



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]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and other items required by statute to be published in the Bulletin.

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

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CITATION of Administrative Rules

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

This citation format applies only to external citations to the Iowa Administrative Code or Iowa Administrative Bulletin and does not apply to citations within the Iowa Administrative Code or Iowa Administrative Bulletin.

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)
441 IAC 79.1(1)“a”(1)“1”	(Numbered paragraph)

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 2020

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
19	Friday, February 21, 2020	March 11, 2020
20	Friday, March 6, 2020	March 25, 2020
21	Friday, March 20, 2020	April 8, 2020

PLEASE NOTE:

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

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

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

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

ENVIRONMENTAL PROTECTION COMMISSION[567]

Wastewater and water supply delegated construction permitting authority; water use permitting, ch 9, 50.4(2)“b”(2), 50.7(3)“a” IAB 2/12/20 ARC 4919C	DNR Conference Room 2N Wallace State Office Bldg. Des Moines, Iowa	March 4, 2020 10 to 11 a.m.
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IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Contribution rates; retirement benefits; disability; death benefits and beneficiaries; recognition of agents, amendments to chs 4, 11 to 14, 20 IAB 2/12/20 ARC 4925C	IPERS 7401 Register Dr. Des Moines, Iowa	March 5, 2020 9 to 11 a.m.
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LABOR SERVICES DIVISION[875]

Hazardous occupations for youth; amusement ride operating permits; asbestos abatement; definitions of “construction,” “mixed martial arts”; address and statutory language updates, amendments to chs 1, 4, 32, 38, 61, 150, 155, 156, 177 IAB 2/12/20 ARC 4894C	150 Des Moines St. Des Moines, Iowa	March 4, 2020 9 a.m. (If requested)
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Federal occupational safety and health standards for general industry—adoption by reference, 10.20 IAB 1/29/20 ARC 4882C	150 Des Moines St. Des Moines, Iowa	February 19, 2020 9 a.m. (If requested)
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NATURAL RESOURCE COMMISSION[571]

Fish kill counting and assessment of restitution—use of American Fisheries Society (AFS) special publication 35, 113.2 IAB 2/12/20 ARC 4921C	Conference Room 4E Wallace State Office Building Des Moines, Iowa	March 5, 2020 12 noon to 2 p.m.
	Spirit Lake Hatchery Conference Room 122 252nd Ave. Spirit Lake, Iowa	March 5, 2020 12 noon to 2 p.m.
	Cold Springs District Office Conference Room 57744 Lewis Rd. Lewis, Iowa	March 5, 2020 12 noon to 2 p.m.
	Manchester Hatchery Conference Room 22693 205th Ave. Manchester, Iowa	March 5, 2020 12 noon to 2 p.m.
	Lake Darling District Office Conference Room 110 Lake Darling Rd. Brighton, Iowa	March 5, 2020 12 noon to 2 p.m.

NATURAL RESOURCE COMMISSION[571](cont'd)

Designation of “no anchoring” and “no boating” zoned areas on Rathbun Lake, 40.5 IAB 2/12/20 ARC 4918C	Conference Room 3 East and West Wallace State Office Bldg. Des Moines, Iowa	March 3, 2020 12 noon to 1 p.m.
Virtual fishing tournaments, 44.2, 44.5(4), 44.8 IAB 2/12/20 ARC 4924C	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	March 5, 2020 12 noon to 2 p.m.
	Spirit Lake Hatchery Conference Room 122 252nd Ave. Spirit Lake, Iowa	March 5, 2020 12 noon to 2 p.m.
	Cold Springs District Office Conference Room 57744 Lewis Rd. Lewis, Iowa	March 5, 2020 12 noon to 2 p.m.
	Lake Darling District Office Conference Room 110 Lake Darling Rd. Brighton, Iowa	March 5, 2020 12 noon to 2 p.m.
	Manchester Hatchery Conference Room 22693 205th Ave. Manchester, Iowa	March 5, 2020 12 noon to 2 p.m.
Permits for application of chemicals to public waters for removal of aquatic plants for navigational and recreational purposes, 54.5(1) IAB 2/12/20 ARC 4920C	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	March 5, 2020 12 noon to 2 p.m.
	Cold Springs District Office Conference Room 57744 Lewis Rd. Lewis, Iowa	March 5, 2020 12 noon to 2 p.m.
	Manchester Hatchery Conference Room 22693 205th Ave. Manchester, Iowa	March 5, 2020 12 noon to 2 p.m.
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NATURAL RESOURCE COMMISSION[571](cont'd)

Fishing regulations, 81.2 IAB 2/12/20 ARC 4922C	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	March 5, 2020 12 noon to 2 p.m.
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Waterfowl and coot hunting seasons and zones, 91.1, 91.3 IAB 2/12/20 ARC 4914C	Conference Room 5E Wallace State Office Bldg. Des Moines, Iowa	March 3, 2020 12 noon to 1 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Physical therapists and physical therapist assistants, occupational therapists and occupational therapy assistants—license reactivation, 200.15(3), 206.11(3) IAB 2/12/20 ARC 4917C	Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	March 4, 2020 9:30 to 10 a.m.
Podiatrists—mandatory child abuse and dependent adult abuse identification and reporting training, 220.9(4) IAB 1/29/20 ARC 4883C	Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	February 18, 2020 8 to 8:30 a.m.
Speech pathologists and audiologists—mandatory child abuse and dependent adult abuse identification and reporting training, 300.11(4) IAB 2/12/20 ARC 4913C	Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	March 4, 2020 9 to 9:30 a.m.

REVENUE DEPARTMENT[701]

Sales and use tax exemption for grain bins, 226.19(4), 226.20 IAB 2/12/20 ARC 4915C	Room 430, Fourth Floor Hoover State Office Bldg. Des Moines, Iowa	March 3, 2020 9 to 10 a.m.
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TRANSPORTATION DEPARTMENT[761]

Federal motor carrier safety and hazardous materials regulations—adoption by reference, 520.1, 520.5, 529.1, 607.10(1)“c” IAB 2/12/20 ARC 4895C	Department of Transportation Motor Vehicle Division 6310 SE Convenience Blvd. Ankeny, Iowa	March 5, 2020 10 a.m. (If requested)
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The following list will be updated as changes occur.

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

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

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ARC 4919C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

**Proposing rule making related to water permitting
and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 9, “Delegation of Construction Permitting Authority,” to adopt a new Chapter 9 with the same title, and to amend Chapter 50, “Scope of Division—Definitions—Forms—Rules of Practice,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 455B.105, 455B.173, and 455B.265.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 17A.3, 455B.105, 455B.171, 455B.172, 455B.173 to 455B.176, 455B.177 to 455B.183, 455B.184 to 455B.187, 455B.261, 455B.262, 455B.264, 455B.265, 455B.266 to 455B.274, and 455B.278.

Purpose and Summary

The proposed amendments conform the rules with 2019 Iowa Acts, Senate File 409, signed by Governor Reynolds on May 9, 2019. Proposed changes to Chapter 9 provide wastewater and water supply delegated construction permitting authority to rural water systems organized under Iowa Code chapter 357A or 504. The delegated authority is for the permitting of wastewater sewer extensions and water supply water main extensions. Chapter 9 has not been updated since 1985, and other rule making changes include updating forms, updating references to construction standards, and establishing criteria for rescission and revocation of delegated permitting authority.

There are two proposed amendments to Chapter 50. The first amendment changes the Iowa Department of Natural Resources’ (Department’s) annual permit fee budgeting criteria to evaluate expenses in past and succeeding years. The second proposed amendment changes the requirement for a second public notice for water use permit issuance at community public water supplies, allowing for the use of alternate methods of publishing the notice.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 5, 2020. Comments should be directed to:

Diane Moles
Iowa Department of Natural Resources
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Fax: 515.725.8202
Email: diane.moles@dnr.iowa.gov

Public Hearing

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

March 4, 2020
10 to 11 a.m.

DNR Conference Room 2N
Wallace State Office Building
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Rescind 567—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9

DELEGATION OF CONSTRUCTION PERMITTING AUTHORITY

567—9.1(455B) Scope. Iowa Code section 455B.183 delegates construction permitting authority over certain sewer and water main extensions to qualified local public works departments and rural water systems organized under Iowa Code chapter 357A or 504. This chapter describes the manner and criteria under which the department oversees this delegated authority.

567—9.2(455B,17A) Forms. The following forms are to be used by the local public works department or rural water system implementing this authority:

542-1001: Application for delegating permitting authority to local public works departments

542-1002: Statement of engineer's qualifications

542-1003: Review checklist for water main extensions at local public works departments

542-1004: Review checklist for sewer extensions

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

- 542-1005: Quarterly report for permitting authority
- 542-1057: Application for delegating permitting authority to rural water systems
- 542-1058: Review checklist for water main extensions at rural water systems

567—9.3(455B) Procedures. A local public works department or rural water system incorporated under Iowa Code chapter 357A or 504 exercising permitting authority for sewer or water supply distribution system extensions under Iowa Code section 455B.183 shall notify the director in writing prior to the first permit issuance, using Form 542-1001 or 542-1057, as applicable, and 542-1002. Additional information may be requested by the director.

567—9.4(455B) Criteria for permitting authority at local public works departments. The requirements for permitting authority at local public works departments are as follows:

9.4(1) Permitting authority under this rule applies only to extensions which:

- a.* Primarily serve residential consumers and will not result in an increase greater than 5 percent of the capacity of the treatment works or system, or will serve fewer than 250 dwelling units.
- b.* In the case of sewer extensions, will not exceed the capacity of any treatment works which received a federal or state monetary grant after 1972.
- c.* In the case of water main extensions, will not exceed the production capacity of any system constructed after 1972.

9.4(2) The local public works department's standard specifications must be in conformance with the Iowa Standards for Sewer Systems cited in 567—paragraph 64.2(9) "b," or the water supply construction standards in rule 567—43.3(455B), and must be filed with and approved by the department.

9.4(3) The reviewing engineer shall be licensed as a professional engineer in Iowa and shall be employed by the local public works department.

9.4(4) When reviewing applications for sewer and water supply distribution system extensions under its jurisdiction, the local public works department shall use the Iowa Standards for Sewer Systems, the water supply construction standards in rule 567—43.3(455B), and the local standard specifications approved by the department.

9.4(5) The local public works department shall use Form 542-1003 or Form 542-1004, as applicable, when reviewing plans. Upon issuance of each permit, the local public works department shall submit to the department a copy of the permit and a copy of the form used during the review.

9.4(6) The local public works department shall submit to the department a complete quarterly report using Form 542-1005 by the fifteenth day of the month following each quarter of the calendar year.

9.4(7) Plans for which a construction permit has been issued shall be retained on file by the local public works department for the life of the extension or until the extension has been platted.

567—9.5(455B) Criteria for permitting authority at rural water systems. The requirements for permitting authority at rural water systems incorporated under Iowa Code chapter 357A or 504 are as follows:

9.5(1) Permitting authority under this rule applies only to extensions which:

- a.* Primarily serve residential consumers and will not result in an increase greater than 5 percent of the capacity of the treatment works or system, or will serve fewer than 250 dwelling units.
- b.* In the case of sewer extensions, will not exceed the capacity of any treatment works which received a federal or state monetary grant after 1972.
- c.* In the case of water main extensions, will not exceed the production capacity of any system constructed after 1972.

9.5(2) The rural water system's standard specifications must be in conformance with the Iowa Standards for Sewer Systems cited in 567—paragraph 64.2(9) "b," or the water supply construction standards in 567—43.3(455B), and must be filed with and approved by the department. The system's hydraulic modeling must comply with the water supply distribution system standards pursuant to rule 567—43.3(455B).

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

9.5(3) The reviewing engineer shall be licensed as a professional engineer in Iowa and shall be employed or retained by the rural water system.

9.5(4) When reviewing applications for sewer and water supply distribution system extensions under its jurisdiction, the rural water system shall use the Iowa Standards for Sewer Systems, the water supply construction standards in rule 567—43.3(455B), and the local standard specifications approved by the department.

9.5(5) The rural water system shall use Form 542-1003 or Form 542-1058, as applicable, when reviewing plans. Upon issuance of each permit, the rural water system shall submit to the department a copy of the permit and a copy of the form used during the review.

9.5(6) The rural water system shall submit to the department a complete quarterly report using Form 542-1005 by the fifteenth day of the month following each quarter of the calendar year.

9.5(7) Plans for which a construction permit has been issued shall be retained on file by the rural water system for the life of the extension.

567—9.6(455B) No variance allowed. No variance to the design standards is allowed under delegated permitting authority. If a variance to the design standards is needed, the local public works department or rural water system must apply to the department for an individual construction permit following the wastewater permit procedures in rule 567—60.4(455B) and rule 567—64.2(455B) and the water supply permit procedures in 567—subrule 40.4(1).

567—9.7(455B) Criteria for rescission or revocation of delegated permitting authority.

9.7(1) The local public works department or rural water system may voluntarily request that its permitting authority be rescinded by submitting the request in writing to the director.

9.7(2) The director may suspend or revoke delegation of review and permit authority after notice and hearing as set forth in Iowa Code chapter 17A if the director determines that a public works department or rural water system with delegated permitting authority has approved extensions which do not comply with design criteria, which exceed the capacity of waste treatment plants or the production capacity of public water supply systems, or which otherwise violate state or federal requirements.

These rules are intended to implement Iowa Code sections 17A.3, 455B.105 and 455B.171 to 455B.187.

ITEM 2. Amend subparagraph **50.4(2)“b”(2)** as follows:

(2) The annual fee shall be based on the costs for administering the water use permitting program for the previous calendar year years and on the budget anticipated expenses for the next succeeding fiscal year years. The department will review the annual permit fee each year and adjust the fee as necessary to cover all reasonable costs required to develop and administer the water use permitting program. Permit holders that have paid an application fee after December 1, but prior to November 30, will not be required to pay an annual fee until December 1 of the following year. If an applicant remits an annual fee for the 12-month period beginning December 1 and then later submits an application fee for a permit modification, the applicant will be refunded the lesser of the fees. The department shall request commission approval of the amount of the annual fee no later than September 30 of each year.

ITEM 3. Amend paragraph **50.7(3)“a”** as follows:

a. *New permits and modifications of permits.*

(1) ~~Applicable to all except community public water supplies. Before~~ Prior to the issuance of a permit to withdraw, divert or inject water, the department shall publish a notice of recommendation to grant a permit. The notice shall summarize the application and the recommendations in the summary report. The notice shall allow 20 days to request a copy of the summary report and submit comments on the report. The department may extend the comment period upon request for good cause. The notice shall may be published in a newspaper circulated in the locality of the proposed water source, or the department may use other methods of publishing the notice to ensure adequate notice to the affected public. The notice shall be sent to any person who has requested a copy of the notice concerning the particular water use under consideration.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

~~(2) Applicable only to community public water supplies. Prior to the issuance of a permit to withdraw, divert or inject water to a community public water supply, the department shall publish a notice of recommendation to grant a permit. The notice shall allow 20 days to request a copy of the summary report and submit comments on the report. The department may extend the comment period upon request for good cause. The notice shall include a brief summary of the proposed permit and shall be published in a newspaper of general circulation within the county of the proposed water source as provided in Iowa Code section 618.3. If the newspaper of general circulation is not the newspaper of the nearest locality to the proposed water source that publishes a newspaper, the notice shall also be published in the newspaper of the nearest locality to the proposed water source that publishes a newspaper, and the department may charge the applicant for the expenses associated with publishing the notice in the second newspaper. The notice shall be sent to any person who has requested a copy of the notice concerning the particular water use under consideration.~~

ARC 4912C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action****Proposing rule making related to removal of third-party administrator
and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 514I.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 514I.

Purpose and Summary

These proposed amendments implement 2019 Iowa Acts, House File 625, which removed the third-party administrator for HAWK-I from Iowa Code chapter 514I. References to the third-party administrator are proposed to be deleted from Chapter 86. The proposed rule making also amends references that are not referenced correctly in the rules.

Fiscal Impact

This rule making is expected to be budget-neutral. There will be savings associated with the HAWK-I third-party administrator contract that will shift to the Department to cover the cost of determining HAWK-I eligibility, payment of claims and administration of the program.

Jobs Impact

This rule making may result in loss of some jobs for the individuals working for the third-party administrator.

Waivers

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 3, 2020. Comments should be directed to:

Nancy Freudenberg
Iowa Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

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

PREAMBLE

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

ITEM 2. Amend rule **441—86.1(514I)**, definitions of “Contract,” “Good cause,” “Health insurance coverage,” “Health Insurance Marketplace,” “Institution for mental diseases,” “Modified adjusted gross income,” “Nonmedical public institution” and “Third-party administrator,” as follows:

~~“Contract” shall mean the contract between the department and the person or entity selected as the third-party administrator or the contract between the department~~ “Contract” shall mean the contract between the department and the participating health or dental plan for the provision of medical or dental services to HAWK-I enrollees for whom the participating health or dental plans assume risk.

“Good cause” shall mean the family has demonstrated that one or more of the following conditions exist:

1. to 3. No change.
4. There was a failure to receive the ~~third-party administrator’s~~ department’s request for a reason not attributable to the enrollee. Lack of a forwarding address is attributable to the enrollee.

HUMAN SERVICES DEPARTMENT[441](cont'd)

“*Health insurance coverage*” shall mean health insurance coverage as defined in 45 CFR Section 144.103, ~~as amended to October 1, 2008.~~

“*Health Insurance Marketplace*” or “*Exchange*” shall mean the entity authorized under 42 U.S.C. Section 18031(d)(4)(F) ~~as amended to April 1, 2013,~~ to evaluate and determine eligibility of applicants for Medicaid, the Children’s Health Insurance Program (CHIP), and other health programs.

“*Institution for mental diseases*” shall mean a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care and related services as defined at 42 CFR Section 435.1009 ~~as amended November 10, 1994~~ 435.1010.

“*Modified adjusted gross income*” shall mean the methodology prescribed in 42 U.S.C. Section 1396a(e)(14) and 42 CFR 435.603 ~~as amended to April 1, 2013.~~

“~~Nonmedical public~~ *Public institution*” shall mean an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control as defined in 42 CFR Section 435.1009 ~~as amended November 10, 1994~~ 435.1010.

“~~Third-party administrator~~” shall mean the person or entity with which the department contracts to provide administrative services for the HAWK-I program.

ITEM 3. Amend subrule 86.2(9) as follows:

86.2(9) ~~*Inmates of nonmedical public institutions.*~~ The child shall not be an inmate of a ~~nonmedical~~ public institution as defined at 42 CFR Section 435.1009 ~~as amended November 10, 1994~~ 435.1010.

ITEM 4. Amend subrule 86.2(10) as follows:

86.2(10) ~~*Inmates of institutions for mental disease.*~~ At the time of application or annual review of eligibility, the child shall not be an inmate of an institution for mental disease as defined at 42 CFR Section 435.1009 ~~as amended November 10, 1994~~ 435.1010.

ITEM 5. Amend subrule 86.3(3) as follows:

86.3(3) ~~*Place of filing.*~~ An application for the HAWK-I program may be filed with the ~~third-party administrator responsible for making the eligibility determination~~ department through an Internet ~~Web site~~ website, by telephone, through other electronic means, or ~~in any local or area office of the department of human services,~~ through an exchange, disproportionate share hospital, federally qualified health center, or other facility in which outstationing activities are provided.

ITEM 6. Amend paragraph **86.3(7)“b”** as follows:

b. Failure to supply the information or verification or refusal to authorize the ~~third-party administrator~~ department to secure the information shall serve as a basis for rejection of the application or cancellation of coverage. If the requested information or authorization is received within 14 calendar days of the notice of decision on an application or within 14 calendar days of the effective date of cancellation for enrollees, the information or authorization shall be acted upon as though it had been provided timely. If the fourteenth calendar day falls on a weekend or state holiday, the applicant or enrollee shall have until the next business day to provide the information.

ITEM 7. Amend subrule 86.3(9) as follows:

86.3(9) ~~*Applicant cooperation.*~~ An applicant must cooperate with the ~~third-party administrator~~ department in the application process, which may include providing verification or signing documents. Failure to cooperate with the application process shall serve as basis for a denial of the application.

ITEM 8. Amend paragraph **86.3(10)“a”** as follows:

a. The department ~~or the third-party administrator~~ shall mail a notice of decision to the applicant that states:

(1) The applicant meets the eligibility requirements but that no funds are available and that the applicant will be placed on a waiting list, or

(2) The applicant does not meet eligibility requirements, in which case the applicant shall not be put on a waiting list.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 9. Amend subrule 86.7(6) as follows:

86.7(6) *Enrolled in other health insurance coverage.* The child shall be canceled from the program as of the first day of the month following the month in which the department ~~or the third-party administrator~~ is notified that the child has other health insurance coverage. If there are months during which the child is covered by both another insurance plan and the HAWK-I program, the other insurance plan shall be the primary payor and HAWK-I shall be the payor of last resort.

ITEM 10. Amend subrule 86.7(7) as follows:

86.7(7) *Admission to a nonmedical public institution.* The child shall be canceled from the program as of the first day of the month following the month in which the child enters a nonmedical public institution unless the temporary absence provisions of paragraph 86.2(3)“d” apply if the child is in a public institution at the time of the annual review.

ITEM 11. Amend rule 441—86.10(514I), introductory paragraph, as follows:

441—86.10(514I) Reporting changes. Changes that may affect eligibility shall be reported timely to the department ~~or the third-party administrator~~. “Timely” shall mean no later than ten working days after the change occurred. The ten working-day period begins the first working day following the date of the change. The parent, guardian, or other adult responsible for the child shall report the change unless the child is emancipated, married, or otherwise in an independent living situation, in which case the child shall be responsible for reporting the change.

ITEM 12. Rescind subrule **86.10(1)**.

ITEM 13. Renumber subrules **86.10(2)** to **86.10(8)** as **86.10(1)** to **86.10(7)**.

ITEM 14. Amend renumbered subrule 86.10(4) as follows:

86.10(4) *Decrease in income.* If the family reports a decrease in income, the ~~third-party administrator~~ department shall ascertain whether the change affects the premium obligation of the family. If the change is such that the family is no longer required to pay a premium in accordance with the provisions of rule 441—86.8(514I), premiums will no longer be charged beginning with the month following the month of the report of the change.

ITEM 15. Rescind and reserve rule **441—86.13(514I)**.

ITEM 16. Amend paragraph **86.14(1)“o”** as follows:

o. Translation and interpreter services as specified pursuant to ~~the federal Children’s Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3~~ 42 U.S.C. Section 1397ee(a)(1).

ITEM 17. Amend subrule 86.15(3) as follows:

86.15(3) *Premium tax.* Premiums paid to participating health and dental plans by the ~~third-party administrator~~ department are exempt from premium tax.

ITEM 18. Amend subparagraph **86.15(6)“c”(2)** as follows:

(2) All health and dental plan literature and brochures shall be available in English and any other language when enrollment in the health or dental plan by enrollees who speak the same non-English language equals or exceeds 10 percent of all enrollees in the health or dental plan ~~and shall be made available to the third-party administrator for distribution.~~

ITEM 19. Amend subrule 86.15(9) as follows:

86.15(9) *Records and reports.* The participating health and dental plans shall maintain records and reports as follows:

a. The health or dental plan shall comply with the provisions of rule 441—79.3(249A) regarding maintenance and retention of clinical and fiscal records and shall file a letter with the commissioner of insurance as described in Iowa Code section 228.7. In addition, the health or dental plan or subcontractor of the health or dental plan, as appropriate, must maintain a medical or dental records system that:

- (1) Identifies each medical or dental record by HAWK-I enrollee identification number.
- (2) Maintains a complete medical or dental record for each enrollee.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- (3) Provides a specific medical or dental record on demand.
- (4) Meets state and federal reporting requirements applicable to the HAWK-I program.
- (5) Maintains the confidentiality of medical or dental records information and releases the information only in accordance with established policy below:

1. All medical and dental records of the enrollee shall be confidential and shall not be released without the written consent of the enrollee or responsible party.

2. Written consent is not required for the transmission of medical or dental records information to physicians, dentists, other practitioners, or facilities that are providing services to enrollees under a subcontract with the health or dental plan. This provision also applies to specialty providers who are retained by the health or dental plan to provide services which are infrequently used, which provide a support system service to the operation of the health or dental plan, or which are of an unusual nature. This provision is also intended to waive the need for written consent for department staff ~~and the third-party administrator~~ assisting in the administration of the program, reviewers from the peer review organization (PRO), monitoring authorities from the Centers for Medicare and Medicaid Services (CMS), the health or dental plan itself, and other subcontractors which require information as described under numbered paragraph "5" below.

3. to 6. No change.

EXCEPTION: Written consent is required for the transmission of medical records relating to substance abuse, HIV, or mental health treatment in accordance with state and federal laws.

b. Each health or dental plan shall provide at a minimum reports and plan information to the ~~third-party administrator~~ department as follows:

- (1) A list of providers of services under the plan.
- (2) Encounter data on a monthly basis as required by the department.
- (3) Other information as directed by the department.

c. No change.

ITEM 20. Amend subrule 86.15(10) as follows:

86.15(10) *Systems System.* The participating health or dental plan shall maintain data files that are compatible with the department's ~~and third-party administrator's systems~~ system.

ITEM 21. Amend subrule **86.19(1)**, definition of "Administrative error," as follows:

"*Administrative error*" means an action of the department ~~or the HAWK-I third-party administrator~~ that results in incorrect payment of benefits, including premiums paid to a health or dental plan, due to one or more of the following circumstances:

- 1. Misfiled or lost form or document.
- 2. Error in typing or copying.
- 3. Computer input error.
- 4. Mathematical error.
- 5. Failure to determine eligibility correctly when all essential information was available to the department ~~or the HAWK-I third-party administrator~~.
- 6. Failure to request essential verification necessary to make an accurate eligibility determination.
- 7. Failure to make timely revision in eligibility following a change in policy requiring application of the policy change as of a specific date.
- 8. Failure to issue timely notice to cancel benefits that results in benefits continuing in error.

ITEM 22. Amend subrule 86.20(2) as follows:

86.20(2) *Eligibility.* Unless otherwise specified, eligibility for supplemental dental-only coverage shall be determined in accordance with the provisions of rules ~~441—86.1(514I)~~ 441—86.2(514I) through ~~441—86.12(514I), 441—86.18(514I), and 441—86.19(514I).~~

ITEM 23. Amend paragraph **86.20(3)"a"** as follows:

a. No premium is charged to families ~~who meet the provisions of subparagraph 86.8(2)"a"(1) or to families~~ whose countable income is less than or equal to 167 percent of the federal poverty level for

HUMAN SERVICES DEPARTMENT[441](cont'd)

a family of the same size using the modified adjusted gross income methodology or to an eligible child who is an American Indian or Alaska Native.

ARC 4911C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to personal degradation and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 176, “Dependent Adult Abuse,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 235B.

