to ensure compliance with applicable regulations and requirements.

“Health facility” means a hospital, health care facility, clinic, blood bank, blood center, sperm bank, laboratory organ ~~transplant center and procurement agency~~ organization, or other health care institution.

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

11.4(1) ~~All pregnant women, including minors, shall be tested for HIV infection as part of the routine panel of prenatal tests.~~ Health care providers that offer prenatal care to women shall provide HIV testing to all pregnant women, including minors, as part of the routine panel of prenatal tests. The health care provider requesting the HIV test of a pregnant woman shall notify a the pregnant woman that HIV screening is recommended for all prenatal patients and that the pregnant woman will receive an HIV test as part of the routine panel of prenatal tests unless the pregnant woman objects to the test. No written or oral consent shall be required.

ITEM 3. Amend subrule 11.6(2) as follows:

11.6(2) Within seven days of the receipt of a person’s confirmed positive test result indicating HIV infection, the director of a plasma center, blood bank, organ procurement organization, clinical laboratory or public health laboratory that performed the test or that requested the confirmatory test shall make a report to the department on a form provided by the department.

ITEM 4. Amend subrule 11.7(1) as follows:

11.7(1) A director of a plasma center, blood bank, organ procurement organization, clinical laboratory or public health laboratory or a physician or other health care provider who repeatedly fails to file the report required pursuant to these rules is subject to a report being made to the licensing board governing the professional activities of the individual. The department shall notify the individual each time the department determines that the individual has failed to file a required report. The department shall inform the individual in the notification that the individual may provide information to the department to explain or dispute the failure to report.

ITEM 5. Amend rule 641—11.11(135) as follows:

641—11.11(135) Purpose. The purpose of this rule is to describe the required content of HIV and AIDS training programs and to identify the groups of personnel involved.

11.11(1) Nonemergency personnel. ~~Within six months of their initial employment~~ Before an initial assignment of tasks where occupational exposure to blood or other potentially infectious materials may take place and at least annually thereafter, all supervisory and patient care personnel of any agency listed below shall complete ~~a minimum of two hours of training concerning AIDS-related conditions and the prevention of HIV infection~~ training concerning blood-borne pathogens, including human immunodeficiency virus and viral hepatitis, consistent with standards from the Occupational Safety and Health Administration of the U.S. Department of Labor:

- a. A licensed hospice,
- b. A homemaker-home health aide provider agency which receives state homemaker-home health aide funds, or
- c. An agency which provides respite care services ~~and receives state funds for respite care services.~~

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11.11(2) ~~Content~~ *Nonemergency personnel training content.* Training programs must address the following topics:

- a. ~~HIV disease processes~~ Symptoms and modes of transmission of blood-borne diseases,
- b. ~~Signs and symptoms~~ Location and handling of personal protective equipment,
- c. ~~Transmission,~~ Information on the hepatitis B vaccine, and
- d. ~~High-risk activities,~~ Follow-up procedures in the event of an exposure.
- e. ~~Prevention recommendations, and~~
- f. ~~Standard precautions as defined by the CDC and the Occupational Safety and Health Administration of the U.S. Department of Labor.~~

11.11(3) *Emergency and law enforcement personnel.* All ~~Before an initial assignment of tasks where occupational exposure to blood or other potentially infectious materials may take place and at least annually thereafter, all~~ emergency medical services personnel, firefighters, and law enforcement personnel shall complete ~~a minimum of two hours of training concerning AIDS-related conditions and the prevention of HIV infection~~ training concerning blood-borne pathogens, including human immunodeficiency virus and viral hepatitis, consistent with standards from the Occupational Safety and Health Administration of the U.S. Department of Labor.

11.11(4) ~~Content~~ *Emergency and law enforcement personnel training content.* Training programs must address the following topics:

- a. ~~HIV disease processes~~ Symptoms and modes of transmission of blood-borne diseases,
- b. ~~Signs and symptoms~~ Location and handling of personal protective equipment,
- c. ~~Transmission,~~ Information on the hepatitis B vaccine, and
- d. ~~High-risk activities,~~ Follow-up procedures in the event of an exposure.
- e. ~~Prevention recommendations, and~~
- f. ~~Standard precautions as defined by the CDC and the Occupational Safety and Health Administration of the U.S. Department of Labor.~~

This rule is intended to implement Iowa Code section 135.11.

ITEM 6. Adopt the following **new** definitions of “Meningococcal disease” and “Tuberculosis” in rule **641—11.22(139A)**:

“*Meningococcal disease*” means acute infectious bacterial meningococcal infection presenting as invasive disease characterized by one or more clinical syndromes including bacteremia, sepsis, or meningitis. “Meningococcal disease” does not include nasopharyngeal colonization by *Neisseria meningitidis*.

“*Tuberculosis*” means infectious tuberculosis as defined in 641—1.1(139A).

ITEM 7. Amend subrules 11.34(5) and 11.34(6) as follows:

11.34(5) Results of a test performed under 641—11.30(915) to 641—11.34(915), except as provided in subrule 11.34(6), shall be disclosed only to the physician or other practitioner who ordered the test of the convicted or alleged offender; the convicted or alleged offender; the victim; the victim counselor or person requested by the victim who is authorized to provide the counseling regarding the HIV-related test and results; the physician of the victim if requested by the victim; the parent, guardian, or custodian of the victim, if the victim is a minor; and the county attorney who filed the petition for the HIV-related testing under 641—11.30(915) to 641—11.34(915), ~~who may use the results to file charges of criminal transmission of HIV.~~ Results of a test performed under these rules shall not be disclosed to any other person without the written informed consent of the convicted or alleged offender. A person to whom the results of a test have been disclosed under 641—11.30(915) to 641—11.34(915) is subject to the confidentiality provision of Iowa Code section 141A.9, and shall not disclose the results to another person except as authorized by Iowa Code section 141A.9.

11.34(6) If HIV-related testing is ordered under 641—11.30(915) to 641—11.34(915), the court shall also order periodic testing of the convicted offender during the period of incarceration, probation, or parole or of the alleged offender during a period of six months following the initial test if the physician or other practitioner who ordered the initial test of the convicted or alleged offender certifies that, based upon prevailing scientific opinion regarding the maximum period during which the results of an HIV-related

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test may be negative for a person after being HIV-infected, additional testing is necessary to determine whether the convicted or alleged offender was HIV-infected at the time the sexual assault or alleged sexual assault was perpetrated. The results of the subsequent periodic tests conducted pursuant to subrule 11.34(6) shall be released only to the physician or other practitioner who ordered the test of the convicted or alleged offender; the convicted or alleged offender; the victim counselor or person requested by the victim to provide the counseling regarding the HIV-related test and results, who shall disclose the results to the petitioner; the physician of the victim if requested by the victim; and the county attorney, ~~who may use the results as evidence in the prosecution of the sexual assault or in the prosecution of the offense of criminal transmission of HIV~~ who filed the petition for the HIV-related testing under 641—11.30(915) to 641—11.34(915).

ITEM 8. Rescind the definition of “Modified adjusted gross income” in rule **641—11.40(141A)**.

ITEM 9. Amend rule 641—11.43(141A) as follows:

641—11.43(141A) Eligibility requirements.

11.43(1) An applicant is eligible to participate in the ADAP medication assistance program if the applicant:

- a. Applies for enrollment in ADAP on a form provided by the department;
- b. Has no health insurance to cover the cost of the drugs that are or may become available from ADAP;
- c. Is currently being prescribed a drug on the ADAP formulary;
- d. Has an annual MAGI income that is less than or equal to ~~200~~ 400 percent of the poverty level as determined by the most recent federal poverty guidelines published annually by the U.S. Department of Health and Human Services for the size of the household ~~(this income shall be determined after a \$500 work-related allowance is deducted from the monthly salary of an employed person with HIV/AIDS);~~
- e. Has a medical diagnosis of HIV infection or AIDS or is an unborn infant or an infant under 18 months of age who has an HIV-infected mother; and
- f. Is a resident of Iowa.

11.43(2) An applicant is eligible to participate in the ADAP health insurance assistance program if the applicant:

- a. Applies for enrollment in ADAP on a form provided by the department;
- b. Has creditable health insurance coverage;
- c. Is currently being prescribed a drug on the ADAP formulary;
- d. Has an annual MAGI income that is less than or equal to 400 percent of the poverty level as determined by the most recent federal poverty guidelines published annually by the U.S. Department of Health and Human Services for the size of the household;
- e. Has a medical diagnosis of HIV infection or AIDS or is an unborn infant or an infant under 18 months of age who has an HIV-infected mother; and
- f. Is a resident of Iowa.

ITEM 10. Amend paragraph **11.45(1)“c”** as follows:

- c. The enrolled individual’s annual MAGI income increases to an amount above the respective ADAP component’s income guidelines;

[Filed 1/11/17, effective 3/8/17]

[Published 2/1/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/1/17.

ARC 2933C**PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 144.3, the Iowa Department of Public Health hereby amends Chapter 95, “Vital Records: General Administration,” Iowa Administrative Code.

These amendments clarify restrictions on creating an alternative system for the registration of vital statistics, remove restrictions regarding obtaining vital records from the county level and clarify that the intent of rule 641—95.2(144) is to prohibit the establishment of another official system of registration of vital statistics—not to prohibit, for example, the routine publication of vital records information such as births in the local newspaper.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2821C** on November 23, 2016. A public hearing was held on December 14, 2016, in Room 518, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa. Comments were received by e-mail.

The Department received nine public comments supporting the amendments. The comments were received from genealogists from within the state of Iowa, the State Archivist and the Freedom of Information Council. The comments were supportive of the proposed changes as the changes align with the authority given under Iowa Code chapter 22, “Examination of Public Records (Open Records).” The Department received one public comment questioning additional changes. The Department received three public comments stating concerns regarding the proposed amendments. The comments were from the Iowa County Recorders Association, the Iowa State Association of Counties and a retired county recorder. The comments from the Iowa County Recorders Association and the former county recorder centered on integrity of the vital record at the county level and concerns regarding fraud and identity theft. The Iowa State Association of Counties supported the letter written by the Iowa County Recorders Association.

After consideration of the comments and discussion with legal counsel, the following changes were made from the amendments published under Notice:

- In renumbered subrule 95.7(3), the words “or at the direction of the state registrar” were stricken from the introductory paragraph of the subrule, and the words “issued by the county registrar” were added to paragraph “a” of the subrule;
- Subrule 95.10(2) was stricken in its entirety, and the remaining subrules were renumbered accordingly.

The State Board of Health adopted these amendments on January 11, 2017.

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

These amendments are intended to implement Iowa Code chapter 144.

These amendments will become effective March 8, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 641—95.2(144) as follows:

641—95.2(144) Vital records and statistics. There is established a division in the department which shall install, maintain, and operate the system of vital statistics throughout the state. No official system for the registration of births, deaths, fetal deaths, adoptions, marriages, dissolutions, and annulments shall be maintained in the state or any of its political subdivisions other than the one provided for in Iowa Code chapter 144, including, but not limited to, a system maintained by any agency or private entity.

95.2(1) No person shall prepare or issue any certificate which purports to be an original certified copy or a copy of a certificate of birth, death, fetal death, adoption, marriage, dissolution, or annulment ~~or any subset of the data items taken from a certificate~~ except as provided for in Iowa Code chapter 144 and authorized by the state registrar.

~~**95.2(2)** A vital record, index, or subset of data shall not be maintained in any other system or manner except as provided for in Iowa Code chapter 144 and authorized by the state registrar.~~

PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~95.2(3)~~ **95.2(2)** The state registrar and the county registrar shall not maintain or issue copies of any vital record of an event occurring outside the state registrar's or county registrar's jurisdiction except as provided for in Iowa Code chapter 144 and authorized by the state registrar.

~~95.2(4)~~ To protect the integrity of vital records and to ensure their proper use, no vital record, index, or subset of data shall be posted to the World Wide Web or published in any other manner except as provided for in Iowa Code chapter 144 and pursuant to subrule 95.10(3) or as authorized by the state registrar.

ITEM 2. Amend rule 641—95.7(144) as follows:

641—95.7(144) General public access of vital records in the custody of the county registrar. A vital record may be in the custody of the county registrar if the event occurred in that county and the record is not excluded by statute or definition for purposes of confidentiality.

95.7(1) There shall be public access and the right to inspect ~~in person~~ all vital records in the custody of the county registrar after they the vital records are purged of confidential information pursuant to rule 641—95.11(144). The county registrar shall allow the general public access to the electronic statewide vital records system to search as a public user as a right under Iowa Code chapter 22 for events which occurred in that county.

~~95.7(2)~~ Electronic devices, including but not limited to scanners, cameras, tablets, cellular phones or laptops, shall not be used to secure images or copies from county vital records. Laptops or like devices may be allowed only for purposes of typing information into a genealogy software program or electronic document and as directed by the state registrar or county registrar.

