



# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

### CITATION of Administrative Rules

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

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

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

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

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

## Schedule for Rule Making 2016

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
18	Friday, February 12, 2016	March 2, 2016
19	Friday, February 26, 2016	March 16, 2016
20	Friday, March 11, 2016	March 30, 2016

**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\*\*\***

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

NPDES and Iowa operation permits for wastewater, amendments to chs 60, 62 to 64, 67 IAB 1/6/16 <b>ARC 2353C</b>	DNR Field Office 4 1401 Sunnyside Lane Atlantic, Iowa	February 15, 2016 2 to 4 p.m.
	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	February 16, 2016 10 a.m. to 12 noon
	Meeting Room A, Public Library 123 S. Linn St. Iowa City, Iowa	February 16, 2016 6:30 to 8:30 p.m.

**LABOR SERVICES DIVISION[875]**

Hazardous chemical inventory, amend 130.10(3), 140.8(3); rescind 130.11, 130.12, 140.9 IAB 2/3/16 <b>ARC 2394C</b>	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	February 24, 2016 2:30 p.m. (If requested)
Employer requirements relating to non-English speaking employees, amendments to ch 160 IAB 2/3/16 <b>ARC 2389C</b>	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	February 24, 2016 1:30 p.m. (If requested)

**MEDICINE BOARD[653]**

Minimum standards for appropriate supervision of a physician assistant by a physician, 21.4 to 21.8 IAB 1/20/16 <b>ARC 2372C</b>	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	February 12, 2016 9 to 11 a.m.
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**PROFESSIONAL LICENSURE DIVISION[645]**

Physical therapists and physical therapist assistants—disability-related accommodation for licensure examination, 200.4(5) IAB 1/20/16 <b>ARC 2368C</b>	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	February 10, 2016 8 to 8:30 a.m.
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**TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]**

Confidential records—exception relating to security procedures or emergency preparedness, 2.13(2) IAB 2/3/16 <b>ARC 2381C</b>	ICN Director's Conference Room Grimes State Office Bldg. Des Moines, Iowa	February 23, 2016 10 a.m.
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The following list will be updated as changes occur.

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

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

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

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## CIVIL REPARATIONS TRUST FUND

Pursuant to Iowa Administrative Code 361—subrule 12.2(1), the Executive Council gives Notice that the Civil Reparations Trust Fund balance as of January 1, 2016, is approximately \$16,154.00. Money in the Civil Reparations Trust Fund is available for use for indigent civil litigation programs or insurance assistance programs. Application forms are available in the office of the State Treasurer by contacting GeorgAnna Madsen, Executive Secretary, State Capitol Room 114, Des Moines, Iowa 50319; telephone (515)281-5368. Applications must be filed on the thirtieth day after the date of publication of this Notice in the Iowa Administrative Bulletin, or on the thirtieth day after the date affixed to the Notice sent by first-class mail, whichever is later. Any person/company that would like to receive future notices should make request in writing to the above-mentioned contact. Rules regarding the Civil Reparations Trust Fund can be found at 361 IAC Chapter 12.

**ARC 2380C**

## HUMAN SERVICES DEPARTMENT[441]

### Amended Notice of Intended Action

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” 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 amendments implement the changes in employment service definitions as provided by the Centers for Medicaid and Medicare Services (CMS) in its September 16, 2011, Informational Bulletin and in the CMS 2015 Technical Guide.

These amendments also change the provider qualifications, scope of services, duration, limitation and reimbursement methodologies for the home- and community-based services (HCBS) prevocational and supported employment services within the habilitation services program and the intellectual disability (ID) and brain injury (BI) waivers.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2114C** on August 19, 2015. The Department received 190 comments from 23 respondents. As a direct result of those comments, many of which were lengthy and in some cases duplicative, the Department is amending the original Notice of Intended Action to incorporate a number of changes to the proposed amendments. The public comments that resulted in changes to the original Notice of Intended Action and the Department’s responses to those comments are shown below. A full electronic copy of all of the public comments and the Department’s responses may be found on the Department’s Web site, [www.dhs.iowa.gov](http://www.dhs.iowa.gov), under the rules section.

**Comment 1:** Eleven respondents suggested that the option for the 9.5 hours of staff credentialing be expanded to include training programs other than the College of Direct Support, College of Employment Services (CES). The respondents felt that specifying CES is too narrow, and some providers said that they cannot afford CES training programs.

**Department response 1:** The Department contracts with the Iowa Association of Community Providers to make the College of Direct Support, CES, available to all HCBS providers free of charge regardless of the providers’ association membership status. Based on the comments received, subparagraphs 77.25(8)“c”(3), 77.37(26)“c”(3), and 77.39(22)“c”(3) have been revised and now read as follows:

“(3) A person providing direct support shall, within 6 months of hire or within 6 months of [the effective date of this subrule], complete at least 9.5 hours of employment services training as offered through DirectCourse or through the Association of Community Rehabilitation Educators (ACRE) certified training program.”

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

**Comment 2:** Twenty-one respondents commented that the hiring qualifications relating to experience and degrees for direct support staff are too limiting.

**Department response 2:** The Department agrees with the comments and has revised subparagraphs 77.25(9)“c”(1) to (3), 77.37(16)“d”(1) to (3), and 77.39(15)“d”(1) to (3) to read as follows:

“(1) Individual supported employment: bachelor’s degree or commensurate experience, preferably in human services, sociology, psychology, education, human resources, marketing, sales or business. The person must also hold nationally recognized certification (ACRE or College of Employment Services (CES) or similar) as an employment specialist or must earn this credential within 24 months of hire.

“(2) Long-term job coaching: associate degree, or high school diploma or equivalent and 6 months’ relevant experience. A person providing direct support shall, within 6 months of hire or within 6 months of [the effective date of this subrule], complete at least 9.5 hours of employment services training as offered through DirectCourse or through the ACRE certified training program. The person must also hold or obtain, within 24 months of hire, nationally recognized certification in job training and coaching.

“(3) Small-group supported employment: associate degree, or high school diploma or equivalent and 6 months’ relevant experience. A person providing direct support shall, within 6 months of hire or within 6 months of [the effective date of this subrule], complete at least 9.5 hours of employment services training as offered through DirectCourse or through the ACRE certified training program. The person must also hold or obtain, within 24 months of hire, nationally recognized certification in job training and coaching.”

**Comment 3:** One respondent suggested adding a requirement of four hours of employment training per year and allowing providers flexibility in choosing those courses.

**Department response 3:** Based on the comment received, paragraphs 77.25(8)“c,” 77.25(9)“c,” 77.37(16)“d,” 77.37(26)“c,” 77.39(15)“d” and 77.39(22)“c” have been revised to include a new subparagraph (4) that adds a requirement that four hours of continuing education in employment services be completed annually.

**Comment 4:** Five respondents requested that definitions be added to subrule 78.27(1) to provide additional necessary information.

**Department response 4:** The Department agrees to the respondents’ request and has revised subrule 78.27(1) to include the following three additional definitions:

“‘*Benefits education*’ means providing basic information to understand and access appropriate resources to pursue employment and knowledge of work incentives and the Medicaid for employed persons with disabilities (MEPD) program. Benefits education may include gathering information needed to pursue work incentives and offering basic financial management information to members, families, guardians and legal representatives.”

“‘*Supported employment*’ means the ongoing supports to participants who, because of their disabilities, need intensive ongoing support to obtain and maintain an individual job in competitive or customized employment, or self-employment, in an integrated work setting in the general workforce at or above the state’s minimum wage or at or above the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. The outcome of this service is sustained paid employment at or above the minimum wage in an integrated setting in the general workforce in a job that meets personal and career goals. Supported employment services can be provided through many different service models.”

“‘*Sustained employment*’ means an individual employment situation that the member maintains over time but not for less than 90 calendar days following the receipt of employment services and supports.”

In addition, the Department has replaced the terms “benefits planning” and “benefits information” with the defined term “benefits education” throughout the chapter. The Department did not revise other definitions in subrule 78.27(1) because they, as currently stated, comport with CMS guidance and the intent of this rule making.

**Comment 5:** Six respondents requested clarification on prevocational services, specifically on the time limits for new and current members.

**Department response 5:** The 90-day time limit for prevocational services applies only to members after the completion of the career exploration activity if the member chooses not to pursue individual

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

community employment. In this situation, the prevocational service is no longer appropriate to the member's goals and the 90 days are allowed for transition to other services.

The 24-month time limit applies to members who are new to the prevocational service after these rules take effect and allows the members time to participate in generalized skill building, project search, internships, and/or the career exploration activity. Neither the 90-day time limit nor the 24-month time limit would apply if any one of the stated exceptions applies.

The Department agrees with the requests for clarification and has revised paragraphs "1" to "5" of subparagraph 78.27(9)"e"(1) to improve clarity regarding time limits for new and current members. The paragraphs now read as follows:

"1. The member who is in prevocational services is also working in either individual or small-group community employment for at least the number of hours per week desired by the member, as identified in the member's current service plan; or

"2. The member who is in prevocational services is also working in either individual or small-group community employment for less than the number of hours per week the member desires, as identified in the member's current service plan, but the member has services documented in the member's current service plan, or through another identifiable funding source (e.g., Iowa vocational rehabilitation services (IVRS)), to increase the number of hours the member is working in either individual or small-group community employment; or

"3. The member is actively engaged in seeking individual or small-group community employment or individual self-employment, and services for this are included in the member's current service plan or services funded through another identifiable funding source (e.g., IVRS) are documented in the member's service plan; or

"4. The member has requested supported employment services from Medicaid and IVRS in the past 24 months, and the member's request has been denied or the member has been placed on a waiting list by both Medicaid and IVRS; or

"5. The member has been receiving individual supported employment services (or comparable services available through IVRS) for at least 18 months without obtaining individual or small-group community employment or individual self-employment; or"

**Comment 6:** Eleven respondents requested clarification on the specifics of the career exploration activity in prevocational service as it relates to similar services provided through other funding streams.

**Department response 6:** The career exploration service is not intended to replicate the discovery service funded through IVRS or the Iowa Department of Workforce Development or the workplace readiness assessment. The career exploration service is intended to be delivered one to one to assist the member in determining if the member wants to work and where the member's employment interests lie in order to develop a career plan that will assist with employment service planning. Under the basic prevocational service, members could participate in activities in small groups, such as business tours, benefit information classes or job fairs.

Career exploration activity is also an option under all supported employment service categories, and the specific activities would be based on the individual's needs. Career exploration activities provided through supported employment services would be a part of those services and billed through those fee schedules. For example, if a member in small-group supported employment participates in a business tour during the day, it would be billed as part of the member's small-group supported employment service.

The Department agrees to revise subparagraph 78.27(9)"a"(1) to clarify the career exploration activities. The subparagraph now reads as follows:

"(1) Career exploration. Career exploration activities are designed to develop an individual career plan and facilitate the member's experientially based informed choice regarding the goal of individual employment. Career exploration may be authorized for up to 34 hours, to be completed over 90 business days in the member's local community or in nearby communities, and may include but is not limited to the following activities:

"1. Meeting with the member and the member's family, guardian or legal representative to introduce them to supported employment and explore the member's employment goals and experiences,

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- “2. Business tours,
- “3. Informational interviews,
- “4. Job shadows,
- “5. Benefits education and financial literacy,
- “6. Assistive technology assessment, and
- “7. Job exploration events.”

In addition, the Department has revised subparagraph 78.27(9)“e”(2) to change “90 days” to “90 business days.”

**Comment 7:** Four respondents commented that volunteer opportunities and programs are limited by the proposed rules regarding prevocational services.

**Department response 7:** Volunteer opportunities, consistent with labor laws, and paid or unpaid internships or similar opportunities can be offered as part of the prevocational service in accordance with CMS Informational Bulletin dated September 16, 2011, and the January 2015 CMS HCBS Waiver Technical Guidance. The Department agrees with the comments and has revised subparagraph 78.27(9)“d”(4) to clarify volunteer opportunities. The subparagraph now reads as follows:

“(4) Support for members volunteering in for-profit organizations and businesses other than for-profit organizations, or businesses that have formal volunteer programs in place (e.g., hospitals, nursing homes), and support for members volunteering to benefit the service provider.”

The Department has also revised subparagraph 78.27(10)“c”(1) by changing a reference to “natural supervisors” to “natural supports” and by deleting “planning, discovery, or” from the description of small-group activities. The subparagraph now reads as follows:

“(1) Scope. Small-group supported employment services must be provided in a manner that promotes integration into the workplace and interaction between members and people without disabilities (e.g., customers, coworkers, natural supports) in those workplaces. Examples include but are not limited to mobile crews and other business-based workgroups employing small groups of workers with disabilities in employment in integrated business settings; and small-group activities focused on career exploration and development of strengths and skills that contribute to successful participation in individual community employment.”

**Comment 8:** The respondents provided 11 overall comments on supported employment services. Five comments specifically related to the need for a period of job stabilization following placement.

**Department response 8:** Job stabilization is part of the initial individual supported employment training per the CMCS Informational Bulletin dated September 16, 2011, and the January 2015 CMS HCBS Waiver Technical Guidance. The Department agrees to address the respondents’ concerns by revising paragraph 78.27(10)“a”(4)“16” and by adding a new paragraph 78.27(10)“a”(4)“20” as follows:  
“20. Initial on-the-job training to stabilization activity.”

**Comment 9:** Five respondents commented on the self-employment imposed time limit by recommending that the reference to a reasonable period of time be retained but that the phrase “not to exceed 36 months” be removed.

**Department response 9:** The Department agrees with the comment and has revised subparagraphs 78.27(10)“a”(2) and 78.27(10)“d”(6) to remove the phrase “not to exceed 36 months.”

**Comment 10:** Four respondents commented that the long-term job coaching tiered system disincentivizes those wanting to work more hours per week or those with higher support needs; the respondents recommended that the tiered system expand the number of hours available. The respondents also asked that language be added to the rules to state that the tiers are assigned according to the service plan and adjusted when higher support needs are determined.

**Department response 10:** The long-term job coaching hours of support were arrived at based on a full year of utilization data and national recommendations, which indicated that only 7 percent of members received 17 to 25 hours of long-term job coaching and 10 percent of members used greater than 25 hours/month.

The Department has revised subparagraph 78.27(10)“b”(4) to include language which states that the hours are assigned according to the service plan and adjusted when higher support needs are determined.

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In order to address the respondents' concerns, the following new subparagraph (6) has been added to paragraph 78.27(10)“b”:

“(6) The hours of support for long-term job coaching are based on the identified needs of the member as documented in the member’s comprehensive service plan.”

The Department has also added the following new subparagraphs (3) and (4) to 83.61(1)“i.” Subparagraph (4) as shown below has also been added to 83.82(1)“p.”

“(3) Have documented in the waiver service plan a goal to achieve or to sustain individual employment.

“(4) Have documented in the waiver service plan that the choice to receive individual supported employment services was offered and explained in a manner sufficient to ensure informed choice, after which the choice to receive small-group supported employment services was made.”

**Comment 11:** Three respondents asked for clarification regarding a provider’s ability to support individuals aged 16 to 17 as well as people over the age of 65. In addition, the respondents noted that subrule 83.61(1) lists no upper age restriction.

**Department response 11:** Persons aged 16 to 17 should be served first with IDEA funds; persons aged 65 or over who are eligible for the brain injury waiver, the intellectual disability waiver or the habilitation services program will be able to continue to receive employment supports as they do today. The current language in rule is not intended to exclude anyone, only to define a “working age adult.” The Department is amending the first sentence of the Chapter 83 preamble as follows to address the respondents’ concerns:

“Medicaid waiver services are services provided to maintain persons in their own homes or communities who would otherwise require care in a medical institutions institution, including support for persons to seek and maintain employment in the community.”

Any interested person may make written comments on the proposed amendments on or before February 23, 2016. 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](mailto:policyanalysis@dhs.state.ia.us).

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

After analysis and review of this rule making, an impact on jobs may be found. Jobs and advancement opportunities for direct support staff within provider agencies should improve based on enhanced reimbursement rates for supported employment services and the qualifications and professional development requirements reflected in these rules. This will be true throughout the state. Additionally, as community employment participation of people with disabilities increases, unmet workforce needs of Iowa businesses could be filled by the largely untapped resource of people with disabilities.

These amendments are intended to implement Iowa Code chapter 249A.

The following amendments are proposed.

ITEM 1. Rescind subrule 77.25(8) and adopt the following **new** subrule in lieu thereof:

**77.25(8) Prevocational habilitation.**

a. The following providers may provide prevocational services:

(1) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as an organizational employment service provider or a community employment service provider.

(2) An agency that is accredited by the Council on Quality and Leadership.

(3) An agency that is accredited by the International Center for Clubhouse Development.

(4) An agency that is certified by the department to provide prevocational services under:

1. The home- and community-based services intellectual disability waiver pursuant to rule 441—77.37(249A); or

2. The home- and community-based services brain injury waiver pursuant to rule 441—77.39(249A).

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b. Providers responsible for the payroll of members shall have policies that ensure compliance with state and federal labor laws and regulations, which include, but are not limited to:

- (1) Subminimum wage laws and regulations, including the Workforce Investment Opportunity Act.
- (2) Member vacation, sick leave and holiday compensation.
- (3) Procedures for payment schedules and pay scale.
- (4) Procedures for provision of workers' compensation insurance.
- (5) Procedures for the determination and review of commensurate wages.

c. Direct support staff providing prevocational services shall meet the following minimum qualifications in addition to other requirements outlined in administrative rule:

(1) A person providing direct support without line-of-sight supervision shall be at least 18 years of age and possess a high school diploma or equivalent degree. A person providing direct support with line-of-sight supervision shall be 16 years of age or older.

(2) A person providing direct support shall not be an immediate family member of the member.

(3) A person providing direct support shall, within 6 months of hire or within 6 months of [the effective date of this subrule], complete at least 9.5 hours of employment service training as offered through DirectCourse or through the Association of Community Rehabilitation Educators (ACRE) certified training program.

(4) Prevocational direct support staff shall complete 4 hours of continuing education in employment services annually.

ITEM 2. Rescind subrule 77.25(9) and adopt the following new subrule in lieu thereof:

**77.25(9) Supported employment habilitation.**

a. The following agencies may provide supported employment services:

(1) An agency that is certified by the department to provide supported employment services under:

1. The home- and community-based services intellectual disability waiver pursuant to rule 441—77.37(249A); or

2. The home- and community-based services brain injury waiver pursuant to rule 441—77.39(249A).

(2) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as an organizational employment service provider or a community employment service provider.

(3) An agency that is accredited by the Council on Accreditation.

(4) An agency that is accredited by the Joint Commission.

(5) An agency that is accredited by the Council on Quality and Leadership.