Purpose and Summary

Two pieces of legislation recently passed which resulted in these proposed rule changes. 2019 Iowa Acts, House File 569, added personal degradation as a category of dependent adult abuse. 2019 Iowa Acts, House File 323, changed the definition of exploitation within the definition of dependent adult abuse. The proposed amendments update the definition of exploitation and define personal degradation within the definition of adult abuse and set criteria for outcome determinations for dependent adult abuse evaluations conducted by the Department of Human Services to include references to personal degradation.

Fiscal Impact

Both legislative changes will result in Department computer system updates, and the new category of abuse will increase case counts and result in the need for additional Department staff.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 3, 2020. Comments should be directed to:

HUMAN SERVICES DEPARTMENT[441](cont'd)

Nancy Freudenberg
Iowa Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule **441—176.1(235B)**, definition of “Adult abuse,” as follows:

“*Adult abuse*” means either:

1. Any of the following as a result of the willful or negligent acts or omissions of a caretaker:
 - Physical injury to, or injury which is at variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult.
 - The commission of a sexual offense under Iowa Code chapter 709 or Iowa Code section 726.2 with or against a dependent adult.
 - Exploitation of a dependent adult, which means the act or process of taking unfair advantage of a dependent adult or the adult’s physical or financial resources ~~for one’s own personal or pecuniary profit~~, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.
 - The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult’s life or health.
 - Sexual exploitation of a dependent adult by a caretaker. “Sexual exploitation” means any consensual or nonconsensual sexual contact with a dependent adult which includes but is not limited to kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in Iowa Code section 702.17. “Sexual exploitation” includes the transmission, display, taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment or diagnosis or as part of an ongoing assessment, evaluation or investigation. “Sexual exploitation” does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses.
 - Personal degradation of a dependent adult, which means a willful act or statement by a caretaker intended to shame, degrade, humiliate, or otherwise harm the personal dignity of a dependent adult, or where the caretaker knew or reasonably should have known the act or statement would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person.
2. The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult’s life or health as a result of the acts or omissions of the dependent adult.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend subrule 176.3(1) as follows:

176.3(1) Dependent adult abuse reports shall be evaluated when all of the following criteria are alleged to be met:

- a. The person is a dependent adult.
- b. Dependent adult abuse exists as defined in Iowa Code section 235B.2.
- c. A caretaker exists in reports of physical injury to or unreasonable confinement or cruel punishment of a dependent adult; commission of a sexual offense; exploitation; personal degradation; and deprivation by another person of food, shelter, clothing, supervision, physical and mental health care and other care necessary to maintain life or health.

ITEM 3. Amend subrule 176.3(4) as follows:

176.3(4) Confirmed, not registered. Reports of physical abuse, ~~or~~ denial of critical care by a caretaker, or personal degradation that would otherwise be founded reports shall be considered confirmed, not registered reports if the abuse is determined to be minor, isolated, and unlikely to reoccur. These reports shall be assessments and shall not be included on the central abuse registry. The assessment shall be maintained in the local office as directed in subrule 176.13(4).

ARC 4923C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Proposing rule making related to food and consumer safety and food establishment and food processing plant inspections and providing an opportunity for public comment

The Inspections and Appeals Department hereby proposes to amend Chapter 30, “Food and Consumer Safety,” and Chapter 31, “Food Establishment and Food Processing Plant Inspections,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 10A.104 and 137F.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 10A.104 and 137F.2 and 2019 Iowa Acts, Senate File 265.

Purpose and Summary

The proposed amendments update the reference to the adopted parts of the Code of Federal Regulations. Subrule 31.2(9) currently adopts the 2018 Code of Federal Regulations, and this rule making proposes to adopt the same sections of the 2019 Code of Federal Regulations. No substantive changes were made to the pertinent parts of the 2019 Code of Federal Regulations.

The proposed amendments define “patrol dog” and “pet dog” and prescribe standards for permitting dogs on exterior premises of food establishments, including outdoor patio and outdoor dining areas.

Finally, the proposed amendments implement additional changes made to Iowa Code chapter 137F resulting from the enactment of 2019 Iowa Acts, Senate File 265. The legislation requires the Department to adopt rules for the sale at a farmers market of culinary mushrooms commonly referred to as a variety of wild oyster. The Department is updating the rules it previously adopted by expressly referring to another variety of wild oyster mushroom, *Pleurotus citrinopileatus*.

Prior to the publication of this Notice, the Department distributed for comment a draft of these proposed amendments to industry associations, local contracting health departments and food safety educators.

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

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 3, 2020. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: ashleigh.hackel@dia.iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** definitions of “Patrol dog” and “Pet dog” in rule **481—30.2(10A,137C,137D,137F)**:

“*Patrol dog*” means a dog that is accompanying a law enforcement officer or security officer.

“*Pet dog*” means a dog that does not meet the definition of a “patrol dog” or a “service animal” as defined in the Code of Federal Regulations, Title 28, Part 36.

ITEM 2. Amend subrule 31.1(4) as follows:

31.1(4) *Morel mushrooms and oyster mushrooms (Pleurotus citrinopileatus, Pleurotus ostreatus, Pleurotus populinus, or Pleurotus pulmonarius)*. Section 3-201.16, paragraph (A), is amended by adding the following:

“A food establishment or farmers market time/temperature control for safety food licensee may serve or sell morel mushrooms or oyster mushrooms (a variety classified as *Pleurotus citrinopileatus, Pleurotus ostreatus, Pleurotus populinus, or Pleurotus pulmonarius*) if procured from an individual

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who has completed a wild-harvested mushroom identification expert course. Every morel mushroom or oyster mushroom shall be identified and found to be safe by a certified wild-harvested mushroom identification expert whose competence has been verified and approved by the department through the expert's successful completion of a wild-harvested mushroom identification expert course provided by either an accredited college or university or a mycological society. The course may address identification of morel mushrooms, oyster mushrooms, or both. The certified wild-harvested mushroom identification expert shall personally inspect each mushroom and determine it to be a morel mushroom or an oyster mushroom. A wild-harvested mushroom identification expert course shall be at least two hours in length and include a visual identification exercise for each wild-harvested mushroom species that the individual will be certified to identify at the completion of the course. The individual's certification of successful completion of the course must clearly indicate whether the certified wild-harvested mushroom identification expert is certified to identify morel mushrooms, oyster mushrooms, or both.

"To maintain status as a wild-harvested mushroom identification expert, the individual shall have successfully completed a wild-harvested mushroom identification expert course described above within the past three years. A person who wishes to offer a wild-harvested mushroom identification expert course must submit the course curriculum to the department for review and approval. Food establishments or farmers market time/temperature control for safety food licensees offering morel mushrooms or oyster mushrooms shall maintain the following information for a period of 90 days from the date the morel mushrooms or oyster mushrooms were obtained:

- "1. The name, address, and telephone number of the wild-harvested mushroom identification expert;
- "2. A copy of the wild-harvested mushroom identification expert's certificate of successful completion of the course, containing the date of completion; and
- "3. The quantity of morel mushrooms or oyster mushrooms purchased and the date(s) purchased.

"Furthermore, a consumer advisory shall inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means that wild-harvested mushrooms should be thoroughly cooked and may cause allergic reactions or other effects."

ITEM 3. Renumber subrules **31.1(15)** to **31.1(18)** as **31.1(16)** to **31.1(19)**.

ITEM 4. Adopt the following **new** subrule 31.1(15):

31.1(15) Prohibiting animals. Section 6-501.115, paragraph (B), is amended by adding the following:

"(6) Pet dogs may be allowed on exterior premises of a food establishment, including outdoor patio and outdoor dining areas, provided the food establishment meets all of the following requirements:

- "a. A separate entrance is present so that pet dogs do not enter the food establishment to access the outdoor area;
- "b. No food preparation is allowed in the outdoor area, including mixing or dispensing drinks and ice;
- "c. Customer multi-service or reusable utensils such as plates, silverware, glasses, and bowls are not stored, displayed, or pre-set in the outdoor area;
- "d. Food or water provided to pet dogs shall only be in single-use disposable containers;
- "e. Employees are prohibited from direct contact with pet dogs while on duty;
- "f. The outdoor area is maintained clean;
- "g. In cases where excrement or bodily fluids (urine, saliva, vomit, or the like) are deposited, an employee shall immediately ensure the area is cleaned and sanitized;
- "h. The outdoor area shall not be fully enclosed (an enclosed area is considered part of the interior of the facility);
- "i. Disruptive pet dogs must be controlled or removed from the premises;
- "j. Rules governing pet dogs shall be posted at each entrance of the food establishment and shall, at a minimum, contain the following:
 - "i. Pet dogs shall be leashed at all times;
 - "ii. Pet dogs shall not enter any interior area of the food establishment at any time;
 - "iii. Pet dogs must be controlled at all times by the dog's owner or designee;
 - "iv. Pet dogs are not permitted on chairs, tables, benches or seats; and

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“v. Pet dog owners must immediately notify the food establishment’s staff in the event that excrement or bodily fluids (urine, saliva, vomit, or the like) are deposited.”

ITEM 5. Amend subrule 31.2(9), introductory paragraph, as follows:

31.2(9) *Adoption of Code of Federal Regulations.* The following parts of the Code of Federal Regulations (April 1, ~~2018~~ 2019) are adopted:

ARC 4925C**IOWA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM[495]****Notice of Intended Action****Proposing rule making related to five-year review of rules and providing an opportunity for public comment**

The Iowa Public Employees’ Retirement System (IPERS) hereby proposes to amend Chapter 4, “Employers,” Chapter 11, “Application for, Modification of, and Termination of Benefits,” Chapter 12, “Calculation of Monthly Retirement Benefits,” Chapter 13, “Disability for Regular and Special Service Members,” Chapter 14, “Death Benefits and Beneficiaries,” and Chapter 20, “Recognition of Agents,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 97B.4 and 97B.15.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 97B.

Purpose and Summary

This proposed rule making is intended to conform rules with other rules and statutes or rescind rules that are outdated, redundant or inconsistent, or no longer in effect to meet the requirements of the statutory five-year review of rules for Chapters 11 to 15; to implement contribution rates for employers and regular and special service members beginning July 1, 2020; to reflect an IRS requirement verifying citizenship status; to add further clarity as to when a member’s first month of entitlement begins; to indicate that subrule 12.1(6) (renumbered as 12.1(4) herein) applies only to regular class members; to change the yearly multiplier to a quarterly multiplier as is current IPERS practice; to remove outdated language regarding average covered wages and clarify the way in which a computed year of wages is calculated; to strike obsolete language and add necessary language regarding vesting by service; to clarify that annual certifications of disability benefits are not necessary after a member meets IPERS normal retirement age; to provide for the trial work period as allowed by federal disability benefits; to acknowledge and reflect the reality that multiple medical appointments may not be able to be scheduled consecutively the same day and written notice will be the primary communication of appointment notification; to amend language to reflect current practice regarding precertification of medical eligibility for disability; to further delineate the continued requirements for qualification for special service disability benefits; to emphasize that IPERS designation of beneficiary forms may be filed online through the IPERS website; and to preserve and clearly state that the member receives the higher of two preretirement death benefit calculations. In addition, this rule making is intended to clarify that when there is no proper or valid beneficiary to whom a death benefit is to be paid, beneficiaries will be paid via the intestacy law of the State of Iowa; and to address the proper role of social security representative payees.

Fiscal Impact

IPERS’ enabling legislation requires employer and employee contribution rates for each member class be updated every fiscal year.

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

Jobs Impact

After analysis and review of this rule making, IPERS believes the changes providing for the trial work period, as allowed by federal disability benefits, will positively impact disabled IPERS members returning to the workforce.

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by IPERS no later than 4:30 p.m. on March 6, 2020. Comments should be directed to:

Cheryl Vander Hart
Iowa Public Employees' Retirement System
7401 Register Drive
Des Moines, Iowa 50321
Phone: 515.281.7623
Email: cheryl.vanderhart@ipers.org

Public Hearing

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

March 5, 2020
9 to 11 a.m.

IPERS
7401 Register Drive
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 4.6(1) as follows:

4.6(1) Contribution rates for regular class members.

a. No change.

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

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

	Effective July 1, 2015	Effective July 1, 2016	Effective July 1, 2017	Effective July 1, 2018	Effective July 1, 2019	Effective July 1, 2020
Combined rate	14.88%	14.88%	14.88%	15.73%	15.73%	<u>15.73%</u>
Employer	8.93%	8.93%	8.93%	9.44%	9.44%	<u>9.44%</u>
Employee	5.95%	5.95%	5.95%	6.29%	6.29%	<u>6.29%</u>

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

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

	Effective July 1, 2015	Effective July 1, 2016	Effective July 1, 2017	Effective July 1, 2018	Effective July 1, 2019	Effective July 1, 2020
Combined rate	19.76%	19.26%	18.76%	19.52%	19.02%	<u>18.52%</u>
Employer	9.88%	9.63%	9.38%	9.76%	9.51%	<u>9.26%</u>
Employee	9.88%	9.63%	9.38%	9.76%	9.51%	<u>9.26%</u>

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

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

	Effective July 1, 2015	Effective July 1, 2016	Effective July 1, 2017	Effective July 1, 2018	Effective July 1, 2019	Effective July 1, 2020
Combined rate	16.40%	16.40%	16.40%	17.02%	16.52%	<u>16.02%</u>
Employer	9.84%	9.84%	9.84%	10.21%	9.91%	<u>9.61%</u>
Employee	6.56%	6.56%	6.56%	6.81%	6.61%	<u>6.41%</u>

ITEM 4. Adopt the following **new** paragraph **11.1(1)“g”**:

g. An indication whether the member is a U.S. citizen, resident alien, or non-U.S. citizen.

ITEM 5. Amend paragraph **11.2(4)“a”** as follows:

a. Notwithstanding the foregoing, IPERS shall commence payment of a member's retirement benefit under Iowa Code sections 97B.49A to 97B.49I (under Option 2) no later than the “required beginning date” specified under Internal Revenue Code Section 401(a)(9), even if the member has not submitted the application for benefits. If the lump sum actuarial equivalent could have been elected by the member, payments shall be made in such a lump sum rather than as a monthly allowance. The “required beginning date” is defined as the later of: (1) April 1 of the year following the year that the member attains the age of ~~70½~~ 72, or (2) April 1 of the year following the year that the member actually terminates all employment with employers covered under Iowa Code chapter 97B.

ITEM 6. Amend subrule 11.3(1) as follows:

11.3(1) General. A member shall submit a written application to IPERS setting forth the retirement date, provided the member has attained at least age 55 by the retirement date and the retirement date is after the member's last day of service. A member's first month of entitlement shall be no earlier than the first day of the first month after the member's ~~last day of service~~ date of termination from employment or, if later, the month provided for under subrule 11.3(2). No payment shall be made for any month prior to the month the completed application for benefits is received by IPERS.

If a member files a retirement application but fails to select a valid first month of entitlement, IPERS will select by default the earliest month possible. A member may appeal this default selection by sending written notice of the appeal postmarked on or before 30 days after a notice of the default selection was mailed to the member. Notice of the default selection is deemed sufficient if sent to the member at the member's address.

ITEM 7. Amend subrule 11.3(2) as follows:

11.3(2) Additional FME provisions.

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

~~a.—Effective through December 31, 1992, the first month of entitlement of a member who qualifies for retirement benefits is the first month following the member's date of termination or last day of leave, with or without pay, whichever is later.~~

~~b.—Effective January 1, 1993, the first month of entitlement of an employee who qualifies for retirement benefits shall be the first month after the employee is paid the last paycheck, if paid more than one calendar month after termination. If the final paycheck is paid within the month after termination, the first month of entitlement shall be the month following termination.~~

e. Effective January 1, 2001, employees of a school corporation who are permitted by the terms of their employment contracts to receive their annual salaries in monthly installments over periods ranging from 9 to 12 months may retire at the end of a school year and receive trailing wages through the end of the contract year if they have completely fulfilled their contract obligations at the time of retirement. For purposes of this paragraph, "school corporation" means body politic described in Iowa Code sections 260C.16 (community colleges), 273.2 (area education agencies) and 273.1 (K-12 public schools). For purposes of this paragraph, "trailing wages" means previously earned wage payments made to such employees of a school corporation after the first month of entitlement. This exception does not apply to hourly employees, including those who make arrangements with their employers to hold back hourly wages for payment at a later date, to employees who are placed on sick or disability leave or leave of absence, or to employees who receive lump sum leave, vacation leave, early retirement incentive pay or any other lump sum payments in installments.

For all employees of all IPERS-covered employers who terminate employment in January 2003, or later, if the final paycheck is paid within the same quarter or within one quarter after termination and wages are reported under the normal pay schedule, the first month of entitlement shall be the month following termination. However, if the last paycheck is paid more than one quarter after the termination, the first month of entitlement shall be the first month after the employee is paid the last paycheck. Under no circumstances shall such trailing wages result in more than one quarter of service credit being added to retiring members' earning records.

ITEM 8. Amend subrule 11.5(1) as follows:

11.5(1) *Bona fide retirement—general.* To receive retirement benefits, a member under the age of 70 must officially leave employment with all IPERS-covered employers, give up all rights as an employee, and complete a period of bona fide retirement. A period of bona fide retirement means four or more consecutive calendar months for which the member qualifies for monthly retirement benefit payments. The qualification period begins with the member's first month of entitlement for retirement benefits as approved by IPERS. A member may not return to covered employment before filing a completed application for benefits. Notwithstanding the foregoing, the continuation of group insurance coverage at employee rates for the remainder of the school year for a school employee who retires following completion of services by that individual shall not cause that person to be in violation of IPERS' bona fide retirement requirements.

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

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

The bona fide retirement period shall be waived for an elected official covered under Iowa Code section 97B.1A(8) "a"(1), and for a member of the general assembly covered under Iowa Code section 97B.1A(8) "a"(2), when the elected official or legislator notifies IPERS of the intent to terminate IPERS

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

coverage for the elective office and, at the same time, terminates all other IPERS-covered employment prior to the issuance of the retirement benefit. Such an elected official or legislator may remain in the elective office and receive an IPERS retirement without violating IPERS' bona fide retirement rules. If such elected official or legislator terminates coverage for the elective office and also terminates all other IPERS-covered employment but is then reemployed in covered employment, and has not received a retirement as of the date of hire, the retirement shall not be made. Furthermore, if such elected official or legislator is reemployed in covered employment, the election to revoke IPERS coverage for the elective position shall remain in effect, and the elected official or legislator shall not be eligible for new IPERS coverage for such elected position. The prior election to revoke IPERS coverage for the elected position shall also remain in effect if such elected official or legislator is reelected to the same position without an intervening term out of office.

The bona fide retirement period will be waived if the member has been elected to public office which term begins during the normal four-month bona fide retirement period. This includes elected officials who shall be covered under this chapter as defined in Iowa Code section 97B.1A. This waiver does not apply if the member was an elected official who was reelected to the same position for another term.

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

Effective July 1, 2018, a member will not have a bona fide retirement if the member enters into a verbal or written arrangement to perform duties for the member's former employer(s) as an independent contractor prior to or during the member's first month of entitlement or performs any duties for the member's former employer(s) as an independent contractor prior to receiving four months of retirement benefits.

ITEM 9. Rescind subrule **11.5(2)**.

ITEM 10. Renumber subrules **11.5(3)** to **11.5(5)** as **11.5(2)** to **11.5(4)**.

ITEM 11. Amend renumbered subrule 11.5(2) as follows:

11.5(2) Bona fide refund. For a member to be eligible for a lump sum refund, the member must terminate the member's covered employment and incur a bona fide separation from service and remain out of employment for at least 30 days with all covered employers. The 30-day bona fide refund period shall be waived for an elected official covered under Iowa Code section 97B.1A(8)"a"(1), and for a member of the general assembly covered under Iowa Code section 97B.1A(8)"a"(2), when the elected official or legislator notifies IPERS of the intent to terminate IPERS coverage for the elective office and, at the same time, terminates all other IPERS-covered employment prior to the issuance of the refund. Such an official may remain in the elective office and receive an IPERS refund without violating IPERS' bona fide refund rules. If such elected official terminates coverage for the elective office and also terminates all other IPERS-covered employment but is then reemployed in covered employment, and has not received a refund as of the date of hire, the refund shall not be made. Furthermore, if such elected official is reemployed in covered employment, the election to revoke IPERS coverage for the elective position shall remain in effect, and the public official shall not be eligible for new IPERS coverage for such elected position.

The prior election to revoke IPERS coverage for the elected position shall also remain in effect if such elected official is reelected to the same position without an intervening term out of office. The waiver granted in this subrule shall be applicable to such elected officials who were in violation of the prior bona fide refund rules on and after November 1, 2002, when such individuals have not repaid the previously invalid refund.

If a member takes a refund in violation of the bona fide refund requirements of Iowa Code section 97B.53(4), the member may return the refund during the bona fide retirement period and restore the member's account. If the repayment is not made, the member shall receive no credit for the period

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

covered by the refund. At retirement, the member may purchase, at actuarial cost, the service credit covered by the refund.

ITEM 12. Amend rule 495—11.7(97B) as follows:

495—11.7(97B) Overpayment of IPERS benefits.

11.7(1) and **11.7(2)** No change.

11.7(3) *Overpayment made to a person other than a retired member.* A recipient other than a retired member, except a recipient listed in subrule ~~11.7(4)~~ **11.5(2)**, shall receive written notice of overpayment, including the reason for the overpayment, the amount of the overpayment, and the opportunity to repay the overpayment in full without interest. If such a recipient repays an overpayment in full within 30 days after the date of the notice, there will be no interest charge. If such a recipient cannot repay an overpayment in full within 30 days after the date of the notice, interest shall be charged. If repayment in full cannot be made within 30 days, such a recipient shall make repayment arrangements subject to IPERS' approval within 30 days of the written notice and request for repayment.

If the overpayment recipient cannot be located to receive notice of the overpayment at the recipient's last-known address, IPERS shall, after trying to locate the person, consider the recipient to have waived entitlement to the quarters covered by the refund.

~~**11.7(4)** *Overpayment made to a person who violates a bona fide severance period.* If a recipient takes a refund and does not complete the required period of severance, the recipient shall receive a written notice of overpayment, including the reason for the overpayment, the amount of the overpayment, and the opportunity to repay the overpayment in full without interest. The recipient shall have 30 days after the date of notice to repay the full amount of the refund without interest. If the repayment is not made within 30 days after the date of notice, the person shall receive no credit for the period of employment covered by the refund and shall be required to buy back the refund at its actuarial cost if the member later decides that the member wants service credit for any portion of the period of employment covered by the refund.~~

~~**11.7(5)**~~ **11.7(4)** *Interest charges.*

a. Overpayment not fraudulent. If the overpayment of benefits, other than an overpayment that results from a violation described in subrule ~~11.7(4)~~ **11.5(2)**, was not the result of wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay interest charges at the rate of 5 percent, or the rate IPERS determines, on the outstanding balance, beginning 30 days after the date of notice of the overpayment(s) is provided by IPERS.

b. Overpayments in violation of Iowa Code section 97B.40 or 715A.8. If the overpayment of benefits, other than an overpayment that results from a violation described in subrule ~~11.7(4)~~ **11.5(2)**, was the result of wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay interest charges at the rate of 7 percent on the outstanding balance, beginning on the date of the overpayment(s).

c. Overpayments that result in a judgment. In addition to other remedies, IPERS may file a civil action to recover overpayments, and the interest rate may be set by the court.

~~**11.7(6)**~~ **11.7(5)** *Recovery of overpayment from a deceased recipient.* If a recipient dies prior to the full repayment of an erroneous overpayment of benefits, IPERS shall be entitled to apply to the estate of the deceased to recover the remaining balance.

~~**11.7(7)**~~ **11.7(6)** *Offsets against amounts payable.* IPERS may, in addition to other remedies and after notice to the recipient, request an offset against amounts owing to the recipient by the state according to the offset procedures pursuant to Iowa Code sections 8A.504 and 421.17.

~~**11.7(8)**~~ **11.7(7)** *Rights of appeal.* A recipient who is notified of an overpayment and required to make repayments under this rule may appeal IPERS' determination in writing to the CEO or CEO's designee. The written request must explain the basis of the appeal and must be received by IPERS' office within 30 days of overpayment notice pursuant to 495—Chapter 26.

~~**11.7(9)**~~ **11.7(8)** *Release of overpayment.* IPERS may release a recipient from liability to repay an overpayment, in whole or in part, if IPERS determines that the receipt of overpayment is not the fault of the recipient, and that it would be contrary to equity and good conscience to collect the overpayment.

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

No release of an individual recipient's obligation to repay an overpayment shall stand as precedent for release of another recipient's obligation to repay an overpayment.

ITEM 13. Amend subrule **12.1(2)**, catchwords, as follows:

12.1(2) *Reduction for early retirement for regular class members.*

ITEM 14. Amend subrule **12.1(3)**, catchwords, as follows:

12.1(3) *Early retirement date for regular class members.*

ITEM 15. Rescind subrules **12.1(4)** and **12.1(5)**.

ITEM 16. Renumber subrules **12.1(6)** and **12.1(7)** as **12.1(4)** and **12.1(5)**.

ITEM 17. Amend renumbered subrule 12.1(4) as follows:

12.1(4) *Benefit formulas for members retiring on or after July 1, 1994 2012.*

a. For each active member retiring on or after July 1, 1994 2012, with four or more complete years of who is vested by service, the monthly benefit will be equal to one-twelfth of an amount equal to 60 percent of the ~~three-year~~ final average covered wage multiplied by a fraction of years of service.

b. For all active and inactive vested members, the monthly retirement allowance shall be determined on the basis of the formula in effect on the date of the member's retirement. If the member takes early retirement, the benefit shall be adjusted as provided in subrule 12.1(2).

c. ~~Effective July 1, 1996, through June 30, 1998, in~~ In addition to the 60 percent multiplier identified above, regular class members who retire with years of service in excess of their "applicable years" 30 years shall have the percentage multiplier increased by \pm .25 percent for each quarter of a year in excess of their "applicable years," 30, not to exceed an increase of 5 percent. For regular members, "applicable years" means 30 years; for protection occupation members, "applicable years" means 25 years; for sheriffs, deputy sheriffs, and airport firefighters, "applicable years" means 22 years.

d. In addition to the 60 percent multiplier identified above, protection occupation members, sheriffs, and deputy sheriffs who retire with years of service in excess of 22 years shall have the percentage multiplier increased by .375 percent for each quarter of a year in excess of 22, not to exceed an increase of 12 percent.