~~95.7(3)~~ **95.7(2)** Information inspected and copied shall not be published or used to establish an index or record of information at any other location official system for the registration of vital statistics except as authorized by Iowa Code chapter 144.

~~95.7(4)~~ **95.7(3)** County registrars may issue uncertified copies of vital records held in the registrars' physical custody or accessible through the electronic statewide vital records system, except those records excluded by statute or at the direction of the state registrar.

a. Requests for uncertified copies shall be accepted solely through in-person application after the applicant has conducted the applicant's own search for the record at the county registrar's office.

b. Uncertified copies issued by the county registrar shall be issued on plain white paper and clearly stamped "not for legal purposes." Security paper provided by the state registrar shall not be used to produce records for uncertified copies.

~~95.7(5)~~ County registrars shall not provide specific information from any vital record via telephone, fax, electronic file, Web site, written letter or verbally, except for administrative purposes with the state vital records office.

~~95.7(6)~~ County registrars shall not produce lists of vital records for any agency, private business, or member of the general public.

~~95.7(7)~~ **95.7(4)** For records available in the electronic statewide vital records system, the state registrar shall send to the county registrars a list of all records that have been modified. County registrars shall, as directed by the state registrar, remove all forms of any vital record in their physical custody from the county vital records system if the vital record appears on the list of modified records. The county registrar shall allow the general public access to the electronic statewide vital records system to search as a public user as a right under Iowa Code chapter 22.

~~95.7(8)~~ **95.7(5)** For records not available in the electronic statewide vital records system, the state registrar shall send a copy of any modified vital record to the county of event and, if the record is a death record, to the county of residence.

ITEM 3. Amend rule 641—95.10(144) as follows:

641—95.10(144) Search and issuance for genealogy or family history. The search and issuance of a vital record for genealogy may be requested from the state registrar or county registrar upon written application and payment of the required fee pursuant to paragraph 95.6(1) "a."

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95.10(1) The state registrar or county registrar may issue certified copies of a vital record for genealogy or family history to an applicant who can satisfactorily demonstrate a line of direct lineal consanguinity and to aunts, uncles, and cousins not past twice removed.

~~**95.10(2)** The county registrar may issue uncertified copies of a vital record for genealogy or family history to any member of the general public except those records excluded by statute or at the direction of the state registrar. Requests for uncertified copies shall be accepted solely through in-person application after the applicant has conducted a search for the record at the county registrar's office.~~

~~**95.10(3)** The state registrar may issue uncertified copies of a vital record for genealogy or family history to an applicant who is conducting genealogical research and can satisfactorily demonstrate a line of direct lineal consanguinity and to aunts, uncles, and cousins not past twice removed if the event occurred 125 years ago or more for birth records and 75 years ago or more for marriage and death records.~~

~~**95.10(4)**~~ **95.10(2)** All certified copies issued for genealogy or family history shall be clearly marked "for genealogical purposes only."

~~**95.10(5)**~~ **95.10(3)** No certified copy shall be issued for genealogy or family history if the registrant is known to be living.

~~**95.10(6)**~~ **95.10(4)** If, after the search is conducted, no record is on file, the state registrar or county registrar shall issue a "notification of record search" on certified paper, and the fee for the search shall be retained pursuant to paragraph 95.6(1) "a."

[Filed 1/11/17, effective 3/8/17]

[Published 2/1/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/1/17.

ARC 2931C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135A.9, the Iowa Department of Public Health hereby amends Chapter 186, "Governmental Public Health Advisory Bodies," Iowa Administrative Code.

The current rules in Chapter 186 implement Iowa Code chapter 135A, the Public Health Modernization Act. The Act became outdated, and 2016 Iowa Acts, Senate File 2159, updated Iowa Code chapter 135A to reflect the intent to have one Governmental Public Health Advisory Council to advise and make policy recommendations to the Department, the Director of the Department and the State Board of Health regarding the Governmental Public Health System. The Council recommendations support improved organization and delivery of critical public health services across the state.

These amendments reflect the changes to the Act made in 2016 Iowa Acts, Senate File 2159, which removed, added or changed some definitions; removed outdated references to "Iowa Public Health Standards"; removed the requirement to establish a voluntary accreditation process; eliminated the evaluation committee; adjusted the membership of the Governmental Public Health Advisory Council; clarified the roles and responsibilities of the Governmental Public Health Advisory Council; and clarified the roles and responsibilities of the Department.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2822C** on November 23, 2016. No public comments were received. References to 2016 Iowa Acts, Senate File 2159, have been removed because the amendments in Senate File 2159 have been codified in Iowa Code chapter 135A. These amendments are otherwise identical to those published under Notice of Intended Action.

The State Board of Health adopted these amendments on January 11, 2017.

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

These amendments are intended to implement Iowa Code chapter 135A and 2016 Iowa Acts, Senate File 2159.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

These amendments will become effective March 8, 2017.

The following amendments are adopted.

ITEM 1. Amend **641—Chapter 186**, title, as follows:

GOVERNMENTAL PUBLIC HEALTH ADVISORY ~~BODIES~~ COUNCIL

ITEM 2. Amend rule 641—186.1(135A) as follows:

641—186.1(135A) Purpose. ~~The governmental public health advisory council and the governmental public health evaluation committee shall advise the department and make policy recommendations to the department, the director of the department, and the state board of health regarding the coordination and implementation of the voluntary accreditation of designated local public health agencies and of the department and the evaluation of the accreditation program and governmental public health system. The council is intended to support the goal that Iowa's governmentally sponsored public health systems be effective, efficient, well-organized, and well-coordinated to have the greatest impact on the improvement of health status for all Iowans.~~

ITEM 3. Amend rule 641—186.2(135A) as follows:

641—186.2(135A) Definitions. For the purposes of this chapter, the following definitions apply:

"Academic institution" means an institution of higher education in the state which grants degrees in public health or another health-related field and is accredited by a nationally recognized accrediting agency as determined by the United States Secretary of Education. For purposes of this definition, "accredited" means a certification of the quality of the institution of higher education.

"Committee" means the governmental public health evaluation committee as established in 2009 Iowa Code Supplement section 135A.5.

"Council" means the governmental public health advisory council as established in 2009 Iowa Code Supplement Iowa Code section 135A.4.

"Department" means the Iowa department of public health.

"Designated local public health agency" means an entity that is either governed by or contractually responsible to a local board of health and designated by the local board to comply with the Iowa public health standards for a jurisdiction.

"Director" means the director of the Iowa department of public health.

"Governmental public health system" means local boards of health, the state board of health, designated local public health agencies, the state hygienic laboratory, and the department.

"Local board of health" means a county or district board of health.

"Organizational capacity" means the governmental public health infrastructure that must be in place in order to deliver public health services.

"Public health system" means all public, private, and voluntary entities that contribute to the delivery of public health services within a jurisdiction.

ITEM 4. Amend rule 641—186.3(135A) as follows:

641—186.3(135A) Roles and responsibilities of advisory bodies the council. ~~Two advisory bodies~~ The council shall provide guidance to the department regarding the governmental public health system.

186.3(1) A governmental public health advisory council is established to advise do all of the following:

a. Advise the department and make policy recommendations to the director of the department and the state board of health concerning administration, implementation, and coordination of 2009 Iowa Code Supplement chapter 135A and to make recommendations to the department regarding the governmental public health system.

b. Propose to the director public health standards that may be utilized by the governmental public health system.

c. Develop and implement processes for longitudinal evaluation of the public health system including collection of information about organizational capacity and public health service delivery.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

d. Determine what process and outcome improvements in the governmental health system are attributable to voluntary accreditation.

e. Assure that the evaluation process is capturing data to support key research in public health system effectiveness and health outcomes.

f. Develop and make recommendations for improvements to the public health system.

g. Make recommendations for resources to support the public health system.

h. Review rules developed and adopted by the state board of health under Iowa Code chapter 135A and make recommendations to the department for revisions to further promote implementation of Iowa Code chapter 135A and modernization of the governmental public health system.

i. Form and utilize subcommittees as necessary to carry out the duties of the council.

j. Annually submit a report on the activities of the council to the state board of health by July 1.

~~186.3(2) The council shall annually provide a report to the department by July 1.~~

~~186.3(3) A governmental public health evaluation committee is established to develop and implement the evaluation of the governmental public health system and voluntary accreditation program as described in 2009 Iowa Code Supplement section 135A.5.~~

~~186.3(4) The committee shall annually provide a report to the department by July 1.~~

~~186.3(5) 186.3(2) Recommendations from the council and committee shall be provided to the director in writing. The director may provide those recommendations to the state board of health.~~

~~186.3(6) Communication. The council and committee shall ensure communication between the two bodies by:~~

~~a. Providing regular updates to the other body through written reports at each meeting.~~

~~b. Stipulating that the chairperson and vice chairperson of the committee and council hold semiannual conference calls.~~

~~c. Meeting together at least biennially.~~

~~d. Responding to requests from one body to the other that shall be made in writing and appear in new business on the agenda of the next regularly scheduled meeting.~~

ITEM 5. Amend rule 641—186.4(135A) as follows:

641—186.4(135A) Officers.

186.4(1) The officers of the council ~~and committee~~ shall be a chairperson and vice chairperson ~~for each body.~~

a. The officers shall be elected at the first meeting each September.

b. Vacancy in the office of chairperson shall be filled by the vice chairperson.

c. Vacancy in the office of vice chairperson shall be filled by election at the next regularly scheduled meeting after the vacancy occurs.

186.4(2) Duties of officers.

a. The chairperson of the council shall preside at all meetings of the council, ~~and the chairperson of the committee shall preside at all meetings of the committee.~~

b. Robert's Rules of Order shall govern all meetings.

c. If the chairperson is absent or unable to act, the vice chairperson shall perform the duties of the chairperson. When so acting, the vice chairperson shall have all the powers of and be subject to all the restrictions upon the chairperson.

d. The vice chairperson shall also perform such other duties as may be assigned by the chairperson.

ITEM 6. Amend rule 641—186.5(135A) as follows:

641—186.5(135A) Members of advisory bodies the council.

186.5(1) The director, pursuant to 2009 Iowa Code Supplement sections section 135A.4 and 135A.5, shall appoint members of the council ~~and committee.~~

a. The membership of the council shall consist of all of the following members who satisfy all of the following requirements:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

(1) Twelve members who represent various subfields of public health. These members shall provide geographical representation from all areas of the state. Each of these members shall be an employee of a designated local board of public health. Such members shall include a minimum of one local public health administrator and one physician member of a local board of health.

(2) Two members who are representatives of the department.

(3) The director of the state hygienic laboratory at the University of Iowa, or the director's designee.

(4) At least two representatives from academic institutions.

(5) Two members who serve on a county board of supervisors.

(6) At least one economist who has demonstrated experience in public health, health care, or a health-related field.

(7) At least one research analyst.

(8) Four nonvoting members who shall consist of four members of the general assembly, two from the senate and two from the house of representatives, with not more than one member from each chamber being from the same political party. The two senators shall be designated, one member each, by the majority leader of the senate after consultation with the president and by the minority leader of the senate. The two representatives shall be designated, one member each, by the speaker of the house of representatives after consultation with the majority leader of the house of representatives and by the minority leader of the house of representatives.

(9) One member of the state board of health who shall be a nonvoting member.

a. b. Members shall serve for a term of two years and may be reappointed for a maximum of three consecutive terms. Initial appointments shall be in staggered terms.

b. c. Vacancies shall be filled in the same manner in which the original appointments were made for the balance of the unexpired term.

186.5(2) A member's designee shall meet the same criteria for which the member was appointed. The member shall notify the department when the designee will be in attendance. The designee shall have voting rights.

186.5(3) Two consecutive unexcused absences of a member or designee shall be grounds for the director to consider dismissal of the council member ~~or committee member~~ and to appoint another. The department staff person assigned to the council ~~or committee~~ is charged with providing notification of absences to the director.

ITEM 7. Amend rule 641—186.6(135A) as follows:

641—186.6(135A) Meetings. The council ~~and committee~~ shall ~~each~~ hold a meeting at least quarterly. Notice of routine meetings and agenda should be made available to the members a minimum of five working days prior to the meeting.

186.6(1) Persons wishing to submit materials for consideration by the council ~~or committee~~ should submit the materials electronically to the department at least 14 days in advance of the scheduled meeting to ensure that members have adequate time to review the materials.

186.6(2) Persons wishing to make a presentation to the council ~~or committee~~ shall submit the request to the department not less than 14 days prior to the meeting. Presentations upon matters appearing on the agenda may be made either at the discretion of the chairperson or the department.

186.6(3) All meetings are open to the public in accordance with the open meetings law, Iowa Code chapter 21.