(6) An agency that is accredited by the International Center for Clubhouse Development.

b. Providers responsible for the payroll of members shall have policies that ensure compliance with state and federal labor laws and regulations, which include, but are not limited to:

- (1) Subminimum wage laws and regulations, including the Workforce Investment Opportunity Act.
- (2) Member vacation, sick leave and holiday compensation.
- (3) Procedures for payment schedules and pay scale.
- (4) Procedures for provision of workers' compensation insurance.
- (5) Procedures for the determination and review of commensurate wages.

c. Direct support staff providing individual or small-group supported employment or long-term job coaching services shall meet the following minimum qualifications in addition to other requirements outlined in administrative rule:

(1) Individual supported employment: bachelor's degree or commensurate experience, preferably in human services, sociology, psychology, education, human resources, marketing, sales or business. The person must also hold nationally recognized certification (ACRE or College of Employment Services (CES) or similar) as an employment specialist or must earn this credential within 24 months of hire.

(2) Long-term job coaching: associate degree, or high school diploma or equivalent and 6 months' relevant experience. A person providing direct support shall, within 6 months of hire or within 6 months of [the effective date of this subrule], complete at least 9.5 hours of employment services training as

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offered through DirectCourse or through the ACRE certified training program. The person must also hold or obtain, within 24 months of hire, nationally recognized certification in job training and coaching.

(3) Small-group supported employment: associate degree, or high school diploma or equivalent and 6 months' relevant experience. A person providing direct support shall, within 6 months of hire or within 6 months of [the effective date of this subrule], complete at least 9.5 hours of employment services training as offered through DirectCourse or through the ACRE certified training program. The person must also hold or obtain, within 24 months of hire, nationally recognized certification in job training and coaching.

(4) Supported employment direct support staff shall complete 4 hours of continuing education in employment services annually.

ITEM 3. Rescind subrule 77.37(16) and adopt the following new subrule in lieu thereof:

**77.37(16) Supported employment providers.**

a. The following agencies may provide supported employment services:

(1) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as an organizational employment service provider, a community employment service provider, or a provider of a similar service.

(2) An agency that is accredited by the Council on Accreditation for similar services.

(3) An agency that is accredited by the Joint Commission for similar services.

(4) An agency that is accredited by the Council on Quality and Leadership for similar services.

(5) An agency that is accredited by the International Center for Clubhouse Development.

b. Providers responsible for the payroll of members shall have policies that ensure compliance with state and federal labor laws and regulations, which include, but are not limited to:

(1) Subminimum wage laws and regulations, including the Workforce Investment Opportunity Act.

(2) Member vacation, sick leave and holiday compensation.

(3) Procedures for payment schedules and pay scale.

(4) Procedures for provision of workers' compensation insurance.

(5) Procedures for the determination and review of commensurate wages.

c. Individuals may not provide supported employment services except when the services are purchased through the consumer choices option.

d. Direct support staff providing individual or small-group supported employment or long-term job coaching services shall meet the following minimum qualifications in addition to other requirements outlined in administrative rule:

(1) Individual supported employment: bachelor's degree or commensurate experience, preferably in human services, sociology, psychology, education, human resources, marketing, sales or business. The person must also hold a nationally recognized certification (ACRE or College of Employment Services (CES) or similar) as an employment specialist or must earn this credential within 24 months of hire.

(2) Long-term job coaching: associate degree, or high school diploma or equivalent and 6 months' relevant experience. A person providing direct support shall, within 6 months of hire or within 6 months of [the effective date of this subrule], complete at least 9.5 hours of employment services training as offered through DirectCourse or through the ACRE certified training program. The person must also hold or obtain, within 24 months of hire, nationally recognized certification in job training and coaching.

(3) Small-group supported employment: associate degree, or high school diploma or equivalent and 6 months' relevant experience. A person providing direct support shall, within 6 months of hire or within 6 months of [the effective date of this subrule], complete at least 9.5 hours of employment services training as offered through DirectCourse or through the ACRE certified training program. The person must also hold or obtain, within 24 months of hire, nationally recognized certification in job training and coaching.

(4) Supported employment direct support staff shall complete 4 hours of continuing education in employment services annually.

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ITEM 4. Rescind subrule 77.37(26) and adopt the following **new** subrule in lieu thereof:

**77.37(26) Prevocational service providers.**

a. Providers of prevocational services must be accredited by one of the following:

(1) The Commission on Accreditation of Rehabilitation Facilities as an organizational employment service provider or a community employment service provider.

(2) The Council on Quality and Leadership accreditation in supports for people with disabilities.

b. Providers responsible for the payroll of members shall have policies that ensure compliance with state and federal labor laws and regulations, which include, but are not limited to:

(1) Subminimum wage laws and regulations, including the Workforce Investment Opportunity Act.

(2) Member vacation, sick leave and holiday compensation.

(3) Procedures for payment schedules and pay scale.

(4) Procedures for provision of workers' compensation insurance.

(5) Procedures for the determination and review of commensurate wages.

c. Direct support staff providing prevocational services shall meet the following minimum qualifications in addition to other requirements outlined in administrative rule:

(1) A person providing direct support without line-of-sight supervision shall be at least 18 years of age and possess a high school diploma or equivalent. A person providing direct support with line-of-sight supervision shall be 16 years of age or older.

(2) A person providing direct support shall not be an immediate family member of the member.

(3) A person providing direct support shall, within 6 months of hire or within 6 months of [the effective date of this subrule], complete at least 9.5 hours of employment services training as offered through DirectCourse or through the Association of Community Rehabilitation Educators (ACRE) certified training program.

(4) Prevocational direct support staff shall complete 4 hours of continuing education in employment services annually.

ITEM 5. Rescind subrule 77.39(15) and adopt the following **new** subrule in lieu thereof:

**77.39(15) Supported employment providers.**

a. The following agencies may provide supported employment services:

(1) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as an organizational employment service provider, a community employment service provider or a provider of a similar service.

(2) An agency that is accredited by the Council on Accreditation for similar services.

(3) An agency that is accredited by the Joint Commission for similar services.

(4) An agency that is accredited by the Council on Quality and Leadership for similar services.

(5) An agency that is accredited by the International Center for Clubhouse Development.

b. Providers responsible for the payroll of members shall have policies that ensure compliance with state and federal labor laws and regulations, which include, but are not limited to:

(1) Subminimum wage laws and regulations, including the Workforce Investment Opportunity Act.

(2) Member vacation, sick leave and holiday compensation.

(3) Procedures for payment schedules and pay scale.

(4) Procedures for provision of workers' compensation insurance.

(5) Procedures for the determination and review of commensurate wages.

c. Individuals may not provide supported employment services except when the services are purchased through the consumer choices option.

d. Direct support staff providing individual or small-group supported employment or long-term job coaching services shall meet the following minimum qualifications in addition to other requirements outlined in administrative rule:

(1) Individual supported employment: bachelor's degree or commensurate experience, preferably in human services, sociology, psychology, education, human resources, marketing, sales or business. The person must also hold a nationally recognized certification (ACRE or College of Employment Services (CES) or similar) as an employment specialist or must earn this credential within 24 months of hire.

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(2) Long-term job coaching: associate degree, or high school diploma or equivalent and 6 months' relevant experience. A person providing direct support shall, within 6 months of hire or within 6 months of [the effective date of this subrule], complete at least 9.5 hours of employment services training as offered through DirectCourse or through the ACRE certified training program. The person must also hold or obtain, within 24 months of hire, nationally recognized certification in job training and coaching.

(3) Small-group supported employment: associate degree, or high school diploma or equivalent and 6 months' relevant experience. A person providing direct support shall, within 6 months of hire or within 6 months of [the effective date of this subrule], complete at least 9.5 hours of employment services training as offered through DirectCourse or through the ACRE certified training program. The person must also hold or obtain, within 24 months of hire, nationally recognized certification in job training and coaching.

(4) Supported employment direct support staff shall complete 4 hours of continuing education in employment services annually.

ITEM 6. Rescind subrule 77.39(22) and adopt the following **new** subrule in lieu thereof:

**77.39(22) Prevocational services providers.**

a. Providers of prevocational services must be accredited by one of the following:

(1) The Commission on Accreditation of Rehabilitation Facilities as an organizational employment service provider or a community employment service provider.

(2) The Council on Quality and Leadership accreditation in supports for people with disabilities.

b. Providers responsible for the payroll of members shall have policies that ensure compliance with state and federal labor laws and regulations, which include, but are not limited to:

(1) Subminimum wage laws and regulations, including the Workforce Investment Opportunity Act.

(2) Member vacation, sick leave and holiday compensation.

(3) Procedures for payment schedules and pay scale.

(4) Procedures for provision of workers' compensation insurance.

(5) Procedures for the determination and review of commensurate wages.

c. Direct support staff providing prevocational services shall meet the following minimum qualifications in addition to other requirements outlined in administrative rule:

(1) A person providing direct support without line-of-sight supervision shall be at least 18 years of age and possess a high school diploma or equivalent. A person providing direct support with line-of-sight supervision shall be 16 years of age or older.

(2) A person providing direct support shall not be an immediate family member of the member.

(3) A person providing direct support shall, within 6 months of hire or within 6 months of [the effective date of this subrule], complete at least 9.5 hours of employment services training as offered through DirectCourse or through the Association of Community Rehabilitation Educators (ACRE) certified training program.

(4) Supported employment direct support staff shall complete 4 hours of continuing education in employment services annually.

ITEM 7. Adopt the following **new** definitions in subrule **78.27(1)**:

*"Benefits education"* means providing basic information to understand and access appropriate resources to pursue employment, and knowledge of work incentives and the Medicaid for employed persons with disabilities (MEPD) program. Benefits education may include gathering information needed to pursue work incentives and offering basic financial management information to members, families, guardians and legal representatives.

*"Career exploration,"* also referred to as "career planning," means a person-centered, comprehensive employment planning and support service that provides assistance for waiver program participants to obtain, maintain or advance in competitive employment or self-employment. Career exploration is a focused, time-limited service engaging a participant in identifying a career direction and developing a plan for achieving competitive, integrated employment at or above the state's minimum wage. The outcome of this service is documentation of the participant's stated career objective and a career plan used to guide individual employment support.

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“*Career plan*” means a written plan documenting the member’s stated career objective and used to guide individual employment support services for achieving competitive, integrated employment at or above the state’s minimum wage.

“*Customized employment*” means an approach to supported employment which individualizes the employment relationship between employees and employers in ways that meet the needs of both. Customized employment is based on an individualized determination of the strengths, needs, and interests of the person with a disability and is also designed to meet the specific needs of the employer. Customized employment may include employment developed through job carving, self-employment or entrepreneurial initiatives, or other job development or restructuring strategies that result in job responsibilities being customized and individually negotiated to fit the needs of the individual with a disability. Customized employment assumes the provision of reasonable accommodations and supports necessary for the individual to perform the functions of a job that is individually negotiated and developed.

“*Individual employment*” means employment in the general workforce where the member interacts with the general public to the same degree as nondisabled persons in the same job, and for which the member is paid at or above minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by persons without disabilities.

“*Individual placement and support*” means an evidence-based supported employment model that helps people with mental illness to seek and obtain employment.

“*Integrated community employment*” means work (including self-employment) for which an individual with a disability is paid at or above minimum wage and not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by employees who are not disabled, where the individual interacts with other persons who are not disabled to the same extent as others who are in comparable positions, and which presents opportunities for advancement that are similar to those for employees who are not disabled. In the case of an individual who is self-employed, the business results in an income that is comparable to the income received by others who are not disabled and are self-employed in similar occupations.

“*Supported employment*” means the ongoing supports to participants who, because of their disabilities, need intensive ongoing support to obtain and maintain an individual job in competitive or customized employment, or self-employment, in an integrated work setting in the general workforce at or above the state’s minimum wage or at or above the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. The outcome of this service is sustained paid employment at or above the minimum wage in an integrated setting in the general workforce in a job that meets personal and career goals. Supported employment services can be provided through many different service models.

“*Supported self-employment*” includes services and supports that assist the participant in achieving self-employment through the operation of a business; however, Medicaid funds may not be used to defray the expenses associated with starting up or operating a business. Assistance for self-employment may include aid to the individual in identifying potential business opportunities; assistance in the development of a business plan, including potential sources of business financing and other assistance in developing and launching a business; identification of the supports necessary for the individual to operate the business; and ongoing assistance, counseling and guidance once the business has been launched.

“*Sustained employment*” means an individual employment situation that the member maintains over time but not for less than 90 calendar days following the receipt of employment services and supports.

ITEM 8. Rescind subrule 78.27(9) and adopt the following **new** subrule in lieu thereof:

**78.27(9) Prevocational service habilitation.** “Prevocational services” means services that provide career exploration, learning and work experiences, including volunteer opportunities, where the member can develop non-job-task-specific strengths and skills that lead to paid employment in individual community settings.

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*a. Scope.* Prevocational services are provided to persons who are expected to be able to join the general workforce with the assistance of supported employment. Prevocational services are intended to develop and teach general employability skills relevant to successful participation in individual employment. These skills include but are not limited to the ability to communicate effectively with supervisors, coworkers and customers; an understanding of generally accepted community workplace conduct and dress; the ability to follow directions; the ability to attend to tasks; workplace problem-solving skills and strategies; general workplace safety and mobility training; the ability to navigate local transportation options; financial literacy skills; and skills related to obtaining employment.

Prevocational services include career exploration activities to facilitate successful transition to individual employment in the community. Participation in prevocational services is not a prerequisite for individual or small-group supported employment services.

(1) Career exploration. Career exploration activities are designed to develop an individual career plan and facilitate the member's experientially based informed choice regarding the goal of individual employment. Career exploration may be authorized for up to 34 hours, to be completed over 90 business days in the member's local community or in nearby communities, and may include but is not limited to the following activities:

1. Meeting with the member and the member's family, guardian or legal representative to introduce them to supported employment and explore the member's employment goals and experiences,
2. Business tours,
3. Informational interviews,
4. Job shadows,
5. Benefits education and financial literacy,
6. Assistive technology assessment, and
7. Job exploration events.

(2) Expected outcome of service.

1. The expected outcome of prevocational services is individual employment in the general workforce, or self-employment, in a setting typically found in the community, where the member interacts with individuals without disabilities, other than those providing services to the member or other individuals with disabilities, to the same extent that individuals without disabilities in comparable positions interact with other persons; and for which the member is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

2. The expected outcome of the career exploration activity is a written career plan that will guide employment services which lead to community employment or self-employment for the member.

*b. Setting.* Prevocational services shall take place in community-based nonresidential settings.

*c. Concurrent services.* A member's individual service plan may include two or more types of nonresidential habilitation services (e.g., individual supported employment, long-term job coaching, small-group supported employment, prevocational services, and day habilitation); however, more than one service may not be billed during the same period of time (e.g., the same hour).

*d. Exclusions.* Prevocational services payment shall not be made for the following:

(1) Services that are available to the individual under a program funded under Section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.). Documentation that funding is not available to the individual for the service under these programs shall be maintained in the service plan of each member receiving prevocational services.

(2) Services available to the individual that duplicate or replace education or related services defined in the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.).

(3) Compensation to members for participating in prevocational services.

(4) Support for members volunteering in for-profit organizations and businesses other than for-profit organizations, or businesses that have formal volunteer programs in place (e.g., hospitals, nursing homes), and support for members volunteering to benefit the service provider.

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(5) The provision of vocational services delivered in facility-based settings where individuals are supervised for the primary purpose of producing goods or performing services or where services are aimed at teaching skills for specific types of jobs rather than general skills.

(6) A prevocational service plan with the goal or purpose of the service documented as maintaining or supporting the individual in continuing prevocational services or any employment situation similar to sheltered employment.

*e. Limitations.*

(1) Time limitation for members starting prevocational services. For members starting prevocational services after [the effective date of this subrule], participation in these services is limited to 24 calendar months. This time limit can be extended to continue beyond 24 months if one or more of the following conditions apply:

1. The member who is in prevocational services is also working in either individual or small-group community employment for at least the number of hours per week desired by the member, as identified in the member's current service plan; or

2. The member who is in prevocational services is also working in either individual or small-group community employment for less than the number of hours per week the member desires, as identified in the member's current service plan, but the member has services documented in the member's current service plan, or through another identifiable funding source (e.g., Iowa vocational rehabilitation services (IVRS)), to increase the number of hours the member is working in either individual or small-group community employment; or

3. The member is actively engaged in seeking individual or small-group community employment or individual self-employment, and services for this are included in the member's current service plan or services funded through another identifiable funding source (e.g., IVRS) are documented in the member's service plan; or

4. The member has requested supported employment services from Medicaid and IVRS in the past 24 months, and the member's request has been denied or the member has been placed on a waiting list by both Medicaid and IVRS; or

5. The member has been receiving individual supported employment services (or comparable services available through IVRS) for at least 18 months without obtaining individual or small-group community employment or individual self-employment; or

6. The member is participating in career exploration activities as described in subparagraph 78.27(9)"a"(1).

(2) Time limitation for members enrolled in prevocational services. For members enrolled in prevocational services on or before [the effective date of this subrule], participation in these services is limited to 90 business days beyond the completion of the career exploration activity including the development of the career plan described in subparagraph 78.27(9)"a"(1). This time limit can be extended as stated in paragraphs 78.27(9)"e"(1)"1" through "6." If the criteria in paragraphs 78.27(9)"e"(1)"1" through "6" do not apply, the member will not be reauthorized to continue prevocational services.

ITEM 9. Rescind subrule 78.27(10) and adopt the following **new** subrule in lieu thereof:

**78.27(10) Supported employment services.**

*a. Individual supported employment.* Individual supported employment involves supports provided to, or on behalf of, the member that enable the member to obtain and maintain individual employment. Services are provided to members who need support because of their disabilities.

(1) Scope. Individual supported employment services are services provided to, or on behalf of, the member that enable the member to obtain and maintain an individual job in competitive employment, customized employment or self-employment in an integrated work setting in the general workforce.

(2) Expected outcome of service. The expected outcome of this service is sustained employment, or self-employment, paid at or above the minimum wage or the customary wage and level of benefits paid by an employer, in an integrated setting in the general workforce, in a job that meets personal and career goals. Successful transition to long-term job coaching, if needed, is also an expected outcome of

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this service. An expected outcome of supported self-employment is that the member earns income that is equal to or exceeds the average income for the chosen business within a reasonable period of time.

(3) Setting. Individual supported employment services shall take place in integrated work settings. For self-employment, the member's home can be considered an integrated work setting. Employment in the service provider's organization (not including a sheltered workshop or similar type of work setting where members are paid for the production of goods or services) can be considered employment in an integrated work setting in the general workforce if the employment occurs in a work setting where interactions are predominantly with coworkers or business associates who do not have disabilities or with the general public.