~~d. Effective July 1, 1998, sheriffs, deputy sheriffs, and airport firefighters who retire with years of service in excess of their applicable years shall have their percentage multiplier increased by 1.5 percent for each year in excess of their applicable years, not to exceed an increase of 12 percent.~~

~~e. Effective July 1, 2000, the "applicable years" and increases in the percentage multiplier for years in excess of the applicable years for protection occupation members shall be determined under Iowa Code section 97B.49B(1), as set forth in paragraph "f" below.~~

~~f. For special service members covered under Iowa Code section 97B.49B, the applicable percentage and applicable years for members retiring on or after July 1, 2000, shall be determined as follows:~~

~~(1) For each member retiring on or after July 1, 2000, and before July 1, 2001, 60 percent plus, if applicable, an additional .25 percent for each additional quarter of eligible service beyond 24 years of service (the "applicable years"), not to exceed 6 additional percentage points;~~

~~(2) For each member retiring on or after July 1, 2001, and before July 1, 2002, 60 percent plus, if applicable, .25 percent for each additional quarter of eligible service beyond 23 years of service (the "applicable years"), not to exceed a total of 7 additional percentage points;~~

~~(3) For each member retiring on or after July 1, 2002, and before July 1, 2003, 60 percent plus, if applicable, .25 percent for each additional quarter of eligible service beyond 22 years of service (the "applicable years"), not to exceed a total of 8 additional percentage points;~~

~~(4) For each member retiring on or after July 1, 2003, 60 percent plus, if applicable, an additional .375 percent for each additional quarter of eligible service beyond 22 years of service (the "applicable years"), not to exceed a total of 12 additional percentage points.~~

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

~~(5) e.~~ Regular service does not count as “eligible service” in determining a special service member’s applicable percentage.

ITEM 18. Amend renumbered subrule 12.1(5) as follows:

12.1(5) *Average covered wages for special service members and for wages of regular class members prior to July 2012.*

a. “Three-year average covered wage” means a member’s covered calendar year wages averaged for the highest three years of the member’s service. However, ~~if a member’s final quarter of a year of employment does not occur at the end of a calendar year,~~ for the member’s final year of wages, IPERS may determine the wages for the third year by computing the final quarter or quarters of wages to complete the year. The computed year will be created when the final quarter or quarters reported are combined with a computed average quarter to complete the last year. The value of this average quarter will be computed by selecting the highest covered wage year not used in the computation of the three high years and dividing the covered salary by four quarters. This value will be combined with the final quarter or quarters to complete a full calendar year. If the member’s final quarter of wages will reduce the three-year average covered wage, it can be dropped from the computation. However, if the covered wages for that quarter are dropped, the service credit for that quarter will be forfeited as well. If the final quarter is the first quarter of a calendar year, those wages must be used in order to give the member a computed year. The computed year wages shall not exceed the Internal Revenue Service maximum covered wage in effect for that calendar year. Furthermore, ~~for members whose first month of entitlement is January of 1999 or later,~~ the computed year shall not exceed the member’s highest actual calendar year of covered wages by more than 3 percent. Effective July 1, 2007, a member’s high three-year average wage shall be the greater of (1) the member’s high three-year average covered wage based on covered wages reported through June 30, 2007; or (2) the member’s high three-year average covered wage after application of the antispiking control as described in paragraph “e” “b” below.

~~For members whose first month of entitlement is January 1995 or later, a full third year will be created when the final quarter or quarters reported are combined with a computed average quarter to complete the last year. The value of this average quarter will be computed by selecting the highest covered wage year not used in the computation of the three high years and dividing the covered salary by four quarters. This value will be combined with the final quarter or quarters to complete a full calendar year. If the member’s final quarter of wages will reduce the three-year average covered wage, it can be dropped from the computation. However, if the covered wages for that quarter are dropped, the service credit for that quarter will be forfeited as well. If the final quarter is the first quarter of a calendar year, those wages must be used in order to give the member a computed year. The three-year average covered wage cannot exceed the highest maximum covered wages in effect during the member’s service.~~

If the three-year average covered wage of a member who retires on or after January 1, 1997, and before January 1, 2002, exceeds the limits set forth in paragraph “b” below, the longer period specified in paragraph “b” shall be substituted for the three-year averaging period described above. No quarters from the longer averaging period described in paragraph “b” shall be combined with the final quarter or quarters to complete the last year.

b.—For the persons retiring during the period beginning January 1, 1997, and ending December 31, 2001, the three-year average covered wage shall be computed as follows:

~~(1) For a member who retires during the calendar year beginning January 1, 1997, and whose three-year average covered wage at the time of retirement exceeds \$48,000, the member’s covered wages averaged for the highest four years of the member’s service or \$48,000, whichever is greater.~~

~~(2) For a member who retires during the calendar year beginning January 1, 1998, and whose three-year average covered wage at the time of retirement exceeds \$52,000, the member’s covered wages averaged for the highest five years of the member’s service or \$52,000, whichever is greater.~~

~~(3) For a member who retires during the calendar year beginning January 1, 1999, and whose three-year average covered wage at the time of retirement exceeds \$55,000, the member’s covered wages averaged for the highest six years of the member’s service or \$55,000, whichever is greater.~~

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~~(4) For a member who retires on or after January 1, 2000, but before January 1, 2001, and whose three-year average covered wage at the time of retirement exceeds \$65,000, the member's covered wages averaged for the highest six years of the member's service or \$65,000, whichever is greater. For the calendar year beginning January 1, 2001, the six-year wage averaging trigger shall be increased to \$75,000.~~

~~(5) Effective January 1, 2002, the computation of average covered wages shall be as provided in paragraph 12.1(7)"a."~~

~~For purposes of paragraph 12.1(7)"b," the highest years of the member's service shall be determined using calendar years and may be determined using one computed year. The computed year shall be calculated in the manner and subject to the restrictions provided in paragraph 12.1(7)"a."~~

~~e. b.~~ Antispiking limit on the growth of a member's high three-year average.

~~(1) to (6) No change.~~

~~d. c.~~ Effective July 1, 2012, a nonvested regular class member's average covered wage shall be the member's five-year average covered wage calculated as provided in Iowa Code section 97B.1A(10A)"a."

~~e. d.~~ Effective July 1, 2012, for regular class members vested as of June 30, 2012, the member's average covered wage shall be the greater of the member's three-year average covered wage calculated as provided under paragraphs 12.1(7)"a" through "e," 12.1(5)"a" and "b," or the member's five-year average covered wage calculated as provided in Iowa Code section 97B.1A(10A)"a." The "five-year average covered wage" means a member's covered calendar year wages averaged for the highest five years of the member's service. However, in the member's final year of wages, IPERS may determine the wages for the fifth year by computing the final quarter or quarters of wages to complete the year. The computed year wages shall not exceed the Internal Revenue Service maximum covered wage in effect for that calendar year. Furthermore, the computed year shall not exceed the member's highest actual calendar year of covered wages by more than 3 percent. A full fifth year will be created when the final quarter or quarters reported are combined with a computed average quarter to complete the last year. The value of this average quarter will be computed by selecting the highest covered wage year not used in the computation of the five high years and dividing the covered salary by four quarters. This value will be combined with the final quarter or quarters of wages to complete a full calendar year. If the member's final quarter of wages will reduce the five-year average covered wage, it can be dropped from the computation. However, if the covered wages for that quarter are dropped, the service credit for that quarter will be forfeited as well. If the final quarter is the first quarter of a calendar year, those wages must be used in order to give the member a computed year. The five-year average covered wage cannot exceed the highest Internal Revenue Service maximum covered wages in effect during the member's service. In addition, the average five-year salary is restricted to an antispiking limit of 134 percent of the highest sixth year of wages.

ITEM 19. Rescind rule **495—12.3(97B)**.

ITEM 20. Renumber rules **495—12.4(97B)** to **495—12.10(97B)** as **495—12.3(97B)** to **495—12.9(97B)**.

ITEM 21. Amend renumbered subrule 12.4(1) as follows:

12.4(1) For each member who is vested prior to July 1, 2012, and is retiring prior to July 1, 2012, with less than four complete years of service, not vested by service as defined in Iowa Code section 97B.1A(25)"d," a monthly annuity shall be determined by applying the total reserve member and employer's accumulated contributions as of the effective retirement date (plus any retirement dividends standing to the member's credit on December 31, 1966) to the annuity tables in use by the system according to the member's age (or member's and contingent annuitant's ages, if applicable). If the member's retirement occurs before January 1, 1995, IPERS' revised 6.50 percent tables shall be used. If the member's retirement occurs after December 31, 1994, IPERS' 6.75 percent tables shall be used. If the member's retirement occurs after December 31, 2009, IPERS' 7.50 percent tables shall be used. If the member's retirement occurs after December 31, 2019, IPERS' 7.00 percent tables shall be used.

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ITEM 22. Amend renumbered subrule 12.4(2) as follows:

12.4(2) For each vested member for whom the present value of future benefits under Option 2 is less than the member reserve as of the effective retirement date, a monthly annuity shall be determined by applying the member reserve to the annuity tables in use by the system according to the member's age (or member's and contingent annuitant's ages, if applicable). ~~If the member's retirement occurs before January 1, 1995, IPERS' revised 6.50 percent tables shall be used. If the member's retirement occurs after December 31, 1994, IPERS' 6.75 percent tables shall be used.~~

ITEM 23. Rescind renumbered subrule **12.4(3)**.

ITEM 24. Renumber subrules **12.4(4)** to **12.4(5)** as **12.4(3)** to **12.4(4)**.

ITEM 25. Rescind renumbered subrule **12.4(6)**.

ITEM 26. Renumber subrule **12.4(7)** as **12.4(5)**.

ITEM 27. Rescind renumbered subrule **12.6(1)**.

ITEM 28. Renumber subrules **12.6(2)** to **12.6(7)** as **12.6(1)** to **12.6(6)**.

ITEM 29. Amend renumbered subrule 12.6(5) as follows:

12.6(5) Limit on reductions. ~~For a member who has substantial noncovered employment, the application of the~~ The level payment choice factors shall not reduce the monthly amount payable to a member at age 62 to less than 50 percent of the monthly amount that would have been payable under IPERS Option 2. Accordingly, payments before age 62 to such members shall be reduced in the same manner, with the corresponding adjustments made to death benefits.

ITEM 30. Amend renumbered subrule 12.7(4) as follows:

12.7(4) In recomputing a retired member's monthly benefit, IPERS shall use the following assumptions.

a. The member cannot change the option or beneficiary with respect to the reemployment period.

b. If the member would only qualify for a money purchase benefit under rule ~~495—12.5(97B)~~ 495—12.4(97B) based solely on the period of reemployment, then the money purchase formula shall be used to compute the additional benefit amount due to the reemployment.

c. If the member would qualify for a non-money purchase retirement allowance based solely on the period of reemployment, the benefit formula in effect as of the first month of entitlement (FME) for the reemployment period shall be used. If the FME is July 1998 or later, and the member has more than 30 years of service, including both original and reemployment service, the percentage multiplier for the reemployment period only will be at the applicable percentage (up to 65 percent) for the total years of service.

d. If a period of reemployment would increase the monthly benefit a member is entitled to receive, the member may elect between the increase and a refund of the employee and employer contributions without regard to reemployment FME.

e. If a member previously elected IPERS Option 1, is eligible for an increase in the Option 1 monthly benefits, and elects to receive the increase in the member's monthly benefits, the member's Option 1 death benefit shall also be increased if the investment is at least \$1,000. The amount of the increase shall be at least the same percentage of the maximum death benefit permitted with respect to the reemployment as the percentage of the maximum death benefit elected at the member's original retirement. In determining the increase in Option 1 death benefits, IPERS shall round up to the nearest \$1,000. For example, if a member's investment for a period of reemployment is \$1,900 and the member elected at the member's original retirement to receive 50 percent of the Option 1 maximum death benefit, the death benefit attributable to the reemployment shall be \$1,000 (50 percent times \$1,900, rounded up to the nearest \$1,000). Notwithstanding the foregoing, if the member's investment for the period of reemployment is less than \$1,000, the benefit formula for a member who originally elected new IPERS Option 1 shall be calculated under IPERS Option 3.

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~~f.~~ A retired reemployed member whose reemployment FME precedes July 1998 shall not be eligible to receive the employer contributions made available to retired reemployed members under Iowa Code section 97B.48A(4) effective July 1, 1998.

~~g.~~ f. A retired reemployed member who requests a return of the employee and employer contributions made during a period of reemployment cannot repay the distribution and have the service credit for the period of reemployment restored.

~~h.~~ g. If a retired reemployed member selected IPERS Option 5 at retirement, and after the period of reemployment requests an increase in the member's monthly allowance, at death all remaining guaranteed payments with respect to both periods of employment shall be paid in a commuted lump sum.

~~i.~~ h. If a retired reemployed member selected IPERS Option 2 (~~or old IPERS Option 1~~) at retirement, and after the period of reemployment requests an increase in the member's monthly allowance, at death the member's monthly payments following the increase shall be prorated between the member's two annuities to determine the amount of the member's remaining accumulated contributions that may be paid as a death benefit.

~~j.~~ i. A retired reemployed member who has attained the age of 70 may take an actuarial equivalent (AE) payment. However, such a member must terminate covered employment for at least 30 days before taking an additional AE payment.

ITEM 31. Amend renumbered subrule 12.8(3) as follows:

12.8(3) An AE payment under this rule shall be equal to the sum of the member's and employer's accumulated contributions ~~and the retirement dividends standing to the member's credit before December 31, 1966.~~

ITEM 32. Amend subrule 13.1(1) as follows:

13.1(1) For IPERS ~~regular class~~ members retiring because of a disability:

a. The member must be awarded federal social security benefits due to a disability which existed on or before the member's first month of entitlement.

b. Effective July 1, 1990, the member may also qualify for the IPERS disability provision by being awarded, and commencing to receive, disability benefits through the federal Railroad Retirement Act, 45 U.S.C. Section 231 et seq., due to a disability which existed at the time of retirement.

c. The period for which up to 36 months of retroactive payments under Iowa Code section 97B.50(2) shall be paid is for up to 36 months preceding the month in which such completed application for IPERS disability is received by IPERS. In no event shall retroactive disability benefits payments under Iowa Code section 97B.50(2) precede the month the member actually receives the member's first social security or railroad retirement disability payment. The member shall provide IPERS with a copy of the Social Security Administration or railroad retirement award letter showing dates of eligibility.

d. Continued qualification monitoring.

(1) For a member retiring due to a disability under Iowa Code section 97B.50(2), on or after July 1, 2009, the member shall provide IPERS with proof of continuing eligibility for federal social security disability benefits or railroad retirement disability benefits by June 30 of each calendar year, in order to continue qualification for IPERS disability benefits.

(2) ~~For a member retiring due to a disability under Iowa Code section 97B.50A, the member shall provide IPERS complete copies of the member's state and federal income tax returns, including all supporting schedules, by June 30 of each calendar year, in order to continue qualification for IPERS disability benefits.~~

IPERS shall suspend the disability benefits of any member if the records required ~~under these subparagraphs~~ are not timely provided.

(2) The annual certification of continued eligibility for federal social security disability benefits or railroad retirement disability benefits is not required as of the calendar year the member reaches normal retirement age as defined by Iowa Code section 97B.45, or for special service members aged 55, or sheriffs and deputies aged 50 with 22 years of service.

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ITEM 33. Amend subrule 13.1(2) as follows:

13.1(2) If a member returns to covered employment after achieving a bona fide retirement, and is no longer eligible for social security or railroad disability benefits, the benefits being provided to the member under Iowa Code section 97B.50(2) "a" or "b" shall be suspended or reduced as follows. If the member has not attained the age of 55 upon reemployment, benefit payments shall be suspended in their entirety until the member subsequently terminates employment, applies for, and is approved to receive benefits under the provisions of Iowa Code chapter 97B. If the member has attained the age of 55 or older upon reemployment, the member shall continue to receive monthly benefits adjusted as follows. Monthly benefits shall be calculated under the same benefit option that was first selected, based on the member's age, years of service, and the applicable reductions for early retirement as of the month that the member returns to covered employment. The suspension or reduction of benefits for returning to covered employment no longer applies as of the calendar year the member reaches normal retirement age, as defined by Iowa Code section 97B.45, or for special service members aged 55, or sheriffs and deputies aged 50 with 22 years of service. The member's benefit shall also be subject to the applicable provisions of Iowa Code section 97B.48A pertaining to reemployed retired members.

ITEM 34. Amend subrule 13.2(3) as follows:

13.2(3) *Scheduling of appointments.* Upon receipt and forwarding of the application and sufficient medical records to the medical board, the disability retirement benefits officer shall establish an appointment for the applicant to be seen by the medical board in Iowa City. The member shall be notified ~~by telephone and~~ in writing of the appointment, and shall be given general instructions about where to go for the examinations. The appointment for the examinations shall be no later than 60 days after the completed application, including sufficient medical records, is provided. ~~All examinations must be scheduled and completed on the same date.~~ The member shall also be notified about the procedures to follow for reimbursement of travel expenses and lodging. Fees for physical examinations and medical records costs shall be paid directly by IPERS pursuant to its contractual arrangements with the medical providers required to implement Iowa Code section 97B.50A.

ITEM 35. Amend subrule 13.2(8) as follows:

13.2(8) *General benefits provisions.* Effective July 1, 2000, if an initial disability determination is favorable, benefits shall begin as of the date of the initial disability determination or, if earlier, the member's last day on the payroll, but no more than six months of retroactive benefits are payable, subject to Iowa Code section 97B.50A(13). "Last day on the payroll" shall include any form of authorized leave time, whether paid or unpaid. If a member receives short-term disability benefits from the employer while awaiting a disability determination hereunder, disability benefits will accrue from the date the member's short-term disability payments are discontinued. If an initial favorable determination is appealed, the member shall continue to receive payments pending the outcome of the appeal.

Any member who is awarded disability benefits under Iowa Code section 97B.50A and this rule shall be eligible to elect any of the benefit options available under Iowa Code section 97B.51. All such options shall be the actuarial equivalent of the lifetime monthly benefit provided in Iowa Code section 97B.50A(2) and (3).

The disability benefits established under this subrule shall be eligible for the favorable experience dividends payable under Iowa Code section 97B.49F(2).

If the award of disability benefits is overturned upon appeal, the member may be required to repay the amount already received or, upon retirement, have payments suspended or reduced until the appropriate amount is recovered.

~~IPERS shall, at the member's written request, precertify a member's medical eligibility through the procedures set forth in subrules 13.2(3) and 13.2(4), provided that IPERS shall have full discretion to request additional medical information and to redetermine the member's medical eligibility if the member chooses not to apply for disability benefits at the time of the precertification. IPERS shall not pay for the costs of more than one such precertification per 12-month period.~~

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ITEM 36. Amend subrule 13.2(13) as follows:

13.2(13) *Reemployment/income monitoring.* A member who retires under Iowa Code section 97B.50A and this rule shall be required to supply a copy of a complete set of the member's state and federal income tax returns, including all supporting schedules, by June 30 of each calendar year, in order to continue qualification for IPERS special service disability benefits. IPERS may suspend the benefits of any such member if such records are not timely provided. This subrule does not apply to a member who is at least 55 years of age and would have completed 22 years of service if the member had remained in active special service employment.

Only wages and self-employment income shall be counted in determining a member's reemployment comparison amount, as adjusted for health care coverage for the member and member's dependents.

ITEM 37. Amend rule 495—14.1(97B) as follows:

495—14.1(97B) Internal Revenue Code limitations. The death benefits payable under Iowa Code sections 97B.51 and 97B.52 shall not exceed the maximum amount possible under Internal Revenue Code Section 401(a)(9).

To ensure that the limit is not exceeded, a member's combined lump sum death benefit under Iowa Code sections 97B.52(1) and 97B.52(2) shall not exceed 100 times the Option 2 amount that would have been payable to the member at the member's earliest normal retirement age. If a beneficiary of a special service member is eligible for an in-the-line-of-duty death benefit, any reduction required under this rule shall be taken first from a death benefit payable under Iowa Code section 97B.52(1). The "100 times" limit shall apply to active and inactive members. The death benefits payable under this chapter for a period of reemployment for a retired reemployed member who dies during the period of reemployment shall also be subject to the limits described in this rule.

The maximum claims period for IPERS lump sum death benefits shall not exceed the period required under Internal Revenue Code Section 401(a)(9), which may be less than five years for a member who dies after the member's required beginning date, unless the beneficiary is a spouse. The claims period for all cases in which the member's death occurs during the same calendar year in which a claim must be filed under this rule shall end April 1 of the year following the year of the member's death.

A member's beneficiary or heir may file a claim for previously forfeited death benefits. Interest, if any, for periods prior to the date of the claim will only be credited through the quarter that the death benefit was required to be forfeited by law. Interest for periods following the quarter of forfeiture will accrue beginning with the quarter that the claim for reinstatement is received by IPERS. For death benefits required to be forfeited in order to satisfy Section 401(a)(9) of the federal Internal Revenue Code, in no event will the forfeiture date precede January 1, 1988. IPERS shall not be liable for any excise taxes imposed by the Internal Revenue Service on reinstated death benefits.

Effective January 14, 2004, all claims for a previously forfeited death benefit shall be processed under the procedure set forth at rule ~~495—14.13(97B)~~ 495—14.6(97B).

The system recognizes the validity of same gender marriages executed in Iowa on or after April 27, 2009, if the domestic relations order or other assignment otherwise meets the system's minimum requirements for such orders; the system shall modify the tax treatment of distributions under such orders as required by the federal laws governing such distributions. IPERS shall adopt such rules and procedures as are deemed necessary to fully implement the provisions of this rule. The Iowa Supreme Court decision recognizing same gender marriages in Iowa specifically states that this recognition does not extend to same gender marriages of other states. The system recognizes the validity of same gender marriages based on the U.S. Supreme Court's decision in *United States v. Windsor*, 133 S.Ct. 2675 (2013) and the direction of Rev. Rul. 2013-17 and IRS Notice 2014-19. IPERS shall recognize the federal tax treatment of distributions as required by the sources listed in this paragraph.

ITEM 38. Amend subrule 14.3(1) as follows:

14.3(1) *Designation of beneficiaries.* To designate a beneficiary, the member must complete an IPERS designation of beneficiary form, which must be filed with IPERS. Members may also designate their beneficiary through the IPERS website. The designation of a beneficiary by a retiring member

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on the application for monthly benefits revokes all prior designation of beneficiary forms. IPERS may consider as valid a designation of beneficiary form filed with the member's employer prior to the death of the member, even if that form was not forwarded to IPERS prior to the member's death. If a retired member is reemployed in covered employment, the most recently filed beneficiary form shall govern the payment of all death benefits for all periods of employment. Notwithstanding the foregoing sentence, a reemployed IPERS Option 4 or 6 retired member may name someone other than the member's contingent annuitant as beneficiary, but only for lump sum death benefits accrued during the period of reemployment and only if the contingent annuitant has died or has been divorced from the member before or during the period of reemployment unless a qualified domestic relations order (QDRO) directs otherwise. If a reemployed IPERS Option 4 or 6 retired member dies without filing a new beneficiary form, the death benefits accrued for the period of reemployment shall be paid to the member's contingent annuitant, unless the contingent annuitant has died or been divorced from the member. If the contingent annuitant has been divorced from the member, any portion of the lump sum death benefits awarded in a QDRO shall be paid to the contingent annuitant as alternate payee, and the remainder of the lump sum death benefits shall be paid to the member's estate or, if applicable, to the member's heirs if no estate is probated.

ITEM 39. Amend subrule 14.3(3) as follows:

14.3(3) *Change of beneficiary.* The beneficiary may be changed by the member by filing a new designation of beneficiary form with IPERS. Members may also change their beneficiary through the IPERS website. The latest dated designation of beneficiary form on file shall determine the identity of the beneficiary. Payment of a refund to a terminated member cancels the designation of beneficiary on file with IPERS.

ITEM 40. Amend rule 495—14.4(97B) as follows:

495—14.4(97B) Applications for death benefits. Before death benefit payments can be made, application in writing must be submitted to IPERS with a copy of the member's death certificate, or if a death certificate cannot be obtained, IPERS may rely on such resources as it has available, including but not limited to records from the Social Security Administration, bureau of health statistics, IPERS' own internal records, or reports derived from other public records, and other departmental or governmental records to which IPERS may have access together with information establishing the claimant's right to payment. A named beneficiary must complete an IPERS application for death benefits based on the deceased member's account. If the claimant's claim is based on dissolution of marriage that revoked the IPERS beneficiary designation, the claim must be processed pursuant to rule 495—14.17(97B) 495—14.16(97B).

ITEM 41. Amend rule 495—14.6(97B) as follows:

495—14.6(97B) Payment of the death benefit when no designation of beneficiary or an invalid designation of beneficiary form is on file. When no designation of beneficiary or an invalid designation of beneficiary form is on file with IPERS, payment shall be made in one of the following ways.

14.6(1) Where the estate is open, payment shall be made to the administrator or executor where said executor or administrator shall be duly appointed and serving under Iowa Code chapter 633 or 635.

14.6(2) Where no estate is probated or the estate is closed prior to the filing with IPERS of an application for death benefits, payment will be made to the surviving spouse. The following documents shall be presented as supporting evidence: in accordance with the intestacy laws of the state of Iowa. If someone, other than those identified pursuant to the intestacy laws of the state of Iowa claims entitlement to a death benefit, an estate must be opened and the death benefit shall be payable to the administrator or executor of the estate.

a.—Copy of the will, if any;

b.—Copy of any letters of appointment; and

c.—Copy of the court order closing the estate and discharging the executor or administrator.

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~~14.6(3) Where no estate is probated or the estate is closed prior to the filing with IPERS of an application for death benefits and there is no surviving spouse, payment will be made to the heirs-at-law as determined by the intestacy laws of the state of Iowa.~~

~~14.6(4) Where a trustee has been named as designated beneficiary and is not willing to accept the death benefit or otherwise serve as trustee, IPERS may apply but is not required to apply to the applicable district court for an order to distribute the funds to the clerk of court on behalf of the beneficiaries of the member's trust. Upon the issuance of an order and the giving of such notice as the court prescribes, IPERS may deposit the death benefit with the clerk of court for distribution. IPERS shall be discharged from all liability upon deposit with the clerk of court.~~

ITEM 42. Rescind rule 495—14.12(97B) and adopt the following new rule in lieu thereof:

495—14.12(97B) Preretirement death benefits.

14.12(1) *Death prior to first month of entitlement.* Where an active member, or an inactive member vested by service, dies prior to the first month of entitlement, the lump sum death benefit shall be the greater of the amount provided in subrule 14.12(3) or 14.12(4). Sole beneficiaries may elect, in lieu of the lump sum amount, to receive a single life annuity that is the actuarial equivalent of such lump sum amount. Where an inactive member, not vested by service, dies prior to the first month of entitlement, the lump sum death benefit shall be as provided in subrule 14.12(7).

14.12(2) *Death benefits under Iowa Code section 97B.52(1).*

a. Definitions.

"Accrued benefit" means the monthly amount that would have been payable to the deceased member under IPERS Option 2 at the member's earliest normal retirement age, based on the member's covered wages and service credits at the date of death. If a deceased member's wage record consists of a combination of regular and special service credits, the monthly amount that would have been payable to the deceased member under Option 2 at the member's earliest normal retirement age shall be determined separately for regular and special service credits, and then combined.