186.6(4) The council ~~or committee~~ may conduct a meeting by electronic means pursuant to Iowa Code section 21.8.

186.6(5) A simple majority of appointed members shall be considered a quorum.

186.6(6) Any member or member's designee who is unable to attend a meeting shall notify the department at least 24 hours prior to the start of a regularly scheduled meeting; a meeting may be canceled if a quorum will not be present.

186.6(7) When a quorum is present, a position is carried by affirmative vote of the majority of those present.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

186.6(8) Minutes. Minutes of all meetings showing the date, time, place, members present, members absent, and the general topics discussed shall be kept. The minutes shall reflect the actions agreed upon by the members for topics requiring the members' input or consensus.

ITEM 8. Amend rule 641—186.7(135A) as follows:

641—186.7(135A) Conflict of interest. A conflict of interest exists when ~~members~~ a member of the council ~~or committee participate~~ participates in a way that directly affects the financial interests of the council ~~or committee members~~ member.

186.7(1) To avoid conflict of interest issues, a council or committee member ~~council or committee members~~ who ~~have~~ has a financial interest in an action must abstain from participating in the entire process including discussion and voting.

186.7(2) ~~The council or committee~~ Council members who have or think they may have a conflict of interest shall declare that there is or may be a conflict of interest and request a determination from the department.

186.7(3) If a conflict of interest is determined to exist, a council or committee member ~~council or committee members~~ shall abstain from voting and shall be recorded as abstaining when votes are taken.

ITEM 9. Amend rule 641—186.8(135A) as follows:

641—186.8(135A) Subcommittees. The council ~~and committee~~ may designate one or more subcommittees to perform such duties as may be deemed necessary.

ITEM 10. Adopt the following new rule 641—186.9(135A):

641—186.9(135A) Roles and responsibilities of the department. The department is the lead agency to administer Iowa Code chapter 135A. The department's administration shall include evaluation of and quality improvement measures for the governmental health system.

ITEM 11. Amend **641—Chapter 186**, implementation sentence, as follows:

These rules are intended to implement 2009 Iowa Code Supplement sections 135A.2 to 135A.4 and 135A.5, 135A.8 and 135A.9.

[Filed 1/11/17, effective 3/8/17]

[Published 2/1/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/1/17.

ARC 2927C

RACING AND GAMING COMMISSION[491]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby amends Chapter 1, "Organization and Operation," Chapter 4, "Contested Cases and Other Proceedings," Chapter 5, "Track, Gambling Structure, and Excursion Gambling Boat Licensees' Responsibilities," Chapter 6, "Occupational and Vendor Licensing," Chapter 10, "Thoroughbred and Quarter Horse Racing," Chapter 11, "Gambling Games," and Chapter 12, "Accounting and Cash Control," Iowa Administrative Code.

Item 1 provides the current Web site address for the Commission.

Item 2 clarifies that the provisions in subrule 4.5(8) apply to all licensed facilities.

Item 3 removes a requirement for dog tracks.

Item 4 allows for the acceptance of all types of checks.

Item 5 allows for mobile pari-mutuel wagering outside the designated wagering area.

Item 6 provides the current Web site address for the Commission.

Item 7 adds a specific circumstance that is grounds for license sanction.

RACING AND GAMING COMMISSION[491](cont'd)

Item 8 excludes spouses from the partnership requirements.

Item 9 removes the abuse of discretion standard to make consistent with previous rule change.

Item 10 changes the required payments made by the horsemen's bookkeeper.

Item 11 adds a requirement to identify horses that are racing on that day.

Item 12 clarifies which horses are eligible to compete for breeders awards.

Item 13 changes number and types of claims allowed.

Item 14 removes "unsound" as a condition.

Items 15 and 16 add the definition of "independent financial institution" and amend the definition of "reserve."

Item 17 adds requirements relating to preverified cards.

Item 18 makes changes to the wide area progressive system provider requirements.

Item 19 requires changes to internal controls for preverified cards.

Notice of Intended Action was published in the November 9, 2016, Iowa Administrative Bulletin as **ARC 2801C**. On November 29, 2016, at 9 a.m., a public hearing was held at the Iowa Racing and Gaming Commission, 1300 Des Moines Street, Suite 100, Des Moines, Iowa. The hearing was attended by one stakeholder, who had also made previous written comments and was present at the hearing to be of assistance. The concern shared related to the proposed change specified in Item 18. The concern was that entities do not provide irrevocable surety bonds.

Commission staff reviewed the comment received and reviewed it with the stakeholder. A change has been made to paragraph 11.12(8)"j"(2)"2" as published under Notice of Intended Action to reflect this concern.

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

These amendments will become effective March 8, 2017.

The following amendments are adopted.

ITEM 1. Amend paragraph **1.2(2)"a"** as follows:

a. The commission meets periodically throughout the year and shall meet in July of each year. Notice of a meeting is published on the commission's Web site at www.iowa.gov/irgc/ <https://irgc.iowa.gov/> at least five days in advance of the meeting or will be ~~mailed sent~~ to interested persons upon request. The notice shall contain the specific date, time, and place of the meeting. Agendas are available to any interested persons not less than five days in advance of the meeting.

ITEM 2. Amend subrule 4.5(8) as follows:

4.5(8) Persons who are not holders of a license or occupational license and who have allegedly violated commission rules or statute, or whose presence at a ~~track or on a riverboat~~ licensed facility is allegedly undesirable, are subject to the authority of the board and to any penalties, as set forth in rule 491—4.7(99D,99F).

ITEM 3. Amend paragraph **5.4(4)"a"** as follows:

a. During all hours of operation, each licensee shall equip and maintain adequate first-aid facilities and have, at a minimum, one employee trained in CPR, first aid, and the use of the automated external defibrillator (AED). During live racing at horse racetracks and while excursion gambling boats are cruising, the licensee shall have present either a physician, a physician assistant, a registered nurse, a licensed practical nurse, a paramedic, or an emergency medical technician.

ITEM 4. Amend subrule 5.4(9) as follows:

5.4(9) Checks. ~~The acceptance of personal checks shall be allowed; however, "counter" checks shall not be allowed.~~ All checks accepted must be deposited in a bank by the close of the banking day following acceptance.

ITEM 5. Adopt the following **new** subrule 5.5(12):

5.5(12) Mobile pari-mutuel wagering. Pari-mutuel wagering shall be allowed outside the designated wagering area using mobile pari-mutuel tellers with portable wagering devices and by any other method approved in writing by the commission.

RACING AND GAMING COMMISSION[491](cont'd)

ITEM 6. Amend subrule 6.4(2) as follows:

6.4(2) Knowledge of rules. By acceptance of a license from the commission, the licensee agrees to follow and comply with the rules of the commission and Iowa statutes pertaining to racing and gaming, to report immediately to the commission representative any known irregularities or wrongdoing involving racing or gaming and to cooperate in subsequent investigations. Commission rules are available on the commission's Web site at www.iowa.gov/irgc/ <https://irgc.iowa.gov/>.

ITEM 7. Adopt the following new paragraph **6.5(3)“x”**:

x. Communicating with or contacting a person who is voluntarily excluded pursuant to Iowa Code chapter 99D or 99F for gaming-related activities.

ITEM 8. Amend subrule 6.20(1) as follows:

6.20(1) A partnership is defined as a formal or informal arrangement between two or more persons to own a racing animal. All partnerships, excluding ~~husband and wife~~ spouses, must be licensed with the commission on forms furnished by the commission, and in accordance with the requirements of 491—6.17(99D).

ITEM 9. Amend subparagraph **10.4(4)“d”(3)** as follows:

(3) Fouls.

1. Extent of disqualification. Upon any claim of foul submitted to them, the stewards shall determine the extent of any disqualification and place any horse found to be disqualified behind others in the race with which it interfered or may place the offending horse last in the race. The stewards at their discretion may determine if there was sufficient interference or intimidation to affect the outcome of the race and take the appropriate actions thereafter. ~~Abuse of discretion shall be the standard of review used in any appeal involving a steward's disqualification decision.~~

2. and 3. No change.

ITEM 10. Amend subparagraph **10.4(15)“d”(3)** as follows:

(3) The horsemen's bookkeeper shall disburse the purse of each race and all stakes, entrance money, and jockey fees, ~~purchase money in claiming races, and all applicable taxes,~~ upon request, within 48 hours of receipt of notification that all tests with respect to such races have cleared the drug testing laboratory (commission chemist) as reported by the stewards. Minimum jockey mount fees may be disbursed prior to notification that the tests have cleared the testing laboratory.

ITEM 11. Amend subparagraph **10.5(1)“a”(2)** as follows:

(2) Preventing the administration of any drug, medication, or other prohibited substance that may cause a violation of these rules. An “in-today” sign must be placed by 8 a.m. on race day next to the stall of a horse that is scheduled to race on that day. For horses shipping in on race day, the sign must be placed upon the horse's arrival.

ITEM 12. Adopt the following new paragraph **10.6(2)“n”**:

n. Iowa-foaled horse. An Iowa-foaled horse may be entered in an Iowa-bred race without having its official jockey club registration papers stamped, but shall not compete in a race limited to Iowa-foaled horses unless the horse is registered with and the papers are stamped by the department of agriculture and land stewardship. An Iowa-foaled horse would be allowed to run in an open race without the stamp, but would be ineligible for Iowa-bred supplement, Iowa-bred breeders awards and Iowa-bred breeders supplement.

ITEM 13. Rescind subparagraph **10.6(18)“a”(2)** and adopt the following new subparagraph in lieu thereof:

(2) Number of claims.

1. An ownership entity (sole owner, partnership or limited liability partnership, racing stable, corporation or limited liability corporation, or owner/trainer acting as an owner) shall not claim more than one horse in a race, and an authorized agent or trainer acting on behalf of an ownership entity shall not submit more than two claims in a race with two separate ownership interests.

RACING AND GAMING COMMISSION[491](cont'd)

2. If an authorized agent or trainer acting on behalf of an ownership entity submits two claims in a race, the claims shall not be for the same horse.

3. A trainer shall not receive more than two horses from any claiming race.

ITEM 14. Amend subparagraph **10.6(18)“g”(3)** as follows:

(3) The stewards shall void the claim and return the horse to the original owner if:

1. The claimed horse suffers a fatality during the running of the race, dies, or is euthanized before leaving the track.

2. The commission veterinarian, during the veterinarian's observation of the horse coming off the track or upon its arrival to the test barn, determines the horse will be placed on the veterinarian's list as ~~unsound or lame~~. The stewards shall not void the claim if, prior to the race in which the horse is claimed, the claimant elects to claim the horse regardless of whether the commission veterinarian determines the horse will be placed on the veterinarian's list as ~~unsound or lame~~. An election made under this rule shall be entered on the claim form.

3. The race is called off, canceled, or declared no contest.

ITEM 15. Adopt the following new definition of “Independent financial institution” in rule **491—11.1(99F)**:

“*Independent financial institution*” means a bank approved to do business in the state of Iowa or an insurance company admitted to transact insurance in the state of Iowa with an A.M. Best insurance rating of “A” or other equivalent rating.

ITEM 16. Amend rule **491—11.1(99F)**, definition of “Reserve,” as follows:

“*Reserve*” means an account with an independent financial institution or brokerage firm consisting of cash, ~~and~~ qualified investments, ~~or other secure funding method approved by the administrator~~ used to satisfy periodic payments of prizes.

ITEM 17. Adopt the following new subrule 11.7(9):

11.7(9) Preverified cards. Cards that are verified prior to arrival at the facility may be approved by the administrator for use in table games authorized by this rule. Preverified cards may be shuffled or sequenced according to the licensee's specifications. Each manufacturer of preverified cards shall request approval of its cards, pursuant to subrule 11.4(1), and is subject to the following additional requirements:

a. Each device used to verify or automate the randomization of the cards before they are shipped to a licensee shall be certified by a commission-designated independent testing facility.

b. The manufacturer shall develop and submit to the administrator a process for producing, shuffling, and packaging preverified cards that includes the following:

(1) A visual inspection of the back of each card, ensuring the cards are not flawed or marked in any way that might compromise the integrity of the gambling game.

(2) A verification that each package of cards contains the correct number of suits and cards in accordance with the commission-approved rules of the game for the game with which the package of cards is intended for use.

(3) Insertion of the cards in a package with a tamper-evident seal that bears conspicuous indication if the package has been opened. The exterior of the package shall indicate:

1. The total number of decks contained within the package.

2. The commission-authorized game with which the cards are intended for use.

3. The color of the cards within the package.

(4) Generation of a receipt in the package or a label on the sealed package to include the following information:

1. The total number of cards and decks contained within the package.

2. The date and time the cards were shuffled, verified and packaged.

3. Information sufficient to determine the specific details regarding any persons or devices involved in the production, verification or packaging of the cards.