(4) Individual employment strategies include but are not limited to: customized employment, individual placement and support, and supported self-employment. Service activities are individualized and may include any combination of the following:

1. Benefits education.
2. Career exploration (e.g., tours, informational interviews, job shadows).
3. Employment assessment.
4. Assistive technology assessment.
5. Trial work experience.
6. Person-centered employment planning.
7. Development of visual/traditional résumés.
8. Job-seeking skills training and support.
9. Outreach to prospective employers on behalf of the member (e.g., job development; negotiation with prospective employers to customize, create or carve out a position for the member; employer needs analysis).
10. Job analysis (e.g., work site assessment or job accommodations evaluation).
11. Identifying and arranging transportation.
12. Career advancement services (e.g., assisting a member in making an upward career move or seeking promotion from an existing employer).
13. Reemployment services (if necessary due to job loss).
14. Financial literacy and asset development.
15. Other employment support services deemed necessary to enable the member to obtain employment.
16. Systematic instruction and support during initial on-the-job training including initial on-the-job training to stabilization.
17. Engagement of natural supports during initial period of employment.
18. Implementation of assistive technology solutions during initial period of employment.
19. Transportation of the member during service hours.
20. Initial on-the-job training to stabilization activity.

(5) Self-employment. Individual employment may also include support to establish a viable self-employment opportunity, including home-based self-employment. An expected outcome of supported self-employment is that the member earns income that is equal to or exceeds the average income for the chosen business within a reasonable period of time. In addition to the activities listed under subparagraph 78.27(10) "a"(4), assistance to establish self-employment may include:

1. Aid to the member in identifying potential business opportunities.
  2. Assistance in the development of a business plan, including identifying potential sources of business financing and other assistance in developing and launching a business.
  3. Identification of the long-term supports necessary for the individual to operate the business.
- b. Long-term job coaching.* Long-term job coaching is support provided to, or on behalf of, the member that enables the member to maintain an individual job in competitive employment, customized employment or self-employment in an integrated work setting in the general workforce.

(1) Scope. Long-term job coaching services are provided to or on behalf of members who need support because of their disabilities and who are unlikely to maintain and advance in individual employment absent the provision of supports. Long-term job coaching services shall provide

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

individualized and ongoing support contacts at intervals necessary to promote successful job retention and advancement.

(2) Expected outcome of service. The expected outcome of this service is sustained employment paid at or above the minimum wage in an integrated setting in the general workforce, in a job that meets the member's personal and career goals. An expected outcome of supported self-employment is that the member earns income that is equal to or exceeds the average income for the chosen business within a reasonable period of time.

(3) Setting. Long-term job coaching services shall take place in integrated work settings. For self-employment, the member's home can be considered an integrated work setting. Employment in the service provider's organization (not including a sheltered workshop or similar type of work setting) can be considered employment in an integrated work setting in the general workforce if the employment occurs in a work setting where interactions are predominantly with coworkers or business associates who do not have disabilities, or with the general public, and if the position would exist within the provider's organization were the provider not being paid to provide the job coaching to the member.

(4) Service activities. Long-term job coaching services are designed to assist the member with learning and retaining individual employment, resulting in workplace integration, and which allows for the reduction of long-term job coaching over time. Services are individualized, and service plans are adjusted as support needs change and may include any combination of the following activities with or on behalf of the member:

1. Job analysis.
2. Job training and systematic instruction.
3. Training and support for use of assistive technology/adaptive aids.
4. Engagement of natural supports.
5. Transportation coordination.
6. Job retention training and support.
7. Benefits education and ongoing support.
8. Supports for career advancement.
9. Financial literacy and asset development.
10. Employer consultation and support.
11. Negotiation with employer on behalf of the member (e.g., accommodations; employment conditions; access to natural supports; and wage and benefits).
12. Other workplace support services may include services not specifically related to job skill training that enable the waiver member to be successful in integrating into the job setting.
13. Transportation of the member during service hours.
14. Career exploration services leading to increased hours or career advancement.

(5) Self-employment long-term job coaching. Self-employment long-term job coaching may include support to maintain a self-employment opportunity, including home-based self-employment. In addition to the activities listed under subparagraph 78.27(10) "b"(4), assistance to maintain self-employment may include:

1. Ongoing identification of the supports necessary for the individual to operate the business;
2. Ongoing assistance, counseling and guidance to maintain and grow the business; and
3. Ongoing benefits education and support.

(6) The hours of support for long-term job coaching are based on the identified needs of the member as documented in the member's comprehensive service plan.

*c. Small-group supported employment.* Small-group supported employment services are training and support activities provided in regular business or industry settings for groups of two to eight workers with disabilities. The outcome of this service is sustained paid employment experience, skill development, career exploration and planning leading to referral for services to obtain individual integrated employment or self-employment for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

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

(1) Scope. Small-group supported employment services must be provided in a manner that promotes integration into the workplace and interaction between members and people without disabilities (e.g., customers, coworkers, natural supports) in those workplaces. Examples include but are not limited to mobile crews and other business-based workgroups employing small groups of workers with disabilities in employment in integrated business settings; and small-group activities focused on career exploration and development of strengths and skills that contribute to successful participation in individual community employment.

(2) Expected outcome of service. Small-group supported employment services are expected to enable the member to make reasonable and continued progress toward individual employment. Participation in small-group supported employment services is not a prerequisite for individual supported employment services. The expected outcome of the service is sustained paid employment and skill development which leads to individual employment in the community.

(3) Setting. Small-group supported employment services shall take place in integrated, community-based nonresidential settings separate from the member's residence.

(4) Service activities. Small-group supported employment services may include any combination of the following activities:

1. Employment assessment.
2. Person-centered employment planning.
3. Job placement (limited to service necessary to facilitate hire into individual employment paid at minimum wage or higher for a member in small-group supported employment who receives an otherwise unsolicited offer of a job from a business where the member has been working in a mobile crew or enclave).
4. Job analysis.
5. On-the-job training and systematic instruction.
6. Job coaching.
7. Transportation planning and training.
8. Benefits education.
9. Career exploration services leading to career advancement outcomes.
10. Other workplace support services may include services not specifically related to job skill training that enable the waiver member to be successful in integrating into the individual or community setting.

11. Transportation of the member during service hours.

*d. Service requirements for all supported employment services.*

(1) Community transportation options (e.g., transportation provided by family, coworkers, carpools, volunteers, self or public transportation) shall be identified by the member's interdisciplinary team and utilized before the service provider provides the transportation to and from work for the member. If none of these options are available to a member, transportation between the member's place of residence and the employment or service location may be included as a component part of supported employment services.

(2) Personal care or personal assistance and protective oversight may be a component part of supported employment services, but may not comprise the entirety of the service.

(3) Activities performed on behalf of a member receiving long-term job coaching or individual or small-group supported employment shall not comprise the entirety of the service.

(4) Concurrent services. A member's individual service plan may include two or more types of nonresidential services (e.g., individual supported employment, long-term job coaching, small-group supported employment, prevocational services, and day habilitation); however, more than one service may not be billed during the same period of time (e.g., the same hour).

(5) Integration requirements. In the performance of job duties, the member shall have regular contact with other employees or members of the general public who do not have disabilities, unless the absence of regular contact with other employees or the general public is typical for the job as performed by persons without disabilities.

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

(6) Compensation. Members receiving these services are compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. For supported self-employment, the member earns income that is equal to or exceeds the average income for the chosen business within a reasonable period of time. For small-group supported employment, if the member is not compensated at or above minimum wage, the compensation to the member shall be in accordance with all applicable state and federal labor laws and regulations.

*e. Limitations.* Supported employment services are limited as follows:

(1) Total monthly costs of supported employment may not exceed the monthly cap on the cost of waiver services set for the individual waiver program.

(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 per month.

(3) Individual supported employment is limited to 240 units per calendar year.

(4) Long-term job coaching is limited in accordance with 441—subrule 79.1(2).

(5) Small-group supported employment is limited to 160 units per week.

*f. Exclusions.* Supported employment services payments shall not be made for the following:

(1) Services that are available to the individual under a program funded under Section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.). Documentation that the service is not available to the individual under these programs shall be maintained in the service plan of each member receiving individual supported employment or long-term job coaching services.

(2) Incentive payments, not including payments for coworker supports, made to an employer to encourage or subsidize the employer's participation in a supported employment program.

(3) Subsidies or payments that are passed through to users of supported employment programs.

(4) Training that is not directly related to a member's supported employment program.

(5) Services involved in placing and stabilizing members in day activity programs, work activity programs, sheltered workshop programs or other similar types of vocational or prevocational services furnished in specialized facilities that are not a part of the general workplace.

(6) Supports for placement and stabilization in volunteer positions or unpaid internships. Such volunteer learning and unpaid training activities that prepare a person for entry into the general workforce are addressed through prevocational services and career exploration activities.

(7) Tuition for education or vocational training.

(8) Individual advocacy that is not related to integrated individual employment participation or is not member-specific.

(9) Medicaid funds may not be used to defray the expenses associated with starting up or operating a business.

ITEM 10. Rescind subrule 78.41(7) and adopt the following **new** subrule in lieu thereof:

**78.41(7) Supported employment services.** Supported employment services are service activities provided pursuant to subrule 78.27(10).

ITEM 11. Rescind subrule 78.41(13) and adopt the following **new** subrule in lieu thereof:

**78.41(13) Prevocational services.** Prevocational services are service activities provided pursuant to subrule 78.27(9).

ITEM 12. Rescind subrule 78.43(4) and adopt the following **new** subrule in lieu thereof:

**78.43(4) Supported employment services.** Supported employment services are service activities provided pursuant to subrule 78.27(10).

ITEM 13. Rescind subrule 78.43(11) and adopt the following **new** subrule in lieu thereof:

**78.43(11) Prevocational services.** Prevocational services are service activities provided pursuant to subrule 78.27(9).

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

ITEM 14. Amend subrule **79.1(2)**, provider category “HCBS waiver services providers,” by rescinding paragraphs “19” and “23” and adopting the following **new** paragraphs in lieu thereof:

Provider category	Basis of reimbursement	Upper limit
19. Supported employment:		
Individual supported employment	Fee schedule	Fee schedule in effect [the effective date of this amendment]. Total monthly cost for all supported employment services not to exceed \$3,029.00 per month.
Long-term job coaching	Fee schedule	Fee schedule in effect [the effective date of this amendment]. Total monthly cost for all supported employment services not to exceed \$3,029.00 per month.
Small-group supported employment (2 to 8 individuals)	Fee schedule	Fee schedule in effect [the effective date of this amendment]. Maximum 160 units per week. Total monthly cost for all supported employment services not to exceed \$3,029.00 per month.
23. Prevocational services, including career exploration	Fee schedule	Fee schedule in effect [the effective date of this amendment].

ITEM 15. Amend subrule **79.1(2)**, provider category “Home- and community-based habilitation services,” as follows:

Provider category	Basis of reimbursement	Upper limit
Home- and community-based habilitation services:		
1. to 3. No change.		
4. Prevocational habilitation <u>Career exploration</u>	<u>See 79.1(24)“d” Fee schedule</u>	<u>Effective 7/1/13: \$13.47 per hour or \$48.22 per day. Fee schedule in effect [the effective date of this amendment].</u>
5. Supported employment:		
<del>Activities to obtain a job:</del>		
Job development	<u>See 79.1(24)“d”</u>	<u>\$909 per unit (job placement). Maximum of two units per 12 months.</u>
<u>Individual supported employment</u>	<u>Fee schedule</u>	<u>Fee schedule in effect [the effective date of this amendment]. Total monthly cost for all supported employment services not to exceed \$3,029.00 per month.</u>
Employer development	<u>See 79.1(24)“d”</u>	<u>\$909 per unit (job placement). Maximum of two units per 12 months</u>

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

Provider category	Basis of reimbursement	Upper limit
<u>Long-term job coaching</u>	<u>Fee schedule</u>	<u>Fee schedule in effect [the effective date of this amendment]. Total monthly cost for all supported employment services not to exceed \$3,029.00 per month.</u>
Enhanced job search	See 79.1(24)“d”	Effective 7/1/13: Maximum of \$8.75 per 15-minute unit and 104 units per 12 months.
<u>Small-group supported employment (2 to 8 individuals)</u>	<u>Fee schedule</u>	<u>Fee schedule in effect [the effective date of this amendment]. Maximum 160 units per week. Total monthly cost for all supported employment services not to exceed \$3,029.00 per month.</u>
Supports to maintain employment	See 79.1(24)“d”	Effective 7/1/13: \$1.55 per 15-minute unit for services in an enclave setting; \$4.95 per 15-minute unit for personal care; and \$8.75 per 15-minute unit for all other services. Total not to exceed \$2,883.71 per month. Maximum of 160 units per week.

ITEM 16. Amend subrule 79.1(15), introductory paragraph, as follows:

**79.1(15)** *HCBS retrospectively limited prospective rates.* This methodology applies to reimbursement for HCBS supported community living; HCBS family and community support services; ~~HCBS supported employment enhanced job search activities~~; and HCBS interim medical monitoring and treatment when provided by an HCBS-certified supported community agency.

ITEM 17. Rescind subparagraphs **79.1(24)“a”(4)** and **(5)**.

ITEM 18. Renumber subparagraph **79.1(24)“a”(6)** as **79.1(24)“a”(4)**.

ITEM 19. Amend **441—Chapter 83**, preamble, as follows:

Medicaid waiver services are services provided to maintain persons in their own homes or communities who would otherwise require care in a medical institutions institution, including support for persons to seek and maintain employment in the community. Provision of these services must be cost-effective. Services are limited to certain targeted client groups for whom a federal waiver has been requested and approved. Services provided through the waivers are not available to other Medicaid recipients as the services are beyond the scope of the Medicaid state plan.

ITEM 20. Amend subrule 83.61(1) as follows:

**83.61(1)** *Eligibility criteria.* All of the following criteria must be met. The person must:

a. to f. No change.

g. For individual supported employment and long-term job coaching services:

(1) Be at least 16 years of age.

~~(2) Rescinded IAB 7/1/98, effective 7/1/98.~~

~~(3) (2) Not be eligible for supported employment service funding under Public Law 94-142 or for the Rehabilitation Act of 1973.~~ The services must not be available to the member through one of the following:

1. Special education and related services as defined in the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); or

2. A program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

~~(4) (3) Not reside in a medical institution.~~

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

(4) Have documented in the waiver service plan a goal to achieve or to sustain individual employment.

h. For small-group supported employment services:

(1) Be at least 16 years of age.

(2) The services must not be available to the member through one of the following:

1. Special education and related services as defined in the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); or

2. A program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

(3) Have documented in the waiver service plan a goal to achieve or to sustain individual employment.

(4) Have documented in the waiver service plan that the choice to receive individual supported employment services was offered and explained in a manner sufficient to ensure informed choice, after which the choice to receive small-group supported employment services was made.

(5) Not reside in a medical institution.

i. For prevocational services:

(1) Be at least 16 years of age.

(2) The services must not be available to the member through one of the following:

1. Special education and related services as defined in the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); or

2. A program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

(3) Have documented in the waiver service plan a goal to achieve or to sustain individual employment.

(4) Have documented in the waiver service plan that the choice to receive individual supported employment services was offered and explained in a manner sufficient to ensure informed choice, after which the choice to receive small-group supported employment services was made.

(5) Not reside in a medical institution.

~~h. j.~~ Choose HCBS intellectual disability waiver services rather than ICF/ID services.

~~i. k.~~ To be eligible for interim medical monitoring and treatment services the consumer must be:

(1) Under the age of 21;

(2) Currently receiving home health agency services under rule 441—78.9(249A) and require medical assessment, medical monitoring, and regular medical intervention or intervention in a medical emergency during those services. (The home health aide services for which the consumer is eligible must be maximized before the consumer accesses interim medical monitoring and treatment.);

(3) Residing in the consumer's family home or foster family home; and

(4) In need of interim medical monitoring and treatment as ordered by a physician.

~~j. l.~~ Be assigned an HCBS intellectual disability payment slot pursuant to subrule 83.61(4).

~~k. m.~~ For residential-based supported community living services, meet all of the following additional criteria:

(1) Be less than 18 years of age.

(2) Be preapproved as appropriate for residential-based supported community living services by the bureau of long-term care. Requests for approval shall be submitted in writing to the DHS Bureau of Long-Term Care, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, and shall include the following:

1. Social history;

2. Case history that includes previous placements and service programs;

3. Medical history that includes major illnesses and current medications;

4. Current psychological evaluations and consultations;

5. Summary of all reasonable and appropriate service alternatives that have been tried or considered;

6. Any current court orders in effect regarding the child;

7. Any legal history;

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

8. Whether the child is at risk of out-of-home placement or the proposed placement would be less restrictive than the child's current placement for services;

9. Whether the proposed placement would be safe for the child and for other children living in that setting; and

10. Whether the interdisciplinary team is in agreement with the proposed placement.

(3) Either:

1. Be residing in an ICF/ID;

2. Be at risk of ICF/ID placement, as documented by an interdisciplinary team assessment pursuant to paragraph 83.61(2)“a”; or

3. Be a child whose long-term placement outside the home is necessary because continued stay in the home would be a detriment to the health and welfare of the child or the family, and all service options to keep the child in the home have been reviewed by an interdisciplinary team, as documented in the service file.

~~l.~~ n. For day habilitation, be 16 years of age or older.

~~m.~~ o. For the consumer choices option as set forth in 441—subrule 78.41(5)<sub>2</sub> not be living in a residential care facility.

ITEM 21. Adopt the following **new** paragraphs **83.82(1)“n”** to **“p”**:

*n.* For individual supported employment and long-term job coaching services:

(1) Be at least 16 years of age.

(2) The services must not be available to the member through one of the following:

1. Special education and related services as defined in the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); or

2. A program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

(3) Not reside in a medical institution.

(4) Have documented in the waiver service plan a goal to achieve or to sustain individual employment and an expectation that this service will result in this outcome.

*o.* For small-group supported employment services:

(1) Be at least 16 years of age.

(2) The services must not be available to the member through one of the following:

1. Special education and related services as defined in the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); or

2. A program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

(3) Have documented in the waiver service plan a goal to achieve or to sustain individual employment.

(4) Have documented in the waiver service plan that the choice to receive individual supported employment services was offered and explained in a manner sufficient to ensure informed choice, after which the choice to receive small-group supported employment services was made.

(5) Not reside in a medical institution.

*p.* For prevocational services:

(1) Be at least 16 years of age.

(2) The services must not be available to the member through one of the following:

1. Special education and related services as defined in the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); or

2. A program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

(3) Have documented in the waiver service plan a goal to achieve or to sustain individual employment and an expectation that this service will result in community employment.

(4) Have documented in the waiver service plan that the choice to receive individual supported employment services was offered and explained in a manner sufficient to ensure informed choice, after which the choice to receive small-group supported employment services was made.

**ARC 2395C**

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

**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 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 57, “Residential Care Facilities,” Chapter 62, “Residential Care Facilities for Persons with Mental Illness (RCF/PMI),” and Chapter 63, “Residential Care Facilities for the Intellectually Disabled,” Iowa Administrative Code.

The proposed amendments eliminate the requirement that an individual first must be a certified nursing assistant (CNA) before becoming a certified medication aide (CMA) in residential care facilities, including facilities for persons with mental illness and facilities for the intellectually disabled. Eliminating this requirement will permit an individual to become trained as a CMA without first being trained as a CNA. The proposed amendments also eliminate references to a residential aide course as this course is no longer available.