"Nearest age" means a member's or beneficiary's age expressed in whole years, after rounding for partial years of age. Ages shall be rounded down to the nearest whole year if less than six complete months have passed following the month of the member's or beneficiary's last birthday, and shall be rounded up if six complete months or more have passed following the month of the member's or beneficiary's last birthday.

b. Process for applying.

(1) A claim for a single life annuity under this subrule must be filed as follows:

1. A nonspouse beneficiary must file a claim for a single life annuity within 12 months of the member's death.

2. A beneficiary who is a surviving spouse must file a claim for a single life annuity within 12 months of the member's death, or by the date that the member would have attained the age of 72, whichever period is later.

(2) Elections to receive the lump sum amount or single life annuity shall be irrevocable once the first payment is made.

(3) No further benefits will be payable following the death of any beneficiary who qualifies and elects to receive the single life annuity provided under this subrule.

(4) The provisions of this subrule shall not apply to members who died before January 1, 2001.

14.12(3) *Accumulated contributions lump sum benefit.* An accumulated contribution lump sum death benefit is equal to the accumulated contributions of the member plus the product of an amount equal to the highest year of covered wages of the deceased member and the number of years of membership service divided by the "applicable denominator," as provided in Iowa Code section 97B.52(1) "a." The calculation of the highest year of covered wages shall use the highest calendar year of covered wages reported to IPERS.

14.12(4) *Present value lump sum.* A lump sum death benefit equal to the present value of the member's accrued benefit is calculated as follows:

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a. IPERS shall calculate a member's retirement benefit at earliest normal retirement age under IPERS Option 2, based on the member's covered wages and service credits at the date of death and the retirement benefit formula in effect in the month following the date of death.

b. For purposes of determining the "member date of death annuity factor" under the conversion tables supplied by IPERS' actuary, IPERS shall assume that "age" means the member's nearest age at the member's date of death.

c. For purposes of determining the "member unreduced retirement annuity factor" under the conversion tables supplied by IPERS' actuary, IPERS shall assume that "age" means the member's nearest age at the member's earliest normal retirement date. If a member had already attained the member's earliest normal retirement date, IPERS shall assume that "age" means the member's nearest age at the date of death.

14.12(5) *Single life annuity benefit.* Procedures and assumptions for converting the actuarial equivalent of a lump sum death benefit to a single life annuity are as follows:

a. For purposes of determining the "age of beneficiary annuity factor" under the conversion tables supplied by IPERS' actuary, IPERS shall assume that "age" means the beneficiary's nearest age as of the beneficiary's first month of entitlement.

b. A beneficiary's first month of entitlement is the month after the date of the member's death.

c. Effective for claims filed after June 30, 2004, no retroactive payments of the single life annuity shall be made under this subrule.

d. Effective for claims filed after June 30, 2004, the beneficiary whose single life annuity is less than \$600 per year shall be able to receive only the lump sum payment under this rule.

e. Any sole beneficiary who is eligible for and elects to receive a single life annuity under this subrule shall also qualify for the favorable experience dividend (FED) payments authorized under rule 495—15.2(97B), subject to the requirements of that rule.

14.12(6) *Retired reemployed members and aged 70 members who retire without terminating employment.* Preretirement death benefits for retired reemployed members and aged 70 members who retire without terminating employment shall be calculated as follows:

a. For beneficiaries of such members who elect IPERS Option 4 or 6 at retirement, IPERS shall recompute (for retired reemployed members) or recalculate/recompute (for aged 70 members who retired without terminating employment) the member's monthly benefits as though the member had elected to terminate employment as of the date of death, to have the member's benefits adjusted for postretirement wages, and then lived into the recomputation or recalculation/recomputation (as applicable) first month of entitlement.

b. The recomputation provided under paragraph "a" shall apply only to beneficiaries of members who elected IPERS Option 4 or 6, where the member's monthly benefit would have been increased by the period of reemployment, and is subject to the limitations of Iowa Code sections 97B.48A, 97B.49A, 97B.49B, 97B.49C, 97B.49D, and 97B.49G. The recalculation/recomputations provided under paragraph "a" shall apply only to beneficiaries of members who elected IPERS Option 4 or 6, where the member's monthly benefit would have been increased by the period of employment after the initial retirement, and is subject to the limitations of Iowa Code sections 97B.49A, 97B.49B, 97B.49C, 97B.49D, and 97B.49G. In all other cases, including cases where members previously received a lump sum payment under Iowa Code section 97B.48(1) in lieu of a monthly retirement allowance, preretirement death benefits under this paragraph shall be the lump sum amount equal to the accumulated employee and accumulated employer contributions.

c. Beneficiaries of members who had elected IPERS Option 4 or 6 may also elect to receive the accumulated employer and accumulated employee contributions described in paragraph 14.12(6) "b" in lieu of the increased monthly annuity amount. Notwithstanding paragraph "b" above, if the member elected IPERS Option 5 at retirement, the lump sum amount payable under this paragraph shall be the greater of the applicable commuted lump sum or the accumulated employee and accumulated employer contributions.

14.12(7) *Inactive member, not vested by service death benefit.*

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

a. For deaths occurring after June 30, 2004, and before July 1, 2012, for inactive members who have less than 16 quarters of service credit, preretirement death benefits shall be provided solely under Iowa Code section 97B.52(1)“*a*,” and shall only be payable in lump sum amounts. For purposes of this paragraph, an inactive member is a member as defined under Iowa Code section 97B.1A(12).

b. For deaths occurring after June 30, 2012, preretirement death benefits shall be provided solely under Iowa Code section 97B.52(1)“*a*” and shall only be payable in lump sum amounts for inactive members who are not vested by service. For purposes of this paragraph, an inactive member is a member as defined under Iowa Code section 97B.1A(12).

ITEM 43. Rescind rule **495—14.13(97B)**.

ITEM 44. Renumber rules **495—14.14(97B)** to **495—14.17(97B)** as **495—14.13(97B)** to **495—14.16(97B)**.

ITEM 45. Amend rule 495—14.17(97B) as follows:

495—14.17(97B) Beneficiary revocation pursuant to Iowa Code section 598.20B, dissolution of marriage. IPERS is not liable for the payment of death benefits to a beneficiary pursuant to a beneficiary designation that has been revoked or reinstated by a divorce, annulment, or remarriage before IPERS receives the written notice set forth in subrule ~~14.17(1)~~ 14.16(1). Furthermore, IPERS shall only be liable for payments made after receipt of such written notice if the written notice is received at least ten calendar days prior to the payment.

14.17(1) and **14.17(2)** No change.

14.17(3) Administration. Upon receipt of written notice that meets the requirements of subrules ~~14.17(1)~~ 14.16(1) and ~~14.17(2)~~ 14.16(2):

a. to *d.* No change.

If the probate court charges a filing fee for the deposit of amounts payable hereunder, IPERS shall deduct such filing fees and other court costs from the amounts payable prior to transfer. The probate court shall hold the funds and, upon its determination, shall order disbursement or transfer in accordance with the determination. Additional filing fees and court costs, if any, shall be charged upon disbursement either to the recipient or against the funds on deposit with the probate court, in the discretion of the court.

14.17(4) No change.

ITEM 46. Amend rule 495—20.1(97B) as follows:

495—20.1(97B) Recognition of agents.

20.1(1) Recognition of agents in general. When a member or beneficiary desires to be represented by an agent before the system, the member or beneficiary shall designate in writing, using a power of attorney form or other acceptable legal form, the name of a representative and the nature of the business the representative is authorized to transact. Other acceptable legal form can be a guardianship, conservatorship, other similar court order that appoints an agent to act upon behalf of a member or beneficiary, or social security representative payee documents for the individual so designated. An agent can be an institution or facility acting upon the member's or beneficiary's behalf. Such designation on the part of the member or beneficiary shall constitute for IPERS sufficient proof of the acceptability of the individual to serve as the member's or beneficiary's agent.

20.1(2) Payment to members or beneficiaries with a recognized agent. When it appears that the interest of a member or beneficiary would be served, IPERS may recognize an agent to represent the member or beneficiary in the transaction of the affairs with IPERS. ~~Recognition may be obtained through the filing with IPERS of a copy of the guardianship, trusteeship, power of attorney, conservatorship, other similar court order which appoints an agent to act upon behalf of a member or beneficiary, or social security representative payee documents by the individual so designated.~~ Such persons agents have all the rights and obligations of the member or beneficiary unless the document creating the agency relationship limits this authority as it pertains to the system. Notwithstanding the foregoing, ~~none of the foregoing representatives~~ no agent shall have the right to name the representative agent as the member's

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

or beneficiary's beneficiary unless approved to do so by a court having jurisdiction of the matter, or unless expressly authorized to do so in a power of attorney executed by the member or beneficiary.

20.1(3) *Revocation or suspension of power of attorney.* Any person serving as an agent by power of attorney under this rule can have the agency relationship rescinded by the member or beneficiary by notifying IPERS ~~verbally or~~ in writing. A power of attorney shall be suspended and given no effect when the system receives written proof of the appointment of a guardian, conservator, or court order that appoints an agent to act upon behalf of the member or beneficiary. The power of attorney shall be reinstated when the system receives written proof that a guardianship, conservatorship, or court order appointing an agent no longer exists, has expired, or is invalid.

20.1(4) *Revocation of other representative agents.* Any person, institution, or facility serving as a ~~representative~~ an agent under a guardianship, or conservatorship, ~~or social security representative payee~~ may not ~~be~~ have its agency relationship revoked unless by court order ~~or notice from the social security administration in writing.~~

20.1(5) *Social security representative payees.* The system shall accept the federal social security administration's appointment of a person, facility, or institution to act upon a member's or beneficiary's behalf only with regard to the deposit of system benefits. The appointment of a person, facility, or institution by the federal social security administration shall be suspended and given no effect when the system receives written proof of the appointment of a guardian, conservator, or court order that appoints an agent to act upon behalf of the member or beneficiary. A power of attorney or court order will take precedence over the federal social security administration's appointment of a person, facility, or institution to act upon a member's or beneficiary's behalf.

20.1(6) *Agent standards.* A person, facility, or institution serving in the capacity of an agent shall act in the best interests of the member or beneficiary. Payments made to the agent on behalf of the member or beneficiary will be used for the direct benefit of the member or beneficiary. The failure to serve in the best interests of the member or beneficiary will cause discontinuance of the agency relationship and may serve as the basis for legal action by IPERS, the member, or the beneficiary.

ITEM 47. Rescind and reserve rule 495—20.2(97B).

ARC 4894C

LABOR SERVICES DIVISION[875]

Notice of Intended Action

Proposing rule making related to update of rules and providing an opportunity for public comment

The Labor Commissioner hereby proposes to amend Chapter 1, "Description of Organization and Procedures Before the Division," Chapter 4, "Recording and Reporting Occupational Injuries and Illnesses," Chapter 32, "Child Labor," Chapter 38, "Employment Agency Licensing," Chapter 61, "Administration of Iowa Code Chapter 88A," Chapter 150, "Construction Contractor Registration," Chapter 155, "Asbestos Removal and Encapsulation," Chapter 156, "Bidder Preferences in Government Contracting," and Chapter 177, "Mixed Martial Arts," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 88.5, 88A.3, 88B.3, 90A.7, 91.6, 91C.6, 92.8 and 94A.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 88, 88A, 88B, 90A, 91, 91C, 92 and 94A.

LABOR SERVICES DIVISION[875](cont'd)

Purpose and Summary

The proposed items remove obsolete references; update addresses; amend language concerning hazardous occupations for youth; allow year-round amusement operators to apply for their annual permits in November; require amusement permit applications to be submitted 30 days, rather than 14 days, in advance; align rules with statutory language; facilitate the use of hoods for asbestos abatement workers; and amend the definitions of “construction” and “mixed martial arts.”

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commissioner for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 1.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Commissioner no later than 4:30 p.m. on March 4, 2020. Comments should be directed to:

Kathleen Uehling
Division of Labor Services
150 Des Moines Street
Des Moines, Iowa 50309
Email: kathleen.uehling@iwd.iowa.gov

Public Hearing

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

March 4, 2020
9 a.m.

150 Des Moines Street
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

LABOR SERVICES DIVISION[875](cont'd)

ITEM 1. Amend subrule 1.3(2) as follows:

1.3(2) ~~Correspondence and payments may be mailed to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.~~ The telephone number for the division is (515)242-5870. The division's office is located at 150 Des Moines Street, Des Moines, Iowa 50309. The division's website is www.iowadivisionoflabor.gov.

ITEM 2. Amend rule 875—1.15(22,91) as follows:

875—1.15(22,91) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may have a written statement of additions, dissents, or objections entered into a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of a record to alter the original copy or to expand the official record of any division proceeding. Written statements of additions, dissents, or objections shall be sent to the custodian or to the Labor Commissioner, ~~1000 E. Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309. Written statements of additions, dissents, or objections must be dated and signed and shall include the current address and telephone number of the requester or the requester's representative.

ITEM 3. Amend subrule 1.41(1) as follows:

1.41(1) General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the division will issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Division of Labor Services, Division Rules Coordinator, ~~1000 East Grand~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

ITEM 4. Amend subrule 1.43(4) as follows:

1.43(4) Written criticisms. Written criticisms of a rule may be mailed to Division of Labor Services, Division Rules Coordinator, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309. To constitute a criticism of a rule, the criticism must be in writing, state it is a criticism of a specific rule, state the rule number, and provide reasons for criticism of the rule. All written rule criticisms received will be kept for a period of five years.

ITEM 5. Amend subrule 1.52(3), introductory paragraph, as follows:

1.52(3) A petition for intervention shall be mailed to Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309. The petition is deemed filed when it is received by that office. The division will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be legible and must substantially conform to the following form:

ITEM 6. Amend rule 875—1.54(17A) as follows:

875—1.54(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be mailed to Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309.

ITEM 7. Amend subrule 1.55(2) as follows:

1.55(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Declaratory Orders Coordinator, Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the division.

ITEM 8. Amend subrule 1.75(4) as follows:

1.75(4) When filing is required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be mailed to the division at ~~1000 East Grand Avenue~~

LABOR SERVICES DIVISION[875](cont'd)

150 Des Moines Street, Des Moines, Iowa 50319 50309. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the division.

ITEM 9. Amend subrule 1.75(6) as follows:

1.75(6) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa 50319 50309, and to the names and addresses of the parties listed below by depositing the same in (state: a United States post office mailbox with correct postage properly affixed, state interoffice mail, courier).

(Date)

(Signature)

ITEM 10. Amend rule 875—1.102(17A,91), introductory paragraph, as follows:

875—1.102(17A,91) Petitions. If the petition for waiver or variance relates to a pending contested case, the petition shall be filed in the contested case proceeding. Other petitions must be mailed to Labor Commissioner, Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa 50319 50309. In either case, the petition shall include the following information where applicable:

ITEM 11. Amend paragraph **4.3(2)“c”** as follows:

c. Visiting ~~1000 E. Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa.

ITEM 12. Amend subrule 32.8(21) as follows:

32.8(21) ~~Occupations deemed by the labor commissioner to be hazardous to life or limb as provided by Iowa Code section 92.8(21)~~ Hazardous occupations prohibited by the labor commissioner include the following:

a. Occupations involved in the operation of power cutters on corn detasseling machines.

b. Occupations involved in the driving of power-driven detasseling machines ~~provided that~~ unless the driver has a valid driver's license or a certificate issued by the Federal Extension Service showing that the driver has completed a 4-H farm and machinery program.

This subrule is intended to implement Iowa Code section 92.8(21).

ITEM 13. Amend subrule 38.2(1) as follows:

38.2(1) *Application.* An application for a license must be made in writing to the commissioner ~~upon Form PEA-1(309-6164)~~ on the form provided by the commissioner. ~~The application form applicant shall be accompanied by two copies of also complete and submit the employee-paid fee schedule Form PEA-2(309-6164) form provided by the commissioner;~~ \$75 nonrefundable fee; and all contract forms to be signed by an employee. The application shall also be accompanied by a surety company bond in the sum of \$30,000, to be approved by the commissioner and conditioned to pay any damages that may accrue to any person due to a wrongful act or violation of law on the part of the applicant in the conduct of business.

ITEM 14. Amend subrule 38.2(3) as follows:

38.2(3) *Change in officers.* A change in the name of any person required to be reported on the application under Iowa Code ~~Supplement~~ chapter 94A shall be forwarded to the commissioner within ten days of the change.

ITEM 15. Amend paragraph **38.8(2)“c”** as follows:

c. All contracts and fee schedules must clearly state that the agency is licensed by the labor commissioner and that inquiries may be made via mail to the Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa 50319 50309, or by telephone to (515)242-5870.

LABOR SERVICES DIVISION[875](cont'd)

ITEM 16. Amend **875—Chapter 38**, implementation sentence, as follows:
These rules are intended to implement Iowa Code ~~Supplement~~ chapter 94A.

ITEM 17. Amend subrule 61.3(1) as follows:

61.3(1) Operating permit. No later than May 1 and at least ~~14~~ 30 days before operation begins each calendar year, the operator of covered equipment shall apply to the commissioner for an operating permit. Applications may be submitted in November for continuous operations. Application shall be made on a form provided by the commissioner. Each of the following shall be submitted with the completed operating permit application:

a. to g. No change.

ITEM 18. Amend rule **875—150.2(91C)**, definition of “Construction,” as follows:

“*Construction*” means new work, additions, alterations, reconstruction, installations, repairs and demolitions. Construction activities are generally administered or managed from a relatively fixed place of business, but the actual construction work is performed at one or more different sites which may be dispersed geographically. Examples of construction activities, adopted by reference, are in 871—23.82(96) for purposes of the Iowa employment security law. ~~For work on structures that are both located in an area that is subject to a disaster emergency proclamation pursuant to Iowa Code section 29C.6 and damaged by circumstances related to those that caused the disaster emergency proclamation, “construction” includes asbestos abatement.~~

ITEM 19. Amend subrule 155.6(1) as follows:

155.6(1) Application form. Except as noted in this subrule, the applicant must complete and submit the entire form provided by the division with the necessary attachments. Respirator fit tests and medical examinations must have occurred within the past 12 months. Only worker and contractor/supervisor license applicants must submit the ~~respirator fit test~~ respiratory protection and physician’s certification forms. Photocopies of the forms shall not be accepted.

ITEM 20. Amend subrule 155.6(2) as follows:

155.6(2) Training. A certificate of appropriate training ~~from a course provider approved for asbestos training as established~~ by the U.S. Environmental Protection Agency must accompany all applications. Applicants for a license must be trained by training providers other than themselves. Applicants who completed initial training under a prior set of applicable rules will not be required to take another initial training course if they complete all annual refresher courses.

ITEM 21. Amend subparagraph **155.6(11)“a”(1)** as follows:

(1) A copy of a certificate for training that was provided within the past 12 months ~~by a course provider approved as established~~ by the U.S. Environmental Protection Agency and that pertains to the work being performed;

ITEM 22. Amend subparagraph **155.6(11)“a”(3)** as follows:

(3) ~~Documentation~~ For a worker wearing or intending to wear a tight-fitting respirator, documentation of a respirator fit test consistent with 29 CFR 1910.134 within the past 12 months;

ITEM 23. Amend subparagraph **155.6(11)“b”(1)** as follows:

(1) A copy of a certificate for training ~~by a course provider approved as established~~ by the U.S. Environmental Protection Agency and that pertains to the work being performed;

ITEM 24. Amend subrule 156.4(1) as follows:

156.4(1) Complaints. Any person with information regarding a violation of the Act may submit a written complaint to the commissioner. Any complaint must provide the information required pursuant to subrule 156.4(2) or as much of such information as is reasonably practicable under the circumstances. The completed written complaint form shall be mailed to the commissioner at Labor Services Division, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa 50319 50309.

LABOR SERVICES DIVISION[875](cont'd)

ITEM 25. Amend rule 875—177.1(90A), introductory paragraph, as follows:

875—177.1(90A) Definitions. The definitions contained in Iowa Code chapter 90A as amended by 2010 Iowa Acts, Senate File 2286, and the definitions in this rule shall apply to this chapter.

ITEM 26. Amend rule **875—177.1(90A)**, definition of “Mixed martial arts,” as follows:

“*Mixed martial arts*” means a style of athletic contest that includes a combination of combative skills from the sports of boxing, wrestling, kickboxing and judo different disciplines of the martial arts, including, without limitation, grappling, kicking and striking.

ARC 4918C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rule making related to “no anchoring” and “no boating” zoned areas on Rathbun Lake and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to amend Chapter 40, “Boating Speed and Distance Zoning,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 462A.26 and 462A.32.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 462A.26 and 462A.32.

Purpose and Summary

The proposed amendments create new subrules allowing for the designation of “no anchoring” and “no boating” zoned areas on Rathbun Lake, which is located primarily in Appanoose County. Such zoned areas could be designated at locations where these activities would pose a risk to human safety or threaten to damage property. Current rules allow for zoned areas on Rathbun Lake that restrict the speed of watercraft and designate swimming and wading areas.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department of Natural Resources (Department) upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

This rule is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

NATURAL RESOURCE COMMISSION[571](cont'd)

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 3, 2020. Comments should be directed to:

Deborah Vitko
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Fax: 515.725.8201
Email: deborah.vitko@dnr.iowa.gov

Public Hearing

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

March 3, 2020
12 noon to 1 p.m.

Conference Room 3 East and West
Wallace State Office Building
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

- ITEM 1. Adopt the following **new** subrule 40.5(3):
40.5(3) Areas may be designated as “no anchoring” areas.
- ITEM 2. Adopt the following **new** subrule 40.5(4):
40.5(4) Areas may be designated as “no boating” areas.

ARC 4924C

NATURAL RESOURCE COMMISSION[571]**Notice of Intended Action****Proposing rule making related to virtual fishing tournaments
and providing an opportunity for public comment**

The Natural Resource Commission (Commission) hereby proposes to amend Chapter 44, “Special Events and Fireworks Displays,” Iowa Administrative Code.

NATURAL RESOURCE COMMISSION[571](cont'd)

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 455A.5(6), 462A.16 and 481A.39.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455A.5(6), 462A.16 and 481A.39.

Purpose and Summary

This proposed rule making would expand the existing definition of “fishing tournament” found in rule 571—44.2(321G,321I,461A,462A,481A) by adding language to include virtual fishing tournaments, also known as “catch-photo-release” tournaments. Virtual fishing tournaments are increasing in popularity; however, there is no allowance for these events within the current rules. The proposed amendments are necessary because Iowa Code section 462A.16 requires that all tournaments be authorized by the Commission.

The proposed rule making also adds definitions of “aggregated virtual fishing tournament” and “distributed virtual fishing tournament.” An aggregated virtual tournament is similar to a traditional fishing tournament in which participants gather at one location to fish, except that it does not have a weigh-in at the end of the day because all fish are immediately measured, photographed, and released. A distributed virtual tournament, usually organized as an online contest, occurs on multiple bodies of water and can last for weeks or months. This type of tournament has a minimal impact on natural resources and fish populations, and the Commission wishes to encourage the growth of these events in Iowa. The proposed rule making allows distributed virtual tournaments to occur at more than one location and last longer than the currently established nine-day period for a single special event. In addition, the proposed amendments exempt both types of virtual fishing tournaments from paying the special event permit application fee.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department of Natural Resources (Department) upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

This rule is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4 p.m. on March 5, 2020. Comments should be directed to:

NATURAL RESOURCE COMMISSION[571](cont'd)

Joe Larscheid
 Iowa Department of Natural Resources
 Wallace State Office Building
 502 East Ninth Street
 Des Moines, Iowa 50319
 Fax: 515.725.8201
 Email: fisheries@dnr.iowa.gov

Public Hearing

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

March 5, 2020 12 noon to 2 p.m.	Wallace State Office Building Conference Room 4 East Des Moines, Iowa
March 5, 2020 12 noon to 2 p.m.	Spirit Lake Hatchery Conference Room 122 252nd Avenue Spirit Lake, Iowa
March 5, 2020 12 noon to 2 p.m.	Cold Springs District Office Conference Room 57744 Lewis Road Lewis, Iowa
March 5, 2020 12 noon to 2 p.m.	Lake Darling District Office Conference Room 110 Lake Darling Road Brighton, Iowa
March 5, 2020 12 noon to 2 p.m.	Manchester Hatchery Conference Room 22693 205th Avenue Manchester, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule **571—44.2(321G,321I,461A,462A,481A)**, definition of “Fishing tournament,” as follows:

“*Fishing tournament*” means any organized fishing event, except for department-sponsored fishing events held for educational purposes, involving any of the following: (1) six or more boats or 12 or more participants, except for waters of the Mississippi River, where the number of boats shall be 20 or more and the number of participants shall be 40 or more; (2) an entry fee is charged; or (3)

NATURAL RESOURCE COMMISSION[571](cont'd)

prizes or other inducements are awarded. Additionally, a “virtual fishing tournament,” also known as a “catch-photo-release” tournament, is a fishing tournament where fish are not possessed (i.e., not placed in a live well) by the angler but instead are photographed and released upon catching. An “aggregated virtual fishing tournament” occurs when all participants are present on one body of water simultaneously. A “distributed virtual fishing tournament” occurs when participants are present on two or more bodies of water. Additionally, only five or fewer participants may be present on any one body of water simultaneously, and the tournament may occur over an extended time frame. For purposes of this chapter, “fishing tournament” is included in the definition of “special event” unless otherwise specified.

ITEM 2. Amend subrule 44.5(4) as follows:

44.5(4) One application form may be submitted for all events of the same type being held at the same location within a nine-day period and will be processed as a single application. A distributed virtual fishing tournament may extend beyond the nine-day period and need not be at a single location.

ITEM 3. Amend rule 571—44.8(321G,321I,461A,462A,481A) as follows:

571—44.8(321G,321I,461A,462A,481A) Fees and exceptions. The administrative fee for processing each special event application is \$25. In the case of field and retriever meets and trials, the fee for processing each special event application is \$2. The fees are nonrefundable.

The department shall waive the administrative fee for processing special event applications for sailing schools; accredited postsecondary institutions and programs; private and public primary and secondary schools; all department-approved watercraft education courses, ATV education courses, and snowmobile education courses; fishing clinics; friends groups; ~~and~~ department-sponsored youth fishing days; and virtual fishing tournaments.

ARC 4920C**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action****Proposing rule making related to the application of chemicals to public waters and providing an opportunity for public comment**

The Natural Resource Commission (Commission) hereby proposes to amend Chapter 54, “Restrictions on Introduction and Removal of Plant Life,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 455A.5(6) and chapters 461A and 462A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 455A, 461A and 462A.