ITEM 18. Rescind paragraph **11.12(8)“j”** and adopt the following new paragraph in lieu thereof:

j. The provider shall comply with the following:

RACING AND GAMING COMMISSION[491](cont'd)

(1) A reserve shall be established and maintained by the provider in an amount of not less than the sum of the following amounts:

1. The present value of the amount currently reflected on the jackpot meters of the multilink.
2. The present value of one additional reset (start amount) of the multilink.

(2) For system jackpots disbursed in periodic payments, a provider shall fund the periodic payments within 90 days of the notice of the jackpot award with:

1. Purchase of a qualified investment. A copy of such qualified investment shall be provided to the administrator within 30 days of purchase. Any qualified investment shall have a surrender value at maturity, excluding any interest paid before the maturity date, equal to or greater than the value of the corresponding periodic jackpot payment and shall have a maturity date prior to the date the periodic jackpot payment is required to be made; or

2. A surety bond or an irrevocable letter of credit with an independent financial institution which provides periodic payments to a winner should the establishment default for any reason. The written agreement establishing a surety bond or irrevocable letter of credit shall be submitted to the administrator within 30 days of purchase; or

3. An irrevocable trust with an independent financial institution in accordance with a written trust agreement approved by the administrator which provides periodic payments from an unallocated pool of assets to a group of winners and which shall expressly prohibit the winner from encumbering, assigning or otherwise transferring in any way the winner's right to receive the deferred portion of the winnings except to the winner's estate. The assets of the trust shall consist of federal government securities including but not limited to treasury bills, treasury bonds, savings bonds or other federally guaranteed securities in an amount sufficient to meet the periodic payments as required; or

4. Another irrevocable method of providing the periodic payments to a winning player consistent with the purpose of this subparagraph, and which is approved by the administrator prior to implementation.

(3) The provider shall not be permitted to sell, trade, or otherwise dispose of any periodic payment funding unless approval to do so is first obtained from the administrator.

(4) Upon becoming aware of an event of noncompliance with the terms of the reserve requirement mandated by subparagraph 11.12(8)“j”(1) above, or in the event of nonpayment of a periodic payment directly by the provider, the provider must immediately notify the administrator. An event of noncompliance includes a nonpayment of a jackpot periodic payment or a circumstance which may cause the provider to be unable to fulfill, or which may otherwise impair the provider's ability to satisfy, the provider's jackpot payment obligations.

(5) On a quarterly basis, the provider must deliver to the administrator a calculation of system reserves required under subparagraph 11.12(8)“j”(1) above. The calculation shall come with a certification of financial compliance signed by a duly authorized financial officer of the provider, on a form prescribed by the administrator, validating the calculation.

(6) On an annual basis, the provider must deliver to the administrator updated information sufficient to determine compliance with the funding requirements of all outstanding periodic payments. This shall include an updated listing of all winners showing outstanding periodic payment amounts and any updates to funding documents and agreements. The updated information shall come with a certification of compliance signed by a duly authorized financial officer of the provider.

(7) The reserve required under subparagraph 11.12(8)“j”(1) must be examined by an independent certified public accountant according to procedures approved by the administrator. Two copies of the report must be submitted to the administrator within 90 days after the conclusion of the provider's fiscal year.

(8) The administrator may require additional information or audits at any time to ensure compliance with this paragraph.

ITEM 19. Adopt the following new paragraph **12.3(1)“g”**:

g. Preverified card control, for use with cards approved pursuant to 491—subrule 11.7(9). Controls shall be designed to document:

RACING AND GAMING COMMISSION[491](cont'd)

- (1) The procedure governing inspection of the packaging when the cards are put into use on a live table game, including verification of the tamper-evident seal and review of the manufacturer-generated receipt for relevant details.
- (2) The procedure for employee breaking of the tamper-evident seal to sign the receipt with name, time the package is being placed in use, and specific table where the package is being used.
- (3) The procedure to retain the receipt and the details of use.
- (4) Any additional procedures that will be used to verify or randomize preverified cards prior to play.

[Filed 1/9/17, effective 3/8/17]

[Published 2/1/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/1/17.

ARC 2925C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 422.68, the Department of Revenue hereby amends Chapter 42, "Adjustments to Computed Tax and Credits," and Chapter 52, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," Iowa Administrative Code.

These amendments update the Department of Revenue's rules regarding the application of the solar energy system tax credit to both individual and corporation income taxes in order to comply with 2015 Iowa Acts, chapter 124; 2016 Iowa Acts, House File 2459; and 2016 Iowa Acts, House File 2468. These amendments also include nonsubstantive changes to clarify the rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2736C** on September 28, 2016. One public comment was received in relation to this rule making. The comment was in support of the rules as published in the Notice.

Several changes have been made to these amendments from the Notice of Intended Action in order to clarify the expiration dates for the credits available under this program and the relationship between the Iowa credit and the federal credit. The changes add specific expiration dates for the credits for systems installed on or after January 1, 2016; add citations to the federal provisions which determine the expiration dates of these credits for Iowa purposes; and eliminate misleading language that suggested that the Iowa credits would be automatically extended if the federal credits are extended. There is also a change to the catchwords in subrules 42.48(9) and 52.44(9). The phrase "or beneficiaries of an estate or trust" was added to the end of the existing catchwords. These changes to the catchwords were necessary to better describe the information contained within the subrules and to match similar catchwords in other rules related to tax credits.

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

The Department of Revenue adopted these amendments on January 12, 2017.

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

These amendments are intended to implement Iowa Code section 422.11L as amended by 2015 Iowa Acts, chapter 124; 2016 Iowa Acts, House File 2459; and 2016 Iowa Acts, House File 2468; and Iowa Code section 422.33 as amended by 2015 Iowa Acts, chapter 124.

These amendments will become effective March 8, 2017.

The following amendments are adopted.

REVENUE DEPARTMENT[701](cont'd)

ITEM 1. Amend rule 701—42.48(422) as follows:

701—42.48(422) Solar energy system tax credit. For tax years beginning on or after January 1, 2012, a solar energy system tax credit is available for both residential property and business property located in Iowa. The solar energy system must be installed on or after January 1, 2012, to be eligible for the credit.

42.48(1) Property eligible for the tax credit. The following property located in Iowa is eligible for the tax credit:

a. to d. No change.

42.48(2) Relationship between the Iowa and federal credits. As stated in subrules 42.48(3) to 42.48(5) below, the Iowa credit is a percentage of the applicable federal credit. Taxpayers who apply for the Iowa credit must also claim the corresponding federal credit. Availability of the Iowa credit for a specific type of installation in a given year is dependent upon availability of the federal credit for that type of installation. The Iowa credit is coupled with the Internal Revenue Code as amended to and including January 1, 2016. See Iowa Code section 422.11L(6); see also Public Law No. 114-113, Div. P, Title III, §§ 302, 303, 304, and Div. Q, Title I, § 187.

42.48(2) 42.48(3) Calculation of credit for systems installed during tax years beginning on or after January 1, 2012, but before January 1, 2014. The credit is equal to the sum of the following federal tax credits:

a. to c. No change.

d. Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code.

The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(2)“a” 42.48(3)“a” and “b” cannot exceed \$3,000 for a tax year. The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(2)“e” 42.48(3)“c” and “d” cannot exceed \$15,000 for a tax year.

The federal residential energy efficient tax credits are allowed for installations that are completed and the federal energy tax credits for solar energy systems are allowed for installations that are placed in service before January 1, 2014. The solar energy system must be installed on or after January 1, 2012, to qualify for the Iowa credit. If the taxpayer installed a solar energy system and initially reported the federal tax credit for a tax year beginning prior to January 1, 2012, no Iowa credit will be allowed.

EXAMPLE: A taxpayer reported a \$9,000 residential energy efficient tax credit on the 2011 federal return due to an installation of a solar energy system that was placed in service in 2011. The taxpayer applied \$4,000 of the credit on the taxpayer’s 2011 federal return since the federal tax liability was \$4,000. The remaining \$5,000 of federal credit was applied on the 2012 federal return. No credit will be allowed on the 2012 Iowa return since the installation was placed in service before January 1, 2012.

42.48(3) 42.48(4) Calculation of credit for systems installed during tax years beginning on or after January 1, 2014, but and installed before January 1, 2017 2016. The credit is equal to the sum of the following federal tax credits:

a. to c. No change.

d. Sixty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code.

The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(3)“a” 42.48(4)“a” and “b” cannot exceed \$5,000 for a tax year per separate and distinct installation. The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(3)“e” 42.48(4)“c” and “d” cannot exceed \$20,000 for a tax year per separate and distinct installation. “Separate and distinct installation” is described in subrule 42.48(7).

The federal residential energy efficient tax credits are allowed for installations that are completed on or before December 31, 2016, and the federal energy tax credits for solar energy systems are allowed for installations that are placed in service on or before December 31, 2016. Therefore, the Iowa tax credit is available for installations that are either completed or placed in service before January 1, 2017. If the federal residential energy property tax credits or the federal energy credits are extended to installations completed or placed in service on or after January 1, 2017, the Iowa tax credit will also be extended.

REVENUE DEPARTMENT[701](cont'd)

42.48(5) *Calculation of credit for systems installed on or after January 1, 2016.* The credit is equal to the sum of the following federal tax credits:

a. Fifty percent of the federal residential energy property credit provided in Section 25D(a)(1) of the Internal Revenue Code. This credit is set to expire December 31, 2021, in accordance with Public Law No. 114-113 Div. P, Title III, § 304.

b. Fifty percent of the federal residential energy property credit provided in Section 25D(a)(2) of the Internal Revenue Code. This credit is set to expire December 31, 2021, in accordance with Public Law No. 114-113 Div. P, Title III, § 304.

c. Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code. This credit applies to property the construction of which begins before January 1, 2022, in accordance with Public Law No. 114-113 Div. P, Title III, § 303.

d. Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code. This credit is set to expire December 31, 2016, in accordance with Public Law No. 114-113 Div. Q, Title I, § 187.

The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(5) “a” and “b” cannot exceed \$5,000 per separate and distinct installation. The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(5) “c” and “d” cannot exceed \$20,000 per separate and distinct installation. The term “separate and distinct installation” is described in subrule 42.48(7).

42.48(4) 42.48(6) *Application for the tax credit. Tax credit award limitations.* No more than \$1.5 million of tax credits for solar energy systems are allowed for tax years 2012 and 2013. The \$1.5 million cap also includes the solar energy system tax credits provided in rule 701—52.44(422) for corporation income tax. No more than \$4.5 million of tax credits for solar energy systems is allowed for each of the tax years 2014 to 2016. The \$4.5 million cap does not include any dollars allocated to a previous tax year that roll over to the 2015 and 2016 tax years. The following limitations apply:

a. *Aggregate tax credit award limit.* No more than \$5 million of tax credits will be issued for calendar years beginning on or after January 1, 2015. The \$4.5 million annual tax credit allocation cap also includes the solar energy system tax credits provided in rule 701—52.44(422) for corporation income tax and in rule 701—58.22(422) for franchise tax. Awards of tax credits are made on a first-come, first-served basis.

b. *Allocation for residential installations.* At Beginning with tax year 2014, at least \$1 million of the \$4.5 million annual tax credit allocation cap for the 2014 to 2016 each tax years year is reserved for residential installations. If the total amount of credits for residential installations for a tax year is less than \$1 million, the remaining amount below \$1 million will be allowed for nonresidential installations.

c. *Rollover of unallocated credits.* If Beginning with calendar year 2014, if the \$4.5 million annual tax credit allocation cap for the 2014 and 2015 tax years is not reached, the remaining amount below \$4.5 million the cap will be allowed to be carried forward to the following tax year and shall not count toward the cap for that year.

42.48(7) *How to apply for the credit.* Timely and complete applications shall be reviewed and approved on a first-come, first-served basis. Applications for the tax credit may be submitted through the Tax Credit Award, Claim, and Transfer Administration System (CACTAS), which applicants may access through the department’s Web site.

a. *Separate and distinct installation requirement.* A taxpayer may claim apply for one tax credit for each separate and distinct solar installation. Each separate and distinct installation requires a separate application. In order for an installation to be considered a separate and distinct solar installation, both of the following factors must be met:

(1) Each installation must be eligible for the federal residential energy property credit or the federal energy credit as provided in subrule 42.48(3) 42.48(1).

(2) Each installation must have separate metering.

b. *Application deadline.* In order to request the tax credit, a taxpayer must complete an application for the solar energy tax credit for each separate and distinct installation. For installations completed on or after January 1, 2014, the application must be filed by May 1 following the year of installation of the

REVENUE DEPARTMENT[701](cont'd)

solar energy system. Notwithstanding the foregoing sentence, the following extensions are applicable to installations completed in 2014 and 2015:

(1) Solar energy systems installed during the 2014 calendar year shall be eligible for approval under Iowa Code section 422.11L even if the application is filed after May 1, 2015. Valid and complete applications shall be accepted and approved on a first-come, first-served basis and shall first be eligible for approval for the tax year during which the application is received, but not before the tax year beginning January 1, 2016.