While the proposed amendments require all medication managers working in facilities licensed for 15 or fewer beds to take the new CMA training, medication managers are permitted a three-year period in which to complete the training.

Adoption of these proposed amendments will allow residential care facilities to more easily hire CMAs. The Department understands that it is difficult for residential care facilities to hire CMAs to work in smaller facilities when a CMA is expected to become a CNA before becoming a CMA. The University of Iowa is developing a training program for individuals wishing to become CMAs.

The Department does not believe that the proposed amendments will pose any financial hardship on any regulated entity or individual.

The State Board of Health initially reviewed the proposed amendments at its January 13, 2016, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before February 23, 2016. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Third Floor, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to [david.werning@dia.iowa.gov](mailto:david.werning@dia.iowa.gov).

After analysis and review of this rule making, it has been determined that adoption of the proposed amendments may increase employment opportunities for individuals seeking jobs as CMAs.

These amendments are intended to implement Iowa Code section 135C.14.

The following amendments are proposed.

ITEM 1. Amend paragraph **57.19(3)“d”** as follows:

*d.* Prior to taking a department-approved medication aide course, the person shall: have a letter of recommendation for admission to the medication aide course from the employing facility. (III)

~~(1) Successfully complete an approved residential aide course, nurse aide course, nurse aide training and testing program or nurse aide competency examination; (III)~~

~~(2) Have a letter of recommendation for admission to the medication aide course from the employing facility. (III)~~

ITEM 2. Rescind paragraph **57.19(3)“g”** and adopt the following new paragraph in lieu thereof:

*g.* A person who is employed in a facility as a medication manager must within 36 months from [the effective date of this paragraph] successfully complete a department-approved medication aide course. (III)

## INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

ITEM 3. Amend paragraph **62.15(2)“d”** as follows:

*d.* Prior to taking a department-approved medication aide course, the individual shall: have a letter of recommendation for admission to the medication aide course from the employing facility.

~~(1) Successfully complete an approved residential aide course, nurse aide course, nurse aide training and testing program or nurse aide competency examination;~~

~~(2) Be employed in the same facility for at least six consecutive months prior to the start of the medication aide course. This requirement is not subject to waiver.~~

~~(3) Have a letter of recommendation for admission to the medication aide course from the employing facility.~~

ITEM 4. Amend paragraph **63.18(3)“d”** as follows:

*d.* Prior to taking a department-approved medication aide course, the individual shall: have a letter of recommendation for admission to the medication aide course from the employing facility.

~~(1) Successfully complete an approved residential aide course, nurse aide course, nurse aide training and testing program or nurse aide competency examination;~~

~~(2) Be employed in the same facility for at least six consecutive months prior to the start of the medication aide course. This requirement is not subject to waiver.~~

~~(3) Have a letter of recommendation for admission to the medication aide course from the employing facility.~~

ITEM 5. Rescind paragraph **63.18(3)“f”** and adopt the following **new** paragraph in lieu thereof:

*f.* A person who is employed in a facility as a medication manager must within 36 months from [the effective date of this paragraph] successfully complete a department-approved medication aide course. (III)

**ARC 2394C**

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

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 91.6, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 130, “Community Right to Know,” and Chapter 140, “Public Safety/Emergency Response Right to Know,” Iowa Administrative Code.

The proposed amendments rescind obsolete rules and amend outdated rules. Duties pertaining to the hazardous chemical inventory were transferred from the Division of Labor Services to the Department of Natural Resources, making three Division rules obsolete. Division rules governing hearing procedures were transferred from Chapter 300 to Chapter 1, making amendments to two existing rules necessary.

The principal reasons for adoption of these amendments are to update the rules and implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on February 23, 2016, a public hearing will be held on February 24, 2016, at 2:30 p.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than February 24, 2016, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [kathleen.uehling@iwd.iowa.gov](mailto:kathleen.uehling@iwd.iowa.gov).

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

No variance procedures are included in this rule making. Variance procedures are set forth in 875—Chapter 1.

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

These amendments are intended to implement Iowa Code chapter 89B.

The following amendments are proposed.

ITEM 1. Amend subrule 130.10(3) as follows:

**130.10(3)** If the employer has not requested a hearing, the commissioner, after the time set forth for compliance with the order to comply, may reexamine records submitted by the employer or may reinspect the premises. If the employer has not taken the necessary remedial steps required by the order to comply, the commissioner, upon notice and administrative hearing, may issue a decision on the order to comply which shall be deemed a final agency action pursuant to Iowa Code chapter 17A. The rules contained in ~~875—Chapter 300~~ 875—Chapter 1 are applicable to the hearing.

ITEM 2. Rescind and reserve rules **875—130.11(30,89B)** and **875—130.12(30,89B)**.

ITEM 3. Amend subrule 140.8(3) as follows:

**140.8(3)** In the event the issue of noncompliance comes for hearing before the commissioner, the commissioner may, at the conclusion of the hearing, issue an order for compliance which shall be a final agency action pursuant to Iowa Code chapter 17A or dismiss the complaint. Any hearing shall be conducted pursuant to the rules contained in ~~875—Chapter 300~~ 875—Chapter 1.

ITEM 4. Rescind and reserve rule **875—140.9(30,89B)**.

**ARC 2389C**

## LABOR SERVICES DIVISION[875]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 91E.5, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 160, “Employer Requirements Relating to Non-English Speaking Employees,” Iowa Administrative Code.

The proposed amendments align the rules with statutory authority, revise outdated rules and make other technical changes.

The principal reasons for adoption of these amendments are to update the rules, implement legislative intent, and protect the safety and health of Iowa workers.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on February 23, 2016, a public hearing will be held on February 24, 2016, at 1:30 p.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendment. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than February 24, 2016, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [kathleen.uehling@iwd.iowa.gov](mailto:kathleen.uehling@iwd.iowa.gov).

No variance procedures are included in this rule making. Variance procedures are set forth in 875—Chapter 5.

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

These amendments are intended to implement Iowa Code chapter 91E.

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

The following amendments are proposed.

ITEM 1. Amend rule 875—160.1(91E) as follows:

**875—160.1(91E) Purpose and scope.** The rules in this chapter are intended to implement and clarify the division of labor's responsibilities under Iowa Code chapter 91E. These rules apply to employees employed on an hourly basis. ~~These rules would apply to employees paid a salary, piece, task or other basis of calculation unless specifically exempted by rule 875—215.4(91D).~~ These rules apply to employers whose total employment of employees paid on an hourly basis in this state exceeds 100.

ITEM 2. Amend rule 875—160.3(91E), introductory paragraph, as follows:

**875—160.3(91E) Comprehension of employment Knowledge of English.** The Act and these rules apply to employees who do not speak, read, write, or understand English ~~to a degree necessary for comprehension of~~ well enough to understand the terms, conditions, and daily responsibilities of employment. ~~The following include, as a minimum, the terms, conditions and daily responsibilities of employment which an~~ An employee must be able to comprehend ~~who can understand the following~~ in English ~~is not covered by these rules:~~

ITEM 3. Amend subrules 160.3(1) to 160.3(5) as follows:

**160.3(1)** ~~The minimum number of hours an employee can expect to~~ of work on a weekly basis.

**160.3(2)** ~~The hourly wages of the position of employment, including the starting hourly wage.~~

**160.3(3)** All mandatory and elective benefits.

**160.3(4)** ~~A description of the responsibilities and tasks of the position of employment~~ The job duties.

**160.3(5)** ~~The safety and health risks, known to the employer, to the employee involved in the position of employment~~ of the job and appropriate methods of protection.

ITEM 4. Amend subrules 160.4(1) and 160.4(3) as follows:

**160.4(1) Interpreter available.** An interpreter shall be made available at ~~the a~~ a work site ~~when an employer has more than~~ where at least 10 percent of its ~~the employees that are non-English speaking and speak the same non-English language.~~ At least one interpreter shall be available at each work site for each entire shift on which the non-English speaking employees are employed.

**160.4(3) Spanish-speaking interpreters.** If a Spanish-speaking interpreter is needed, the employer shall select an interpreter from the list of interpreters developed by the commissioner. ~~Persons on the commissioner's list will be selected from a statewide list of interpreters provided by the Spanish-speaking people commission.~~

ITEM 5. Amend paragraph **160.7(1)“c”** as follows:

c. ~~Who resign~~ Resign from employment within four calendar weeks of the date of initial employment. ~~Periods of temporary layoff shall not be included in the 28-day computation, and~~

ITEM 6. Amend rule 875—160.8(91E) as follows:

**875—160.8(91E) Inspections and investigations.** This rule pertains to ~~either the enforcement of the Act or to the granting of exemptions.~~

**160.8(1)** ~~Inspections and investigations shall take place at the times and places as directed by the commissioner may direct.~~

**160.8(2)** ~~Inspections and investigations may be conducted without prior notice by correspondence, telephone conversation, review of materials submitted to the commissioner, or by a physical inspection of the work site.~~

**160.8(3)** The commissioner may interview persons at the work site and utilize other reasonable inspection ~~or investigatory~~ techniques including but not limited to ~~correspondence, telephone conversation, review of written materials, and physical inspection of the work site.~~

**160.8(4)** ~~Inspection or investigation shall be conducted to preclude unreasonable~~ Unnecessary ~~disruptions to the operations at the work site will be avoided.~~

LABOR SERVICES DIVISION[875](cont'd)

**160.8(5)** In the event the commissioner is not permitted to fully conduct an inspection ~~or investigation~~, an administrative warrant may be sought.

ITEM 7. Amend rule 875—160.9(91E), introductory paragraph, as follows:

**875—160.9(91E) Exemptions.** This rule contains procedures for the application for and granting of exemptions from the requirements of the Act or the rules in this chapter. These rules shall be construed to secure a prompt and just conclusion ~~of to a proceeding subject to this rule~~ these rules.

ITEM 8. Rescind subrule 160.9(5) and adopt the following **new** subrule in lieu thereof:

**160.9(5)** Hearing procedures are set forth in 875—Chapter 1.

ITEM 9. Amend subrule 160.10(1) as follows:

**160.10(1)** If the commissioner finds ~~any violations~~ a violation subject to a civil penalty, the commissioner shall issue a notice of violation to the employer and propose a civil penalty which shall be sent to the employer by certified mail. The employer shall have 14 calendar days from receipt of the notice of violation or proposed civil penalty to inform the commissioner by mail of the intent to contest the notification or proposed penalty. After receipt of the employer's notification, the commissioner shall afford the employer the opportunity for a hearing. The hearing shall be conducted pursuant to the rules in ~~875—Chapter 300~~ 875—Chapter 1.

## ARC 2381C

### TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

#### 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 8D.3(3)“b,” the Iowa Telecommunications and Technology Commission hereby gives Notice of Intended Action to amend Chapter 2, “Public Records and Fair Information Practices,” Iowa Administrative Code.

Chapter 2 establishes Commission policies and procedures for the maintenance of records. These amendments add an exception regarding the availability of certain records related to security procedures or emergency preparedness consistent with Iowa Code section 22.7(50).

Any interested person may make written comments or suggestions on the proposed amendments on or before February 23, 2016. Such written comments should be directed to Jontell Harris, Iowa Communications Network, First Floor, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319. E-mail may be sent to [jontell.harris@iowa.gov](mailto:jontell.harris@iowa.gov).

A public hearing will be held on February 23, 2016, beginning at 10 a.m. in the ICN Director's Conference Room, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any person who plans to attend the public hearing and who may have special requirements, such as those related to hearing or mobility impairments, should contact the Commission and advise of specific needs by calling Jontell Harris at 877-426-4692 toll free, by e-mailing [jontell.harris@iowa.gov](mailto:jontell.harris@iowa.gov) or, for the hearing impaired, by calling Relay Iowa TTY toll free at 800-735-2942.

These amendments were approved at the December 16, 2015, meeting of the Iowa Telecommunications and Technology Commission.

This rule is not subject to waiver or variance.

## TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

After analysis and review of this rule making, no fiscal impact statement is required pursuant to Iowa Code section 17A.4(4).

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

These amendments are intended to implement Iowa Code sections 8D.3(3)“b” and 22.7(50).

The following amendments are proposed.

ITEM 1. Reletter paragraph **2.13(2)“l”** as **2.13(2)“m.”**

ITEM 2. Adopt the following **new** paragraph **2.13(2)“l”**:

*l.* Records concerning security procedures or emergency preparedness developed and maintained by the commission or other federal or state agency for the protection of governmental employees, visitors to the agency, persons in the care, custody, or under the control of the agency, or property under the jurisdiction of the agency, if disclosure could reasonably be expected to jeopardize such employees, visitors, or property. Pursuant to Iowa Code section 22.7(50), specific records or classes of records to which this protection also applies may include specific information related to the physical network, contract- and vendor-related records and information associated with security and emergency preparedness, and similar or related records and information.

## 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, 2015 — February 28, 2015	4.25%
March 1, 2015 — March 31, 2015	4.00%
April 1, 2015 — April 30, 2015	4.00%
May 1, 2015 — May 31, 2015	4.00%
June 1, 2015 — June 30, 2015	4.00%
July 1, 2015 — July 31, 2015	4.25%
August 1, 2015 — August 31, 2015	4.25%
September 1, 2015 — September 30, 2015	4.25%
October 1, 2015 — October 31, 2015	4.25%
November 1, 2015 — November 30, 2015	4.25%
December 1, 2015 — December 31, 2015	4.00%
January 1, 2016 — January 31, 2016	4.25%
February 1, 2016 — February 29, 2016	4.25%

## ARC 2376C

## VOTER REGISTRATION COMMISSION[821]

## Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 47.8, 48A.13, and 17A.4, the Secretary of State's office hereby amends Chapter 2, "Voter Registration Forms, Acceptability, Registration Dates, and Effective Dates," Chapter 8, "Transmission of Registration Forms by Agencies," and Chapter 11, "Registration Procedure at the Office of Driver Services, Department of Transportation," Iowa Administrative Code.

These amendments pertain to electronic voter registration through the Iowa Department of Transportation's Web site. The amendments permit the use of electronic signatures on file with the Iowa Department of Transportation to be used on subsequent online voter registration transactions conducted via the Iowa Department of Transportation's Web site.

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin as **ARC 2160C** on September 30, 2015. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2246C** on November 25, 2015, to provide for a public hearing. The public hearing was held on December 23, 2015, at 8:30 a.m. in the Secretary of State's office, and comments were received from the American Civil Liberties Union of Iowa, the Iowa League of Women Voters, Disability Rights IOWA, and the Iowa-Nebraska NAACP State Area Conference of Branches.

These amendments are identical to those published under Notice of Intended Action.

A meeting of the State Voter Registration Commission was convened and the amendments were adopted on Thursday, December 31, 2015.

Pursuant to Iowa Code section 17A.5(2)"b"(1)(b), the Commission finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective on January 5, 2016. These amendments confer a benefit on the public by creating an additional method for eligible voters to register or update their voter registration information.

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

These amendments are intended to implement Iowa Code section 48A.

These amendments became effective January 5, 2016.

The following amendments are adopted.

ITEM 1. Amend subrules 2.4(2) and 2.4(3) as follows:

**2.4(2)** The applicant shall be shown a list of the eligibility requirements for registering to vote and the penalties for falsely registering, printed or displayed in large, easy-to-read type, and shall be advised to read them.

**2.4(3)** The application to register to vote and the signature of the applicant shall be recorded in digitized form in the agency's computer system and shall be kept permanently by the agency. The system shall ensure that neither the application ~~form~~ information nor the signature, once captured, can be edited.

ITEM 2. Adopt the following **new** subrule 2.4(6):

**2.4(6)** In the case of a voter registration applicant who registers to vote online through the Web site of the office of driver services, department of transportation, the applicant's signature for voter registration purposes shall be the last signature on file with the office of driver services, department of transportation. If there is no signature on file with the office of driver services, department of transportation, the applicant shall be offered the opportunity to print, complete, sign and return a paper copy of the Iowa voter registration application.

ITEM 3. Amend subrule 2.8(2) as follows:

**2.8(2)** The notice mailed to applicants who submit incomplete voter registration applications shall instruct the applicant that the applicant may provide the required information in writing by appearing in person at the commissioner's office to complete a new application or by mailing a new and complete application. If the incomplete registration application is received during the period in which registration

## VOTER REGISTRATION COMMISSION[821](cont'd)

is closed pursuant to Iowa Code section 48A.9 and by 5 p.m. on the Saturday before the election for general and primary elections or by 5 p.m. on the Friday before the election for all other elections, the commissioner shall send a notice advising the applicant of election day and in-person absentee registration procedures under Iowa Code section 48A.7A.

ITEM 4. Amend rule 821—8.1(48A) as follows:

**821—8.1(48A) ~~Cataloging registration data~~ Transmission of electronic voter registration applications.** Every agency ~~which that~~ registers voters in a paperless manner shall ~~daily catalog~~ transmit a file of registration ~~records applications~~ to the ~~computer system used by the registrar on a daily basis.~~ The file shall contain all voter registration ~~records applications~~ collected by the agency during the previous working day, ~~except that the file containing registration records collected on the last day of registration for a regularly scheduled election shall be cataloged not later than 8 p.m. of that day.~~

ITEM 5. Amend rule 821—11.6(48A) as follows:

**821—11.6(48A) Signature on attestation required.** The signature required for voter registration shall be obtained in the following manner:

**11.6(1) In-person applicants.** At the conclusion of the ~~client's~~ applicant's business, ~~clients~~ applicants who apply to register, or give information to update an existing registration shall be asked to sign the registration application attestation, either on a paper copy or an electronic version. Any ~~client~~ applicant who fails to sign the attestation shall be deemed to have declined to apply to register to vote.

**11.6(2) Online driver's license and nonoperator identification card renewal applicants.** During the online renewal transaction, applicants shall be asked if they would like to register to vote or update an existing voter registration record. If an applicant answers the question in the affirmative, the applicant shall have the opportunity to select a political party and affirm the use of the applicant's last digitized signature on file with the office of driver services, department of transportation, to finalize the voter registration transaction.

**11.6(3) Stand-alone online voter registration applicants.** The office of driver services, department of transportation, may offer stand-alone online voter registration through its Web site to individuals with current state-issued driver's licenses or nonoperator identification cards. Applicants for voter registration must provide information from their state-issued identification cards to begin the online voter registration application, including the applicant's first and last name and date of birth as they appear on the state-issued identification card, the last five digits of the applicant's social security number, the state-issued identification card number and the first five digits of the document discriminator number which is printed on the state-issued identification card. Applicants who do not have a state-issued identification card who attempt to use the stand-alone online voter registration function shall be offered the opportunity to print, complete, sign and mail a paper copy of the Iowa voter registration application.