Purpose and Summary

This proposed rule making would allow cities and counties to apply chemicals to public waters, as defined by rule 571—13.3(455A,461A), for the removal of aquatic plants for navigational and recreational purposes. This application would be subject to a permit issued by the Department of Natural Resources (Department) and a Department-approved vegetation management plan. Currently, only Department staff may apply chemicals for plant control for navigational or recreational purposes. An already-available alternative is for the Department to apply chemicals under an agreement with a city or county. The city or county then reimburses the Department for the cost incurred. If the proposed rule making were implemented, the cost to the Department would be the cost of having existing staff process city and county permit applications. This cost would be much less than the cost if the Department

NATURAL RESOURCE COMMISSION[571](cont'd)

continued to delegate staff to apply chemicals and entered into and managed written agreements with cities and counties.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

This rule is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4 p.m. on March 5, 2020. Comments should be directed to:

Joe Larscheid
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Fax: 515.725.8201
Email: fisheries@dnr.iowa.gov

Public Hearing

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

March 5, 2020 12 noon to 2 p.m.	Wallace State Office Building Conference Room 4 East Des Moines, Iowa
March 5, 2020 12 noon to 2 p.m.	Cold Springs District Office Conference Room 57744 Lewis Road Lewis, Iowa
March 5, 2020 12 noon to 2 p.m.	Spirit Lake Hatchery Conference Room 122 252nd Avenue Spirit Lake, Iowa
March 5, 2020 12 noon to 2 p.m.	Manchester Hatchery Conference Room 22693 205th Avenue Manchester, Iowa
March 5, 2020 12 noon to 2 p.m.	Lake Darling District Office Conference Room 110 Lake Darling Road Brighton, Iowa

NATURAL RESOURCE COMMISSION[571](cont'd)

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

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend subrule 54.5(1) as follows:

54.5(1) Permits.

a. The department may issue permits for the introduction and removal of aquatic plants in public waters. To be considered for a permit under this rule, applicants shall use the department's application form for sovereign lands construction permits, as described in rule 571—13.9(455A,461A,462A), and shall complete all relevant information on that application form. Applicants shall also provide any additional information as may be necessary, as described in rule 571—13.10(455A,461A). The term of the permit shall be stated in the permit. Permits are nontransferable and shall be subject to reevaluation upon expiration. Permits may be issued for between one and five years.

b. Cities and counties in Iowa may use chemicals, including pesticides and herbicides, to remove aquatic vegetation from water intake structures. However, such cities and counties shall be required to obtain a permit under this rule, and ~~rules in~~ 567—Chapter 66, as may be required, for such activities.

c. Cities and counties in Iowa may use chemicals, including pesticides and herbicides, to remove aquatic vegetation for certain recreation and navigation purposes, including boating, fishing, and swimming. However, such cities and counties shall be required to obtain a permit under this rule, and 567—Chapter 66 as may be required, for such activities. Additionally, all such use of chemicals shall be conducted by a certified aquatic applicator and shall be subject to the terms of a vegetation management plan approved by the director. Issuance of such permits and approval of a vegetation management plan shall be at the sole discretion of the department.

ARC 4922C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

**Proposing rule making related to fishing regulations
and providing an opportunity for public comment**

The Natural Resource Commission (Commission) hereby proposes to amend Chapter 81, "Fishing Regulations," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 481A.38.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 481A.38.

NATURAL RESOURCE COMMISSION[571](cont'd)

Purpose and Summary

This proposed rule making would standardize the methods used for establishing length limits and other fishing regulations that are specific to a site (waterbody) and would extend the Missouri River/Big Sioux River paddlefish season by three days. Currently, site-specific regulations exist as administrative rules within Chapter 81. This proposed rule making would allow the Department of Natural Resources (Department) to make changes to site-specific regulations, or implement new regulations, by posting such regulations on signage at the relevant waterbodies. The Department already uses onsite signage to alert anglers to various regulations, and this method is highly successful and well-accepted by the state's anglers. The proposed changes are explained individually and in greater detail below.

Subrule 81.2(2) prescribes length limits and catch and release regulations for black bass. The proposed changes to this subrule would simplify how the various length limits are listed in the rule and would allow the Department greater flexibility in managing bass populations by designating site-specific restrictions via posting signage at the respective waterbodies. The alternative is to conduct rule making every time the Department determines that a length limit or other similar restriction at a specific waterbody should be changed. This is unnecessarily burdensome. The practice of posting length limits and catch and release requirements at waterbodies is already widespread, effective, and accepted by anglers.

Subrule 81.2(3) provides daily bag limits, possession limits, and length limits for walleye. Paragraph 81.2(3)“b” currently allows the Department to establish site-specific walleye regulations by posting signage at the waterbody. When paragraph 81.2(3)“b” was adopted in 2014, allowing for this method of implementing new regulations, the existing site-specific regulations for walleye in the Mississippi River were inadvertently left in the rules in paragraph 81.2(3)“c.” The proposed change to subrule 81.2(3) removes the Mississippi River-specific regulations by deleting paragraph 81.2(3)“c,” at which point the existing provision in paragraph 81.2(3)“b,” allowing for regulation adoption via signage, would apply to the Mississippi River. This change would allow the Department to more efficiently institute management regulations (length limits, etc.) for walleye on the Mississippi River and would bring statewide consistency to how walleye regulations are implemented.

Subrule 81.2(4) provides various regulations applicable to the paddlefish season on the Missouri River and Big Sioux River. This rule making proposes to amend subparagraph 81.2(4)“b”(1) by changing “February 4” to “February 1.” This change would provide three additional days for anglers to harvest paddlefish, without negatively impacting the population.

Subrule 81.2(5) currently provides various regulations applicable to trout fishing. The subrule's single paragraph covers multiple species of trout, streams, length limits, and tackle limitations. This rule making proposes to greatly simplify this subrule by striking the paragraph and replacing it with new provisions that (1) would allow the Department to post via signage seasons, bag or possession limits, length limits, catch and release regulations, and tackle regulations specific to a waterbody at that waterbody and (2) would provide a simplified list of standard trout regulations applicable to all waterbodies that do not have posted regulations.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

This rule is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

NATURAL RESOURCE COMMISSION[571](cont'd)

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4 p.m. on March 5, 2020. Comments should be directed to:

Joe Larscheid
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Fax: 515.725.8201
Email: fisheries@dnr.iowa.gov

Public Hearing

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

March 5, 2020 12 noon to 2 p.m.	Wallace State Office Building Conference Room 4E Des Moines, Iowa
March 5, 2020 12 noon to 2 p.m.	Spirit Lake Hatchery Conference Room 122 252nd Avenue Spirit Lake, Iowa
March 5, 2020 12 noon to 2 p.m.	Cold Springs District Office Conference Room 57744 Lewis Road Lewis, Iowa
March 5, 2020 12 noon to 2 p.m.	Manchester Hatchery Conference Room 22693 205th Avenue Manchester, Iowa
March 5, 2020 12 noon to 2 p.m.	Lake Darling District Office Conference Room 110 Lake Darling Road Brighton, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 1. Amend subrule 81.2(2) as follows:

81.2(2) Black bass. The department may post season, bag or possession limits, length limits, and catch and release regulations specific to a body of water at that body of water. For bodies of water without posted regulations, the following regulations apply to black bass:

a. A 15-inch minimum length limit shall apply on black bass in all public lakes ~~except as otherwise posted. On federal flood control reservoirs, a 15-inch minimum length limit shall apply on black bass at Coralville, Rathbun, Saylorville, and Red Rock. All black bass caught from Lake Wapello, Davis County, and Brown's Lake, Jackson County, must be immediately released alive.~~

b. A 12-inch minimum length limit shall apply on black bass in all interior streams, river impoundments, and the Missouri River including chutes and backwaters of the Missouri River where intermittent or constant flow from the river occurs.

c. A 14-inch minimum length limit shall apply to the Mississippi River including chutes and backwaters where intermittent or constant flow from the river occurs. ~~All black bass caught from the following stream segments must be immediately released alive:~~

1. ~~Middle Raccoon River, Guthrie County, extending downstream from below Lennon Mills Dam at Panora as posted to the dam at Redfield.~~

2. ~~Maquoketa River, Delaware County, extending downstream from below Lake Delhi Dam as posted to the first county gravel road bridge.~~

3. ~~Cedar River, Mitchell County, extending downstream from below the Otranto Dam as posted to the bridge on County Road T26 south of St. Ansgar.~~

4. ~~Upper Iowa River, Winneshiek County, extending downstream from the Fifth Street bridge in Decorah as posted to the Upper Dam.~~

ITEM 2. Amend subrule 81.2(3) as follows:

81.2(3) Walleye.

a. ~~West Okoboji, East Okoboji, Spirit, Upper Gar, Minnewashta, and Lower Gar Lakes in Dickinson County, Storm Lake in Buena Vista County, Clear Lake in Cerro Gordo County, and Big Creek Lake in Polk County.~~ The daily bag limit shall be three, with a possession limit of six.

b. *Length limits.* Length limits shall apply on walleye in public waters that have length limits posted or published.

c. ~~Mississippi River.~~ A 15-inch minimum length limit shall apply. All walleye from 20 inches to 27 inches in length that are caught from Mississippi River Pools 12 through 20 must be immediately released alive. No more than one walleye greater than 27 inches in length may be taken per day from Pools 12 through 20.

ITEM 3. Amend subparagraph **81.2(4)“b”(1)** as follows:

(1) There shall be an open season from February 4 1 through April 30.

ITEM 4. Amend subrule 81.2(5) as follows:

81.2(5) ~~Special trout regulations. A 14-inch minimum length limit shall apply on brown trout, rainbow trout, and brook trout in Spring Branch Creek, Delaware County, from the spring source to County Highway D5X as posted, and on brown trout only in portions of Bloody Run Creek, Clayton County, where posted. All trout caught from the posted portion of Waterloo Creek, Allamakee County, Hewitt and Ensign Creeks (Ensign Hollow), Clayton County, McLoud Run, Linn County, and South Pine Creek, Winneshiek County, and all brown trout caught from French Creek, Allamakee County, must be immediately released alive. Fishing in the posted area of Spring Branch Creek, Bloody Run Creek, Waterloo Creek, Hewitt and Ensign Creeks (Ensign Hollow), South Pine Creek, McLoud Run, and French Creek shall be by artificial lure only. Artificial lure means lures that do not contain or have applied to them any natural or synthetic substances designed to attract fish by the sense of taste or smell.~~ Trout regulations. The department may post season, bag or possession limits, length limits, catch and release regulations, and tackle restrictions specific to a body of water at that body of water. On bodies of water posted as artificial lure only, “artificial lure” means lures that do not contain or have applied to them any natural or synthetic substances designed to attract fish by the sense of taste or smell. For bodies of water without posted regulations, the following regulations apply to trout:

NATURAL RESOURCE COMMISSION[571](cont'd)

- a. Open season is continuous.
- b. A five-fish daily bag limit and ten-fish possession limit shall apply to any combination of brown trout, brook trout, rainbow trout, and their hybrids.
- c. A trout fee is required to fish for and possess trout.

ARC 4914C**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action****Proposing rule making related to waterfowl hunting seasons and zones and providing an opportunity for public comment**

The Natural Resource Commission (Commission) hereby proposes to amend Chapter 91, "Waterfowl and Coot Hunting Seasons," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 455A.5(6), 481A.38, 481A.39 and 481A.48.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 481A.48.

Purpose and Summary

Chapter 91 contains the regulations for hunting waterfowl and coot, and includes season dates, bag limits, possession limits, shooting hours, and areas open to hunting. The proposed amendments modify the waterfowl hunting zones and adjust the season dates to comply with what the Commission anticipates the 2021-2026 federal regulations will be after having met with the United States Fish and Wildlife Service (USFWS) in August 2019 at the Mississippi Flyway Council and reviewing the preliminary proposed regulations contained in the Federal Register (preliminary proposed in 84 Fed. Reg. 199, 55120-55129 (Oct. 15, 2019)).

More specifically, the season structure that the Department of Natural Resources (Department) is proposing uses the maximum number of days provided by the USFWS. These days are distributed across a wide range of season dates based on a waterfowl migration survey that the Department conducts each fall, an analysis of hunter participation and hunter satisfaction, and a 2019 waterfowl hunter opinion survey. Season dates differ between waterfowl hunting zones and allow for a period of rest before the regular duck seasons and the youth waterfowl hunting season. Hunter surveys and comments show a wide range of preferences; therefore, the season structure offers a wide range of dates in an attempt to accommodate all hunting preferences.

The boundary modifications to the waterfowl hunting zones extend later season dates across southern Iowa in response to hunter interest, while maintaining early and mid-season hunting opportunities, particularly in central and northern Iowa.

The extension of the light goose conservation order is in response to hunter requests regarding the effect of particularly harsh weather during the spring of 2018, which precluded widespread hunting of light geese in northern Iowa until late April of that year.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

NATURAL RESOURCE COMMISSION[571](cont'd)

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

This rule is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 3, 2020. Comments should be directed to:

Orrin Jones
Department of Natural Resources
1203 North Shore Drive
Clear Lake, Iowa 50428
Fax: 641.357.5523
Email: orrin.jones@dnr.iowa.gov

Public Hearing

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

March 3, 2020
12 noon to 1 p.m.

Conference Room 5 East
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrules 91.1(1) to 91.1(5) as follows:

91.1(1) Zone boundaries. The following zone boundaries apply in the time frames noted:

a. The For the 2020-2021 season, the north duck hunting zone is that part of Iowa north of a line beginning on the South Dakota-Iowa border at Interstate 29, southeast along Interstate 29 to State Highway 175, east to State Highway 37, southeast to State Highway 183, northeast to State Highway 141, east to U.S. Highway 30, and along U.S. Highway 30 to the Iowa-Illinois border. The Missouri

NATURAL RESOURCE COMMISSION[571](cont'd)

River duck hunting zone is that part of Iowa west of Interstate 29 and south to the Iowa-Missouri border. The south duck hunting zone is the remainder of the state.

b. For the fall 2021 through spring 2026 seasons, the north duck hunting zone is that part of Iowa north of a line beginning on the South Dakota-Iowa border at Interstate 29, southeast along Interstate 29 to State Highway 20 to the Iowa-Illinois border. The south duck hunting zone is that part of Iowa west of Interstate 29 and south of State Highway 92 east to the Iowa-Illinois border. The central duck hunting zone is the remainder of the state.

91.1(2) Season dates - north zone.

a. For the 2020-2021 season. Special September teal season: September 1 through September 16. For all ducks: The first segment of the season will begin on the last Saturday in September and run for 7 days. The second segment of the season will open on the second Saturday in October and continue for 53 consecutive days.

b. For the fall 2021 through spring 2026 seasons. Special September teal season: September 1 through September 16. For all ducks: The first segment of the season will begin on the Saturday nearest September 30 and run for 7 days. The second segment of the season will open on the Saturday nearest October 13 and continue for 53 consecutive days.

91.1(3) Season dates - south zone/central zone.

a. For the 2020-2021 season - south zone. Special September teal season: September 1 through September 16. For all ducks: The first segment of the season will begin on the first Saturday in October and run for 7 days. The second segment of the season will open on the third Saturday in October and continue for 53 consecutive days.

b. For the fall 2021 through spring 2026 seasons - central zone. Special September teal season: September 1 through September 16. For all ducks: The first segment of the season will begin on the Saturday nearest October 6 and run for 7 days. The second segment of the season will open on the Saturday nearest October 20 and continue for 53 consecutive days.

91.1(4) Season dates - Missouri River zone/south zone.

a. For the 2020-2021 season - Missouri River zone. Special September teal season: September 1 through September 16. For all ducks: The first segment of the season will begin on the second Saturday in October and run for 7 days. The second segment of the season will open on the fourth Saturday in October and continue for 53 consecutive days.

b. For the fall 2021 through spring 2026 seasons - south zone. Special September teal season: September 1 through September 16. For all ducks: The first segment of the season will begin on the Saturday nearest October 13 and run for 7 days. The second segment of the season will open on the Saturday nearest October 27 and continue for 53 consecutive days.

91.1(5) Bag limit. Bag limits for all species other than scaup are as adopted by the U.S. Fish and Wildlife Service and published in the Federal Register. The daily bag limit for scaup will be 1 for the first 15 days of the duck hunting season and 2 for the remaining 45 days.

ITEM 2. Amend subrules 91.3(1) to 91.3(4) as follows:

91.3(1) Zone boundaries. The following zone boundaries apply in the time frames noted:

a. For the 2020-2021 season, the north goose hunting zone is that part of Iowa north of a line beginning on the South Dakota-Iowa border at Interstate 29, southeast along Interstate 29 to State Highway 175, east to State Highway 37, southeast to State Highway 183, northeast to State Highway 141, east to U.S. Highway 30, and along U.S. Highway 30 to the Iowa-Illinois border. The Missouri River goose hunting zone is that part of Iowa west of Interstate 29 and south to the Iowa-Missouri border. The south goose hunting zone is the remainder of the state.

b. Effective fall 2021 through spring 2026, the north goose hunting zone is that part of Iowa north of a line beginning on the South Dakota-Iowa border at Interstate 29, southeast along Interstate 29 to State Highway 20 to the Iowa-Illinois border. The south duck hunting zone is that part of Iowa west of Interstate 29 and south of State Highway 92 east to the Iowa-Illinois border. The central duck hunting zone is the remainder of the state.

91.3(2) Season dates - north zone.

NATURAL RESOURCE COMMISSION[571](cont'd)

a. For the 2020-2021 season. For all geese: The first segment of the regular goose season will begin on the second-to-last Saturday of September and run for a 16-day period. The second segment of the goose season will open on the second Saturday in October and continue for 53 consecutive days. The goose season will then close for a 10-day period and shall then reopen on the following Saturday and remain continuously open until the total number of days used for goose hunting reaches 107.

b. For the fall 2021 through spring 2026 seasons. For all geese: The first segment of the regular goose season will begin on the Saturday nearest September 23 and run for a 16-day period. The second segment of the goose season will open on the Saturday nearest October 13 and continue for 53 consecutive days. The goose season will reopen on the Saturday nearest December 13 and remain continuously open until the total number of days used for goose hunting reaches 107.

91.3(3) Season dates - south zone/central zone.

a. For the 2020-2021 season - south zone. For all geese: The first segment of the regular goose season will begin on the last Saturday of September and run for a 16-day period. The second segment of the goose season will open on the third Saturday in October and continue for 53 consecutive days. The goose season will then close for a 10-day period and shall then reopen on the following Saturday and remain continuously open until the total number of days used for goose hunting reaches 107.

b. For the fall 2021 through spring 2026 seasons - central zone. For all geese: The first segment of the regular goose season will begin on the Saturday nearest September 30 and run for a 16-day period. The second segment of the goose season will open on the Saturday nearest October 20 and continue for 53 consecutive days. The goose season will reopen on the Saturday nearest December 20 and remain continuously open until the total number of days used for goose hunting reaches 107.

91.3(4) Season dates - Missouri River zone/south zone.

a. For the 2020-2021 season - Missouri River zone. For all geese: The first segment of the regular goose season will begin on the first Saturday of October and run for a 16-day period. The second segment of the goose season will open on the fourth Saturday in October and continue for 53 consecutive days. The goose season will then close for a 10-day period and shall then reopen on the following Saturday and remain continuously open until the total number of days used for goose hunting reaches 107.

b. For the fall 2021 through spring 2026 seasons - south zone. For all geese: The first segment of the regular goose season will begin on the Saturday nearest October 6 and run for a 16-day period. The second segment of the goose season will open on the Saturday nearest October 27 and continue for 53 consecutive days. The goose season will reopen on the Saturday nearest December 27 and remain continuously open until the total number of days used for goose hunting reaches 107.

ITEM 3. Amend subrule 91.3(8), introductory paragraph, as follows:

91.3(8) Light goose conservation order season. Only light geese (white and blue-phase snow geese and Ross' geese) may be taken under a conservation order from the U.S. Fish and Wildlife Service beginning the day after the regular goose season closes and continuing until ~~April 15~~ May 1.

ARC 4921C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rule making related to restitution for pollution causing injury to wild animals and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to amend Chapter 113, "Restitution for Pollution Causing Injury to Wild Animals," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 455A.5(6) and 481A.151.

NATURAL RESOURCE COMMISSION[571](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455A.5(6) and 481A.151.

Purpose and Summary

Iowa Code section 481A.151 authorizes the Commission to adopt rules incorporating the methods and values published by the American Fisheries Society (AFS) for use by the Department of Natural Resources (Department) when conducting fish kill counts and assessing restitution for damages to the state's natural resources and wildlife. The Commission has done so in Chapter 113. The proposed amendment would update the definition of "AFS" in 571—113.2(481A) by changing "Special Publication 30" to "Special Publication 35." Special Publication 35 is the most current version of the AFS publication regarding fish and freshwater mollusk counting methods and restitution valuation. The alternative of not adopting the newest version of the AFS publication would require the Department to use a document that is no longer considered the best available publication for these purposes.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

This rule is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Commission no later than 4:30 p.m. on March 5, 2020. Comments should be directed to:

Joe Larscheid
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Fax: 515.725.8201
Email: fisheries@dnr.iowa.gov

Public Hearing

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

NATURAL RESOURCE COMMISSION[571](cont'd)

March 5, 2020 12 noon to 2 p.m.	Wallace State Office Building Conference Room 4E Des Moines, Iowa
March 5, 2020 12 noon to 2 p.m.	Spirit Lake Hatchery Conference Room 122 252nd Avenue Spirit Lake, Iowa
March 5, 2020 12 noon to 2 p.m.	Cold Springs District Office Conference Room 57744 Lewis Road Lewis, Iowa
March 5, 2020 12 noon to 2 p.m.	Manchester Hatchery Conference Room 22693 205th Avenue Manchester, Iowa
March 5, 2020 12 noon to 2 p.m.	Lake Darling District Office Conference Room 110 Lake Darling Road Brighton, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend rule **571—113.2(481A)**, definition of "AFS," as follows:

"AFS" means the Special Publication ~~30~~ 35, "Investigation and Monetary Values of Fish and Freshwater Mussel Mollusk Kills," published by the American Fisheries Society.

ARC 4917C

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

**Proposing rule making related to licensure reactivation
and providing an opportunity for public comment**

The Board of Physical and Occupational Therapy hereby proposes to amend Chapter 200, "Licensure of Physical Therapists and Physical Therapist Assistants," and Chapter 206, "Licensure of Occupational Therapists and Occupational Therapy Assistants," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 147.76 and 272C.2.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 148A and 148B.

Purpose and Summary

This proposed rule making amends the Board's requirements for license reactivation by accepting verification from another state or jurisdiction that shows two years of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction preceding application for reactivation in lieu of completing continuing education.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on March 4, 2020. Comments should be directed to:

Venus A. Vendoures Walsh
Professional Licensure Division
Iowa Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: venus.vendoures-walsh@idph.iowa.gov

Public Hearing

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

March 4, 2020
9:30 to 10 a.m.

Fifth Floor Conference Room 526
Lucas State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making. In an effort to ensure accuracy in memorializing a person's comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

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

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 200.15(3) as follows:

200.15(3) Provide verification of current competence to practice physical therapy by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 20 hours of continuing education for a physical therapy assistant and 40 hours of continuing education for a physical therapist within two years of application for reactivation; or verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 40 hours of continuing education for a physical therapy assistant and 80 hours of continuing education for a physical therapist within two years of application for reactivation; verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation; or evidence of successful completion of the professional examination required for initial licensure completed within one year prior to the submission of an application for reactivation.

ITEM 2. Amend subrule 206.11(3) as follows:

206.11(3) Provide verification of current competence to practice occupational therapy by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

2. Date of initial licensure;
 3. Current licensure status; and
 4. Any disciplinary action taken against the license; and
- (2) Verification of completion of 15 hours of continuing education for an occupational therapy assistant and 30 hours of continuing education for an occupational therapist within two years of application for reactivation; or verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation.
- b.* If the license has been on inactive status for more than five years, an applicant must provide the following:
- (1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:
 1. Licensee's name;
 2. Date of initial licensure;
 3. Current licensure status; and
 4. Any disciplinary action taken against the license; and
 - (2) Verification of completion of 30 hours of continuing education for an occupational therapy assistant and 60 hours of continuing education for an occupational therapist within two years of application for reactivation; verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation; or evidence of successful completion of the professional examination required for initial licensure completed within one year prior to the submission of an application for reactivation.

ARC 4913C**PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action****Proposing rule making related to child abuse and dependent adult abuse identification and reporting training and providing an opportunity for public comment**

The Board of Speech Pathology and Audiology hereby proposes to amend Chapter 300, "Licensure of Speech Pathologists and Audiologists," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 272C.2, 232.69(3)"e" and 235B.16(5)"f."

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 232.69 and 235B.16.

Purpose and Summary

2019 Iowa Acts, House File 731, amended Iowa Code sections 232.69 and 235B.16, which govern mandatory training in child and dependent adult abuse identification and reporting for certain professionals. This proposed rule making amends the Board's requirements for mandatory training in child and dependent adult abuse identification and reporting to reflect the statutory changes and requires that licensees who must report child or dependent adult abuse comply with the requirements for training every three years, as provided in the amended Iowa Code sections 232.69 and 235B.16. This proposed rule making also updates subrule 300.11(4) to correct a reference to a rescinded chapter.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on March 3, 2020. Comments should be directed to:

Venus A. Vendoures Walsh
Professional Licensure Division
Iowa Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: venus.vendoures-walsh@idph.iowa.gov

Public Hearing

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

March 4, 2020
9 to 9:30 a.m.

Fifth Floor Board Conference Room 526
Lucas State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making. In an effort to ensure accuracy in memorializing a person's comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend subrule 300.11(4) as follows:

300.11(4) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

application completion of ~~two hours~~ of training in child abuse identification and reporting as required by Iowa Code section 232.69(3) “b” in the previous ~~five~~ three years or condition(s) for waiver of this ~~requirements~~ requirement as identified in paragraph ~~“f.”~~ 300.11(4) “e.”

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of ~~two hours~~ of training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5) “b” in the previous ~~five~~ three years or condition(s) for waiver of this requirement as identified in paragraph ~~“f.”~~ 300.11(4) “e.”

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

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

~~*e. d.* The licensee shall maintain written documentation for five three years after mandatory training as identified in paragraphs “a” to “e,” 300.11(4) “a” and “b,” including program date(s), content, duration, and proof of participation.~~

~~*f. e.* The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:~~

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in ~~645—Chapter 303 rule 645—4.14(272C).~~

~~*g. f.* The board may select licensees for audit of compliance with the requirements in paragraphs “a” 300.11(4) “a” to “f.” “e.”~~

ARC 4915C**REVENUE DEPARTMENT[701]****Notice of Intended Action****Proposing rule making related to exemption of sales and use tax for grain bins and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 226, “Agricultural Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 423.3 as amended by 2019 Iowa Acts, House File 779.

Purpose and Summary

During the 2019 Legislative Session, the General Assembly added a new exemption from sales and use tax: “The sales price from the sale of a grain bin, including material or replacement parts used to construct or repair a grain bin.” The exemption defines a “grain bin” as “property that is vented and

REVENUE DEPARTMENT[701](cont'd)

covered with corrugated metal or similar material, and that is primarily used to hold loose grain for drying or storage.”