(2) Solar energy systems installed during the 2015 calendar year shall be eligible for approval under Iowa Code section 422.11L even if the application is filed after May 1, 2016. Valid and complete applications shall be accepted and approved on a first-come, first-served basis and shall first be eligible for approval for the tax year during which the application is received, but not before the tax year beginning January 1, 2017.

c. Contents of the application. The application must contain the following information:

- (1) Name, address and federal identification number of the taxpayer.
- (2) Date of installation of the solar energy system.
- (3) The kilowatt capacity of the solar energy system.
- (4) Copies of invoices or other documents showing the cost of the solar energy system.
- (5) Amount of federal income tax credit for the solar energy system.
- (6) Amount of Iowa tax credit requested.

(7) For nonresidential installations, All applicants must provide a completion sheet from a local utility company or similar documentation verifying that installation of the system has been placed in service completed. For nonresidential installations, the completion sheet must indicate the date the installation was placed in service. If a completion sheet is not available from the local utility company or similar documentation is not available, a statement shall be provided that is similar to the one required to be attached to federal Form 3468 when claiming the federal energy credit and that specifies the date the system was placed in service.

(8) For leased solar energy systems where the lessor is the applicant, the lessor should also provide a copy of the solar energy system lease that indicates the property that is the subject of the lease and the parties to the lease agreement. If the lessor is entitled to the Iowa solar energy system tax credit, the lessee will not be entitled to such a credit.

d. Waitlist. If the department receives applications for tax credits in excess of the annual aggregate award limitation, the department shall establish a waitlist for the next year's allocation of tax credits. The applications will be prioritized based on the date the department received the applications and shall first be funded in the order listed on the waitlist. With the exception of the extension described in subparagraphs 42.48(7) "b"(1) and (2) above, only valid applications filed by the taxpayer by May 1 of the year following the year of the installation of the solar energy property shall be eligible for the waitlist. If the annual aggregate cap is reached for the final year in which the federal credit is available, no applications will be carried over to the next year.

Placement on a waitlist shall not constitute a promise binding the state that persons placed on the waitlist will actually receive the credit in a future year. The availability of a tax credit and approval of a tax credit application pursuant to subrule 42.48(7) in a future year is contingent upon the availability of tax credits in that particular year.

e. e. Certificate issuance. If the application is approved, the department will send a letter to the taxpayer including the amount of the tax credit and providing a tax credit certificate number.

f. Claiming the tax credit. The solar energy system tax credit will be claimed on Form IA 148, Tax Credits Schedule. Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier. The taxpayer must include with any Iowa tax return claiming the solar energy system tax credit federal Form 5695, Residential Energy Credits, if claiming the residential energy credit or federal Form 3468, Investment Credit, if claiming the business energy credit.

If the department receives applications for tax credits in excess of the \$1.5 million available for 2012 and 2013 and the \$4.5 million available for 2014 to 2016, the applications will be prioritized by the date

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the department received the applications. If the number of applications exceeds the \$1.5 or \$4.5 million of tax credits available, the department shall establish a wait list for the next year's allocation of tax credits and the applications shall first be funded in the order listed on the wait list. However, if the \$4.5 million cap of tax credit is reached for 2016, no applications in excess of the \$4.5 million cap will be carried over to the next year, assuming there is no extension of the federal credit.

EXAMPLE: A taxpayer submitted an application for a \$2,500 tax credit on December 1, 2012, for an installation that occurred in 2012. The application was denied on December 15, 2012, because the \$1.5 million cap had already been reached for 2012. The taxpayer will be placed on a wait list and will receive priority for receiving the tax credit for the 2013 tax year. However, if the application was submitted on December 1, 2016, for an installation that occurred in 2016 and the \$4.5 million cap had already been reached for 2016, no tax credit will be allowed for the 2017 tax year, assuming there is no extension of the federal credit.

g. Refundability. Any credit in excess of the taxpayer's tax liability is nonrefundable.

h. Carryforward. Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the taxpayer's tax liability for the following ten years or until depleted, whichever is earlier.

i. Transferability. The credit may not be transferred to any other person.

~~d. 42.48(8)~~ Unavailable to those eligible for renewable energy tax credit. A taxpayer who is eligible to receive a renewable energy tax credit provided in rule 701—42.28(422,476C) is not eligible for the solar energy system tax credit.

~~42.48(5)~~ 42.48(9) Allocation of tax credit to owners of a business entity or beneficiaries of an estate or trust. If the taxpayer claiming the tax credit based on a percentage of the federal energy credit under Section 48 of the Internal Revenue Code is a partnership, limited liability company, S corporation, estate or trust electing to have income taxed directly to the individual, the individual may claim the tax credit. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate or trust. The maximum amount of credit available to a partnership, limited liability company, S corporation, estate or trust shall be limited to \$15,000 for installations placed in service in tax years 2012 and 2013 and \$20,000 for installations placed in service in tax years beginning on or after January 1, 2014 to 2016.

This rule is intended to implement Iowa Code section 422.11L as amended by 2014 Iowa Acts, Senate File 2340, and 2014 Iowa Acts, House File 2473, section 77 2015 Iowa Acts, chapter 124, and 2016 Iowa Acts, House File 2468.

ITEM 2. Amend rule 701—52.44(422) as follows:

701—52.44(422) Solar energy system tax credit. For tax years beginning on or after January 1, 2012, a solar energy system tax credit is available for business property located in Iowa. The solar energy system must be installed on or after January 1, 2012, to be eligible for the credit.

52.44(1) No change.

52.44(2) Relationship between the Iowa and federal credits. As stated in subrules 52.44(3) to 52.44(5) below, the Iowa credit is a percentage of the applicable federal credit. Taxpayers who apply for the Iowa credit must also claim the corresponding federal credit. Availability of the Iowa credit for a specific type of installation in a given year is dependent upon availability of the federal credit for that type of installation. The Iowa credit is coupled with the Internal Revenue Code as amended to and including January 1, 2016. See Iowa Code section 422.11L(6); see also Public Law No. 114-113, Div. P, Title III, §§ 302, 303, and Div. Q, Title I, § 187.

52.44(2) 52.44(3) Calculation of credit for systems installed during tax years beginning on or after January 1, 2012, but before January 1, 2014. The credit is equal to the sum of the following federal tax credits:

a. Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code.

b. Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code.

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The amount of tax credit claimed by a taxpayer related to paragraphs 52.44(2) “a” 52.44(3) “a” and “b” cannot exceed \$15,000 for a tax year.

The federal energy tax credits for solar energy systems are allowed for installations that are placed in service before January 1, 2014. The solar energy system must be placed in service on or after January 1, 2012, to qualify for the Iowa credit. If the taxpayer installed a solar energy system and initially reported the federal tax credit for a tax year beginning prior to January 1, 2012, no Iowa credit will be allowed.

EXAMPLE: A taxpayer reported a \$9,000 energy credit on the 2011 federal return due to an installation of a solar energy system that was placed in service in 2011. The taxpayer applied \$4,000 of the credit on the taxpayer's 2011 federal return since the federal tax liability was \$4,000. The remaining \$5,000 of federal credit was applied on the 2012 federal return. No credit will be allowed on the 2012 Iowa return since the installation was placed in service before January 1, 2012.

~~52.44(3)~~ **52.44(4)** *Calculation of credit for systems installed during tax years beginning on or after January 1, 2014, but and installed before January 1, 2017 2016.* The credit is equal to the sum of the following federal tax credits:

a. Sixty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code.

b. Sixty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code.

The amount of tax credit claimed by a taxpayer related to paragraphs 52.44(3) “a” 52.44(4) “a” and “b” cannot exceed \$20,000 for a tax year per separate and distinct installation. The term “separate and distinct installation” is described in subrule 52.44(7).

The federal energy tax credit for solar energy systems is allowed for installations that are placed in service on or before December 31, 2016. Therefore, the Iowa tax credit is available for installations placed in service before January 1, 2017. If the federal energy tax credit is extended to installations placed in service on or after January 1, 2017, the Iowa credit will also be extended.

52.44(5) *Calculation of credit for systems installed on or after January 1, 2016.* The credit is equal to the sum of the following federal tax credits:

a. Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code. This credit applies to property the construction of which begins before January 1, 2022, in accordance with Public Law No. 114-113 Div. P, Title III, § 303.

b. Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code. This credit is set to expire December 31, 2016, in accordance with Public Law No. 114-113, Div. Q, Title I, § 187.

The amount of tax credit claimed by a taxpayer related to paragraphs 52.44(5) “a” and “b” cannot exceed \$20,000 per separate and distinct installation. “Separate and distinct installation” is described in subrule 52.44(7).

~~52.44(4)~~ **52.44(6)** *Application for the tax credit. Tax credit award limitations.* No more than \$1.5 million of tax credits for solar energy systems are allowed for tax years 2012 and 2013. The \$1.5 million cap also includes the solar energy system tax credits provided in rule 701—42.48(422) for individual income tax. No more than \$4.5 million of tax credits for solar energy systems is allowed for each of the tax years 2014 to 2016. The \$4.5 million cap does not include any dollars allocated to a previous tax year that roll over to the 2015 and 2016 tax years. The following limitations apply:

a. *Aggregate tax credit award limit.* No more than \$5 million of tax credits will be issued for calendar years beginning on or after January 1, 2015. The \$4.5 million annual tax credit allocation cap also includes the solar energy system tax credits provided in rule 701—42.48(422) for individual income tax and in rule 701—58.22(422) for franchise tax. Awards are made on a first-come, first-served basis.

b. *Allocation for residential installations.* At Beginning with tax year 2014, at least \$1 million of the \$4.5 million annual tax credit allocation cap for the 2014 to 2016 each tax years year is reserved for residential installations. If the total amount of credits for residential installations for a tax year is less than \$1 million, the remaining amount below \$1 million will be allowed for nonresidential installations.

c. *Rollover of unallocated credits.* If Beginning with calendar year 2014, if the \$4.5 million annual tax credit allocation cap for the 2014 and 2015 tax years is not reached, the remaining amount below

REVENUE DEPARTMENT[701](cont'd)

~~\$4.5 million~~ the cap will be allowed to be carried forward to the following tax year and shall not count toward the cap for that tax year.

52.44(7) How to apply for the credit. Timely and complete applications shall be reviewed and approved on a first-come, first-served basis. Applications for the tax credit may be submitted through the Tax Credit Award, Claim, and Transfer Administration System (CACTAS), which applicants may access through the department's Web site.

a. Separate and distinct installation requirement. A taxpayer may ~~claim~~ apply for one tax credit for each separate and distinct solar installation. Each separate and distinct installation requires a separate application. In order for an installation to be considered a separate and distinct solar installation, both of the following factors must be met:

(1) Each installation must be eligible for the federal energy credit as provided in subrule 52.44(3) 52.44(1).

(2) Each installation must have separate metering.

b. Application deadline. ~~In order to request the tax credit, a taxpayer must complete an application for the solar energy tax credit for each separate and distinct installation.~~ For installations completed on or after January 1, 2014, the application must be filed by May 1 following the year of installation of the solar energy system. Notwithstanding the foregoing sentence, the following extensions are applicable to installations completed in 2014 and 2015:

(1) Solar energy systems installed during the 2014 calendar year shall be eligible for approval under Iowa Code section 422.11L even if the application is filed after May 1, 2015. Valid and complete applications shall be accepted and approved on a first-come, first-served basis and shall first be eligible for approval for the tax year during which the application is received, but not before the tax year beginning January 1, 2016.

(2) Solar energy systems installed during the 2015 calendar year shall be eligible for approval under Iowa Code section 422.11L even if the application is filed after May 1, 2016. Valid and complete applications shall be accepted and approved on a first-come, first-served basis and shall first be eligible for approval for the tax year during which the application is received, but not before the tax year beginning January 1, 2017.

c. Contents of the application. The application must contain the following information:

(1) Name, address and federal identification number of the taxpayer.

(2) Date of installation of the solar energy system.

(3) The kilowatt capacity of the solar energy system.

(4) Copies of invoices or other documents showing the cost of the solar energy system.

(5) Amount of federal income tax credit for the solar energy system.

(6) Amount of Iowa tax credit requested.

(7) A completion sheet from a local utility company or similar documentation verifying that installation of the system has been placed-in-service completed. The completion sheet must indicate the date the system was placed in service. If a completion sheet is ~~not available~~ from the local utility company or similar documentation is not available, a statement shall be provided that is similar to the one required to be attached to federal Form 3468 when claiming the federal energy credit and that specifies the date the system was placed in service.