**11.6(4) A notice shall appear on screen if a stand-alone online voter registration applicant transaction is terminated because of incomplete information. The notice shall instruct the applicant that the applicant may provide the required information by completing a paper voter registration form and mailing it to the commissioner's office or by completing a new application in person at the commissioner's office. Applicants shall also be advised of election day and in-person registration procedures under Iowa Code section 48A.7A.**

**11.6(5) If a stand-alone online voter registration applicant fails to make a party selection and the application is for a new registration, the commissioner shall enter the selection as "no party." If a stand-alone online voter registration applicant fails to make a party selection and the applicant is already a registered voter in the county, the previous party choice of the registrant shall be retained.**

[Filed Emergency After Notice 1/5/16, effective 1/5/16]

[Published 2/3/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/3/16.

## ARC 2382C

## ALCOHOLIC BEVERAGES DIVISION[185]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 123.21, the Alcoholic Beverages Division hereby amends Chapter 4, "Liquor Licenses—Beer Permits—Wine Permits," Iowa Administrative Code.

The amendments adopt a new rule 185—4.6(123), which establishes guidelines for class "C" beer permit holders to fill and sell beer in a container other than the original container, subject to and mandated by Iowa Code section 123.132, which was amended by 2015 Iowa Acts, Senate File 456, section 1, and Senate File 510, section 14, and pursuant to rules adopted by the Alcoholic Beverages Division. The amendments are necessary to:

- Establish filling and refilling requirements,
- Establish sealing requirements, and
- Establish restrictions for the filling, refilling and selling of beer in a container other than the original container.

The amendments also define three terms to provide clarity for the reader. One definition is added in new rule 185—4.6(123), while two definitions are added to rule 185—4.1(123) because the definitions are equally applicable to other retail permit holders.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 25, 2015, as **ARC 2255C**. A meeting to hear requested oral presentation, scheduled for December 18, 2015, was canceled with notice because no request for oral presentation was made. The Division received no written comments.

Upon further review of the amendments, the Division made a change to the amendments as published under Notice of Intended Action to clarify further the requirements associated with an original container. Specifically, a change was made to subrule 4.1(4) to clarify that an original container must be obtained in a lawful manner permissible under Iowa Code chapter 123, the administrative rules of the Alcoholic Beverages Division, and any other applicable federal and state laws, rules, and regulations. The Division also updated the references to the amending legislation in order to reflect that those changes are now codified in law.

These amendments do not provide for waivers in specified situations. An agencywide waiver provision is provided in 185—Chapter 19.

The Alcoholic Beverages Commission adopted these amendments on January 12, 2016.

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

These amendments are intended to implement Iowa Code chapter 123.

These amendments will become effective on March 9, 2016.

The following amendments are adopted.

ITEM 1. Adopt the following **new** subrules 4.1(3) and 4.1(4):

**4.1(3)** "*Growler*" means any fillable and sealable glass, ceramic, plastic, aluminum or stainless steel container designed to hold only beer or high alcoholic content beer.

**4.1(4)** "*Original container*" means a vessel containing an alcoholic beverage that has been lawfully obtained, bears a label approved by the Alcohol and Tobacco Tax and Trade Bureau, and has been securely capped, sealed or corked at the location of manufacture.

ITEM 2. Adopt the following **new** rule 185—4.6(123):

**185—4.6(123) Filling and selling of beer in a container other than the original container by class "C" beer permit holders.** Class "C" beer permit holders and their employees may fill, refill and sell beer in a container other than the original container, otherwise known as a growler as defined in subrule 4.1(3), subject to the requirements and restrictions provided in Iowa Code section 123.132 and in this rule.

## ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

**4.6(1) Definition.**

“Beer,” for the purpose of this rule, means “beer” as defined in Iowa Code section 123.3(7) and “high alcoholic content beer” as defined in Iowa Code section 123.3(19).

**4.6(2) Sales criteria and restrictions.** All sales made pursuant to this rule shall be made in person. Beer packaged and sold pursuant to this rule shall not be delivered or direct-shipped to consumers.

**4.6(3) Filling and refilling requirements.**

- a. A growler shall have the capacity to hold no more than 72 ounces.
- b. A growler shall be filled or refilled only by the permittee or the permittee’s employees who are 18 years of age or older.
- c. A growler shall be filled or refilled only on demand by a consumer at the time of the in-person sale.
- d. A growler shall be filled or refilled only with beer from the original container procured from a duly licensed wholesaler.
- e. A retailer may exchange a growler to be filled or refilled, provided the exchange occurs at the time of the in-person sale.
- f. The filling or refilling of a growler shall at all times be conducted in compliance with applicable state and federal food safety statutes and regulations.

**4.6(4) Sealing requirements.** A filled or refilled growler shall be securely sealed at the time of the sale by the permittee or the permittee’s employees in the following manner:

- a. A growler shall bear a twist-type cap, screw-on cap, flip-top lid, swing-top lid, stopper, or plug.
- b. A plastic heat shrink wrap band, strip, or sleeve shall extend around the twist-type cap, screw-on cap, flip-top lid, or swing-top lid or over the stopper or plug to form a seal that must be broken upon the opening of the growler.
- c. The heat shrink wrap seal shall be so secure that it is visibly apparent when the seal on a growler has been tampered with or a sealed growler has otherwise been reopened.
- d. A growler shall not be deemed an open container, subject to the requirements of Iowa Code sections 321.284 and 321.284A, provided the sealed growler is unopened and the seal has not been tampered with and the contents of the growler have not been partially removed.

**4.6(5) Restrictions.**

- a. Beer shall not be consumed on the premises of a class “C” beer permit holder.
- b. A growler shall not be filled in advance of a sale.
- c. A growler filled pursuant to this rule shall not be delivered or direct-shipped to a consumer.
- d. A growler filled pursuant to this rule shall not be sold or otherwise distributed to a retailer.
- e. A permittee or a permittee’s employees shall not allow a consumer to fill or refill a growler.
- f. The filling, refilling and selling of a growler shall be limited to the hours in which beer may be legally sold.
- g. A filled or refilled growler shall not be sold to any consumer who is under legal age, intoxicated, or simulating intoxication.
- h. An original container shall only be opened by the permittee or the permittee’s employees for the limited purpose of filling or refilling a growler as provided in this rule.

**4.6(6) Violations.** Failure to comply with the requirements and restrictions of this rule shall subject the permittee to the penalty provisions provided in Iowa Code chapter 123.

This rule is intended to implement Iowa Code section 123.132.

[Filed 1/13/16, effective 3/9/16]

[Published 2/3/16]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/3/16.

**ARC 2388C****ENGINEERING AND LAND SURVEYING  
EXAMINING BOARD[193C]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board amends Chapter 3, “Application and Renewal Process,” and Chapter 4, “Engineering Licensure,” Iowa Administrative Code.

The amendment to Chapter 3 reflects simplifications in the application process for the Fundamentals of Land Surveying examinations, which increase the availability of the examinations. The amendment to Chapter 4 removes outdated information and reflects current practice.

Notice of Intended Action was published in the October 28, 2015, Iowa Administrative Bulletin as **ARC 2219C**. A public hearing was held at 9 a.m. on November 17, 2015, at the offices of the Professional Licensing Bureau, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa. No comments were received. These amendments are identical to those published under Notice of Intended Action.

There is no fiscal impact. No current fees are being changed, and no new fees are being imposed.

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

These amendments were adopted by the Board on January 13, 2016.

After analysis and review of this rule making, no impact on jobs was found. The amendments do not impact the time line for licensure or for new licensees to begin working.

These amendments are intended to implement Iowa Code section 542B.21.

These amendments will become effective on March 9, 2016.

The following amendments are adopted.

ITEM 1. Amend subrule 3.2(2) as follows:

**3.2(2)** *Fundamentals of Land Surveying examination application components ~~and due dates~~*. The components of this application include: the completed, notarized application form; references pursuant to 193C—paragraph 5.1(5)“b”; and transcripts. Fundamentals of Land Surveying examination applications must be submitted to the board office. ~~Examinations are offered during four two-month testing periods throughout the year. Applications must be postmarked on or before October 15 for the January/February window, February 15 for the April/May window, April 15 for the July/August window, and August 15 for the October/November window.~~ Applications will be reviewed by the board at the next regularly scheduled board meeting.

ITEM 2. Amend paragraph **4.1(2)“e”** as follows:

~~e. Commencing with the computer-based FE exams in 2014, all~~ All FE exam candidates will apply directly to the National Council of Examiners for Engineering and Surveying (NCEES) and will self-attest as to the candidate’s eligibility to sit for the FE exam. ~~At that time, NCEES will cease its prior practice of receiving and verifying college transcripts for candidates with ABET/EAC- or CEAB-accredited engineering degrees and for candidates in their senior years of such programs. The board will also cease its practice of processing FE exam applications for those candidates who hold engineering degrees from nonaccredited programs who must have one year of experience in order for the degrees to be accepted by the board.~~ The board will instead verify acceptable education and experience at the time an applicant applies to sit for the Principles and Practice of Engineering examination or applies for an Engineer Intern (EI) number. The board shall apply the education and experience standards set forth in this rule; but will allow reasonable flexibility in timing in the event an applicant sat for and passed the FE exam at a point earlier than provided in this rule. The board

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

will not, however, issue an EI number unless all ~~required~~ experience required for candidates who hold engineering degrees from nonaccredited programs has been satisfied at the time of the EI application.

[Filed 1/14/16, effective 3/9/16]

[Published 2/3/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/3/16.

**ARC 2383C**

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

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 30.5, the Homeland Security and Emergency Management Department on behalf of the Iowa Emergency Response Commission hereby amends Chapter 100, "Mission of Commission," Iowa Administrative Code.

This amendment updates the membership of the Commission to accurately reflect Iowa Code chapter 30. The amendment includes changes to both state and local agencies as well as private industry members.

This amendment was approved by the Commission at the scheduled meeting held on October 29, 2015.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2284C** on December 9, 2015. A public hearing was held on December 29, 2015. No public comment was received during the comment period or during the public hearing. This amendment is identical to that published under Notice of Intended Action.

The Department of Homeland Security and Emergency Management adopted this amendment on January 13, 2016.

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

This amendment is intended to implement Iowa Code chapter 30.

This amendment will become effective March 9, 2016.

The following amendment is adopted.

Amend rule 605—100.1(30) as follows:

**605—100.1(30) Mission.** The Iowa emergency response commission (IERC) was created to implement the Emergency Planning and Community Right-to-Know Act (EPCRA).

The governor appoints one member each to represent ~~department~~ the departments of agriculture and land stewardship, department of employment services workforce development, homeland security and emergency management, department of justice, department of natural resources, department of public defense, department of public health, department of public safety, state department of and transportation, fire service institute of Iowa State University of science and technology state fire service and emergency response council, local emergency planning committee, hazardous materials task force, and the office of the governor, and ~~two~~ three members from private industry.

The IERC shall enter into agreements with the ~~department~~ departments of employment services workforce development, the department of natural resources and the department of public defense homeland security and emergency management to carry out ~~those~~ the duties allocated to those departments under Iowa Code chapter 30.

This rule is intended to implement Iowa Code chapter 30 ~~and 1992 Iowa Acts, chapter 1139.~~

[Filed 1/13/16, effective 3/9/16]

[Published 2/3/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/3/16.

**ARC 2384C****HOMELAND SECURITY AND EMERGENCY  
MANAGEMENT DEPARTMENT[605]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 30.5, the Homeland Security and Emergency Management Department on behalf of the Iowa Emergency Response Commission hereby amends Chapter 101, “Operations of Commission,” Iowa Administrative Code.

These amendments update the membership of the Commission to accurately reflect Iowa Code chapter 30. These amendments include changes to both state and local agencies as well as private industry members.

These amendments were approved by the Commission at the scheduled meeting held on October 29, 2015.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2283C** on December 9, 2015. A public hearing was held on December 29, 2015. No public comment was received during the comment period or during the public hearing. These amendments are identical to those published under Notice of Intended Action.

The Department of Homeland Security and Emergency Management adopted these amendments on January 13, 2016.

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

These amendments are intended to implement Iowa Code chapter 30.

These amendments will become effective March 9, 2016.

The following amendments are adopted.

ITEM 1. Amend rule 605—101.2(30) as follows:

**605—101.2(30) Membership.** The Iowa emergency response commission is composed of ~~15~~ 16 members appointed by the governor.

**101.2(1) Voting members.** Members representing the departments of workforce development, natural resources, homeland security and emergency management, public defense, public safety, and transportation, a local emergency planning committee, and one of the private industry representatives, who is designated by the commission at the first meeting of the commission each year, serve as voting members of the commission.

**101.2(2) Nonvoting members.** The remaining members of the commission, representing the ~~department~~ departments of agriculture and land stewardship, ~~the department of justice, the department of and public health,~~ the state fire service and emergency response council, ~~a local emergency planning committee,~~ the Iowa hazardous materials task force, the office of the governor, and two members representing private industry serve as nonvoting, advisory members of the commission. Nonvoting members may fully participate in discussion of matters before the commission, serve on committees formed by the commission and serve as officers of the commission.

ITEM 2. Amend subrule 101.5(2) as follows:

**101.5(2) Posting of agenda.** The agenda for each meeting will be posted at the office of the chairperson and in the office of the ~~department of public defense,~~ homeland security and emergency management division ~~department.~~

ITEM 3. Amend subrule 101.7(1) as follows:

**101.7(1) Quorum.** ~~Four~~ Six of the ~~six~~ eight voting members of the commission constitute a quorum.

[Filed 1/13/16, effective 3/9/16]

[Published 2/3/16]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/3/16.

**ARC 2385C****HOMELAND SECURITY AND EMERGENCY  
MANAGEMENT DEPARTMENT[605]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 30.5, the Homeland Security and Emergency Management Department on behalf of the Iowa Emergency Response Commission hereby amends Chapter 103, "Local Emergency Planning Committees," Iowa Administrative Code.

These amendments update the name of the Department of Homeland Security and Emergency Management as well as membership on local emergency planning committees. Additionally, the amendments update Iowa Administrative Code references within the chapter.

These amendments were approved by the Commission at the scheduled meeting held on October 29, 2015.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2282C** on December 9, 2015. A public hearing was held on December 29, 2015. No public comment was received during the comment period or during the public hearing. These amendments are identical to those published under Notice of Intended Action.

The Department of Homeland Security and Emergency Management adopted these amendments on January 13, 2016.

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

These amendments are intended to implement Iowa Code chapter 30.

These amendments will become effective March 9, 2016.

The following amendments are adopted.

ITEM 1. Amend subrule 103.1(1) as follows:

**103.1(1) Purpose.** The Iowa emergency response commission (IERC) is required to appoint members to local emergency planning committees. An LEPC is appointed for each of the emergency planning districts established in ~~607~~ 605—Chapter 102.

ITEM 2. Amend rule 605—103.2(30) as follows:

**605—103.2(30) Committee members.**

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

**103.2(2) Meeting participation.** Any member of the ~~county~~ local emergency management commission may participate in any meeting of the LEPC. If the ~~county~~ local emergency management commission member is not the appointed representative of one of the groups or organizations specified in subrule 103.1(2), the ~~county~~ local emergency management commission member shall not be eligible to vote on any issue before the LEPC.

**103.2(3)** No change.

ITEM 3. Amend subrule 103.3(2) as follows:

**103.3(2)** The LEPC shall establish procedures for receiving and processing requests from the public for information under EPCRA Section 324, including Form Tier ~~Two~~ II information under EPCRA Section 312. (42 U.S.C. 11001(c))

ITEM 4. Amend rule 605—103.4(30) as follows:

**605—103.4(30) Emergency response plan development.** The IERC recognizes that emergency planning includes more than chemical release planning. The chemical release planning required by this chapter and EPCRA shall be included in the comprehensive emergency planning conducted by the

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

~~county local~~ emergency management commission as required by Iowa Code chapter 29C and planning standards of the Iowa ~~division of~~ homeland security and emergency management department.

ITEM 5. Amend rule 605—103.7(30) as follows:

**605—103.7(30) Local emergency response plan submission.** After completion of the initial emergency response plan and any subsequent revisions thereto, the LEPC shall submit a copy to the IERC. The IERC shall review the submission and make recommendations to the LEPC on appropriate revisions that may be necessary to comply with provisions in 42 U.S.C. 11003(c) and state planning standards in ~~607~~ 605—Chapter 6 7 to ensure coordination with emergency response plans of other emergency planning districts, the state of Iowa, and adjacent states. To the maximum extent practicable, the review shall not delay implementation of the plan or revisions thereto. All plans shall be submitted annually by October 17.

ITEM 6. Amend **605—Chapter 103**, implementation sentence, as follows:

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

[Filed 1/13/16, effective 3/9/16]

[Published 2/3/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/3/16.

**ARC 2386C**

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

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 30.5, the Homeland Security and Emergency Management Department on behalf of the Iowa Emergency Response Commission hereby amends Chapter 104, "Required Reports and Records," Iowa Administrative Code.

These amendments update reporting form names, addresses, contact phone numbers and conversion of the Department from a division so as to accurately reflect Iowa Code chapters 29C and 30.

These amendments were approved by the Commission at the scheduled meeting held on October 29, 2015.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2281C** on December 9, 2015. A public hearing was held on December 29, 2015. No public comment was received during the comment period or during the public hearing. These amendments are identical to those published under Notice of Intended Action.

The Department of Homeland Security and Emergency Management adopted these amendments on January 13, 2016.

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

These amendments are intended to implement Iowa Code chapter 30.

These amendments will become effective March 9, 2016.

The following amendments are adopted.

Amend **605—Chapter 104** as follows:

CHAPTER 104  
REQUIRED REPORTS AND RECORDS

**605—104.1(30) Department of ~~public defense,~~ homeland security and emergency management division.**

**104.1(1) Emergency planning notification.** The owner or operator of each facility subject to the planning notification requirement shall notify the ~~department of public defense,~~ homeland security and

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

emergency management ~~division~~, department that the facility is subject to the requirements of Section 302, Emergency Planning and Community Right-to-know ~~Know~~ Act, 42 U.S.C. 11002. The notification is to be on the Tier ~~Two~~ II form specified in subrule 104.2(4). The facility owner or operator shall submit the notification to the department of natural resources by March 1 for covered chemicals in its possession. If the facility is reporting chemicals to the department of natural resources on the Tier ~~Two~~ II form pursuant to subrule 104.2(4), a duplicate report is not required. The report shall be revised by a notification on the Tier ~~Two~~ II form within 60 days after the acquisition of chemicals meeting the notification requirements and reported to the homeland security and emergency management ~~division~~ department.

**104.1(2)** No change.

**104.1(3) Submissions.** Plans and notifications required under this rule shall be submitted to the ~~Department of Public Defense, Homeland Security and Emergency Management Division Department,~~ Hoover State Office Building 7900 Hickman Road, Level A Suite 500, Des Moines Windsor Heights, Iowa 50319 50324.

This rule is intended to implement Iowa Code sections 30.5 and 30.9.