Item 2 sets forth a general explanation of what materials will be taxable or exempt under the exemption and then provides a nonexhaustive list of items commonly used to construct a grain bin or sold in conjunction with a grain bin. The proposed rule also explains how entities may claim the exemption. Item 1 amends a current rule to note that cement and concrete are exempt if used in accordance with the new rule proposed in Item 2.

The Department solicited feedback on an initial draft of these proposed amendments with a wide variety of stakeholders, including grain bin manufacturers, retailers, contractors, and others interested in the exemption. The Department made several changes, reflected in this rule making, in response to the comments received.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa beyond the impact of 2019 Iowa Acts, House File 779. The Legislative Services Agency’s fiscal note for House File 779 estimated a reduction in General Fund revenue of \$5.2 million in FY 2020, increasing to \$5.8 million in FY 2024.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 3, 2020. Comments should be directed to:

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

Public Hearing

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

March 3, 2020
9 to 10 a.m.

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

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

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

REVENUE DEPARTMENT[701](cont'd)

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 226.19(4) as follows:

226.19(4) *Taxable even if used in agricultural production.*

additives	lubricants and fluids
air compressors	lumber*
air conditioners, unless a replacement part for exempt machinery	marking chalk
air tanks	mops
antifreeze	motor oils
axes	nails
barn cleaner, permanent	office supplies
baskets	oxygen
belt dressing	packing room supplies
bins, permanent^	paint and paint sprayers
brooms	pliers
buckets	posthole diggers, hand tool
building materials* and supplies	poultry brooders, permanent
burlap cleaners	poultry feeders, permanent
cattle feeders, permanent	poultry nests, permanent
cement#	pruning tools
chain saws	pumps for household or lawn use
cleaning brushes	radios, unless a replacement part for exempt machinery
cleansing agents and materials	refrigerators for home use
computers (including laptop), for personal use	repair tools
computer software	road maintenance equipment
construction tools	road scraper
concrete#	roofing
conveyors, permanent	sanders
cow ties, permanent	scrapers
ear tags	screwdrivers
fence, posts, wire, permanent	shingles
field toilets	shovels
fire prevention equipment	silos
freon	snow fence unless portable and used directly in dairy and livestock production
fuel additives	snow plows and snow equipment
fuel tanks and pumps	space heaters, permanent

REVENUE DEPARTMENT[701](cont'd)

garden hoses and rakes	specialized flooring, permanent
glass	sprinklers, permanent
grain bins and tanks, permanent*^	stalls, permanent
grease	staples
grease guns	stanchions, permanent
hammers	storage tanks
hog rings	tarps
hydraulic fluids	tiling machinery and equipment
hypodermic syringes, disposable	tractors, garden
lamps	welders
lanterns	wheel barrows
light bulbs (for household use)	wrenches

*The buyer of building materials is responsible for paying sales tax or use tax on those materials, including materials to construct grain bins. The buyer is the person who pays the vendor. Contractors and sponsors that purchase building materials, other than grain bin materials, are responsible for paying sales tax to the vendor or supplier or accruing and remitting use tax on those materials.

^ Does not include bins or grain tanks used to hold loose grain for drying or storage.

Does not include cement or concrete used in pads or foundations under grain bins.

ITEM 2. Adopt the following **new** rule 701—226.20(423):

701—226.20(423) Grain bins. The Iowa Code exempts from sales and use tax the sales price from the sale of a grain bin, including material or replacement parts used to construct or repair a grain bin. “Grain bin” is defined by Iowa Code section 423.3(16A). Grain bins are real property, and grain bin materials are building materials as that term is used in rule 701—219.3(423).

226.20(1) *Property considered to be a grain bin or material used to construct a grain bin.* In general, materials that are permanently attached to a grain bin and are required to hold loose grain for drying or storage are used to construct a grain bin and thus exempt from sales and use tax. This generally does not include equipment used to move loose grain into or out of a grain bin. The following lists of exempt or taxable property are not exhaustive.

- a.* Exempt property:
- (1) Grain bins, including hopper bins.
 - (2) Corrugated metal or other similar material for the sides or roof of a grain bin.
 - (3) Bolts and other builders’ hardware.
 - (4) Steps, ladders, or staircases affixed to a grain bin providing access to a grain bin.
 - (5) Structural support towers for a grain bin or for steps, ladders, or staircases providing access to a grain bin.
 - (6) Catwalks primarily used to allow a person to walk from one grain bin to another.
 - (7) Roof vents affixed to a grain bin.
 - (8) Grain bin flooring and floor supports.
 - (9) Concrete pad or foundation under a grain bin.
 - (10) Stirring equipment affixed in a grain bin.
 - (11) Fans affixed in a grain bin.
 - (12) Temperature sensors or temperature cables affixed in a grain bin.
 - (13) Spreaders affixed in a grain bin.
 - (14) Sweeps or augers affixed in a grain bin to move loose grain to, from, or out of a grain bin.
 - (15) Controls and devices to operate the above-listed property.
 - (16) Motors for the above-listed property.
 - (17) Replacement parts for the above-listed property.

REVENUE DEPARTMENT[701](cont'd)

- b.* Taxable property:
- (1) Bucket elevators.
 - (2) Distributors.
 - (3) Receiving stations, including drag conveyors and dump pits.
 - (4) Pneumatic or air systems.
 - (5) Conveyors, including chain conveyors, belt conveyors, and drag conveyors.
 - (6) Anchors, bin jacks, or other construction equipment used to assemble, construct, repair, or replace a grain bin or part of a grain bin.
 - (7) Samplers.
 - (8) Scales or weighers.

226.20(2) *Primarily used to hold loose grain for drying or storage.* Property is deemed to be “primarily used to hold loose grain for drying or storage” if it is used more than 50 percent of the time to hold loose grain for drying or storage.

226.20(3) *Claiming the exemption.*

a. A sponsor of a grain bin, grain bin materials, or grain bin replacement parts shall provide an exemption certificate to the contractor of the property to purchase the property exempt from sales or use tax.

b. A contractor may provide an exemption certificate to a supplier when purchasing a grain bin, grain bin materials, or grain bin replacement parts. The contractor would accrue consumer’s use tax on the purchase price of those grain bin materials unless the contractor obtains an exemption certificate from the sponsor. If the grain bin materials are not used in an exempt manner and if an exemption certificate is not obtained, it is the contractor’s responsibility to accrue and remit use tax. The contractor should not charge sales tax to a sponsor of grain bin materials used in a nonexempt manner because those materials remain building materials used in the performance of a construction contract.

This rule is intended to implement Iowa Code section 423.3.

ARC 4916C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to sales tax exemption excluding persons who are “primarily engaged” in certain activities and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 230, “Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 423.3 as amended by 2019 Iowa Acts, House File 779.

Purpose and Summary

The 2019 Iowa Code provides a sales tax exemption for manufacturers. That exemption excludes persons who “are not commonly understood” to be manufacturers, and excludes a person who engages in any one of five listed activities.

2019 Iowa Acts, House File 779, amends that provision to exclude persons who are “primarily engaged” in one of those five activities. This proposed rule making offers guidance to taxpayers as to how a person is “primarily engaged” in one of those activities and provides several examples of how the provision will be applied.

REVENUE DEPARTMENT[701](cont'd)

The Department shared this provision with various interested stakeholders and made several changes prior to the publication of this proposed rule making.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa beyond that of 2019 Iowa Acts, House File 779, for which there is an estimated reduction in General Fund revenues of \$200,000 in FY 2020 and each year thereafter.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 3, 2020. Comments should be directed to:

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

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Adopt the following **new** paragraph **230.15(4)“c”**:

c. Primarily engaged in an excluded activity. A person is not considered a manufacturer if the person is “primarily engaged” in any of the activities listed in Iowa Code section 423.3(47)“d”(4)(c). A person is “primarily engaged” in an activity if the person generates more than 50 percent of the person’s gross revenue from its operating business from, or spends more than 50 percent of the person’s time engaging in, any combination of those activities during the 12-month period after the date the person engages in one of the listed activities.

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE 1: Company A makes widgets and repairs widgets damaged during use by its customers. Company A generates 70 percent of its revenue making widgets, and its employees spend 80 percent of their time making widgets. The remainder of its revenue and time are attributed to widget repair. Company A is not primarily engaged in “repairing tangible personal property or real property” (Iowa Code section 423.3(47) “d”(4)(c)(ii)) or any of the other enumerated activities from Iowa Code section 423.3(47) “d”(4)(c) because only 30 percent of its revenue and 20 percent of employee time are attributed to widget repair.

EXAMPLE 2A: Company B makes concrete and sells it for resale or directly to individual consumers without entering into a construction contract. Company B generates 100 percent of its revenue from such sales of concrete, and its employees spend 95 percent of their time making concrete during the 12-month period after it claims to be a manufacturer. Company B is not excluded from being considered a manufacturer because Company B’s production and sale of concrete are not part of construction contracting (Iowa Code section 423.3(47) “d”(4)(c)(i)).

EXAMPLE 2B: Company B begins construction contracting to sell its concrete. After 12 months of construction contracting (Iowa Code section 423.3(47) “d”(4)(c)(i)), Company B generates 55 percent of its revenue from construction contracting and 45 percent from resale sales or sales directly to consumers and spends 40 percent of its time performing construction contracts. Company B is no longer considered a manufacturer starting 12 months from the date it began construction contracting because it generates more than 50 percent of its gross revenue from construction contracting.

ARC 4895C**TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action****Proposing rule making related to updates to federal regulations
and providing an opportunity for public comment**

The Department of Transportation hereby proposes to amend Chapter 520, “Regulations Applicable to Carriers,” Chapter 529, “For-Hire Interstate Motor Carrier Authority,” and Chapter 607, “Commercial Driver Licensing,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12, 321.188, 321.449 and 321.450.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 307.27, 321.188, 321.449 and 321.450.

Purpose and Summary

The proposed amendments are part of the regular, annual update by the Department to adopt the most recent updates to the federal regulations published by the Federal Motor Carrier Safety Administration (FMCSA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA).

Iowa Code section 321.188 requires the Department to adopt rules to administer commercial driver’s licenses in compliance with certain portions of 49 Code of Federal Regulations (CFR) Part 383.

Iowa Code section 321.449 requires the Department to adopt rules consistent with the Federal Motor Carrier Safety Regulations (FMCSR) promulgated under United States Code, Title 49, and found in 49 CFR Parts 385 and 390 to 399.

Iowa Code section 321.450 requires the Department to adopt rules consistent with the Federal Hazardous Materials Regulations (HMR) promulgated under United States Code, Title 49, and found in 49 CFR Parts 107, 171 to 173, 177, 178 and 180.

TRANSPORTATION DEPARTMENT[761](cont'd)

Commercial vehicles transporting goods in interstate commerce are subject to the FMCSR on the effective dates specified in the Federal Register (FR). Commercial vehicles transporting hazardous materials in interstate commerce or transporting certain hazardous materials intrastate are subject to the HMR on the effective dates specified in the FR. The adoption of the federal regulations by the Department will extend the enforcement of the regulations to commercial vehicles operated intrastate unless exempted by statute.

The proposed amendments to Chapter 520 adopt the current CFR dated October 1, 2019, for 49 CFR Parts 107, 171, 172, 173, 177, 178, 180, 385 and 390 to 399.

The proposed amendment to Chapter 529 adopts the current CFR dated October 1, 2019, for 49 CFR Parts 365 to 368 and 370 to 379.

The proposed amendment to Chapter 607 adopts the current CFR dated October 1, 2019, for certain portions of 49 CFR Part 383.

Proposed federal regulations are published in the FR to allow a period for public comment, and after adoption, the final regulations are published in the FR.

To ensure the consistency required by statute, the Department adopts the specified parts of 49 CFR as adopted by the United States Department of Transportation.

The following paragraphs provide a specific description of the amendments to the FMCSR and the HMR that have become final and effective since the 2018 edition of the CFR and that affect Chapters 520, 529 and 607:

Amendments to the FMCSR and Federal HMR

Parts 171-173, 178 and 180 (FR Vol. 83, No. 216, Pages 55792-55811, 11-7-18)

This final rule amends the HMR in response to 19 petitions for rule making submitted by the regulated community to update, clarify, streamline, or provide relief from various HMR. By adopting these deregulatory amendments, the PHMSA is allowing more efficient and effective ways of transporting hazardous materials in commerce while maintaining an equivalent level of safety. Effective date: December 7, 2018.

Parts 107 and 171 (FR Vol. 83, No. 228, Pages 60733-60754, 11-27-18)

This final rule amends the HMR in accordance with the Federal Civil Penalties Inflation Adjustment Act to apply the 2018 inflation adjustment to civil penalty amounts. A civil penalty may be imposed under federal law on persons violating federal Department of Transportation regulations, including persons who knowingly violate the HMR. Effective date: November 27, 2018.

Part 390 (FR Vol. 83, No. 233, Pages 62505-62508, 12-4-18)

This final rule extends the compliance date of the May 27, 2015, final rule titled "Lease and Interchange of Vehicles; Motor Carriers of Passengers," from January 1, 2019, to January 1, 2021. This extension of the compliance date was necessary to provide the FMCSA time to consider all comments raised regarding this rule making. Effective date: January 1, 2021.

Part 383 (FR Vol. 83, No. 245, Pages 65564-65571, 12-21-18)

This final rule amends FMCSA regulations to allow states the option of issuing a commercial learner's permit (CLP) with an expiration date of up to one year from the date of initial issuance. This rule making simply codifies an exemption previously granted by FMCSA to state driver's licensing agencies allowing them to issue a CLP with an expiration date of one year. Effective date: February 19, 2019.

Part 367 (FR Vol. 83, No. 248, Pages 67124-67131, 12-28-18)

This final rule amends FMCSA regulations to reduce the annual registration fees collected from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies for the Unified Carrier Registration Plan and Agreement for the registration years 2019, 2020 and thereafter as set forth in the regulation. Effective date: December 28, 2018.

Part 107 (FR Vol. 84, No. 31, Pages 3993-4001, 02-14-19)

This final rule amends the HMR to align with the federal Office of Management and Budget's uniform administrative requirements, cost principles and audit requirements for federal grants, including the hazardous materials grants program and the hazardous materials emergency preparedness grant. Effective date: March 18, 2019.

Part 385 (FR Vol. 84, No. 130, Pages 32323-32326, 07-08-19)

TRANSPORTATION DEPARTMENT[761](cont'd)

This final rule revises FMCSA regulations relating to hazardous material safety permits to incorporate by reference the April 1, 2018, edition of the Commercial Vehicle Safety Alliance's guidance related to out-of-service criteria for commercial highway vehicles transporting transuranic (uranium) materials and highway route-controlled quantities of radioactive materials. The out-of-service criteria provide uniform enforcement tolerances for roadside inspections to enforcement personnel nationwide. Effective date: July 8, 2019.

Part 383 (FR Vol. 84, No. 141, Pages 35335-35339, 07-23-19)

This final rule amends FMCSA regulations to revise the list of offenses permanently disqualifying a person from operating a commercial motor vehicle to include a felony conviction for using a commercial motor vehicle while committing an offense involving a severe form of human trafficking. This regulation change will also require a change to the list of disqualifying offenses in Iowa Code section 321.208 to implement the requirement, and the Department is proposing to amend that Code section during the 2020 Iowa Legislative Session. Effective date: September 23, 2019. Compliance date: September 23, 2022.

Parts 107 and 171 (FR Vol. 84, No. 147, Pages 37059-37079, 07-31-19)

This final rule amends the HMR in accordance with the Federal Civil Penalties Inflation Adjustment Act to apply the 2019 inflation adjustment to civil penalty amounts. A civil penalty may be imposed under federal law on persons violating federal Department of Transportation regulations, including persons who knowingly violate the HMR. Effective date: July 31, 2019.

Part 390 (FR Vol. 84, No. 157, Pages 40272-40296, 08-14-19)

This final rule narrows the applicability of the May 27, 2015, final rule titled "Lease and Interchange of Vehicles; Motor Carriers of Passengers," by excluding certain contracts and other agreements between motor carriers of passengers that have active passenger carrier operating authority registrations with FMCSA from the definition of "lease" and the associated regulatory requirements. For passenger carriers that remain subject to the leasing and interchange requirements, FMCSA returns the bus marking requirement to its July 1, 2015, requirement, but with the slight modification to add references to leased vehicles. FMCSA also revises the exception for the delayed writing of a lease during certain emergencies and removes the 24-hour lease notification requirement from the regulations. Effective date: October 15, 2019.

Part 395 (FR Vol. 84, No. 177, Pages 48077-48081, 09-12-19)

This final rule amends FMCSA regulations applicable to restart provisions for hours of service of drivers of property-carrying commercial motor vehicles. The amendments removed provisions requiring that a 34-hour restart include two periods between 1 a.m. and 5 a.m. and limiting use of restart to once every 168 hours. In a series of federal appropriations acts, Congress suspended these provisions, pending completion of a study comparing the effects of the restart provisions both prior to and after the regulation change. The study found that there were no statistically significant benefits from the restart rule, and thus, the rules were voided by Congress. This amendment merely removes the voided requirement from the regulations. Effective date: September 12, 2019.

Parts 365, 380, 382, 383, 385, 387, 389, 391, 392, 395 and 396 (FR Vol. 84, No. 189, Pages 51427-51435, 09-30-19)

This final rule amends FMCSA regulations by making technical changes to correct inadvertent errors and omissions, remove or update obsolete references, and improve the clarity and consistency of certain regulatory provisions. Effective date: September 30, 2019.

Fiscal Impact

The fiscal impact statement cannot be determined. The federal regulations proposed to be adopted by this rule making were subject to fiscal impact review by either the Federal Motor Carrier Safety Administration or the Pipeline and Hazardous Materials Safety Administration when the regulations were enacted and were determined not to be cost-prohibitive.

TRANSPORTATION DEPARTMENT[761](cont'd)

Jobs Impact

The proposed amendments may have a slight impact on motor carrier operations. However, the amendments should not negatively impact jobs or employment opportunities because the amendments align the rules to federal regulations and bring uniformity and consistency to the industry, which should have a positive impact on employment.

Waivers

Various portions of the federal regulations and Iowa statutes allow some exceptions when the exceptions will not adversely impact the safe transportation of commodities on the nation's highways. Granting additional exceptions for drivers and the motor carrier industry in Iowa would adversely impact the safety of the traveling public in Iowa.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 3, 2020. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Strategic Communications and Policy Bureau
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

If requested, a public hearing to hear requested oral presentations will be held as follows:

March 5, 2020
10 a.m.

Department of Transportation
Motor Vehicle Division
6310 SE Convenience Boulevard
Ankeny, Iowa

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

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 1. Amend paragraph **520.1(1)“a”** as follows:

a. Motor carrier safety regulations. The Iowa department of transportation adopts the Federal Motor Carrier Safety Regulations, 49 CFR Parts 385 and 390-399 (October 1, ~~2018~~ 2019).

ITEM 2. Amend paragraph **520.1(1)“b”** as follows:

b. Hazardous materials regulations. The Iowa department of transportation adopts the Federal Hazardous Materials Regulations, 49 CFR Parts 107, 171-173, 177, 178, and 180 (October 1, ~~2018~~ 2019).

ITEM 3. Amend rule 761—520.5(321) as follows:

761—520.5(321) Safety fitness.

520.5(1) *New motor carrier safety audits.* Peace officers in ~~the office of~~ motor vehicle enforcement of the Iowa department of transportation shall perform safety audits of new motor carriers and shall have the authority to enter a motor carrier's place of business for the purpose of performing these audits. These audits shall be performed in compliance with 49 CFR Part 385 and shall be completed within 18 months from the day the motor carrier commences business.

520.5(2) *Motor carrier compliance reviews.* Peace officers in ~~the office of~~ motor vehicle enforcement of the Iowa department of transportation shall perform compliance reviews of motor carriers and shall have the authority to enter a motor carrier's place of business for the purpose of performing these compliance reviews. These compliance reviews shall be performed in compliance with 49 CFR Part 385.

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

ITEM 4. Amend rule 761—529.1(327B) as follows:

761—529.1(327B) Motor carrier regulations. The Iowa department of transportation adopts the Code of Federal Regulations, 49 CFR Parts 365-368 and 370-379, dated October 1, ~~2018~~ 2019, for regulating interstate for-hire carriers.

Copies of this publication are available from the state law library or ~~through the Internet~~ at www.fmcsa.dot.gov.

ITEM 5. Amend paragraph **607.10(1)“c”** as follows:

c. The following portions of 49 CFR Part 383 (October 1, ~~2018~~ 2019):

- (1) Section 383.51, Disqualification of drivers.
- (2) Subpart E—Testing and Licensing Procedures.
- (3) Subpart G—Required Knowledge and Skills.
- (4) Subpart H—Tests.

ARC 4929C

AUDITOR OF STATE[81]**Adopted and Filed****Rule making related to amending fee schedules**

The Auditor of State hereby amends Chapter 21, "Filing Fees," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 11.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 11.6.

Purpose and Summary

This rule making amends the fee schedules for approximately 600 Iowa municipalities with populations under 2,000 and budgeted expenditures of less than \$1 million. The municipalities are subject to periodic examinations by the Auditor pursuant to Iowa Code section 11.6. Each city is assessed an annual fee based on its annual budget. The Auditor is changing the fee schedule to allocate costs more equitably. One change from the Notice has been made to strike the word "budgeted" in subrule 21.2(1) for clarification.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 4, 2019, as **ARC 4787C**. No public comments were received.

Adoption of Rule Making

This rule making was adopted by the Auditor of State on January 13, 2020.

Fiscal Impact

The revised fee schedule will increase the amount of fees collected by the Auditor by approximately \$20,000 annually.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Office of Auditor of State for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

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

AUDITOR OF STATE[81](cont'd)

Effective Date

This rule making will become effective on April 1, 2020.

The following rule-making action is adopted:

Amend rule 81—21.2(11) as follows:

81—21.2(11) Periodic examination fee. A periodic examination fee, as provided for under ~~2012 Iowa Acts, chapter 1107, section 2~~ Iowa Code section 11.6(11), shall be paid annually by cities that do not otherwise have an audit or fiscal year examination conducted pursuant to Iowa Code section 11.6, subsection 1 or subsection 3, during a fiscal year.

21.2(1) The fee shall be remitted according to a fee schedule using ~~four~~ five strata based on the ~~budgeted average of actual expenditures of the original certified budget~~ of the governmental subdivision for the ~~previous two~~ previous two fiscal year years.

21.2(2) The designated strata and applicable fees are as follows:

<u>Budgeted Expenditures in Thousands of Dollars</u>	<u>Fee Amount</u>
Under 50	\$ 100
At least 50 but less than 300	\$ 475
At least 300 but less than 600	\$ 900
600 or more	\$1,200

<u>Budget Expenditures in Thousands of Dollars</u>	<u>Fee Amount</u>
Under 100	\$ 200
At least 100 but less than 250	\$ 550
At least 250 but less than 500	\$ 800
At least 500 but less than 750	\$1,200
750 or more	\$1,500

21.2(3) The fee shall be remitted to the office of auditor of state on or before March 31 each year.

This rule is intended to implement ~~2012 Iowa Acts, chapter 1107, section 2~~ Iowa Code section 11.6(11).

[Filed 1/13/20, effective 4/1/20]

[Published 2/12/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.

ARC 4930C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rule making related to extracurricular interscholastic competition

The State Board of Education hereby amends Chapter 36, "Extracurricular Interscholastic Competition," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 256.7.

EDUCATION DEPARTMENT[281](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 280.13A.

Purpose and Summary

Chapter 36 outlines the requirements for extracurricular interscholastic competitions. Item 1 incorporates changes to the subrule regarding scholarship rules by providing that a student may not be required to sit out in more than one school-sponsored extracurricular activity because of a failing grade. Item 2 provides the athletic associations with the discretion to set a dead period during the summer for a period up to 14 days in length in which no contact with students would be allowed.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 18, 2019, as **ARC 4815C**. A public hearing was held on January 7, 2020, at 9 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board on January 23, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 36.15(2) as follows:

36.15(2) Scholarship rules.

- a. All contestants must be enrolled and in good standing in a school that is a member or associate member in good standing of the organization sponsoring the event.
- b. All contestants must be under 20 years of age.
- c. All contestants shall be enrolled students of the school in good standing. They shall receive credit in at least four subjects, each of one period or “hour” or the equivalent thereof, at all times. To qualify under this rule, a “subject” must meet the requirements of 281—Chapter 12. Coursework taken

EDUCATION DEPARTMENT[281](cont'd)

from a postsecondary institution and for which a school district or accredited nonpublic school grants academic credit toward high school graduation shall be used in determining eligibility. No student shall be denied eligibility if the student's school program deviates from the traditional two-semester school year.

(1) Each contestant shall be passing all coursework for which credit is given and shall be making adequate progress toward graduation requirements at the end of each grading period. Grading period, graduation requirements, and any interim periods of ineligibility are determined by local policy. For purposes of this subrule, "grading period" shall mean the period of time at the end of which a student in grades 9 through 12 receives a final grade and course credit is awarded for passing grades.

(2) If at the end of any grading period a contestant is given a failing grade in any course for which credit is awarded, the contestant is ineligible to dress for and compete in the next occurring interscholastic athletic contests and competitions in which the contestant is a contestant for 30 consecutive calendar days unless the student has already served a period of ineligibility for 30 consecutive calendar days in another school-sponsored activity. A student shall not serve multiple periods of ineligibility because of a failing grade.

d. to k. No change.

ITEM 2. Amend subrule 36.15(6) as follows:

36.15(6) *Summer camps and clinics and coaching contacts out of season.*

a. School personnel, whether employed or volunteers, of a member or associate member school shall not coach that school's student athletes during the school year in a sport for which the school personnel are currently under contract or are volunteers, outside the period from the official first day of practice through the finals of tournament play. Provided, however, school personnel may coach a senior student from the coach's school in an all-star contest once the senior student's interscholastic athletic season for that sport has concluded. In addition, volunteer or compensated coaching personnel shall not require students to participate in any activities outside the season of that coach's sport as a condition of participation in the coach's sport during its season.

b. A summer team or individual camp or clinic held at a member or associate member school facility shall not conflict with sports in season. Coaching activities between June 1 and the first day of fall sports practices shall not conflict with sports in season. The associations in their discretion may establish a dead period up to 14 calendar days in length. During a dead period coaches will not be allowed to have contact with students.

c. Rescinded IAB 4/20/11, effective 5/25/11.

d. Penalty. A school whose volunteer or compensated coaching personnel violate this rule is ineligible to participate in a governing organization-sponsored event in that sport for one year with the violator(s) coaching.

[Filed 1/28/20, effective 3/18/20]

[Published 2/12/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.

ARC 4931C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rule making related to repairing transportation equipment for transporting students

The State Board of Education hereby amends Chapter 98, "Financial Management of Categorical Funding," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 256.7.