(8) For leased solar energy systems where the lessor is the applicant, the lessor should also provide a copy of the solar energy system lease that indicates the property that is the subject of the lease and the parties to the lease agreement. If the lessor is entitled to the Iowa solar energy system tax credit, the lessee will not be entitled to such a credit.

d. Waitlist. If the department receives applications for tax credits in excess of the annual aggregate award limitation, the department shall establish a waitlist for the next year's allocation of tax credits. The applications will be prioritized based on the date the department received the applications and shall first be funded in the order listed on the waitlist. With the exception of the extension described in subparagraphs 52.44(7) "b" (1) and (2) above, only valid applications filed by the taxpayer by May 1 of the year following the year of the installation of the solar energy property shall be eligible for the

waitlist. If the annual aggregate cap is reached for the final year in which the federal credit is available, no applications will be carried over to the next year.

Placement on a waitlist shall not constitute a promise binding the state that persons placed on the waitlist will actually receive the credit in a future year. The availability of a tax credit and approval of a tax credit application pursuant to subrule 52.44(7) in a future year is contingent upon the availability of tax credits in that particular year.

e. e. *Certificate issuance.* If the application is approved, the department will send a letter to the taxpayer including the amount of the tax credit and providing a tax credit certificate number.

f. *Claiming the tax credit.* The solar energy system tax credit will be claimed on Form IA 148, Tax Credits Schedule. Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier. The taxpayer must include federal Form 3468, Investment Credit, with any Iowa tax return claiming the solar energy system tax credit.

If the department receives applications for tax credits in excess of the \$1.5 million available for 2012 and 2013 and the \$4.5 million available for 2014 to 2016, the applications will be prioritized by the date the department received the applications. If the number of applications exceeds the \$1.5 or \$4.5 million of tax credits available, the department shall establish a wait list for the next year's allocation of tax credits and the applications shall first be funded in the order listed on the wait list. However, if the \$4.5 million cap of tax credit is reached for 2016, no applications in excess of the \$4.5 million cap will be carried over to the next year, assuming there is no extension of the federal credit.

EXAMPLE: A taxpayer submitted an application for a \$2,500 tax credit on December 1, 2012, for an installation that occurred in 2012. The application was denied on December 15, 2012, because the \$1.5 million cap had already been reached for 2012. The taxpayer will be placed on a wait list and will receive priority for receiving the tax credit for the 2013 tax year. However, if the application was submitted on December 1, 2016, for an installation that occurred in 2016 and the \$4.5 million cap had already been reached for 2016, no tax credit will be allowed for the 2017 tax year, assuming there is no extension of the federal credit.

g. *Refundability.* Any credit in excess of the taxpayer's tax liability is nonrefundable.

h. *Carryforward.* Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the taxpayer's tax liability for the following ten years or until depleted, whichever is earlier.

i. *Transferability.* The credit may not be transferred to any other person.

d. **52.44(8)** *Unavailable to those eligible for renewable energy credit.* A taxpayer who is eligible to receive a renewable energy tax credit provided in rule 701—52.27(422,476C) is not eligible for the solar energy system tax credit.

52.44(5) **52.44(9)** *Allocation of tax credit to owners of a business entity or beneficiaries of an estate or trust.* If the taxpayer claiming the tax credit based on a percentage of the federal energy credit under Section 48 of the Internal Revenue Code is a partnership, limited liability company, S corporation, estate or trust electing to have income taxed directly to the individual, the individual may claim the tax credit. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate or trust. The maximum amount of credit available to a partnership, limited liability company, S corporation, estate or trust shall be limited to \$15,000 for installations placed in service in tax years 2012 and 2013 and \$20,000 for installations placed in service in tax years beginning on or after January 1, 2014 to 2016.

This rule is intended to implement Iowa Code section 422.33 as amended by 2014 Iowa Acts, House File 2473, section 76 2015 Iowa Acts, chapter 124, and 2016 Iowa Acts, House File 2468.

[Filed 1/13/17, effective 3/8/17]

[Published 2/1/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/1/17.

ARC 2928C**REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 422.68 and Iowa Code section 404A.6 as amended by 2016 Iowa Acts, House File 2443, the Department of Revenue hereby amends Chapter 42, “Adjustments to Computed Tax and Credits,” Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” and Chapter 58, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” Iowa Administrative Code.

These amendments are necessary to implement the changes to the Historic Preservation and Cultural and Entertainment District Tax Credit Program that resulted from 2016 Iowa Acts, House File 2443. House File 2443 transferred primary responsibility for administration of the program for all projects registered on or after August 15, 2016, from the Department of Cultural Affairs to the Economic Development Authority. House File 2443 also retroactively made the tax credit refundable in the hands of a transferee and provided a five-year carryforward period for nonrefundable tax credits.

These amendments reflect those changes. These amendments also implement additional changes in response to program user feedback and questions. In response to feedback, these amendments provide more detail on the parameters for transferring tax credits and update the rules on when a taxpayer may claim the tax credit to provide more flexibility to program users. For proposed rules related to the historic preservation and cultural and entertainment district tax credits and other related information, see Economic Development Authority Notice of Intended Action **ARC 2774C** (IAB 10/12/16).

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2806C** on November 9, 2016.

A public hearing was held on December 1, 2016, at 9:30 a.m. in the Wallace State Office Building Auditorium at 502 East Ninth Street, Des Moines, Iowa. The Department received one public comment. The public comment was supportive of the proposed amendments.

In subrules 42.55(4) and 52.48(4), the reference to Iowa Code section 404A.1(6) has been updated to Iowa Code section 404A.1(7) to reflect the codification of 2016 Iowa Acts, House File 2443. These amendments are otherwise identical to those published under Notice.

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

The Department adopted these amendments on December 14, 2016.

These amendments have no known impact on jobs.

These amendments are intended to implement Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443.

These amendments will become effective March 8, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 701—42.54(404A,422) as follows:

701—42.54(404A,422) Historic preservation and cultural and entertainment district tax credit for projects with ~~Part 2 applications approved~~ registered on or after July 1, 2014, and agreements entered into on or after July 1, 2014 and before August 15, 2016. The ~~For projects registered before August 15, 2016,~~ the department of cultural affairs is authorized by the general assembly to award tax credits for a percentage of the qualified rehabilitation expenditures on a qualified rehabilitation project as described in the historic preservation and cultural and entertainment district tax credit program, Iowa Code chapter 404A. The program is administered by the department of cultural affairs with the assistance of the department of revenue. The general assembly has mandated that the department of cultural affairs and the department of revenue adopt rules to jointly administer Iowa Code chapter 404A. In general, the department of cultural affairs is responsible for evaluating whether projects comply with

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the prescribed standards for rehabilitation while the department of revenue is responsible for evaluating whether projects comply with the tax aspects of the program.

2014 Iowa Acts, House File 2453, amended the historic preservation and cultural and entertainment district tax credit program effective July 1, 2014. The department of revenue's provisions for projects with Part 2 applications approved and tax credits reserved prior to July 1, 2014, are found in rule 701—42.19(404A,422). The department of revenue's provisions for projects ~~with Part 2 applications approved~~ registered on or after July 1, 2014, and with agreements entered into on or after July 1, 2014 and before August 15, 2016, are found in this rule. The department of cultural affairs' rules related to this program may be found at 223—Chapter 48. ~~Division I of 223—Chapter 48 applies to projects with tax credit reservations approved prior to July 1, 2014. Division II of 223—Chapter 48 applies to projects with Part 2 applications approved on or after July 1, 2014, and agreements entered into on or after July 1, 2014.~~

2016 Iowa Acts, House File 2443, amended the program and transferred primary responsibility for its administration to the economic development authority effective August 15, 2016. Effective August 15, 2016, the program is administered by the economic development authority with the assistance of the department of cultural affairs and the department of revenue. The department of revenue's provisions for projects registered on or after August 15, 2016, are found in rule 701—42.55(404A,422). The economic development authority's rules related to the program may be found at 261—Chapter 49. When adopted, the department of cultural affairs' rules related to the program will be found in 223—Chapter 48.

Notwithstanding anything contained herein to the contrary, the department of cultural affairs shall not reserve tax credits under 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1, for applicants that do not have an approved Part 2 application and a tax credit reservation on or before June 30, 2014. Projects with approved Part 2 applications and provisional tax credit reservations on or before June 30, 2014, shall be governed by 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1; by 223—Chapter 48, Division I; and by rule 701—42.19(404A,422). ~~Projects for which Part 2 applications were approved and agreements entered into registered on or after June 30 July 1, 2014, but before August 15, 2016, shall be governed by 2014 Iowa Code chapter 404A as amended by 2014 Iowa Acts, House File 2453; by 223—Chapter 48, Division II; and by this rule. Projects registered on or after August 15, 2016, shall be governed by 2016 Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443; by 261—Chapter 49; and by rule 701—42.55(404A,422).~~

42.54(1) to 42.54(3) No change.

42.54(4) *Completion of the qualified rehabilitation project and claiming the tax credit on the Iowa return.* After the taxpayer completes a qualified rehabilitation project, the taxpayer will be issued a certificate of completion of the project from the department of cultural affairs if the project complies with the federal standards, as defined in rule 223—48.22(404A). After the department of cultural affairs and the department of revenue verify the taxpayer's eligibility for the tax credit, the department of cultural affairs shall issue a tax credit certificate.

a. Claiming the credit. For the taxpayer to claim the credit, the certificate must be included with the taxpayer's income tax return for the tax year in which the rehabilitation project is completed or ~~the year in which the certificate is issued, whichever is later~~ the income tax return for any tax year within the five years following the tax year of project completion. Taxpayers that elect to delay claiming the credit to a later tax year return as described in this paragraph are subject to the carryforward limitations described in paragraph 42.54(4)“d” below. The credit may be claimed on an amended return so long as the amended return is filed within the statute of limitations applicable to the tax year for which the amended tax return is being filed.

a. b. Information required. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, ~~and the amount of the historic preservation and cultural and entertainment district tax credit, and, if applicable, an indication of whether the credit is nonrefundable~~ (see paragraph 42.54(4)“c” below). In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.54(5). In addition, if the taxpayer is a partnership, limited liability company,

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estate or trust, and the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary shall be provided with the certificate. ~~The tax credit certificate shall be included with the income tax return for the period in which the project was completed or in which the certificate is issued, whichever is later.~~

~~b. c. Refund or carryforward~~ Refundability. ~~Any~~ A historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable with interest computed under Iowa Code section 422.25. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year. To receive a refundable credit, the taxpayer must elect to receive the credit as refundable at the Part 3 stage of the application process administered by the department of cultural affairs. Once the taxpayer elects to receive a nonrefundable credit, the taxpayer cannot elect to change the credit to a refundable credit or vice versa. See department of cultural affairs' 223—Chapter 48. If the taxpayer is a transferee, the taxpayer may elect to receive the credit as refundable or nonrefundable when the taxpayer applies to the department of revenue for transfer of the tax credit as described in subrule 42.54(5).

d. Carryforward. If the taxpayer elects to receive a nonrefundable historic preservation and cultural and entertainment district tax credit as described in paragraph 42.54(4)"b," the amount in excess of the taxpayer's tax liability may be carried forward for five years following the tax year in which the project is completed, or until it is depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer is first eligible to claim the credit. Regardless of whether the taxpayer elects to claim the tax credit on a tax return for a year that is later than the year of project completion as described in paragraph 42.54(4)"a," the taxpayer must utilize the entire credit within five years following the tax year of the project completion as described in this paragraph; any credit amount that is not utilized within the five-year carryforward period is forfeited. The five-year carryforward limitation does not apply if the taxpayer elects to receive a refundable credit, the excess of which may be credited to future tax years as an overpayment.

e. Allocation of historic preservation and cultural and entertainment district tax credits to the individual owners of the entity or beneficiaries of an estate or trust. A partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. The credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation. For an individual claiming a tax credit of an estate or trust, the amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the estate or trust.

42.54(5) Transfer of the historic preservation and cultural and entertainment district tax credit. The historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, for any tax year the original transferor could have claimed the tax credit. ~~Any credit in excess of the transferee's tax liability is not refundable.~~ Transferees must elect to receive either a refundable or nonrefundable tax credit. Once the transferee elects to receive a nonrefundable credit, the transferee cannot elect to change the credit to a refundable credit or vice versa. A tax credit certificate of less than \$1,000 shall not be transferable.

a. Transfer process—information required. Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement that contains the transferee's name, address and tax identification number, the amount of the tax credit being transferred, an election to receive either a refundable or nonrefundable tax credit, and the amount of all consideration provided in exchange for the tax credit and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the tax credit transferee shall describe the nature of the nonmonetary consideration and disclose any value the transferor and

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transferee assigned to the nonmonetary consideration. The tax credit transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The certificate must have the same information required for the original tax credit certificate and must have the same expiration date as the original tax credit certificate. The transferee may not claim a tax credit until a replacement certificate identifying the transferee as the proper holder has been issued.

b. Consideration. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

c. Unlimited number of transferees and subsequent transfers. There is no limitation on the number of transferees to whom the credit may be transferred. There is no limitation on the number of times that the credit may be retransferred by a transferee. The transferor may divide the credit into multiple credits of alternate denominations so long as the resulting credits are for amounts of no less than \$1,000.

d. Carryforward limitations on transferees. The transferee may use the amount of the transferred tax credit for any tax year that the original transferor could have claimed the tax credit. The carryforward limitations described in paragraph 42.54(4) “d” shall apply.