**605—104.2(30) Department of natural resources.**

**104.2(1) Emergency notifications of releases.** Each release subject to the requirements of Section 304, Emergency Planning and Community Right-to-know ~~Know~~ Act, 42 U.S.C. 11004, shall be submitted to the department of natural resources. This notification shall be done in conjunction with the notification required by 567—131.2(455B). Notifications of release shall be telephoned to the department at (515)~~281-8694~~ 725-8694 immediately. A written follow-up emergency notice shall be made within 30 days.

**104.2(2) Toxic chemical release form.** The owner or operator of a facility subject to the requirements of Section 313, Emergency Planning and Community Right-to-know ~~Know~~ Act, 42 U.S.C. 11023, shall submit information required by EPA regulations to the department of natural resources. The information for the previous calendar year shall be submitted by July 1 of the following year.

**104.2(3) ~~Material safety~~ Safety data sheet information.** The owner or operator of a facility required to prepare or have available a ~~material~~ safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act shall submit a list of each chemical required to be submitted under Section 311, Emergency Planning and Community Right-to-know ~~Know~~ Act, 42 U.S.C. 11021. The list shall be submitted to the department of natural resources and to the appropriate local emergency planning committee (LEPC) and the fire department in whose jurisdiction the facility is located. The submission of ~~material~~ safety data sheets in lieu of a list is not permitted. A form is not designated.

**104.2(4) Emergency and hazardous chemical inventory form (Tier ~~Two~~ II).** The owner or operator of a facility required to prepare or have available a ~~material~~ safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act shall submit emergency and hazardous chemical inventory information required to be submitted under Section 312, Emergency Planning and Community Right-to-know ~~Know~~ Act, 42 U.S.C. 11022. The information shall be submitted to the department of natural resources, the appropriate local emergency planning committee (LEPC), and the fire department within whose jurisdiction the facility is located by March 1 for the chemicals in its inventory the preceding calendar year. Tier ~~One~~ I forms will not be accepted. The information shall be submitted on the Iowa Tier ~~Two~~ II form or in any electronic format approved by the department of natural resources.

**104.2(5) Submissions.** Written notifications and reports required under this rule shall be submitted to the Department of Natural Resources, ~~Wallace State Office Building~~ 7900 Hickman Road, Suite 200, Des Moines Windsor Heights, Iowa 50319 50324. For additional information, see rule 567—131.2(455B).

This rule is intended to implement Iowa Code sections 30.5 and 30.8.

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

**605—104.3(30) Department of employment services, labor services division.** Rescinded IAB 2/13/08, effective 3/19/08.

[Filed 1/13/16, effective 3/9/16]

[Published 2/3/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/3/16.

**ARC 2377C**

## **INSURANCE DIVISION[191]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 505.8 and 521H.4, the Insurance Division hereby adopts new Chapter 111, "Corporate Governance Annual Disclosure," Iowa Administrative Code.

New Chapter 111 sets forth the procedural requirements and the required contents of the corporate governance annual disclosure to implement the provisions of 2015 Iowa Acts, House File 445, sections 1 to 8. The rules outline the requirements for an insurer or insurance group to complete a corporate governance annual disclosure for submission to the Commissioner.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 14, 2015, as **ARC 2181C**. Written comments were accepted through November 3, 2015, and a public hearing was held on November 4, 2015, at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa. The Division received no public comment on new Chapter 111.

One technical change has been made to the rules that were published under Notice of Intended Action. All references to 2015 Iowa Acts, House File 455, have been updated to Iowa Code chapter 521H references.

The Insurance Division's waiver provisions in 191—Chapter 4 apply to this rule making.

These rules will impose no fiscal impact to the State.

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

These rules are intended to implement 2016 Iowa Code chapter 521H.

These rules shall become effective on March 9, 2016.

The following amendment is adopted.

Adopt the following **new** 191—Chapter 111:

### CHAPTER 111

#### CORPORATE GOVERNANCE ANNUAL DISCLOSURE

**191—111.1(521H) Purpose.** The purpose of this chapter is to implement 2016 Iowa Code chapter 521H and set forth the procedures for filing and the required contents of the corporate governance annual disclosure.

**191—111.2(521H) Authority.** This chapter is promulgated pursuant to the authority vested in the commissioner under 2016 Iowa Code section 521H.4 in accordance with the procedures set forth in Iowa Code chapter 17A.

**191—111.3(521H) Definitions.** For the purpose of these rules, the terms "commissioner," "corporate governance annual disclosure," "disclosure," "insurance group," "insurance holding company system," and "insurer" shall have the meanings set forth in 2016 Iowa Code section 521H.2. In addition, the following definition shall apply:

"*Senior management*" means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and includes, but is not limited to, the chief executive officer, chief financial officer, chief operations officer, chief

## INSURANCE DIVISION[191](cont'd)

procurement officer, chief legal officer, chief information officer, chief technology officer, chief revenue officer, chief visionary officer, or any other senior level executive.

**191—111.4(521H) Filing procedures.**

**111.4(1)** An insurer, or the insurance group of which the insurer is a member, required to file a corporate governance annual disclosure by 2016 Iowa Code section 521H.3 shall no later than June 1 of each calendar year submit to the commissioner a corporate governance annual disclosure that contains the information described in rule 191—111.5(521H).

**111.4(2)** The corporate governance annual disclosure must include a signature of the insurer's or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer or insurance group has implemented the corporate governance practices and that a copy of the corporate governance annual disclosure has been provided to the insurer's or insurance group's board of directors or the appropriate committee thereof.

**111.4(3)** The insurer or insurance group shall have discretion regarding the appropriate format for providing the information required by these rules and is permitted to customize the corporate governance annual disclosure to provide the most relevant information necessary to permit the commissioner to gain an understanding of the corporate governance structure and of the policies and practices utilized by the insurer or insurance group.

**111.4(4)** For purposes of completing the corporate governance annual disclosure, the insurer or insurance group may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the corporate governance annual disclosure at the level at which the insurer's or insurance group's risk appetite is determined, or the level at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which one of the three criteria was used to determine the level of reporting and explain any subsequent changes in the level of reporting.

**111.4(5)** If the corporate governance annual disclosure is completed at the insurance group level, then it must be filed with the lead state of the group as determined by the procedures outlined in the most recent financial analysis handbook adopted by the National Association of Insurance Commissioners. In this instance, a copy of the corporate governance annual disclosure must also, upon request, be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer.

**111.4(6)** An insurer or insurance group may comply with this rule by referencing the most recently filed version of other existing documents including, but not limited to, own risk and solvency assessment summary report, insurance holding company system annual registration report (Form B), enterprise risk report (Form F), Securities and Exchange Commission proxy statements, and foreign regulatory reporting requirements if the documents provide information that is comparable to the information described in rule 191—111.5(521H). The insurer or insurance group shall clearly reference within the corporate governance annual disclosure the location of the relevant information and attach the reference document if it is not already filed or available to the regulator.

**111.4(7)** Each year following the initial filing of the corporate governance annual disclosure, the insurer or insurance group shall file an amended version of the previously filed corporate governance annual disclosure indicating where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group, the filing should so state.

**191—111.5(521H) Contents of corporate governance annual disclosure.**

**111.5(1)** The insurer or insurance group shall be as descriptive as possible in completing the corporate governance annual disclosure, with inclusion of attachments or example documents that are used in the governance process since these may provide a means to demonstrate the strengths of the insurer's or insurance group's governance framework and practices.

INSURANCE DIVISION[191](cont'd)

**111.5(2)** The corporate governance annual disclosure shall describe the insurer's or insurance group's corporate governance framework and structure, including consideration of the following:

*a.* The board of directors and committees thereof ultimately responsible for overseeing the insurer or insurance group and the level or levels at which that oversight occurs. The insurer or insurance group shall describe and discuss the rationale for the current board of directors' size and structure; and

*b.* The duties of the board of directors and each of its significant committees and how they are governed, which may include bylaws, charters, or informal mandates as well as how the board of directors' leadership is structured and a discussion of the roles of the chief executive officer and chairperson of the board of directors within the organization.

**111.5(3)** The insurer or insurance group shall describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors:

*a.* How the qualifications, expertise and experience of each board of directors member meet the needs of the insurer or insurance group.

*b.* How an appropriate amount of independence is maintained on the board of directors and its significant committees.

*c.* The number of meetings held by the board of directors and its significant committees over the past year as well as information on director attendance.

*d.* How the insurer or insurance group identifies, nominates and elects members to the board of directors and its committees. The discussion should include, for example:

(1) Whether a nomination committee is in place to identify and select individuals for consideration.

(2) Whether term limits are placed on directors.

(3) How the election and reelection processes function.

(4) Whether a board of directors diversity policy is in place and, if so, how it functions.

*e.* The processes in place for the board of directors to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance, including any board of directors or committee training programs that have been put in place.

**111.5(4)** The insurer or insurance group shall describe the policies and practices for directing senior management, including a description of the following factors:

*a.* Any processes or practices such as suitability standards to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:

(1) Identification of the specific positions for which suitability standards have been developed and a description of the standards employed.

(2) Any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.

*b.* The insurer's or insurance group's code of business conduct and ethics, the discussion of which should consider, for example:

(1) Compliance with laws, rules, and regulations; and

(2) Proactive reporting of any illegal or unethical behavior.

*c.* The insurer's or insurance group's processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the commissioner to understand how the organization ensures that compensation programs do not encourage or reward excessive risk taking. Elements to be discussed may include, but are not limited to, the following:

(1) The role of the board of directors in overseeing management compensation programs and practices.

(2) The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid.

(3) How compensation programs are related to both company and individual performance over time.

INSURANCE DIVISION[191](cont'd)

(4) Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels.

(5) Any clawback provisions built into the compensation programs to recover awards or payments if the performance measures upon which the clawback provisions are based are restated or otherwise adjusted.

(6) Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.

*d.* The insurer's or insurance group's plans for chief executive officer and senior management succession.

**111.5(5)** The insurer or insurance group shall describe the processes by which the board of directors, its committees and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's or insurance group's business activities, including a discussion of:

*a.* How oversight and management responsibilities are delegated among the board of directors, its committees and senior management.

*b.* How the board of directors is kept informed of the insurer's or insurance group's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks.

*c.* How reporting responsibilities are organized for each critical risk area. The description should allow the commissioner to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board of directors. This description may include, but is not limited to, the following critical risk areas of the insurer:

(1) Risk management processes (An own risk and solvency assessment summary report filer may refer to the filer's own risk and solvency assessment summary report prepared pursuant to Iowa Code chapter 522);

(2) Actuarial function;

(3) Investment decision-making processes;

(4) Reinsurance decision-making processes;

(5) Business strategy and finance decision-making processes;

(6) Compliance function;

(7) Financial reporting and internal auditing; and

(8) Market conduct decision-making processes.

These rules are intended to implement 2016 Iowa Code chapter 521H.

[Filed 1/5/16, effective 3/9/16]

[Published 2/3/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/3/16.

**ARC 2387C**

## **MEDICINE BOARD[653]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Medicine hereby amends Chapter 13, "Standards of Practice and Principles of Medical Ethics," Iowa Administrative Code.

The purpose of Chapter 13 is to establish standards of medical practice for medical physicians and surgeons and osteopathic physicians and surgeons. The amendment implements 2015 Iowa Acts, Senate File 462, which allows physicians to write prescriptions for authorized facilities, including public schools, to stock an epinephrine auto-injector supply for administration by trained non-health care personnel to individuals at risk of anaphylaxis.

The Board approved a Notice of Intended Action during a regularly scheduled meeting on October 16, 2015. Notice of Intended Action for the amendment was published in the Iowa Administrative Bulletin

MEDICINE BOARD[653](cont'd)

on November 25, 2015, as **ARC 2249C**. A public hearing was held on December 15, 2015. No comments were presented or statements received in writing.

On January 14, 2016, the Board voted to adopt the amendment.

One technical change has been made to the amendment published under Notice of Intended Action. References to 2015 Iowa Acts, Senate File 462, have been updated to Iowa Code references.

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

This amendment is intended to implement Iowa Code chapters 135, 147, 148, 272C and 280.

This amendment will become effective March 9, 2016.

The following amendment is adopted.

Adopt the following **new** rule 653—13.12(135,147,148,272C,280):

**653—13.12(135,147,148,272C,280) Standards of practice—prescribing epinephrine auto-injectors in the name of an authorized facility.**

**13.12(1)** Definitions. For purposes of this rule:

*“Authorized facility”* means any nonpublic school which is accredited pursuant to Iowa Code section 256.11, any school directly supported in whole or in part by taxation, a food establishment as defined in Iowa Code section 137F.1, a carnival as defined in Iowa Code section 88A.1, a recreational camp, a youth sports facility, or a sports area.

*“Epinephrine auto-injector”* means a device for immediate self-administration or administration by another trained person of a measured dose of epinephrine to a person at risk of anaphylaxis.

*“Physician”* means a person licensed pursuant to Iowa Code chapter 148 to practice medicine and surgery or osteopathic medicine and surgery.

**13.12(2)** Notwithstanding any other provision of law to the contrary, a physician may prescribe epinephrine auto-injectors in the name of an authorized facility to be maintained for use pursuant to Iowa Code sections 135.185, 280.16 and 280.16A.

**13.12(3)** A physician who prescribes epinephrine auto-injectors in the name of an authorized facility to be maintained for use pursuant to Iowa Code sections 135.185, 280.16 and 280.16A, provided the physician has acted reasonably and in good faith, shall not be liable for any injury arising from the provision, administration, or assistance in the administration of an epinephrine auto-injector.

[Filed 1/14/16, effective 3/9/16]

[Published 2/3/16]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/3/16.

**ARC 2379C**

**NATURAL RESOURCES DEPARTMENT[561]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455A.4 and 483A.24, the Department of Natural Resources hereby amends Chapter 12, “Special Nonresident Deer and Turkey Licenses,” Iowa Administrative Code.

Chapter 12 establishes the process by which the Department issues special nonresident hunting licenses to individuals as part of a statewide or local effort to promote the state and its natural resources. The Department is amending Chapter 12 to provide nonresident disabled active members or veterans of the armed forces the opportunity to buy hunting licenses in Iowa at resident prices. Iowa Code section 483A.24, subsections 3, 4 and 5, were revised in 2013 to allow 25 of the 75 special nonresident deer hunting licenses, 25 of the 75 special nonresident turkey hunting licenses and an unlimited number of small-game hunting licenses to be allocated to qualified nonresident disabled active members or veterans of the armed forces who participate in hunts conducted by organizations that provide hunting experiences for the severely wounded. These nonresident hunting licenses are sold at resident prices. Guidelines for the application process are outlined in these amendments.

## NATURAL RESOURCES DEPARTMENT[561](cont'd)

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 2, 2015, as **ARC 2132C**. The Department held a public hearing on September 22, 2015. No one attended the meeting, and only two comments were received during the comment period. Both commenters were against limiting approved organizations to nonprofits. The commenters believe veterans should have the ability to choose an outfitter, whether it is a nonprofit or for-profit company. The nonprofit structure was the result of three pre-rule-making stakeholder meetings and public comment that resulted in the initiation of the Notice of Intended Action. The Department is not altering that framework. No changes have been made to the amendments published under Notice.

These amendments are intended to implement Iowa Code section 483A.24(5).

These amendments will become effective March 9, 2016.

The following amendments are adopted.

ITEM 1. Adopt the following new definitions in rule **561—12.2(483A)**:

*“Approved organization”* means an organization that is incorporated under Iowa Code chapter 504 as a nonprofit organization, whose mission involves providing hunting experiences for disabled veterans and military personnel, and that is listed on the IRS exempt organizations list or provides a copy of an IRS determination letter for 501(c) tax-exempt status.

*“Nonresident disabled veteran or disabled member of the armed forces”* means a person who is a veteran and who has an assigned service-related disability rating of 30 percent or more under United States Code, Title 38, Chapter 11; or a person who is a member of the armed forces serving on active federal duty currently participating in the Integrated Disability Evaluation System (IDES).

ITEM 2. Amend rule **561—12.2(483A)**, definition of “Sponsor,” as follows:

*“Sponsor”* means an entity that applies on behalf of one or more hunters. Sponsors shall either conduct business in Iowa and be registered with the secretary of state or have some other affiliation with the state of Iowa.

ITEM 3. Amend rule 561—12.3(483A) as follows:

**561—12.3(483A) Availability of special licenses.** The program shall be available to provide no more than the number of special licenses allowed by Iowa Code section 483A.24 to nonresidents through requests submitted by individual hunters, ~~or~~ through a sponsor, or through an approved organization. ~~Sponsors may be located in the state of Iowa.~~

ITEM 4. Amend subrule 12.4(2) as follows:

**12.4(2)** Develop templates for requests for special licenses and provide the templates to hunters, ~~and~~ sponsors, and approved organizations upon request.

ITEM 5. Amend subrule 12.4(6) as follows:

**12.4(6)** Establish the date on which applications for special licenses for disabled veterans and disabled active military personnel are due, establish the dates on which the legislative committee will select the conservation organizations and hunters who will receive special licenses, and inform the conservation organizations, the approved organizations and the hunters of their selection.

NATURAL RESOURCES DEPARTMENT[561](cont'd)

ITEM 6. Amend rule 561—12.5(483A), catchwords, as follows:

**561—12.5(483A) Request, review, and selection process for promotional special licenses.**

ITEM 7. Amend rule 561—12.6(483A), catchwords, as follows:

**561—12.6(483A) Consideration of requests for promotional special licenses.**

ITEM 8. Amend rule 561—12.7(483A), catchwords, as follows:

**561—12.7(483A) Ranking criteria for promotional special licenses.**

ITEM 9. Amend rule 561—12.8(483A), catchwords, as follows:

**561—12.8(483A) Services provided by recipients of promotional special licenses.**

ITEM 10. Amend rule 561—12.9(483A), catchwords, as follows:

**561—12.9(483A) License term for promotional special licenses.**

ITEM 11. Amend rule 561—12.10(483A), catchwords, as follows:

**561—12.10(483A) Reporting by recipients of promotional special licenses.**

ITEM 12. Amend rule 561—12.11(483A), catchwords, as follows:

**561—12.11(483A) Prohibitions for promotional special licenses.**

ITEM 13. Amend rule 561—12.12(483A), catchwords, as follows:

**561—12.12(483A) License costs for promotional special licenses.**

ITEM 14. Amend rule 561—12.13(483A), catchwords, as follows:

**561—12.13(483A) Hunter safety requirements for holders of promotional special licenses.**

ITEM 15. Adopt the following new rules 561—12.14(483A) to 561—12.18(483A):

**561—12.14(483A) Request, review, and selection processes for special licenses for nonresident disabled veterans or disabled members of the armed forces.**

**12.14(1) *Submission of requests.***

*a.* Individual hunters or approved organizations shall submit a request, or requests, to the coordinator.

(1) A request for a deer license must be on the form provided by the department and shall be submitted to the coordinator by August 1 prior to the season to be hunted.