EDUCATION DEPARTMENT[281](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 298A.

Purpose and Summary

Chapter 98 outlines the financial management of categorical funding. Subrule 98.64(2) addresses appropriate expenditures in the physical plant and equipment levy (PPEL) fund.

This amendment expands “repairing” of transportation equipment for transporting students to include retrofitting when such retrofitting is aligned to school bus construction standards in 281—Chapter 44. Additionally, the amendment stipulates this provision is retroactive to October 2, 2019. This date aligns to the effective date of the recently adopted amendments to 281—Chapter 44.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 18, 2019, as **ARC 4817C**. A public hearing was held on January 7, 2020, at 10 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa. No one attended the public hearing. One comment was received supporting the amendment. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board on January 23, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

An agencywide waiver provision is provided in 281—Chapter 4.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making action is adopted:

Amend paragraph **98.64(2)“1”** as follows:

1. Purchase of transportation equipment for transporting students and for repairing such transportation equipment when the cost of the repair exceeds \$2,500. “Repairing,” for purposes of this paragraph, means restoring an existing item of transportation equipment to its original condition, as near as may be, after gradual obsolescence of physical and functional use due to wear and tear, corrosion and decay, or partial destruction, and includes maintenance that meets the definition of equipment and repair and the cost of which exceeds \$2,500. Effective October 2, 2019, “repairing” also

EDUCATION DEPARTMENT[281](cont'd)

means retrofitting transportation equipment when such retrofitting aligns to the school bus construction standards in 281—Chapter 44.

[Filed 1/28/20, effective 3/18/20]

[Published 2/12/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.

ARC 4896C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to children's behavioral health services

The Human Services Department hereby amends Chapter 25, "Disability Services Management," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 331.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, House File 690.

Purpose and Summary

These amendments to Chapter 25 provide the framework for a children's behavioral health system requiring certain children's behavioral health core services for children with a serious emotional disturbance. The amendments provide guidance to mental health and disability services (MHDS) regions in developing the new children's behavioral health core services and include new definitions, provider standards, access standards, and implementation dates. The amendments also make changes in MHDS regional governance structure and reporting requirements and establish eligibility standards for children's behavioral health services.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 20, 2019, as **ARC 4762C**.

The Department received 22 comments from five respondents on the proposed amendments. The comments and corresponding responses from the Department are divided into four topic areas as follows:

A. Definitions.

B. General.

C. Governing boards and advisory councils.

D. Cost-sharing and resources.

A. Definitions.

1. One respondent commented that the rules should include a definition for "medical necessity."

Department response: No change was made in response to the comment. There is no need to define the term "medical necessity" because it is not used in Chapter 25.

2. One respondent commented that the rules should include a definition for "psychiatric medical institution for children" (PMIC).

Department response: No change was made in response to the comment. The term "psychiatric medical institution for children" is defined in Iowa Code chapter 135H and is not used in Chapter 25. A

HUMAN SERVICES DEPARTMENT[441](cont'd)

PMIC is not among the core service domains that the Legislature identified for the Department to define in rule.

3. One respondent commented that the definition for “early identification” should be changed to include “mental illness” along with “developmental delays” and “untreated conditions.”

Department response: The Department agrees and has added “mental illness” to the conditions listed in the definition of “early identification.”

4. One respondent commented that all noncore domains and services for children should be included, along with a definition for each of them.

Department response: No change was made in response to the comment. The legislation creating the children’s behavioral health system specifically directed the Department to “define the services included in the core domains listed.” Noncore service domains were not listed; therefore, the Department does not have the authority to define them in these rules.

5. One respondent commented that “supplemental services” should be defined.

Department response: No change was made in response to the comment. The legislation creating the children’s behavioral health system specifically directed the Department to “define the services included in the core domains listed.” Supplemental services were not listed as a core domain, and the term “supplemental services” is not used in Chapter 25; therefore, the Department does not have the authority to define the term in these rules.

6. One respondent commented that the term “serious emotional disturbance” (SED) is not clearly defined and that the definition is inconsistent with other definitions of “SED” and should be changed to be the same across all funding sources in the state. The respondent suggested that if a more detailed definition of “SED” is not included in the rule that there should be a reference to the Medicaid state plan amendment that includes that detail.

Department response: No change was made in response to the comment. “Serious emotional disturbance” is defined by reference to the existing definition in Iowa Code section 225C.2, which definition is the same standard used for the children’s mental health waiver. Any further inclusionary or exclusionary criteria would be based on an individual clinical determination by a qualified mental health professional.

B. General.

7. One respondent commented that subrule 25.3(1) should be changed to add the words “for adults” after “core services.”

Department response: No change was made in response to the comment. Subrule 25.3(1) was not included in the noticed changes proposed for Chapter 25 and therefore is not open for revision at this time.

8. One respondent commented that subrule 25.3(2) should be changed to add the words “for adults” after “core services.”

Department response: No change was made in response to the comment. Subrule 25.3(2) was not included in the noticed changes proposed for Chapter 25 and therefore is not open for revision at this time.

9. One respondent commented that access centers are supposed to be for both adults and children, so language throughout the access center requirements should continue to refer to “individuals” rather than being changed to refer to “adults.”

Department response: No change was made in response to the comment. Access centers were created as a part of intensive mental health services for the purpose of serving adults and are required to provide an array of services for adults. Some of the services offered by access centers may also be accessed by individuals under the age of 18, but the centers are not designed as a children’s service. The word “individual” was used in the definition of “access center” to indicate that while regions are required to fund services for children, access centers are allowed to serve individuals under the age of 18 when appropriate and if funding is available.

10. One respondent commented that rule 441—25.7(331) only addresses the noncore services of prescreening assessment and transportation and should include all noncore service domains for adults, including a definition for each of them.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Department response: No change was made in response to the comment. 2018 Iowa Acts, House File 2456, mandated the addition of transportation and prescreening assessment standards to Chapter 25. The legislation did not direct or authorize the addition of other noncore services to these rules. Rule 441—25.7(331) was not included in the noticed changes proposed for Chapter 25 and therefore is not open for revision at this time. The legislation creating the children’s behavioral health system specifically directed the Department to “define the services included in the core domains listed.” Noncore service domains were not listed, so the Department does not have the authority to define them in these rules.

11. One respondent commented that it appears prevention, screening and early intervention services will not be paid for unless the child has a qualifying diagnosis of SED. The respondent would like clarification that prevention, screening and early intervention services are available to any child who needs them and do not require an SED diagnosis at the time of service.

Department response: No change was made in response to the comment. The definitions of and access standards for “prevention” and “education services” specify that such services are intended to increase awareness and understanding, and as described, the reasonable interpretation is that they are applicable to information and activities available to residents of the region without respect to a diagnosis. The definitions of and access standards for “early identification” and “early intervention” indicate that they involve “detecting” untreated conditions that may indicate the need for further evaluation and addressing the needs of children at the earliest stages. These definitions would be meaningless if they did not apply to children who have not yet been diagnosed.

12. One respondent commented that the access standard for early identification services is four weeks and expressed concern that services should be provided more promptly.

Department response: No change was made in response to the comment. The access standards are designed to provide achievable parameters on the reasonable time to ensure services are available. MHDS regions have to work within the capacity of qualified providers and are expected to strive to make all services available as promptly as possible.

13. One respondent commented that the rule should reference the use of telehealth services, such as telepsychiatry, and the use of advanced practice registered nurses who are certified in psychiatric and mental health care to provide services in areas with provider shortages.

Department response: No change was made in response to the comment. These suggestions are beyond the scope of these amendments as authorized by 2019 Iowa Acts, House File 690.

C. Governing boards and advisory councils.

14. One respondent commented that the voting members of the regional governing boards should include one member representing the behavioral health system in the region who is not a provider.

Department response: No change was made in response to the comment. 2019 Iowa Acts, House File 690, specified the voting membership of the regional governing boards, and the Department does not have the authority to change the requirements, which have been codified in Iowa Code section 331.390.

15. One respondent commented that subparagraph 25.14(1)“j”(7), which requires a pediatrician to sit on the regional advisory committees for children’s behavioral health services, should be broadened to include mid-level providers such as advanced registered nurse practitioners (ARNPs), doctors of nursing practice (DNPs), certified pediatric nurse practitioners (CPNPs), certified physician assistants (PA-Cs), or similar professionals because there are limited numbers of pediatricians available, particularly in rural Iowa.

Department response: No change was made in response to the comment. The requirement for a pediatrician to serve as a member of a regional advisory committee for children’s behavioral health services was established in Iowa Code by 2019 Iowa Acts, House File 690; therefore, the Department does not have the authority to make alterations.

16. One respondent commented that the subrule 25.12(1) provision requiring that a governing board member representing the education system in the region be designated as a voting member should be removed because: (1) the education system should not be viewed differently from providers of adult and children’s services which are designated as nonvoting members, and (2) since education systems receive tax dollars, there could be a conflict of interest.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Department response: No change was made in response to the comment. The requirement for a voting regional governing board member representing the education system in the region was included in 2019 Iowa Acts, House File 690, and has been codified in Iowa Code chapter 225; therefore, the Department does not have the authority to make alterations.

17. One respondent commented that the makeup of the regional advisory committees for children's behavioral health services is too prescriptive and should have broader requirements similar to those of the adult system advisory committees. The respondent specifically suggested:

- The requirement for a pediatrician should be removed or at least broadened to allow a nurse practitioner, psychologist, or therapist.
- The requirement for a child care provider should be removed.
- The requirement for a local law enforcement representative should be allowed to be filled by one person for both the adult and child advisory committees.

Department response: No change was made in response to the comment. The requirements for a pediatrician and a child care provider to be members of the regional advisory committees for children's behavioral health services are specified in 2019 Iowa Acts, House File 690, now codified in Iowa Code chapter 331; therefore, the Department does not have the authority to make alterations. There is nothing in these rules that prohibits one individual who meets the membership criteria for a seat on the adult advisory committee and a seat on the child advisory committee from serving in both roles.

18. One respondent commented that it would be more reasonable to require one advisory committee for both adult services and children's services instead of two separate committees, as all the services should be seen as part of one single system.

Department response: No change was made in response to the comment. The requirement for separate advisory committees for adult services and children's services with specific membership criteria was included in 2019 Iowa Acts, House File 690, now codified in Iowa Code chapter 331; therefore, the Department does not have the authority to make alterations.

19. One respondent commented that the composition of the regional advisory committees for children's behavioral health services should include a school nurse in addition to the education representative.

Department response: No change was made in response to the comment. The requirements for members of the regional advisory committees for children's behavioral health services are specified in House File 690, now codified in Iowa Code chapter 331; therefore, the Department does not have the authority to make alterations.

D. Cost-sharing and resource limits.

20. One respondent indicated support for the cost-sharing chart for children's services and commented that there should also be a consistent cost-sharing fee scale across the state for adults.

Department response: No change was made in response to the comment. 2019 Iowa Acts, House File 690, specifically required that family income eligibility limits for children's behavioral health services be "subject to a copayment, a single statewide sliding fee scale, or other cost-sharing requirements approved by the department." There is no similar requirement in Iowa Code for adult services; therefore, the MHDS regions retain flexibility in how income standards are applied, and the Department does not have the authority to impose a statewide standard.

21. One respondent commented that there should be a standard resource limit for the family of a child seeking children's behavioral health services and that having resource limits for adult services and no resource limits for children's services does not seem reasonable or fair.

Department response: No change was made in response to the comment. Prior to this rule-making action, Chapter 25 included a resource limit for adults seeking mental health and disability services. Eligibility for new children's behavioral health services was established by 2019 Iowa Acts, House File 690. The legislation specified an income limitation of 500 percent of the federal poverty level, subject to a copayment, a single statewide sliding fee scale, or other cost-sharing requirement approved by the Department. Since the Legislature chose not to include a resource limit for children's services, the Department does not have the authority to establish one in rule.

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22. One respondent expressed support for the sliding fee scale for children's behavioral health services, but expressed concern about how quickly the percentage of the family cost-share amount increases, and suggested gathering data to determine if services are declined by families due to the inability to pay the cost-share amount.

Department response: No change was made in response to the comment. The cost-share percentages were established to balance keeping services affordable for families with the ability of regional funding to meet the needs of residents requesting services. MHDS regions are not required to gather data relating to the ability of families to pay the cost-share amounts, but the regions may do so if they choose.

Summary of changes: The definition of "early identification" has been changed to add the words "mental illness" in the phrase "the process of detecting developmental delays, mental illness, or untreated conditions that may indicate the need for further evaluation." In addition, a rescinded definition in Item 27 was corrected to read "Coordinator of disability services."

Adoption of Rule Making

This rule making was adopted by the Mental Health and Disability Services Commission on January 16, 2020.

Fiscal Impact

These changes are expected to increase costs for both the Medicaid program and MHDS regions. There will be additional Medicaid costs to fund increased access to Medicaid-funded services, such as crisis services. Many MHDS regions fund some services for children, such as crisis services, but they do not fund all of the core services nor does every region fund children's services or have access to crisis services for children.

Jobs Impact

These amendments are not likely to have any significant impact on private-sector jobs and employment opportunities in Iowa. To the extent there is any impact, it would be to create a demand for more mental health professionals and direct support staff.

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend **441—Chapter 25**, preamble, as follows:

This chapter provides for definitions of regional core services; access standards; implementation dates; practice standards; reporting of regional expenditures; development and submission of regional management plans; data collection; applications for funding as they relate to regional service systems for individuals adults with mental illness, intellectual disabilities, developmental disabilities, or brain

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injury; and submission of data for Medicaid offset calculations and children with a serious emotional disturbance.

ITEM 2. Adopt the following **new** definitions of “Behavioral health inpatient treatment,” “Behavioral health outpatient therapy,” “Child,” “Children’s behavioral health services,” “Children’s behavioral health system,” “Early identification,” “Early intervention,” “Education services,” “Mental health inpatient treatment,” “Prevention,” “Serious emotional disturbance” and “State board” in rule **441—25.1(331)**:

“*Behavioral health inpatient treatment*” or “*mental health inpatient treatment*” means inpatient psychiatric services to treat an acute psychiatric condition provided in a licensed hospital with a psychiatric unit or a licensed freestanding psychiatric hospital.

“*Behavioral health outpatient therapy*” means the same as “outpatient services” described in Iowa Code section 230A.106(2)“a.”

“*Child*” or “*children*” means a person or persons under 18 years of age.

“*Children’s behavioral health services*” means behavioral health services for children who have a diagnosis of serious emotional disturbance.

“*Children’s behavioral health system*” or “*children’s system*” means the behavioral health system for children implemented pursuant to Iowa Code chapter 225C.

“*Early identification*” means the process of detecting developmental delays, mental illness, or untreated conditions that may indicate the need for further evaluation.

“*Early intervention*” means services designed to address the social, emotional, and developmental needs of children at their earliest stages to decrease long-term effects and provide support in meeting developmental milestones.

“*Education services*” means activities that increase awareness and understanding of the causes and nature of conditions or factors which affect an individual’s development and functioning.

“*Mental health inpatient treatment*” or “*behavioral health inpatient treatment*” means inpatient psychiatric services to treat an acute psychiatric condition that are provided in a licensed hospital with a psychiatric unit or a licensed freestanding psychiatric hospital.

“*Prevention*” means efforts to increase awareness and understanding of the causes and nature of conditions or situations which affect an individual’s functioning in society. Prevention activities are designed to convey information about the cause of conditions, situations, or problems that interfere with an individual’s functioning or ways in which that information can be used to prevent their occurrence or reduce their effect and may include, but are not limited to, training events, webinars, presentations, and public meetings.

“*Serious emotional disturbance*” means the same as defined in Iowa Code section 225C.2.

“*State board*” means the children’s behavioral health system state board created in Iowa Code section 225C.51.

ITEM 3. Amend subrule 25.2(1) as follows:

25.2(1) The region shall ensure that core service domains are available in regions as determined in Iowa Code ~~section~~ sections 331.397 and 331.397A.

ITEM 4. Amend subrule 25.2(3) as follows:

25.2(3) The region shall ensure that the following services are available for adults in the region:

a. to aa. No change.

Regions may fund or provide other services in addition to the required core services consistent with requirements set forth in subrules ~~25.2(4) and 25.2(5)~~ and 25.2(6).

ITEM 5. Renumber subrules **25.2(4)** and **25.2(5)** as **25.2(5)** and **25.2(6)**.

ITEM 6. Adopt the following **new** subrule 25.2(4):

25.2(4) The region shall ensure that the following services are available for children in the region:

a. Assessment and evaluation relating to eligibility for services.

b. Behavioral health inpatient treatment.

c. Behavioral health outpatient therapy.

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- d. Crisis stabilization community-based services.
- e. Crisis stabilization residential services.
- f. Early identification.
- g. Early intervention.
- h. Education services.
- i. Medication prescribing and management.
- j. Mobile response.
- k. Prevention.

ITEM 7. Adopt the following **new** subrule 25.3(3):

25.3(3) Regions shall implement the following children's behavioral health core services on or before July 1, 2020, and meet applicable access standards on or before July 1, 2021:

- a. Assessment and evaluation relating to eligibility for services.
- b. Behavioral health outpatient therapy.
- c. Education services.
- d. Medication prescribing and management.
- e. Prevention.

ITEM 8. Adopt the following **new** subrule 25.3(4):

25.3(4) Regions shall implement the following children's behavioral health core services on or before July 1, 2021, and meet applicable access standards on or before July 1, 2021:

- a. Behavioral health inpatient treatment.
- b. Crisis stabilization community-based services.
- c. Crisis stabilization residential services.
- d. Early identification.
- e. Early intervention.
- f. Mobile response.

ITEM 9. Amend subrule 25.4(1) as follows:

25.4(1) A sufficient provider network which shall include:

- a. A community mental health center or federally qualified health center that provides psychiatric and outpatient mental health services to individuals in the region.
- b. A hospital with an inpatient psychiatric unit or state mental health institute located in or within reasonably close proximity that has the capacity to provide inpatient services ~~to the applicant~~.

ITEM 10. Amend subrule 25.4(2) as follows:

25.4(2) Crisis services shall be available 24 hours per day, 7 days per week, 365 days per year for individuals experiencing mental health and disability-related emergencies. A region may make arrangements with one or more other regions to meet the required access standards.

a. to d. No change.

e. *Twenty-three-hour observation and holding.* An ~~individual~~ adult who has been determined to need 23-hour observation and holding shall receive 23-hour observation and holding within 120 minutes of referral. The service shall be located within 120 miles from the residence of the individual.

ITEM 11. Amend subrule 25.4(4) as follows:

25.4(4) Subacute facility-based mental health services. An ~~individual~~ adult shall receive subacute facility-based mental health services within 24 hours of referral. The service shall be located within 120 miles of the residence of the individual.

ITEM 12. Amend subrule 25.4(5) as follows:

25.4(5) Support for community living for adults. The first appointment shall occur within four weeks of the individual's request of support for community living.

ITEM 13. Amend subrule 25.4(6) as follows:

25.4(6) Support for employment for adults. The initial referral shall take place within 60 days of the individual's request of support for employment.

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ITEM 14. Amend subrule 25.4(7) as follows:

25.4(7) Recovery services for adults. An individual receiving recovery services shall not have to travel more than 30 miles if residing in an urban area or 45 miles if residing in a rural area to receive services.

ITEM 15. Amend subrule 25.4(8) as follows:

25.4(8) Service coordination.

a. An individual adult receiving service coordination shall not have to travel more than 30 miles if residing in an urban area or 45 miles if residing in a rural area to receive services.

b. An individual adult shall receive service coordination within ten days of the initial request for such service or being discharged from an inpatient facility.

ITEM 16. Amend subrule 25.4(9), introductory paragraph, as follows:

25.4(9) The region shall make the following intensive mental health services available for adults. A region may make arrangements with one or more other regions to meet the required access standards.

ITEM 17. Adopt the following new subrule 25.4(11):

25.4(11) The region shall make the following efforts and activities related to children's behavioral health available to the residents of the region:

a. *Prevention.* Prevention activities shall be carried out at least four times a year.

b. *Education services.* Education activities shall be carried out at least four times a year.

ITEM 18. Adopt the following new subrule 25.4(12):

25.4(12) The region shall ensure that the following behavioral health services are available to children in the region:

a. *Early identification.* A child shall receive early identification services within four weeks of the time the request for such services is made.

b. *Early intervention.* A child shall receive early intervention services within four weeks of the time the request for such services is made.

ITEM 19. Amend rule 441—25.6(331), introductory paragraph, as follows:

441—25.6(331) Intensive mental health services. The purpose of intensive mental health services is to provide a continuum of services and supports to individuals adults with complex mental health and multi-occurring conditions who need a high level of intensive and specialized support to attain stability in health, housing, and employment and to work toward recovery.

ITEM 20. Amend subrule 25.6(1) as follows:

25.6(1) Access centers. The purpose of an access center is to serve individuals adults experiencing a mental health or substance use crisis who are not in need of an inpatient psychiatric level of care and who do not have alternative, safe, effective services immediately available.

a. and b. No change.

c. *Eligibility for access center services.* To be eligible to receive access center services, an individual shall meet all of the following criteria:

(1) The individual is an adult in need of screening, assessment, services or treatment related to a mental health or substance use crisis.

(2) to (4) No change.

d. No change.

ITEM 21. Amend subrule 25.6(2), introductory paragraph, as follows:

25.6(2) Assertive community treatment (ACT) services. The purpose of assertive community treatment is to serve individuals adults with the most severe and persistent mental illness conditions and functional impairments. ACT services provide a set of comprehensive, integrated, intensive outpatient services delivered by a multidisciplinary team under the supervision of a psychiatrist, an advanced registered nurse practitioner, or a physician assistant under the supervision of a psychiatrist. An ACT program shall designate an individual a staff member to be responsible for administration of the program and with the authority to sign documents and receive payments on behalf of the program.

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ITEM 22. Amend subrule 25.6(4) as follows:

25.6(4) *23-hour observation and holding.* The purpose of 23-hour observation and holding is to provide up to 23 hours of care for adults in a safe and secure, medically staffed treatment environment. Twenty-three-hour observation and holding shall be provided as described in rule 441—24.37(225C).

ITEM 23. Amend subrule 25.6(7), introductory paragraph, as follows:

25.6(7) *Subacute mental health services.* The purpose of subacute mental health services is to provide a comprehensive set of wraparound services to ~~individuals~~ adults who have had or are at imminent risk of having acute or crisis mental health symptoms.

ITEM 24. Amend subrule 25.6(8), introductory paragraph, as follows:

25.6(8) *Intensive residential services.* The purpose of intensive residential services is to serve ~~individuals~~ adults with the most intensive severe and persistent mental illness conditions who have functional impairments and may also have multi-occurring conditions. Intensive residential services provide intensive 24-hour supervision, behavioral health services, and other supportive services in a community-based residential setting.

ITEM 25. Amend **441—Chapter 25**, implementation sentence, Division I, as follows:

These rules are intended to implement Iowa Code chapter 331 ~~and 2018 Iowa Acts, House File 2456.~~

ITEM 26. Amend **441—Chapter 25**, Division II, preamble, as follows:

These rules define the standards for a regional service system. The mental health and disability services and children's behavioral health services provided by counties operating as a region shall be delivered in accordance with a regional service system management plan approved by the region's governing board and implemented by the regional administrator (Iowa Code section 331.393). Iowa counties are encouraged to enter into a regional system when the regional approach is likely to increase the availability of services to residents of the state who need the services. It is the intent of the Iowa general assembly that the adult residents of this state should have access to needed mental health and disability services and that Iowa children should have access to needed behavioral health services regardless of the location of their residence.

ITEM 27. Rescind the definitions of "Applicant" and "Coordinator of disability services" in rule **441—25.11(331)**.

ITEM 28. Adopt the following new definitions of "Coordinator of children's behavioral health services," "Coordinator of mental health and disability services," "Countable household income," "Federal poverty level," and "Modified adjusted gross income" in rule **441—25.11(331)**:

"*Coordinator of children's behavioral health services*" means a member of the regional administrative entity staff who meets the requirements described in Iowa Code section 331.390(3) "b" and is responsible for coordinating behavioral health services for children.

"*Coordinator of mental health and disability services*" means a member of the regional administrative entity staff who meets the requirements described in Iowa Code section 331.390(3) "b" and is responsible for coordinating mental health and disability services for adults.

"*Countable household income*" means earned and unearned income of the family of a child according to the modified adjusted gross income methodology.

"*Federal poverty level*" means the most recently revised annual poverty income guidelines published in the Federal Register by the United States Department of Health and Human Services.

"*Modified adjusted gross income*" means the methodology prescribed in 42 U.S.C. Section 1396a(e)(14) and 42 CFR 435.603.

ITEM 29. Amend subrule 25.12(1) as follows:

25.12(1) *Governing board.* The governing board shall comply with the provisions of Iowa Code section 331.390, Iowa Code chapter 69 and other applicable laws relating to boards and commissions, including but not limited to the following requirements:

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~~a. The governing board shall comply with the membership requirements as outlined in Iowa Code section 331.390 and follow the requirements in Iowa Code chapter 69 and other applicable laws relating to boards and commissions.~~ include the following voting members:

(1) At least one board of supervisors member from each county comprising the region or their designees.

(2) One adult person who utilizes mental health and disability services or is an actively involved relative of an adult who utilizes such services, designated by the regional adult mental health and disability services advisory committee.

(3) Members designated by the regional children's behavioral health services advisory committee as follows:

1. One member representing the education system in the region.

2. One member who is a parent of a child who utilizes children's behavioral health services or is an actively involved relative of a child who utilizes such services.

b. The governing board shall include the following nonvoting members in an ex officio capacity:

(1) One member representing an adult service provider in the region, designated by the regional adult mental health and disability services advisory committee.

(2) One member representing a children's behavioral health service provider in the region, designated by the regional children's behavioral health services advisory committee.

~~b. c. A~~ The governing board shall create a regional adult mental health and disability services advisory committee shall be created and, which shall designate members to the governing board as defined in Iowa Code section 331.390(2).

d. The governing board shall create a regional children's behavioral health services advisory committee, which shall designate members to the governing board as defined in Iowa Code section 331.390(2).

~~e. e.~~ The governing board shall appoint and evaluate the performance of the chief executive officer of the regional administrative entity who will serve as the single point of accountability for the region.

ITEM 30. Amend subrule 25.12(2) as follows:

25.12(2) Regional administrator. The formation of the regional administrator shall be as defined in Iowa Code sections 331.388 and 331.390.

a. to d. No change.

e. The regional administrative entity staff shall include one or more coordinators of mental health and disability services.

f. The regional administrative entity staff shall include one or more coordinators of children's behavioral health services.