42.54(6) No change.

This rule is intended to implement Iowa Code chapter 404A as amended by ~~2014~~ 2016 Iowa Acts, House File ~~2453~~ 2443, and Iowa Code section 422.11D.

ITEM 2. Adopt the following new rule 701—42.55(404A,422):

701—42.55(404A,422) Historic preservation and cultural and entertainment district tax credit for projects registered on or after August 15, 2016. The economic development authority is authorized by the general assembly to award tax credits for a percentage of the qualified rehabilitation expenditures on a qualified rehabilitation project as described in the historic preservation and cultural and entertainment district tax credit program, Iowa Code chapter 404A. The program is administered by the economic development authority with the assistance of the department of cultural affairs and the department of revenue. The general assembly has mandated that the economic development authority, the department of cultural affairs and the department of revenue adopt rules as necessary to administer Iowa Code chapter 404A. In general, the department of revenue is responsible for administering tax credit transfers and processing and auditing tax credits claimed on returns. For the economic development authority’s rules on the credit program, see 261—Chapter 49. For the department of cultural affairs’ rules on the credit program, see 223—Chapter 48.

42.55(1) Program transition. 2016 Iowa Acts, House File 2443, made several changes to the credit program, including transferring primary responsibility for the program’s administration from the department of cultural affairs to the economic development authority. Projects registered prior to August 15, 2016, remain under the purview of the department of cultural affairs, with assistance from the department of revenue. For department of revenue rules related to projects registered prior to August 15, 2016, see rules 701—42.54(404A,422) and 701—42.19(404A,422).

42.55(2) Application, registration, and agreement for the historic preservation and cultural and entertainment district tax credit. For rules on the application, registration, and agreement process, see economic development authority rules, 261—Chapter 49.

42.55(3) Computation of the amount of the historic preservation and cultural and entertainment district tax credit. The amount of the historic preservation and cultural and entertainment district tax credit is a maximum of 25 percent of the qualified rehabilitation expenditures verified by the economic development authority following project completion, up to the amount specified in the agreement

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between the taxpayer and the economic development authority. For more information on the credit computation, see economic development authority rules, 261—Chapter 49. The amount remains subject to audit by the department of revenue when the credit is claimed on the taxpayer's tax return.

42.55(4) *Qualified rehabilitation expenditures.* “Qualified rehabilitation expenditures” means the same as defined in Iowa Code section 404A.1(7) and rule 261—49.5(404A) of economic development authority rules. In the event of an audit, the department of revenue evaluates whether expenditures comply with the agreement between the economic development authority and the eligible taxpayer, as well as with applicable statutes and rules, including Internal Revenue Code Section 47 and its related regulations.

42.55(5) *Completion of the qualified rehabilitation project and claiming the tax credit.* After the economic development authority verifies the taxpayer's eligibility for the tax credit, the economic development authority shall issue a tax credit certificate. For more information on credit certificate issuance, see economic development authority rules, 261—Chapter 49.

a. Claiming the credit. For the taxpayer to claim the credit, the certificate must be included with the taxpayer's income tax return for the tax year in which the rehabilitation project is completed or the income tax return for any year within the five years following the year of project completion. Taxpayers that elect to delay claiming the credit to a later year's return as described in this paragraph are subject to the carryforward limitations described in paragraph 42.55(5)“d” below. The credit may be claimed on an amended return so long as the amended return is filed within the statute of limitations applicable to the tax year for which the amended tax return is being filed.

b. Information required. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, the amount of the historic preservation and cultural and entertainment district tax credit, and, if applicable, an indication of whether the credit is nonrefundable (see paragraph 42.55(5)“c” below). In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.55(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, and the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary shall be provided with the certificate.

c. Refundability. A historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable with interest computed under Iowa Code section 422.25. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year. To receive a refundable credit, the taxpayer must elect to receive the credit as refundable at the Part 3 stage of the application process administered by the economic development authority. See the economic development authority's rule 261—49.15(404A). Once the taxpayer elects to receive a nonrefundable credit, the taxpayer cannot elect to change the credit to a refundable credit or vice versa. If the taxpayer is a transferee, the taxpayer may elect to receive the credit as refundable when the taxpayer applies to the department of revenue for transfer of the tax credit as described in subrule 42.55(6).

d. Carryforward. If the taxpayer elects to receive a nonrefundable historic preservation and cultural and entertainment district tax credit as described in paragraph 42.55(5)“b,” the amount in excess of the taxpayer's tax liability may be carried forward for five years following the tax year in which the project is completed, or until it is depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer is first eligible to claim the credit. Regardless of whether the taxpayer elects to claim the tax credit on a tax return for a year that is later than the year of project completion as described in paragraph 42.55(5)“a,” the taxpayer must utilize the entire credit within five years following the tax year of the project completion as described in this paragraph; any credit amount that is not utilized within the five-year carryforward period is forfeited. The five-year carryforward limitation does not apply if the taxpayer elects to receive a refundable credit, the excess of which may be credited to future tax years as an overpayment.

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e. Allocation of historic preservation and cultural and entertainment district tax credits to the individual owners of the entity or beneficiaries of an estate or trust. A partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. The credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation. For an individual claiming a tax credit of an estate or trust, the amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the estate or trust.

42.55(6) *Transfer of the historic preservation and cultural and entertainment district tax credit.* The historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, for any tax year that the original transferor could have claimed the tax credit. Transferees must elect to receive either a refundable or nonrefundable tax credit. Once the transferee elects to receive a nonrefundable credit, the transferee cannot elect to change the credit to a refundable credit or vice versa. A tax credit certificate of less than \$1,000 shall not be transferable.

a. Transfer process—information required. Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement that contains the transferee's name, address and tax identification number, the amount of the tax credit being transferred, an election to receive either a refundable or nonrefundable tax credit, and the amount of all consideration provided in exchange for the tax credit and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the tax credit transferee shall describe the nature of the nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The tax credit transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The certificate must have the same information required for the original tax credit certificate and must have the same expiration date as the original tax credit certificate. The transferee may not claim a tax credit until a replacement certificate identifying the transferee as the proper holder has been issued.

b. Consideration. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

c. Unlimited number of transferees and subsequent transfers. There is no limitation on the number of transferees to whom the credit may be transferred. There is no limitation on the number of times that the credit may be retransferred by a transferee. The transferor may divide the credit into multiple credits of alternate denominations so long as the resulting credits are for amounts of no less than \$1,000.

d. Carryforward limitations on transferees. The transferee may use the amount of the transferred tax credit for any tax year that the original transferor could have claimed the tax credit. The carryforward limitations described in paragraph 42.55(4) "d" shall apply.

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42.55(7) Appeals. Challenges to an action by the department of revenue related to tax credit transfers, the claiming of tax credits, tax credit revocation, or repayment or recovery of tax credits must be brought pursuant to 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443, and Iowa Code section 422.11D.

ITEM 3. Amend rule 701—52.47(404A,422) as follows:

701—52.47(404A,422) Historic preservation and cultural and entertainment district tax credit for projects with ~~Part 2 applications approved~~ registered on or after July 1, 2014, and agreements entered into on or after July 1, 2014 and before August 15, 2016. ~~The~~ For projects registered before August 15, 2016, the department of cultural affairs is authorized by the general assembly to award tax credits for a percentage of the qualified rehabilitation expenditures on a qualified rehabilitation project as described in the historic preservation and cultural and entertainment district tax credit program, Iowa Code chapter 404A. The program is administered by the department of cultural affairs with the assistance of the department of revenue. The general assembly has mandated that the department of cultural affairs and the department of revenue adopt rules to jointly administer Iowa Code chapter 404A. In general, the department of cultural affairs is responsible for evaluating whether projects comply with the prescribed standards for rehabilitation while the department of revenue is responsible for evaluating whether projects comply with the tax aspects of the program.

2014 Iowa Acts, House File 2453, amended the historic preservation and cultural and entertainment district tax credit program effective July 1, 2014. The department of revenue's provisions for projects with Part 2 applications approved and tax credits reserved prior to July 1, 2014, are found in rule 701—52.18(404A,422). The department of revenue's provisions for projects ~~with Part 2 applications approved~~ registered on or after July 1, 2014, and ~~with agreements entered into on or after July 1, 2014 and before August 15, 2016,~~ are found in this rule. The department of cultural affairs' rules related to this program may be found at 223—Chapter 48. ~~Division I of 223—Chapter 48 applies to projects with reservations approved prior to July 1, 2014. Division II of 223—Chapter 48 applies to projects with Part 2 applications approved on or after July 1, 2014, and agreements entered into on or after July 1, 2014.~~

2016 Iowa Acts, House File 2443, amended the program and transferred primary responsibility for its administration to the economic development authority effective August 15, 2016. Effective August 15, 2016, the program is administered by the economic development authority with the assistance of the department of cultural affairs and the department of revenue. The department of revenue's provisions for projects registered on or after August 15, 2016, are found in rule 701—52.48(404A,422). The economic development authority's rules related to the program may be found at 261—Chapter 49. When adopted, the department of cultural affairs' rules related to the program will be found in 223—Chapter 48.

Notwithstanding anything contained herein to the contrary, the department of cultural affairs shall not reserve tax credits under 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1, for applicants that do not have an approved Part 2 application and a tax credit reservation on or before June 30, 2014. Projects with approved Part 2 applications and provisional tax credit reservations on or before June 30, 2014, shall be governed by 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1; by 223—Chapter 48, Division I; and by rule 701—52.18(404A,422). ~~Projects for which Part 2 applications were approved and agreements entered into~~ registered on or after June 30 July 1, 2014, but before August 15, 2016, shall be governed by 2014 Iowa Acts, House File 2453; by 223—Chapter 48, Division II; and by this rule. Projects registered on or after August 15, 2016, shall be governed by 2016 Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443; by 261—Chapter 49; and by rule 701—52.48(404A,422).

52.47(1) to 52.47(3) No change.

52.47(4) Completion of the qualified rehabilitation project and claiming the tax credit on the Iowa return. After the taxpayer completes a qualified rehabilitation project, the taxpayer will be issued a certificate of completion of the project from the department of cultural affairs if the project complies with the federal standards, as defined in rule 223—48.22(404A). After the department of cultural affairs and

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the department of revenue verify the taxpayer's eligibility for the tax credit, the department of cultural affairs shall issue a tax credit certificate.

a. *Claiming the credit.* For the taxpayer to claim the credit, the certificate must be included with the taxpayer's corporation income tax return for the tax year in which the rehabilitation project is completed ~~or the year in which the certificate is issued, whichever is later~~ the corporation income tax return for any tax year within the five years following the tax year of project completion. Taxpayers that elect to delay claiming the credit to a later tax year return as described in this paragraph are subject to the carryforward limitations described in paragraph 52.47(4) "d" below. The credit may be claimed on an amended return so long as the amended return is filed within the statute of limitations applicable to the tax year for which the amended return is being filed.

~~a. b.~~ *Information required.* The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, ~~and~~ the amount of the historic preservation and cultural and entertainment district tax credit, and, if applicable, an indication of whether the credit is nonrefundable (see paragraph 52.47(4) "c" below). In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.47(5). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, and the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary shall be provided with the certificate. ~~The tax credit certificate shall be included with the income tax return for the period in which the project was completed or in which the certificate is issued, whichever is later.~~

~~b. c.~~ *Refund or carryforward Refundability.* Any A historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable with interest computed under Iowa Code section 422.25. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year. To receive a refundable credit, the taxpayer must elect to receive the credit as refundable at the Part 3 stage of the application process administered by the department of cultural affairs. See department of cultural affairs' 223—Chapter 48. Once the taxpayer elects to receive a nonrefundable credit, the taxpayer cannot select to change the credit to a refundable credit or vice versa. If the taxpayer is a transferee, the taxpayer may elect to receive the credit as refundable or nonrefundable when the taxpayer applies to the department of revenue for transfer of the tax credit as described in subrule 52.47(5).

d. *Carryforward.* If the taxpayer elects to receive a nonrefundable historic preservation and cultural and entertainment district tax credit as described in paragraph 52.47(4) "b," the amount in excess of the taxpayer's tax liability may be carried forward for five years following the tax year in which the project is completed, or until it is depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer is first eligible to claim the credit. Regardless of whether the taxpayer elects to claim the tax credit on a tax return for a year that is later than the year of project completion as described in paragraph 52.47(4) "a," the taxpayer must utilize the entire credit within five years of project completion as described in this paragraph; any credit amount that is not utilized within the five-year carryforward period is forfeited. The five-year carryforward limitation does not apply if the taxpayer elects to receive a refundable credit, the excess of which may be credited to future tax years as an overpayment.