(2) A request for a turkey license must be on the form provided by the department and shall be submitted to the coordinator at least 14 days prior to the season to be hunted.

(3) A request for a regular hunting license that includes the habitat fee must be on the form provided by the department and shall be submitted to the coordinator prior to the seasons to be hunted.

*b.* Applicants will not qualify for a deer or turkey license under this rule if they were issued a deer or turkey license under this rule the previous year. However, if there are unclaimed deer or turkey licenses under this rule, then the coordinator may keep a list of applicants who received licenses the previous year and who apply for the current year, and process those applicants' applications through an electronic, unbiased lottery system to determine the recipients of the unclaimed licenses.

*c.* Hunters awarded a deer license under this rule may purchase preference points for the regular nonresident deer license and shall not lose those preference points when awarded a deer license under this rule.

**12.14(2) *Review.*** After the established deadlines have passed, the coordinator shall review the applications for completeness and shall process the complete applications through an electronic,

## NATURAL RESOURCES DEPARTMENT[561](cont'd)

unbiased lottery system to determine the recipients of the special licenses. The coordinator shall exercise discretion and shall also consider the following:

*a.* Requests from an approved organization or hunter that has been found guilty of a game violation in Iowa or elsewhere shall not be considered for a special license.

*b.* If special licenses are unclaimed after the established deadlines, the coordinator may set new deadlines and inform participating approved organizations that licenses are still available. Applications shall be processed through an electronic, unbiased lottery system to determine the recipients.

**12.14(3) Selection and payment.** Upon notice of selection to receive a special license, the approved organization or hunter shall make payment in accordance with rule 561—12.17(483A) to the department through the coordinator. Payment must be made prior to the hunting season for which the license is valid.

**561—12.15(483A) License term for disabled veteran and military special licenses.** Special deer or turkey licenses issued under these rules shall be valid for only the applicable deer or turkey season immediately following allocation of the license.

**561—12.16(483A) Prohibitions for disabled veteran and military special licenses.** Photographs, videotapes or any other form of media resulting from the special licenses issued pursuant to this chapter shall not be used for political campaign purposes.

**561—12.17(483A) License costs for disabled veteran and military special licenses.** A nonresident who obtains a special license issued pursuant to this chapter shall pay the applicable fee as follows:

**12.17(1)** For a special nonresident deer hunting antlered or any sex deer license or a turkey hunting license, the fee described in Iowa Code section 483A.24(5) “*c.*”

**12.17(2)** For a special nonresident hunting license that includes the wildlife habitat fee, the fee described in Iowa Code section 483A.24(5) “*d.*”

**561—12.18(483A) Hunter safety requirements for disabled veterans and military hunters.** As provided in Iowa Code section 483A.24(5), a hunter education certificate is required for holders of special disabled veteran and military licenses issued pursuant to this chapter.

[Filed 1/8/16, effective 3/9/16]

[Published 2/3/16]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/3/16.

**ARC 2390C**

**PUBLIC HEALTH DEPARTMENT[641]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 139A.8, the Department of Public Health hereby amends Chapter 7, “Immunization and Immunization Education: Persons Attending Elementary or Secondary Schools, Licensed Child Care Centers or Institutions of Higher Education,” Iowa Administrative Code.

Chapter 7 describes the permitted use of the Immunization Registry Information System (IRIS) for immunization and health screenings and addresses the release of IRIS information to the Department and among health care providers. The amendments implement a refugee health screening module in IRIS. The amendments expand the definition of “health screening” to include refugee health screenings and allow refugee health screening information to be shared between the Department and health care providers.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2306C** on December 9, 2015. No public comments were received. These amendments are identical to those published under Notice of Intended Action.

The Department of Public Health adopted these amendments on January 13, 2016.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

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

These amendments are intended to implement Iowa Code chapter 139A.

These amendments will become effective March 9, 2016.

The following amendments are adopted.

ITEM 1. Amend rule **641—7.1(139A)**, definitions of “Health screening” and “Screening provider,” as follows:

“*Health screening*” means a vision screen, ~~or~~ dental screen, or refugee health screen.

“*Screening provider*” means an ophthalmologist, optometrist, pediatrician, ~~family practice~~ physician, free clinic, child care center, local public health department, public or accredited nonpublic school, community-based organization, advanced registered nurse practitioner (ARNP), physician assistant, dentist or dental hygienist.

ITEM 2. Adopt the following new subrule 7.12(5):

**7.12(5)** *Among the department and physicians, physician assistants, nurses, and certified medical assistants conducting refugee health screenings.* Refugee health screenings shall be disclosed only as indicated in this rule. Immunization or health screening information, including the patient’s last name, first name, date of birth, and demographic information; the vaccine(s) administered and the month, day, and year of administration; health screening results; and clinic source and location, shall be disclosed upon written or verbal request among the department, physicians, physician assistants, nurses, certified medical assistants, or screening providers to another health care provider or the department. Written or verbal permission from the parent, guardian or patient is not required to release this information.

[Filed 1/14/16, effective 3/9/16]

[Published 2/3/16]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/3/16.

**ARC 2391C**

**PUBLIC HEALTH DEPARTMENT[641]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby amends Chapter 132, “Emergency Medical Services—Service Program Authorization,” Iowa Administrative Code.

These amendments correct an oversight from previous rule makings and clarify that all authorized EMS services are required to have a driving policy and documented training for all responding members. The current rules address policy and training for ambulance service members only. These amendments will reduce confusion for all EMS service types and ensure that all EMS personnel have received basic training on appropriate emergency driving skills.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2304C** on December 9, 2015. No public comments were received. These amendments are identical to those published under Notice of Intended Action.

The Department of Public Health adopted these amendments on January 13, 2016.

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

These amendments are intended to implement Iowa Code sections 147A.4(1)“a” and 147A.4(2).

These amendments will become effective March 9, 2016.

The following amendments are adopted.

ITEM 1. Amend paragraph **132.8(1)“c”** as follows:

c. Provide as a minimum, on each ambulance call, the following staff:

(1) One currently certified EMT-B or EMT.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

(2) One currently licensed driver. The service shall document each driver's training in CPR (AED training not required), ~~in emergency driving techniques and in the use of the service's communications equipment. Training in emergency driving techniques shall include:~~

- ~~1. A review of Iowa laws regarding emergency vehicle operations.~~
- ~~2. A review of the service program's driving policy for first response vehicles, ambulances, rescue vehicles or personal vehicles of an emergency medical care provider responding as a member of the service. The policy shall include, at a minimum:~~
  - ~~● Frequency and content of driver's training requirements.~~
  - ~~● Criteria for response with lights or sirens or both.~~
  - ~~● Speed limits when responding with lights or sirens or both.~~
  - ~~● Procedure of approaching intersections with lights or sirens or both.~~
  - ~~● Notification process in the event of a motor vehicle collision involving a first response vehicle, ambulance, rescue vehicle or personal vehicle of an emergency medical care provider responding as a member of the service.~~
- ~~3. Behind-the-wheel driving of the service's first response vehicles, ambulances and rescue vehicles.~~

ITEM 2. Adopt the following **new** paragraph **132.8(3)"s"**:

s. Ensure that any member of the service driving a service's first response vehicle, ambulance, or rescue vehicle or a personal vehicle when responding as a member of the service has documented training in emergency driving techniques and in the use of the service's communications equipment. Training in emergency driving techniques shall include:

- (1) A review of Iowa laws regarding emergency vehicle operations.
- (2) A review of the service program's driving policy for first response vehicles, ambulances, rescue vehicles or personal vehicles when used by a service member responding as a member of the service. The policy shall include, at a minimum:
  1. Frequency and content of driver's training requirements.
  2. Criteria for response with lights or sirens or both.
  3. Speed limits when responding with lights or sirens or both.
  4. Procedure for approaching intersections with lights or sirens or both.
  5. Notification process in the event of a motor vehicle collision involving a first response vehicle, ambulance, rescue vehicle or personal vehicle when used by a service member responding as a member of the service.
- (3) Behind-the-wheel driving of the service's first response vehicles, ambulances and rescue vehicles.

[Filed 1/14/16, effective 3/9/16]

[Published 2/3/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/3/16.

**ARC 2393C**

**REVENUE DEPARTMENT[701]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 421.14, the Department of Revenue hereby amends Chapter 38, "Administration," Iowa Administrative Code.

The Iowa Code mandates that the Department follow the federal provisions in the determination of innocent spouse relief from state income tax liability. This amendment simplifies the process and criteria the Department considers in granting innocent spouse relief by referring directly to the relevant sections of the federal code and related regulations. Going forward, the Department will presume that a person granted innocent spouse relief for federal tax purposes also qualifies for relief for Iowa tax purposes. In

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

addition, there will be a rebuttable presumption that a person who has not been approved as an innocent spouse for federal tax purposes does not qualify as an innocent spouse for Iowa tax purposes.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2299C** on December 9, 2015. Public comments were allowed until 4:30 p.m. on December 29, 2015. No public comments were received on this rule making.

This amendment is identical to that published under Notice of Intended Action.

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 this amendment on January 13, 2016.

After analysis and review of this rule making, the Department finds that the changes to this rule are likely to have little or no impact on jobs. The amendment does not substantively change the existing rule but provides clarification and helps to streamline the Department's own internal processes.

This amendment is intended to implement Iowa Code section 422.21(7).

This amendment will become effective March 9, 2016.

The following amendment is adopted.

Amend rule 701—38.15(422) as follows:

**701—38.15(422) Relief of innocent spouse for substantial understatement of tax attributable to other spouse.** ~~A husband and wife Married taxpayers~~ are generally jointly and severally liable for the total tax, penalty, and interest from a joint return or from a return where ~~they~~ the spouses file separately on the combined return form. However, ~~effective for tax years beginning on or after January 1, 1994,~~ a married person who meets the criteria for an innocent spouse established in Section 6015 of the Internal Revenue Code may be relieved of liability for ~~a substantial~~ an understatement of tax that is attributable to grossly erroneous items of the other spouse. ~~For purposes of determining if an individual is an innocent spouse for state income tax purposes, the provisions in Section 6015 of the Internal Revenue Code will be followed as well as federal court cases, letter rulings, and revenue rulings which deal with innocent spouse. In addition, for tax years beginning on or after January 1, 2002, the provisions of Sections 6015(c) and 6015(f) of the Internal Revenue Code regarding relief for separation of liabilities and equitable relief, respectively, are applicable for Iowa income tax purposes. The following are the criteria that must be considered for purposes of determining if an individual is an innocent spouse for Iowa income tax purposes:~~

~~1. Understatement of tax attributable to grossly erroneous items of the other spouse. An understatement of the tax is the excess of the tax required to be shown over the tax actually shown on the return. The understatement must be entirely attributable to grossly erroneous items of one spouse in order for the other spouse to be eligible for status as an innocent spouse. As an innocent spouse, the individual will not be liable for the substantial understatement of tax of the other spouse. The tax liability attributable to the understatement is computed by adding penalties and interest that accrued by the date of the deficiency notice. Grossly erroneous items may include any omission from gross income such as income from embezzled funds. Grossly erroneous items may also include deductions or Iowa tax credits that are without factual or legal foundation.~~

~~2. **38.15(1) Filing status for return with an innocent spouse.** For state income tax purposes, a married taxpayer filing a return with a spouse can qualify as an innocent spouse only if the taxpayers file a joint return or file separately on the combined return form. A married taxpayer who files a separate state return that has been accepted by the state will not be eligible for innocent spouse status.~~

~~**38.15(2) Scope of relief for Iowa income tax purposes.** An understatement of the tax is the excess of the tax required to be shown over the tax actually shown on the return. An erroneous item is any item resulting in an understatement or deficiency in Iowa taxes to the extent that the item is omitted from, or improperly reported or characterized on, an Iowa tax return, including Iowa deductions and tax credits that would not be included on a federal return.~~

~~3. Innocent spouse must establish lack of knowledge of other spouse's substantial understatement. Innocent spouse relief applies only if the individual claiming to be an innocent spouse can establish that~~

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

~~in signing the state return, the individual did not know and had no reason to know that there was a substantial understatement of tax. The innocent spouse's lack of knowledge must exist until the time the return is filed and not just until the end of the year (or period) covered by the return. The U.S. Tax Court has provided that the standard for determining if a taxpayer had reason to know of an omission is whether a reasonable person under the particular circumstances at the time of signing the return could be expected to know of the omission.~~

~~In many cases in which innocent spouse relief is sought, the following factors play a role: business background or education of person claiming innocent spouse relief, involvement in family financial affairs by the person claiming innocent spouse relief, involvement in the family business or the transaction giving rise to the understatement by the person claiming innocent spouse relief, whether or not there were lavish or unusual expenditures in the family or increase in standard of living of the family and knowledge of embezzlement activities of the other spouse.~~

~~4. Whether or not it would be equitable to hold the innocent spouse for the substantial understatement. Innocent spouse relief applies only if, taking into account all facts and circumstances, it would be inequitable to hold the claimed innocent spouse liable for the deficiency in tax for the taxable year attributable to the substantial understatement. Factors taken into account in determining whether it is inequitable to hold a spouse liable for a tax deficiency include whether the spouse seeking relief has been deserted, divorced, separated, or widowed or has been the subject of abuse or financial control by the other spouse. See Internal Revenue Service Notice 2012-8.~~

~~Another important factor in determining equitable treatment for the person claiming innocent spouse relief is whether the person received a benefit attributable to the substantial understatement of taxes. The fact that the spouse received a benefit in the nature of "ordinary support" does not support a finding of significant benefit to deny the spouse relief. In addition, ordinary family support may include maintaining an affluent lifestyle if the standard of living is not enhanced by the tax understatement.~~

~~Where the taxpayer participated in the financial affairs of the other spouse and enjoyed the benefits from the activities of the other spouse, innocent spouse relief will not be granted.~~

**38.15(3) Presumption and burden of proof when requesting innocent spouse relief.**

a. Presumption. The department shall presume that a final determination letter or other document issued by the Internal Revenue Service approving a request for innocent spouse relief for the relevant tax years shows that the innocent spouse granted relief by that document qualifies for innocent spouse relief for Iowa income tax purposes for those tax years. If the person seeking innocent spouse relief does not provide the department with a final determination letter or other document issued by the Internal Revenue Service approving a request for innocent spouse relief within the time frame set forth in subrule 38.15(4), the department shall presume that the person seeking innocent spouse relief does not meet the criteria to qualify for innocent spouse relief for Iowa income tax purposes and shall deny the request. The burden is on the person seeking innocent spouse relief to rebut this presumption with other evidence.

b. Request without Internal Revenue Service approval. If the department denies a claim for innocent spouse relief, the person seeking innocent spouse relief may protest the department's determination under 701—Chapter 7. The department will evaluate the protest by applying the criteria set forth in Section 6015 of the Internal Revenue Code and the related regulations. The department will defer to federal court cases, letter rulings, and revenue rulings in interpreting Section 6015 of the Internal Revenue Code and the related regulations. The provisions of Sections 6015(c) and 6015(f) of the Internal Revenue Code regarding relief for separation of liabilities and equitable relief, respectively, are applicable for Iowa income tax purposes for tax years beginning on or after January 1, 2002. The burden is on the person seeking innocent spouse relief to show that the person meets the federal criteria for innocent spouse relief.

5. 38.15(4) Time period for requesting innocent spouse relief. For tax periods beginning on or after January 1, 2004, innocent spouse relief must be requested within two years after the date the department initiates collection action ~~on an income tax deficiency or assessment~~ against the person claiming innocent spouse relief. However, an extended time period to request ~~innocent spouse equitable relief for innocent~~

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spouses under Section 6015(f) of the Internal Revenue Code can be granted under the provisions of Internal Revenue Service Notice 2011-70, which became effective July 25, 2011.

This rule is intended to implement Iowa Code section 422.21 as amended by 2002 Iowa Acts, House File 2116.

[Filed 1/15/16, effective 3/9/16]

[Published 2/3/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/3/16.

**ARC 2378C**

## **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 1, "Administration," Chapter 11, "Attorney Fee Contracts," Chapter 12, "Claims for Indigent Defense Services," and Chapter 13, "Claims for Other Professional Services," Iowa Administrative Code.

These amendments establish measures to promote fairness in the review of claims of contract attorneys and other professionals who render services on behalf of indigent clients. These measures include:

1. Adding an "undue burden" exception to the enforcement of the 45-day time limit for the submission of attorney fee claims;
2. Changing the current rule providing that any attorney fees "shall be denied" in the event of noncompliance with the State Public Defender's attorney designation to read that attorney fees "may be denied, in whole or in part" in the event of noncompliance;
3. Expanding the circumstances in which substitute counsel will be permitted;
4. Increasing the threshold amount before a parking receipt is required for reimbursement to attorneys;
5. Allowing court interpreters' claims for payment to be timely if submitted within 45 days of the court order approving payment;
6. Excluding weekends and state holidays from the calculation of the 24-hour prior notice required before a deposition can be canceled without cancellation fees to the court reporter;
7. Allowing and requiring additional process for attorney claimants under certain circumstances; and
8. Allowing the State Public Defender additional discretion in determining whether minimum qualification requirements are sufficient for an attorney to contract to accept court appointments in felony cases.

The amendments also make other technical and substantive revisions to promote fairness in the claims review process. In addition, the amendments conform the types of misdemeanor cases for indigent persons to whom the state public defender system provides representation to the Iowa Supreme Court decision in *State v. Young*, 863 N.W.2d 249 (Iowa 2015) and extend the purposes for which evaluations may be court ordered to conform with the Iowa Supreme Court decision in *State v. Lyle*, 854 N.W. 2d 378 (Iowa 2014).

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 11, 2015, as **ARC 2233C**. Comments were received from the Iowa State Bar Association, the Iowa Association of Justice, the Iowa Court Reporters Association, and others.

One technical correction was made to the adopted amendments. In Item 1, the words "or ordinance" were added in paragraph 1.3(2)"b" to conform to existing practice. In addition, an agreement error was corrected in paragraph 13.2(2)"d" in Item 12.

The Agency does not believe that these amendments pose 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.

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These amendments are intended to implement Iowa Code chapters 13B and 815.

These amendments shall become effective March 9, 2016.

The following amendments are adopted.

ITEM 1. Amend paragraph **1.3(2)“b”** as follows:

*b.* Misdemeanors, if ~~there exists a potential for jail sentence~~ an accused faces the possibility of imprisonment under the applicable criminal statute or ordinance;

ITEM 2. Amend subrule 11.3(4) as follows:

**11.3(4) Class A and B felonies.** To be eligible to contract to represent indigent persons in Class A and Class B felony cases at the trial level, an attorney must:

*a.* Have practiced criminal law for four years or more in any state or federal court;  
*b.* Have tried at least five criminal jury trials to completion either as lead counsel or as a pro bono second attorney in a criminal jury trial if the service as pro bono second attorney is approved in advance for credit under this rule by the state public defender;

*c.* Participate in five hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract and in the year prior to entering into the contract; and

*d.* Provide the names of at least three judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent indigent persons in Class A and Class B felony cases.