~~e. e.~~ *Allocation of historic preservation and cultural and entertainment district tax credits to the individual owners of the entity or beneficiaries of an estate or trust.* A partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. The credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation. For an individual claiming a tax credit of an estate or trust, the amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the estate or trust.

52.47(5) *Transfer of the historic preservation and cultural and entertainment district tax credit.* The historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. The transferee may use the amount of the tax credit transferred against the taxes

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imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, for any tax year the original transferor could have claimed the tax credit. ~~Any credit in excess of the transferee's tax liability is not refundable.~~ Transferees must elect to receive either a refundable or nonrefundable tax credit. Once the transferee elects to receive a nonrefundable credit, the transferee cannot elect to change the credit to a refundable credit or vice versa. A tax credit certificate of less than \$1,000 shall not be transferable.

a. Transfer process—information required. Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement that contains the transferee's name, address and tax identification number, the amount of the tax credit being transferred, an election to receive either a refundable or nonrefundable tax credit, and the amount of all consideration provided in exchange for the tax credit and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the tax credit transferee shall describe the nature of the nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The tax credit transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The certificate must have the same information required for the original tax certificate and must have the same expiration date as the original tax credit certificate. The transferee may not claim a tax credit until a replacement certificate identifying the transferee as the proper holder has been issued.

b. Consideration. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

c. Unlimited number of transferees and subsequent transfers. There is no limitation on the number of transferees to whom the credit may be transferred. There is no limitation on the number of times that the credit may be retransferred by a transferee. The transferor may divide the credit into multiple credits of alternate denominations so long as the resulting credits are for amounts of no less than \$1,000.

d. Carryforward limitations on transferees. The transferee may use the amount of the transferred tax credit for any tax year the original transferor could have claimed the tax credit. The carryforward limitations described in paragraph 52.47(4) "d" shall apply.

52.47(6) No change.

This rule is intended to implement Iowa Code chapter 404A as amended by ~~2014~~ 2016 Iowa Acts, House File ~~2453~~ 2443, and Iowa Code section ~~422.11D~~ 422.33.

ITEM 4. Adopt the following new rule 701—52.48(404A,422):

701—52.48(404A,422) Historic preservation and cultural and entertainment district tax credit for projects registered on or after August 15, 2016. The economic development authority is authorized by the general assembly to award tax credits for a percentage of the qualified rehabilitation expenditures on a qualified rehabilitation project as described in the historic preservation and cultural and entertainment district tax credit program, Iowa Code chapter 404A. The program is administered by the economic development authority with the assistance of the department of cultural affairs and the department of revenue. The general assembly has mandated that the economic development authority, the department of cultural affairs and the department of revenue adopt rules as necessary to administer Iowa Code

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chapter 404A. In general, the department of revenue is responsible for administering tax credit transfers and processing and auditing tax returns that include tax credits claimed on returns. For the economic development authority's rules on the credit program, see 261—Chapter 49. For the department of cultural affairs' rules on the credit program, see 223—Chapter 48.

52.48(1) *Program transition.* 2016 Iowa Acts, House File 2443, made several changes to the credit program, including transferring primary responsibility for the program's administration from the department of cultural affairs to the economic development authority. Projects registered prior to August 15, 2016, remain under the purview of the department of cultural affairs, with assistance from the department of revenue. For department of revenue rules related to projects registered prior to August 15, 2016, see rules 701—52.18(404A,422) and 701—52.47(404A,422).

52.48(2) *Application, registration, and agreement for the historic preservation and cultural and entertainment district tax credit.* For rules on the application, registration, and agreement process, see economic development authority rules, 261—Chapter 49.

52.48(3) *Computation of the amount of the historic preservation and cultural and entertainment district tax credit.* The amount of the historic preservation and cultural and entertainment district tax credit is a maximum of 25 percent of the qualified rehabilitation expenditures verified by the economic development authority following project completion, up to the amount specified in the agreement between the taxpayer and the economic development authority. For more information on the credit computation, see economic development authority rules, 261—Chapter 49. The amount remains subject to audit by the department of revenue when the credit is claimed on the taxpayer's tax return.

52.48(4) *Qualified rehabilitation expenditures.* "Qualified rehabilitation expenditures" means the same as defined in Iowa Code section 404A.1(7) and rule 261—49.5(404A) of economic development authority rules. In the event of an audit, the department of revenue evaluates whether expenditures comply with the agreement between the economic development authority and the eligible taxpayer, as well as with applicable statutes and rules, including Internal Revenue Code Section 47 and its related regulations.

52.48(5) *Completion of the qualified rehabilitation project and claiming the tax credit.* After the economic development authority verifies the taxpayer's eligibility for the tax credit, the economic development authority shall issue a tax credit certificate. For more information on credit certificate issuance, see economic development authority rules, 261—Chapter 49.

a. Claiming the credit. For the taxpayer to claim the credit, the certificate must be included with the taxpayer's corporation income tax return for the tax year in which the rehabilitation project is completed or the corporation income tax return for any year within the five years following the year of project completion. Taxpayers that elect to delay claiming the credit to a later year's return as described in this paragraph are subject to the carryforward limitations described in paragraph 52.48(5) "d" below. The credit may be claimed on an amended return so long as the amended return is filed within the statute of limitations applicable to the tax year for which the amended tax return is being filed.

b. Information required. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, the amount of the historic preservation and cultural and entertainment district tax credit, and, if applicable, an indication of whether the credit is nonrefundable (see paragraph 52.48(5) "c" below). In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.48(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, and the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary shall be provided with the certificate.

c. Refundability. A historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable with interest computed under Iowa Code section 422.25. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year. To receive a refundable credit, the taxpayer must elect to receive the credit as refundable at the Part 3 stage of the application process administered by the economic development

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authority. See the economic development authority's rule 261—49.15(404A). Once the taxpayer elects to receive a nonrefundable credit, the taxpayer cannot elect to change the credit to a refundable credit or vice versa. If the taxpayer is a transferee, the taxpayer may elect to receive the credit as refundable or nonrefundable when the taxpayer applies to the department of revenue for transfer of the tax credit as described in subrule 52.48(6).

d. Carryforward. If the taxpayer elects to receive a nonrefundable historic preservation and cultural and entertainment district tax credit as described in paragraph 52.48(5)“b,” the amount in excess of the taxpayer's tax liability may be carried forward for five years following the tax year in which the project is completed, or until it is depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer is first eligible to claim the credit. Regardless of whether the taxpayer elects to claim the tax credit on a tax return for a year that is later than the year of project completion as described in paragraph 52.48(5)“a,” the taxpayer must utilize the entire credit within five years following the tax year of the project completion as described in this paragraph; any credit that is not utilized within the five-year carryforward period is forfeited. The five-year carryforward limitation does not apply if the taxpayer elects to receive a refundable credit, the excess of which may be credited to future tax years as an overpayment.

e. Allocation of historic preservation and cultural and entertainment district tax credits to the individual owners of the entity or beneficiaries of an estate or trust. A partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. The credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation. For an individual claiming a tax credit of an estate or trust, the amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the estate or trust.

52.48(6) *Transfer of the historic preservation and cultural and entertainment district tax credit.* The historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, for any tax year that the original transferor could have claimed the tax credit. Transferees must elect to receive either a refundable or nonrefundable tax credit. Once the transferee elects to receive a nonrefundable credit, the transferee cannot elect to change the credit to a refundable credit or vice versa. A tax credit certificate of less than \$1,000 shall not be transferable.

a. Transfer process—information required. Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement that contains the transferee's name, address and tax identification number, the amount of the tax credit being transferred, an election to receive either a refundable or nonrefundable tax credit, and the amount of all consideration provided in exchange for the tax credit and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the tax credit transferee shall describe the nature of the nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The tax credit transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The certificate must have the same information required for the original tax certificate and

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must have the same expiration date as the original tax credit certificate. The transferee may not claim a tax credit until a replacement certificate identifying the transferee as the proper holder has been issued.

b. Consideration. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

c. Unlimited number of transferees and subsequent transfers. There is no limitation on the number of transferees to whom the tax credit may be transferred. There is no limitation on the number of times that the credit may be retransferred by a transferee. The transferor may divide the credit into multiple credits of alternate denominations so long as the resulting credits are for amounts of no less than \$1,000.

d. Carryforward limitations on transferees. The transferee may use the amount of the transferred tax credit for any tax year that the original transferor could have claimed the tax credit. The carryforward limitations described in paragraph 52.48(4) “d” shall apply.

52.48(7) Appeals. Challenges to an action by the department of revenue related to tax credit transfers, the claiming of tax credits, tax credit revocation, or repayment or recovery of tax credits must be brought pursuant to 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443, and Iowa Code section 422.33.

ITEM 5. Amend rule 701—58.10(404A,422) as follows:

701—58.10(404A,422) Historic preservation and cultural and entertainment district tax credit. For tax years beginning on or after January 1, 2001, a historic preservation and cultural and entertainment district tax credit, subject to the availability of the credit, may be claimed against a taxpayer’s Iowa franchise tax liability for 25 percent of the qualified rehabilitation costs to the extent the costs were incurred for the rehabilitation of eligible property in Iowa. For information related to projects with Part 2 applications approved and tax credits reserved prior to July 1, 2014, see rule 701—52.18(404A,422). For information related to projects with Part 2 applications approved registered on or after July 1, 2014, and ~~agreements entered into on or after July 1, 2014 before August 15, 2016,~~ see rule 701—52.47(404A,422). See For information related to projects registered on or after August 15, 2016, see rule 701—52.48(404A,422). For projects registered before August 15, 2016, see also the administrative rules for the historic preservation and cultural and entertainment district tax credit for the historical division of the department of cultural affairs under 223—Chapter 48. ~~Division I of 223—Chapter 48 applies to projects with Part 2 applications approved and tax credits reserved prior to July 1, 2014. Division II of 223—Chapter 48 applies to projects with Part 2 applications approved on or after July 1, 2014, and agreements entered into on or after July 1, 2014.~~ For projects registered on or after August 15, 2016, see also the administrative rules for the historic preservation and cultural and entertainment district tax credit for the economic development authority under 261—Chapter 49.

This rule is intended to implement Iowa Code chapter 404A as amended by ~~2014~~ 2016 Iowa Acts, House File ~~2453~~ 2443, and Iowa Code section 422.60.

[Filed 1/11/17, effective 3/8/17]

[Published 2/1/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/1/17.

ARC 2926C

STATE PUBLIC DEFENDER[493]

Adopted and Filed

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender hereby amends Chapter 12, “Claims for Indigent Defense Services,” Iowa Administrative Code.

STATE PUBLIC DEFENDER[493](cont'd)

This amendment will allow an attorney in an adult criminal case to submit a claim for attorney fees within 45 days after the date of the expiration of the time for appeal from the judgment of conviction. This amendment is intended to allow the attorney a fairer opportunity to timely submit a fee claim after all required services have been performed.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 7, 2016, as **ARC 2830C**.

A public hearing was held on January 3, 2017, at 10 a.m. in Conference Room 424, Fourth Floor, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa. Interested persons also had the opportunity to make written suggestions or comments on the proposed amendment on or before January 3, 2017. No written suggestions or comments were received. This amendment is identical to that published under Notice of Intended Action.

The agency does not believe that the amendment poses a financial hardship on any regulated entity or individual.

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

This amendment is intended to implement Iowa Code chapters 13B and 815.

This amendment shall become effective March 8, 2017.

The following amendment is adopted.

Amend paragraph **12.2(3)“a”** as follows:

a. Adult claims. For adult claims, “date of service” means the date of filing of an order indicating that the case was dismissed or the client was acquitted ~~or sentenced~~, the date of the expiration of the time for appeal from a judgment of conviction, the date of a final order in a postconviction relief case, the date of mistrial, the date on which a warrant was issued for the client, or the date of a court order authorizing the attorney’s withdrawal from a case prior to the date of a dismissal, acquittal, sentencing, or mistrial. The filing of a notice of appeal is not a date of service. If a motion for reconsideration is filed, the date on which the court rules on that motion is the date of service. For interim adult claims authorized by subrule 12.3(3) or 12.3(4), the date of service is the last day on which the attorney claimed time on the itemization of services.

[Filed 1/11/17, effective 3/8/17]

[Published 2/1/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/1/17.