If an attorney satisfies the requirements for Class C and Class D felonies, the attorney may contract to serve as the second attorney representing an indigent person in a Class A felony in a case where the first appointed attorney meets these requirements. An attorney who does not meet all the requirements of this subrule ~~but who has previously tried a Class A or Class B felony case to completion as lead counsel~~ may provide the state public defender additional detail regarding the attorney's experience and qualifications and the circumstances preventing the attorney from meeting all the requirements and may be approved for contracting by the state public defender at the state public defender's sole discretion.

ITEM 3. Amend subrule 11.3(5) as follows:

**11.3(5) Class C and D felonies.** To be eligible to contract to represent indigent persons in Class C and Class D felony cases at the trial level, an attorney must:

*a.* Have practiced criminal law for two years or more in any state or federal court;  
*b.* Have tried at least one criminal jury trial to completion either as lead counsel or as a pro bono second attorney in a criminal jury trial if the service as pro bono second attorney is approved in advance for credit under this rule by the state public defender;

*c.* Participate in five hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract and in the year prior to entering into the contract; and

*d.* Provide the names of at least three judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent indigent persons in felony cases.

An attorney who has not met all requirements except for the jury trial requirement set forth in paragraph 11.3(5)“b” may provide the state public defender additional detail regarding the attorney's experience and qualifications and the circumstances preventing the attorney from ~~obtaining jury trial experience~~ meeting all the requirements and may be approved for contracting by the state public defender at the state public defender's sole discretion.

ITEM 4. Amend paragraph **11.7(2)“c”** as follows:

*c. Improper billing practices.* The state public defender may notify the attorney that the state public defender is considering the exercise of the state public defender's contract right to terminate the contract for improper billing practices. The notification shall explain the basis for the state public defender's concern and provide the attorney at least 14 days to provide a response. After consideration of the response, the state public defender may terminate the contract for improper billing practices if the state public defender determines that the attorney has engaged in a pattern of willful, intentional, reckless, or negligent submission of false, abusive, or unreasonably excessive fee claims. An attorney

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may seek reconsideration of the state public defender's decision to terminate a contract for improper billing practices in the manner described in rule 493—11.9(13B).

ITEM 5. Amend subrule 11.9(1) as follows:

**11.9(1) *Written notice.*** A request for reconsideration is perfected by giving written notice of the request for reconsideration to the state public defender within ten business days of the date of mailing of the notice of denial of an initial or renewal contract, or ~~the~~ notice of termination ~~following issuance of a notice of default.~~ A request for reconsideration must be in writing and must specify the factual or legal errors the attorney contends were made by the state public defender. The attorney may provide such additional information, explanation or documentation as the attorney believes would be relevant to the reconsideration decision. The request for reconsideration is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service on the state public defender.

ITEM 6. Amend subrule 11.9(2) as follows:

**11.9(2) *Exhaustion of administrative remedies.*** A request for reconsideration of the state public defender's decision to deny or terminate a contract ~~for cause~~ is an administrative prerequisite to seeking any form of judicial review pursuant to Iowa Code chapter 17A.

ITEM 7. Amend subrule 12.2(3) as follows:

**12.2(3) *Timely claims required.*** Claims submitted prior to the date of service shall be returned to the claimant unpaid and may be resubmitted to the state public defender after the date of service. Claims that are not submitted within 45 days of the date of service as defined in this subrule ~~shall~~ may be denied, in whole or in part, as untimely unless the delay in submitting the claim is excused by paragraph 12.2(3) "*f.*" Attorney fees and expenses that are submitted on a claim denied as untimely under this subrule may be resubmitted on a subsequent claim that is timely submitted with respect to a subsequent date of service in the same case. For purposes of this subrule, a probation, parole, or contempt proceeding is not the "same case" as the underlying proceeding.

*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 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 ~~or the issuance of a warrant.~~ 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.

*b. Juvenile claims.* For juvenile claims, "date of service" means the date of filing of an order as a result of the dispositional hearing or most recent postdispositional hearing that occurs while the client is still an active party in the case, the date on which the client ceased to be a party, the date of a court order authorizing the attorney's withdrawal from a case prior to the filing of the final ruling with respect to the client, the date jurisdiction is waived to adult court, the date on which the venue is changed, the date of dismissal, or the file-stamped date of a procedendo resulting from a petition on appeal. The date of a family drug court meeting, family team meeting, staffing, or foster care review board hearing is not a date of service.

*c. Appellate claims.* For appellate claims, "date of service" means the date on which the case was dismissed, the date of a court order authorizing the attorney's withdrawal prior to the filing of the proof brief, the date on which the proof brief was filed, or the date on which the procedendo was issued.

*d. Notices of action and returned claims.* For claims of any type that are filed as a result of a notice of action letter or a returned fee claim letter, "date of service" means the date of the notice of action letter or returned fee claim letter. But a claim that is denied as untimely does not become timely merely because it was resubmitted within 45 days of a returned fee claim letter. A timely claim returned to the attorney for additional information shall continue to be deemed timely only if resubmitted with the required information within 45 days of being returned by the state public defender.

*e. Court orders.* For claims of any type that are filed as a result of a court order after hearing for review of the fee claim, "date of service" means the file-stamped date of the order.

STATE PUBLIC DEFENDER[493](cont'd)

*f. Exceptions to the 45-day rule.* The state public defender may in the state public defender's sole discretion approve a claim that was not submitted within 45 days of the date of service only if the delay in submitting the claim was caused by one of the following circumstances:

- (1) The death of the attorney;
- (2) The death of the spouse of the attorney, a child of the attorney, or an employee of the attorney who was responsible for assisting in the preparation of the attorney's fee claims;
- (3) A serious illness, injury, or other medical condition that prevents the attorney from working for more than 3 consecutive days and occurs in the last 5 days before the expiration of the 45-day period for timely claims;
- (4) The attorney's need to care for the attorney's spouse or child with a serious illness, injury, or other medical condition that prevents the spouse or child from working, attending school, or performing other regular daily activities for more than 3 consecutive days and occurs in the last 5 days before the expiration of the 45-day period for timely claims.

(5) Other circumstances in which the state public defender determines, in the sole discretion of the state public defender, that enforcement of the 45-day rule would impose an undue burden and that payment of the claim should in fairness be made, in whole or in part. The state public defender, in the exercise of such discretion, may consider factors including, but not limited to:

1. The extent to which the 45-day rule was violated;
2. The justification provided by the attorney;
3. The attorney's claim history;
4. The extent of prejudice likely to be experienced by the attorney, the state public defender, and any party to the proceeding, including the attorney's client.

Any claim submitted pursuant to subparagraph (1) must be submitted within 45 days of the death of the attorney. Any claim submitted pursuant to subparagraph (2) must be submitted within 30 days of the death that caused the delay. Any claim submitted pursuant to subparagraph (3) or (4) must be submitted within 15 days of the end of the illness, injury, or medical condition that caused the delay. An attorney claiming an exception to the 45-day rule shall submit with the claim a letter explaining the applicable exception and written documentation supporting the exception.

ITEM 8. Amend subrule 12.2(4) as follows:

**12.2(4) *Valid appointment required.*** Claims for compensation from an attorney appointed as counsel or guardian ad litem may be denied if the attorney was appointed contrary to Iowa Code section 814.11 or 815.10. Claims for which court-appointed counsel at state expense is not statutorily authorized or which are not payable from the indigent defense fund created by Iowa Code section 815.11 shall be denied.

*a. Appellate appointments.* Claims for compensation from an attorney whose appointment as counsel or guardian ad litem at the appellate level does not comply with Iowa Code section 814.11 ~~shall~~ may be denied in whole or in part.

*b. Trial-level designations.* Claims by an attorney whose appointment in a case as counsel or guardian ad litem at the trial level was made on or after July 1, 2009, ~~shall may~~ be denied in whole or in part if the state public defender filed a designation effective at the time of the appointment designating a local public defender, nonprofit corporation, or attorney to represent indigent persons in that type of case in the county in which the case was filed, unless the appointment order and any supporting documentation submitted with the claim demonstrate that:

- (1) The state public defender's designee and any successor designee have withdrawn from the case or have been offered and declined to take the case; or
- (2) The state public defender's designee and any successor designee would have withdrawn from or would have declined to take the case had the appointment been offered.

*c. Trial-level contract attorney preference.* Claims by an attorney whose appointment in a case as counsel or guardian ad litem at the trial level was made on or after February 1, 2012, ~~shall may~~ be denied in whole or in part unless:

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(1) At the time of the appointment, the attorney had a contract with the state public defender to represent indigent persons in that specific type of case and that county in which the action was pending; or

(2) The appointment order includes a specific finding that no attorney with a contract to represent indigent persons in that specific type of case and that county in which the action was pending is available or a finding that the state public defender was consulted and consented to the appointment; or

(3) After the appointment, the attorney entered into a contract with the state public defender, or amended the attorney's existing contract, to represent indigent persons in the specific type of case and the county in which the action was pending, in which case only the portion of the claim for the services performed prior to the effective date of the contract shall be denied.

ITEM 9. Amend subrule 12.5(5) as follows:

**12.5(5) Substitute counsel time.** Work performed by substitute counsel on behalf of an attorney appointed as counsel or guardian ad litem is payable only as provided for under this subrule. The appointed attorney is at all times personally responsible for the representation of the client and must ensure that substitute counsel is qualified to perform the work directed and that the client is effectively represented at all times. The appointed attorney is responsible for compensating substitute counsel. Claims for payment directly by substitute counsel or claims for payment by the appointed attorney that are inconsistent with this subrule shall be denied.

*a. Court time.* An attorney appointed as counsel or guardian ad litem must handle all court appearances unless the appointed attorney has an ~~unavoidable~~ a scheduling conflict, an illness, or other personal emergency, in which case the matter may be covered by substitute counsel. ~~Unless substitute counsel appears for the sole purpose of alerting the court of the appointed attorney's unavailability and requesting a continuance, substitute counsel may not cover for the appointed attorney at a trial in any criminal, juvenile, or postconviction relief case, or in any other hearing in which the court determines that the appointed attorney's personal participation is required.~~ Substitute counsel may never cover for oral arguments in appellate cases.

*b. Out-of-court time.* Substitute counsel ~~must not~~ may perform out-of-court legal services, except that ~~substitute counsel may perform out-of-court legal services to prepare for handling a payable court appearance, and in a juvenile case, substitute counsel may attend a department of human services staffing or family team meeting if appointed counsel has an unavoidable scheduling conflict, illness, or other personal emergency.~~ Time time spent by substitute counsel that duplicates work performed by the appointed attorney and time spent receiving direction from or conferencing with the appointed attorney is are not payable.

*c. Exceptional circumstances.* Substitute counsel may be used in situations that would otherwise be impermissible if the state public defender concludes that use of such substitute counsel would be in the best interest of the client and the administration of justice and provides prior written consent to the appointed attorney.

*d. Supervisory time.* Time spent by the appointed attorney directing, reviewing, or correcting the work of substitute counsel is not payable.

*e. Qualification of substitute counsel.* Unless the state public defender has given prior written consent to use the attorney as substitute counsel, substitute counsel must have an active contract with the state public defender to perform indigent defense services, although the contract need not cover the type of case or county of the case for which the claim is submitted.

*f. Inapplicability to co-counsel in Class A felonies.* The previous paragraphs of this subrule do not apply to a co-counsel who is separately appointed in a Class A felony. Each separately appointed co-counsel in a Class A felony shall submit a separate indigent defense fee claim that claims only the work actually performed by the appointed attorney submitting the claim. The use of substitute counsel is not permissible in a Class A felony in which co-counsel has been separately appointed.

ITEM 10. Amend paragraph **12.8(1)“e”** as follows:

*e.* Ordinary and necessary postage, toll calls, collect calls, and parking for the actual cost of these expenses. Toll and collect calls will be reimbursed at 10 cents per minute or the actual cost. A receipt

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for the actual cost of the toll or collect call must be attached to the claim form. A statement from a correctional facility or jail detailing a standard rate for such calls shall constitute a receipt for purposes of this paragraph. For parking expenses in excess of \$2 ~~\$5~~, a receipt must be attached to the claim form. Claims for the cost of a parking ticket shall be denied. Unless a receipt is provided, any postage, toll calls, collect calls, or parking expenses shall be separately itemized on the itemization of services, specifying the date on which the expense was incurred and, if it is not otherwise clear from the itemization, the purpose of the expense.

ITEM 11. Amend paragraph **13.2(2)“c”** as follows:

c. One copy of each of the following documents is attached to the claim:

(1) The application and order appointing the interpreter. This appointment is presumed to continue until the conclusion of the matter, unless limited by the court or modified by a subsequent order.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application for the appointment of the interpreter, makes one of the following specific findings:

1. The client is indigent, or

2. Although the client is able to employ counsel, funds are not available to the client to pay for necessary interpreter services.

(3) An itemization of the interpreter's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date including the time services began and ended on each day, and the manner in which the amount of the claim for services was calculated. With regard to expenses and services, the following shall apply:

1. Receipts for parking expenses are ~~required for actual costs of \$2 or more per day~~ reimbursed pursuant to the Judicial Branch Administrative Directive on Court Interpreter and Translator Compensation Policies.

2. Claims for translating documents will be paid ~~by the hour, not by the word or line~~ pursuant to the Judicial Branch Administrative Directive on Court Interpreter and Translator Compensation Policies.

(4) A court order setting the maximum dollar amount of the claim.

ITEM 12. Amend paragraph **13.2(2)“d”** as follows:

d. Timely claims required. Claims for services are timely if, within 45 days of completion of services, either the claim is submitted to the state public defender for payment within 45 days of completion of services or the Fee Itemization Form and Court Order Approving Claim for Court Interpreter Services are filed with the clerk of court in the case. Claims that are not timely submitted shall be denied.

ITEM 13. Amend subparagraph **13.2(4)“d”(6)** as follows:

(6) Cancellation fees. No cancellation fees will be paid as long as the certified shorthand reporter is given notice of cancellation at least 24 hours before the time scheduled for a deposition. Weekends and state holidays shall not be included when calculating the 24-hour prior notice of cancellation contained in this subparagraph. If the deposition is canceled with less than 24 hours' notice, a fee for two hours or the actual time that the certified shorthand reporter is present at the site of the deposition including setup and takedown of equipment, whichever is greater, is payable at the rate set forth in subparagraph 13.2(4)“d”(1). A certified shorthand reporter is deemed to have been given notice of cancellation when an attorney or representative of the attorney delivers notice of a cancellation to the e-mail address provided by the certified shorthand reporter or leaves a message on voicemail or with a representative of the certified shorthand reporter at the telephone number provided by the certified shorthand reporter, not when the certified shorthand reporter actually hears or reads the message. No cancellation fee will be paid related to the transcription of an audio or video recording.

ITEM 14. Amend subrule 13.2(5) as follows:

**13.2(5) Claims for court-ordered evaluations.** The state public defender shall review, approve and forward for payment claims for necessary and reasonable evaluations requested by an appointed attorney only if the purpose of the evaluation is to establish a defense, ~~or~~ to determine whether an indigent is

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competent to stand trial, or to evaluate a defendant at sentencing or resentencing who has been charged as an adult for a felony alleged to have been committed while a juvenile, if the offense has a potential mandatory minimum sentence of imprisonment, and not for any other purpose such as nor in any other circumstance for sentencing or placement. Additionally, a claim for a court-ordered evaluation will be approved only if the following conditions are met:

a. The person performing the evaluation submits a signed original and one copy of a claim containing the following information:

- (1) The case name, case number and county in which the action is pending.
- (2) The name of the attorney for whom the services were provided.
- (3) The date on which services commenced.
- (4) The date on which services ended.
- (5) The total number of hours claimed.
- (6) The total amount of the claim.
- (7) The claimant's name, address, social security number or federal tax identification number, and telephone number.

b. Court approval to conduct the evaluation was obtained before any expenses for the evaluation were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to conduct the evaluation. This order must specify that the purpose of the evaluation is ~~either to establish a defense to a pending charge or to determine whether an indigent is competent to stand trial~~ for a permissible purpose under this subrule.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for the evaluation.

(3) An itemization of the evaluator's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order authorizing the evaluation sets a limit for the claim, this court order is unnecessary.

(5) If the evaluator charges a "minimum" amount for services based on a specific time, a certification by the evaluator that no other services have been performed or charges made by the evaluator for any portion of that specific time.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/3/16.

**ARC 2392C**

## **TRANSPORTATION DEPARTMENT[761]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 306.6A, 307.12 and 307A.2, the Iowa Department of Transportation, on January 14, 2016, adopted amendments to Chapter 101, "Farm-to-Market Review Board," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the November 25, 2015, Iowa Administrative Bulletin as **ARC 2248C**.

The amendments update the years associated with the Farm-to-Market Review Board's rotation cycle, correct the location of where the meeting agenda is posted and remove outdated language.

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.

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

These amendments are identical to those published under Notice of Intended Action. After analysis and review of this rule making, no impact on jobs has been found. These amendments are intended to implement Iowa Code sections 306.6 and 306.6A. These amendments will become effective March 9, 2016.

Rule-making actions:

ITEM 1. Amend subrule 101.3(1) as follows:

**101.3(1)** The farm-to-market review board shall be composed of 12 county engineers selected by the Iowa county engineers association. Two members shall be selected from each district to serve staggered terms. After the first complete term rotation as shown below, the members shall serve six-year terms. Rotations shall be staggered so that no more than one-sixth of the membership is rotated off the board in any one year. The rotation of board members shall further provide that two members from one district will not be rotated off the board in the same year, and that their rotations will be varied by three years. ~~Initial board~~ Board rotation shall be as follows and shall be extended in future years in the same pattern:

Year		Rotation
<del>2000</del> <u>2015</u>	District 1 Representative A	District 4 Representative A
<del>2001</del> <u>2016</u>	District 2 Representative A	District 5 Representative A
<del>2002</del> <u>2017</u>	District 3 Representative A	District 6 Representative A
<del>2003</del> <u>2018</u>	District 1 Representative B	District 4 Representative B
<del>2004</del> <u>2019</u>	District 2 Representative B	District 5 Representative B
<del>2005</del> <u>2020</u>	District 3 Representative B	District 6 Representative B

ITEM 2. Amend subrule 101.4(2) as follows:

**101.4(2)** The farm-to-market review board is required to follow the provisions of Iowa Code chapter 21 with regard to open meetings. The chair shall post a meeting agenda on the "~~Service Bureau Bulletin Board~~" Iowa County Engineers Association Service Bureau Web site and send copies of the agenda to all counties.

ITEM 3. Amend subrule 101.4(3) as follows:

**101.4(3)** Minutes of each meeting shall be kept; the chair shall be responsible for the minutes. Meetings may be ~~tape~~ recorded to facilitate the preparation of meeting minutes, but any ~~tapes~~ recordings made shall not be retained after the minutes have been completed.

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