ITEM 31. Amend subrule 25.13(1), introductory paragraph, as follows:

25.13(1) Funding. ~~Non-Medicare~~ Funding for non-Medicare mental health and disability services funding and children's behavioral health services is under the control of the governing board and shall:

ITEM 32. Amend paragraph **25.14(1)"i"** as follows:

i. Provision for formation and assigned responsibilities for one or more regional advisory committees for adult mental health and disability services consisting of:

(1) Individuals who utilize services or the actively involved relatives of such individuals.

(2) Service providers of adult mental health and disability services.

(3) Governing board members.

(4) Other interests identified in the agreement.

ITEM 33. Adopt the following **new** paragraph **25.14(1)"j"**:

j. Provision for formation and assigned responsibilities for one or more regional advisory committees for children's behavioral health services consisting of:

(1) A parent of a child who utilizes services or an actively involved relative of such child.

(2) A member of the education system.

(3) An early childhood advocate.

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- (4) A child welfare advocate.
- (5) A children's behavioral health service provider.
- (6) A member of the juvenile court.
- (7) A pediatrician.
- (8) A child care provider.
- (9) A local law enforcement representative.
- (10) A regional governing board member.

ITEM 34. Amend paragraph **25.14(2)“c”** as follows:

c. A general list of the functions and responsibilities of the regional administrative entity's chief executive officer and other staff including but not limited to coordinators of mental health and disability services and coordinators of children's behavioral health services.

ITEM 35. Rescind subrule 25.15(2) and adopt the following **new** subrule in lieu thereof:

25.15(2) Eligibility for children's behavioral health services. An individual must comply with all of the following requirements to be eligible for children's behavioral health services under the regional service system:

- a. The individual is a child under 18 years of age.
- b. The child's custodial parent is a resident of the state of Iowa, and the child is physically present in the state.
- c. The child's family meets the financial eligibility requirements in rule 441—25.16(331).
- d. The child has been diagnosed with a serious emotional disturbance. A serious emotional disturbance diagnosis is not required to access comprehensive facility and community-based crisis services according to Iowa Code section 331.397A(4)“b.”

ITEM 36. Amend rule 441—25.16(331), introductory paragraph, as follows:

441—25.16(331) Financial eligibility requirements. The regional service system management plan shall identify basic financial eligibility standards for mental health and disability services as defined in Iowa Code ~~section~~ sections 331.395 and 331.396A.

ITEM 37. Rescind subrule 25.16(1) and adopt the following **new** subrule in lieu thereof:

25.16(1) Income requirements.

- a. Income requirements for adult mental health and disability services shall be as follows:
 - (1) The person must have an income equal to or less than 150 percent of the federal poverty level.
 - (2) A person who is eligible for federally funded services and other support must apply for such services and support.
- b. Income requirements for children's behavioral health services shall be as follows:
 - (1) The child's family has countable household income equal to or less than 500 percent of the federal poverty level. Countable household income and family size shall be determined using the modified adjusted gross income methodology.
 - (2) An eligible child whose family's countable household income is at least 150 percent and not more than 500 percent of the federal poverty level shall be subject to a cost share as described in subrule 25.16(3).
 - (3) Verification of income. Income shall be verified using the best information available.
 1. Pay stubs, tip records and employers' statements are acceptable forms of verification of earned income.
 2. Self-employment income can be verified through business records from the previous year if they are representative of anticipated earnings. If business records from the previous year are not representative of anticipated earnings, an average of the business records from the previous two or three years may be used if that average is representative of anticipated earnings.
 - (4) Changes in income. Financial eligibility shall be reviewed on an annual basis and may be reviewed more often in response to increases or decreases in income.

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(5) A child who is eligible for federally funded services and other support must apply for such services and support.

ITEM 38. Amend subrule 25.16(2), introductory paragraph, as follows:

25.16(2) Resource requirements. There are no resource limits for the family of a child seeking children’s behavioral health services. An individual adult seeking mental health and disability services must have resources that are equal to or less than \$2,000 in countable value for a single-person household or \$3,000 in countable value for a multiperson household or follow the most recent federal supplemental security income guidelines.

ITEM 39. Rescind subrule 25.16(3) and adopt the following **new** subrule in lieu thereof:

25.16(3) Cost-share standards. A regional administrative entity must comply with cost-share standards as defined in Iowa Code sections 331.395 and 331.396A.

a. Cost sharing is allowed for adults with income above 150 percent of the federal poverty level as defined by the most recently revised poverty guidelines published by the United States Department of Health and Human Services.

Cost-share amounts for regionally funded adult mental health and disability services in this rule are related to core services as defined in Iowa Code section 331.397 and must be identified in the enrollment and eligibility section of the region’s policy and procedures approved by the department.

b. Cost-share amounts for children’s behavioral health services are applicable to core services as defined in Iowa Code section 331.397A. The family of a child receiving regional funding for behavioral health services shall be responsible for a cost-share amount based on the family’s household income as follows:

Family Income as a % of FPL	Cost Share % Paid by Family
0 to 150%	0%
151 to 200%	10%
201 to 250%	15%
251 to 300%	20%
301 to 350%	35%
351 to 400%	50%
401 to 450%	65%
451 to 500%	80%
Over 500%	100%

ITEM 40. Amend subrule 25.16(4), introductory paragraph, as follows:

25.16(4) ~~Copayment~~ Cost-share standards required by any federal, state, regional, or municipal program. Any ~~copayments~~ cost sharing or other client participation required by any federal, state, regional or municipal program in which the individual participates shall be required by the regional administrative entity. Such ~~copayments include~~ cost sharing includes, but ~~are~~ is not limited to:

ITEM 41. Amend subrule 25.18(1) as follows:

25.18(1) The annual service and budget plan is due on April 1 prior to the July 1 implementation of the annual plan and shall be approved by the region’s governing board prior to submittal to the department. ~~The initial plan is due on April 1, 2014.~~

ITEM 42. Amend subrule 25.18(2) as follows:

25.18(2) The annual service and budget plan shall include but not be limited to the following:

a. ~~The locations of the~~ Access points. A list of the local access points for mental health and disability services. ~~This shall include~~ and children’s behavioral health services, including the name names of the access points ~~including~~ and the physical locations and contact information.

b. Targeted Service coordination and targeted case management. ~~The~~ A list of the service coordination and targeted case management agencies ~~for~~ utilized in the region, whether funded by

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the region, the medical assistance program, or third-party payers, including the physical location and contact information for those agencies, ~~shall be included.~~

c. Crisis planning. A list of accredited crisis services available in the region for crisis prevention, response and resolution, including contact information for the agencies responsible, ~~shall be included.~~

d. Intensive mental health services. Identification of the intensive mental health services designated by the region according to rule 441—25.6(331), including the provider name, contact information, and location of each of the following, ~~shall be included:~~

- (1) Access center(s).
- (2) ACT services.
- (3) Intensive residential services.
- (4) Subacute mental health services.

e. Children's behavioral health services. Identification of children's behavioral health services as described in subrule 25.2(4), including eligibility requirements or reference to where eligibility requirements can be found in the policies and procedures manual.

~~e.f.~~ Scope of services. A description of the scope of services to be provided, a projection of need for the service, and the funding necessary to meet the need ~~shall be included.~~

(1) The scope shall include the regional core services as ~~defined~~ identified in rule 441—25.1(331) 441—25.2(331).

(2) The scope shall also include services in addition to the required core services.

~~f. g.~~ Budget and financing provisions for the next year. The provisions shall address how county, regional, state and other funding sources will be used to meet the service needs within the region.

~~g. h.~~ Financial forecasting measures. ~~The plan shall describe~~ A description of the financial forecasting measures used in the identification of service need and funding necessary for services and a financial statement of actual revenues and actual expenses by chart of account codes, including levies by county.

~~h. i.~~ ~~The provider~~ Provider reimbursement provisions. ~~The plan shall describe~~ A description of the types of provider reimbursement methods that will be used, including fee for service, ~~compensating providers compensation~~ for a "system of care" approach, and for use of nontraditional providers. A region also shall provide information on funding approaches that identify and incorporate all services and sources of funding used by the individuals receiving services, including the medical assistance program.

ITEM 43. Amend rule 441—25.20(331) as follows:

441—25.20(331) Annual report. The annual report shall describe the services provided, the cost of those services, the number of individuals served, and the outcomes achieved for the previous fiscal year. The annual report is due on December 1 following a completed fiscal year of implementing the annual service and budget plan. ~~The initial report is due on December 1, 2015.~~ The annual report shall include but not be limited to:

1. Services actually provided.
2. The status of service development.
- ~~2.~~ 3. Actual numbers of ~~individuals~~ children and adults served.
- ~~3.~~ 4. Documentation that each regionally designated access center has met the service standards in subrule 25.6(1).
4. 5. Documentation that each regionally designated ACT team has been evaluated for program fidelity, including a peer review as required by subrule 25.6(2), and documentation of each team's most recent fidelity score.
- ~~5.~~ 6. Documentation that each regionally designated subacute service has met the service standards in subrule 25.6(7).
- ~~6.~~ 7. Documentation that each regionally designated intensive residential service home or intensive residential service has met the service standards in subrule 25.6(8).
- ~~7.~~ 8. ~~Moneys expended.~~ Financial statement of actual revenues and actual expenditures by chart of account codes, including levies by county.
- ~~8.~~ 9. Outcomes achieved.

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- ITEM 44. Amend subrule 25.21(1) as follows:
- 25.21(1) Content.** The manual shall include but not be limited to:
- a. No change.
 - b. Enrollment. The application and enrollment process that is readily accessible to applicants individuals and their families or authorized representatives shall be included. This procedure shall identify regional access points and where applicants individuals can apply for services and how and when the applications will reach the regional administrative entity's designated staff for processing.
 - c. Eligibility. The process utilized to determine eligibility shall be included in the manual and shall include but not be limited to:
 - (1) to (3) No change.
 - (4) The process for development of a written notice of decision. The time frame for sending a written notice of decision to the individual and guardian (if applicable) and the service providers identified in the notice shall be included. The notice of decision shall:
 1. and 2. No change.
 3. Outline the applicant's individual's right to appeal.
 4. No change.
 - d. to f. No change.
 - g. Targeted case management.
 - (1) and (2) No change.
 - (3) Targeted case management and service coordination services. Targeted case management and service coordination services utilized in a regional service system shall include but are not limited to the following as defined in Iowa Code section 331.393(4) "g":
 1. Performance and outcome measures relating to the health, safety, school attendance and performance, work performance, and community residency of the individuals receiving the services.
 2. and 3. No change.
 - h. to r. No change.
- ITEM 45. Rescind **441—Chapter 25, Division IV**, heading and preamble.
- ITEM 46. Rescind rules **441—25.51(77GA, HF2545)** to **441—25.55(77GA, HF2545)**.
- ITEM 47. Rescind **441—Chapter 25, Division IV**, implementation sentence.
- ITEM 48. Rescind **441—Chapter 25, Division V**, heading and preamble.
- ITEM 49. Rescind rules **441—25.61(426B)** to **441—25.66(426B)**.
- ITEM 50. Rescind **441—Chapter 25, Division V**, implementation sentence.
- ITEM 51. Rescind **441—Chapter 25, Division VI**, heading and preamble.
- ITEM 52. Rescind rules **441—25.71(78GA, ch1221)** to **441—25.77(78GA, ch1221)**.
- ITEM 53. Rescind **441—Chapter 25, Division VI**, implementation sentence.
- ITEM 54. Rescind **441—Chapter 25, Division IX**, heading and preamble.
- ITEM 55. Rescind rules **441—25.95(426B)** and **441—25.96(426B)**.
- ITEM 56. Rescind **441—Chapter 25, Division IX**, implementation sentence.
- ITEM 57. Renumber **441—Chapter 25, Division X**, heading and preamble, as **441—Chapter 25, Division IV**, heading and preamble.
- ITEM 58. Renumber rules **441—25.101(229)** to **441—25.107(229)** as **441—25.51(229)** to **441—25.57(229)**.
- ITEM 59. Amend renumbered paragraph **25.52(2)“b”** as follows:
- b. A person employed as an advocate on or before July 1, 2015, who does not meet the requirements of subparagraph ~~25.102(2)“a”(1) or (2)~~ 25.52(2)“a”(1) or (2) shall be considered to meet

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those requirements so long as the person is continuously appointed as an advocate in the employing county.

[Filed 1/23/20, effective 3/18/20]

[Published 2/12/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.

ARC 4897C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to case management services

The Human Services Department hereby amends Chapter 73, "Managed Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," and Chapter 83, "Medicaid Waiver Services," rescinds Chapter 90, "Targeted Case Management," and adopts a new Chapter 90, "Case Management Services," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4.

Purpose and Summary

This rule making adopts a new Chapter 90 that clarifies the case management service activities received by various populations in the Medicaid program and includes a definition of and references to a core standardized assessment (CSA) as required under the Balancing Incentive Program (BIP). BIP was created as part of the federal Patient Protection and Affordable Care Act. Participation by Iowa is required by 2012 Iowa Acts, chapter 1133, section 14, and 2013 Iowa Acts, chapter 138, section 142(20). In addition, new Chapter 90 outlines and requires billable activities for fee-for-service members, includes a requirement for provider reporting of minor incidents, and includes the person-centered service planning definition and service requirements. Also, cross-reference citations in other chapters that are affected by this rule making are updated.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 6, 2019, as **ARC 4739C**.

The Department received 83 written comments from eight respondents regarding the proposed changes. The following persons and organizations provided written comments: Linda Duffy, Integrated Health Home Program Manager, Child Health Specialty Clinics; Sabra Rosener, J.D., Vice President of Government and External Affairs at UnityPoint Health; Flora A. Schmidt, Executive Director, Iowa Behavioral Health Association; Jane Wollum, Administrator, Johnson County Case Management; Cynthia Pederson, J.D., State Long-Term Care Ombudsman; Melissa Ahrens, Director of Integrated Programs, Community Support Advocates; Sara Hackbart, Health Home Program Manager, Amerigroup; and Shelly Chandler, Executive Officer, Iowa Association of Community Providers.

The comments and corresponding responses from the Department are divided into ten topic areas as follows:

1. Additional clarification needed throughout Chapter 90. Twenty-nine comments were received on this topic.

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- Twenty-five comments requested clarification regarding how new Chapter 90 applies to integrated health home (IHH) non-intensive care management (ICM) members.

Department response: The Department has added clarifying statements for each rule. The Department has also added statements clarifying that the requirements for this chapter apply to the IHH populations of habilitation services and the children's mental health waiver, and not to the full IHH population.

- Three comments asked to have additional words defined.

Department response: The words "applicant" and "case management" are now defined in the chapter. The Department has taken the request to define the word "representative" under advisement, but has decided to not add the definition. "Representative" has many meanings depending upon how it is used. Leaving "representative" undefined in this chapter allows the broader meanings to all be acceptable.

- One comment requested use of the term "IHH care coordination" instead of "IHH case management."

Department response: The term has been revised throughout the rule making as requested.

2. Location or method of contact. Seven comments were received on this topic.

- Five comments related to the change in location of the case manager quarterly face-to-face contact and to the restrictions involved in using face-to-face or telephonic contact as the methods of required monthly contact.

Department response: The Department has taken the suggestions under advisement, but has decided to not alter the chapter as suggested. The Department strongly believes that the case manager should have more direct interaction with the member and the guardian or representative to improve the case manager's knowledge of the member's residence in order to better assess and monitor member health, safety, and welfare. Members continue to have a choice in location and method of contact that is made outside of these three required contacts.

- One comment asked the Department to specify under what circumstances the managed care organization (MCO) contact requirements might differ from the requirements in subrule 90.4(1).

Department response: The Department has taken the comment under advisement, but has decided to not alter subrule 90.4(1) as suggested. This subrule was written without specificity to allow the Department future flexibility in MCO contract negotiation.

- One comment requested that the Department reinstate the prior rule language that allowed for broader options of methods of communication between the member and case manager for most contacts.

Department response: The Department has taken the comment under advisement, but has decided to not alter the chapter as suggested. In regard to the quarterly face-to-face contacts and the monthly face-to-face or telephonic contacts, the Department has purposely limited the method of contact in order to increase the case manager's direct contact with the member and the guardian or representative. That increased direct contact should improve the case manager's knowledge of the member's residence in order to better assess and monitor member health, safety, and welfare. Members continue to have a choice in location and method of contact that is made outside of these three required contacts.

3. Core standardized assessments. Two comments were received on this topic. Commenters asked for clarification in regard to whether an MCO will perform the core standardized assessment or whether the MCO has the ability to transfer that responsibility to another entity.

Department response: The Department has revised the definition of "core standardized assessment" in rule 441—90.1(249A) to state that an MCO shall either perform core standardized assessments for MCO-enrolled members or transfer the responsibility to another entity.

4. Targeted case management and the definition of "targeted population." Three comments were received on this topic. Commenters asked for clarification of targeted case management and the definition of "targeted population."

Department response: Statements clarifying "targeted case management" and "targeted population" have been added to the chapter.

5. Person-centered planning. Nineteen comments were received on this topic.

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- Eight comments requested changes to the wording used in subrule 90.4(1) regarding person-centered service plans and the person-centered planning process.

Department response: The Department has taken the comments under advisement, but has decided to not alter subrule 90.4(1) except as described in paragraph “6” below and except to add references to “guardian” to the subrule. The federal government has issued direction and guidance in relation to person-centered service plans and the person-centered planning process. The Department has purposefully chosen to not revise that wording other than to include a reference to “guardian” or “representative” wherever one term or the other is used.

- Five comments were received regarding the person-centered planning format or tool. Requests were made to have the formats and tools identified in rule.

Department response: The Department has taken the comments under advisement, but has decided to not make the suggested changes. The Department does not mandate or recommend any particular format or tool. If the case manager has options in either format or tool, then the member should have choice.

- One comment stated that the term “case manager” did not apply to IHH care coordination.

Department response: The definition of “case manager” in rule 441—90.1(249A) has been revised to explicitly include IHH care coordination for members participating in habilitation services and the children’s mental health waiver.

- One comment requested the addition of the word “services” after any reference to HCBS.

Department response: The Department has taken the comment under advisement, but has decided to not alter the rule as suggested. “HCBS” is an acronym for “home- and community-based services.” Adding the word “services” would be redundant.

- One comment requested that numbered paragraph 90.4(1)“b”(3)“10” be removed because the commenter thought that there was no identification of the entity responsible for carrying out the requirement stated in the paragraph.

Department response: The Department has taken the comment under advisement, but has decided to not remove or alter the paragraph. Paragraph 90.4(1)“b” already identifies the case manager as the person responsible for the person-centered service plan and processes.

- One comment asked the Department to designate the risk assessment tool to be used for all members.

Department response: The Department has taken the comment under advisement, but has decided to not alter the rules as requested. The Department has purposefully chosen to allow each case management provider to choose the risk assessment tool to be used.

- One comment asked that a redundant mention of the 365-day cycle for service plan review and revision be removed.

Department response: The Department has taken the comment under advisement, but has decided to not alter the language. The Department has purposefully used redundant language to stress the importance of the time frame.

- One comment requested that the Department reinstate prior language regarding monitoring to use the word “may” instead of the word “shall.”

Department response: The Department has taken the comment under advisement, but has decided to not alter the rule relating to monitoring. The Department purposefully revised the rule to use “shall” because the Department expects case managers to review provider service documentation to ensure the member is receiving services as authorized.

6. Assessments. Thirteen comments were received on this topic.

- Three comments asked for clarification about the use of face-to-face or telephonic reassessments.

Department response: Subrule 90.4(1) has been revised to indicate that only a Supports Intensity Scale® (SIS) assessment can be done telephonically, and then only when the situation meets the criteria outlined by the American Association on Intellectual and Developmental Disabilities (AAIDD), and to state that an interRAI reassessment cannot be done telephonically.

- Three comments asked to add the reference for the core standardized assessment used for the habilitation population.

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Department response: Clarifying statements have been added to the definition of “core standardized assessment” and to subrule 90.4(1).

- One comment stated that the term “comprehensive assessment” has not been defined in the rules.

Department response: The word “comprehensive” in relation to assessments has been removed from the rules.

- Two comments requested clarification of the statement that case managers may participate during the assessment or reassessment process at the request of the member.

Department response: Subrule 90.4(1) has been clarified in response to this request. The commenters seemed to believe that the participation of the case manager in the assessment allows the case manager to become the assessor. This is not true. A trained assessor will always conduct the assessment. The case manager can participate just as a family member, representative, guardian, or provider can participate if chosen by the member.

- One commenter requested that the Department require that the case manager always be present unless contraindicated by the member.

Department response: The Department has taken the comment under advisement, but has decided to not alter the rule as suggested. While it is best practice that a case manager participates in the reassessment processes, the Department intends to allow member choice to take precedence.

- One commenter requested that the word “applicant” be used in conjunction with any mention of initial assessments, and that the word “member” be used in conjunction with reassessments.

Department response: A definition of “applicant” has been added, and subrule 90.4(1) has been revised to refer to “applicant” as suggested, except in those parts of the subrule where federal guidance is used for the person-centered service plan and person-centered planning processes.

- One commenter suggested that the definition of “core standardized assessment” be moved out of the definitions rule and into the body of the rules.

Department response: The Department has taken the comment under advisement, but has decided to not alter the location of the definition.

- One commenter suggested that the Department require the assessment to be sent to the interdisciplinary team (IDT) within 14 calendar days.

Department response: The Department has taken the comment under advisement, but has decided to not alter the rule as suggested.

7. Covered services. Three comments were received on this topic.

- One comment questioned the change in subrule 90.4(1) to require monitoring activities by the case manager and stated that the words “as needed” appear to cause confusion.

Department response: The words “as needed” appeared in the proposed rules but have been removed upon revision. Monitoring is an integral part of case management and should be done as warranted by each individual situation. There are no frequency standards for this service.

- Two comments regarding case manager monitoring of provider documentation asked the Department to change the word “shall” to the word “may.”

Department response: The Department has taken the comment under advisement, but has decided to not alter the rule as suggested. The Department intends that case managers play a more active role in monitoring of provider documentation to gain better knowledge of the use of authorized services and of member welfare. At this time, the Department is not issuing guidance or mandates for this activity.

8. Billable activities. Two comments were received on this topic.

- One comment questioned the limited number of activities that are considered as billable activities for fee-for-service (FFS) case management (not applicable to MCO- or IHH-enrolled populations).

Department response: The Department has taken the comment under advisement, but has decided to not alter the rule in response to the comment. Informational Letter 1394, effective July 1, 2014, announced the then new limited billable activities list. This list was the consensus of a case management workgroup whose intention was to standardize billable activities in order to bring about standardization of provider rates. Billable activities were purposefully limited in order to stress the importance of completing case management activities efficiently.

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- One comment suggested that the Department annually adjust the FFS case management fee schedule to allow for wage and benefit increases.

Department response: The Department has taken the comment under advisement, but has decided to not alter the rule as suggested. The Iowa Legislature determines when FFS provider rates are changed. If the Legislature mandates an increase, then the Department will comply.

9. 441—Chapter 24. One comment was received on this topic.

- The commenter asked if a specific subrule of 441—Chapter 24 applied to IHH-enrolled providers.

Department response: This rule making is applicable to Medicaid case management. Any questions related to 441—Chapter 24 should be addressed directly to the mental health and disability services staff.

10. Service provider requirements. Four comments were received on this topic.

- One comment questioned whether the proposed changes to who must report incidents were adding in the types of staff responsible to report.

Department response: The Department has taken the comment under advisement, but has decided to not alter the rule in response to the comment. This rule making implements a requirement that has been in practice for years and is already included in the Department's other administrative rules.

- One comment expressed concern about the removal of references to appeal rights from the chapter.

Department response: The Department has taken the comment under advisement, but has decided to not alter the chapter in response to the comment. The Iowa Attorney General's office advised removal of references to appeal rights because those rights are addressed under the Department's other administrative rules. The intent is to avoid confusion due to the inclusion of these references in multiple rules. There is no effect on any member's appeal rights by the removal of these references in this chapter.

- Two comments were received in reference to use of a risk assessment and subsequent updates to the person-centered service plan based upon review of changes to the risk assessment. The commenter asked to have the updates made to a progress note or another place in the member record instead of in the service plan.

Department response: The Department has taken the comment under advisement, but has decided to not alter the rule as requested. A progress note is not the person-centered service plan; it is merely a record of activities. The service plan drives how services are provided and is the living document used to communicate the services, or changes to services, to all providers and the others responsible for the plan.

In addition to making the changes described above, the Department added four new items to update cross-references affected by the adoption of new Chapter 90. No other changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on January 8, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

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Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 73.5(2) as follows:

73.5(2) Community-based case management service. The managed care organization is required to provide services that meet requirements specified in the contract and in ~~441—subrule 90.5(1) 441—Chapter 90.~~

ITEM 2. Amend paragraph **78.27(6)“a”** as follows:

a. Scope. Case management services shall be provided as set forth in rules ~~441—90.5(249A) and 441—90.8(249A)~~ 441—90.4(249A) through 441—90.7(249A).

ITEM 3. Amend paragraph **78.37(17)“a”** as follows:

a. Case management services shall be provided as set forth in rules ~~441—90.5(249A) and 441—90.8(249A)~~ 441—90.4(249A) through 441—90.7(249A).

ITEM 4. Amend paragraph **78.43(1)“a”** as follows:

a. Case management services shall be provided as set forth in rules ~~441—90.5(249A) and 441—90.8(249A)~~ 441—90.4(249A) through 441—90.7(249A).

ITEM 5. Amend subparagraph **83.2(1)“d”(1)** as follows:

(1) The member's designated case manager shall use the completed assessment to develop the comprehensive service plan as specified in ~~rule 441—90.5(249A); 441—paragraph 90.4(1)“b.”~~

ITEM 6. Amend rule ~~441—83.7(249A)~~, introductory paragraph, as follows:

~~441—83.7(249A) Service plan.~~ A service plan shall be prepared for health and disability waiver members in accordance with ~~441—paragraph 90.5(1)“b.” 441—paragraph 90.4(1)“b.”~~ Service plans for both children and adults shall be completed every 12 months or when there is significant change in the person's situation or condition.

ITEM 7. Amend paragraph **83.22(2)“a”** as follows:

a. Case management. Consumers under the elderly waiver shall receive case management services from a provider qualified pursuant to rule ~~441—77.29(249A)~~. Case management services shall be provided as set forth in rules ~~441—90.5(249A) and 441—90.8(249A)~~ 441—90.4(249A) through 441—90.7(249A).

ITEM 8. Rescind 441—Chapter 90 and adopt the following **new** chapter in lieu thereof:

CHAPTER 90
CASE MANAGEMENT SERVICES

PREAMBLE

Case management services are designed to ensure the health, safety, and welfare of members by assisting them in gaining access to appropriate and necessary medical services and interrelated social, educational, housing, transportation, vocational, and other services. The term “case management” encompasses all categories of case management: targeted case management, case management and administrative case management provided to members enrolled in a 1915(c) waiver, community-based

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case management provided through managed care, and integrated health home (IHH) care coordination provided to the habilitation and children's mental health waiver populations. If a part of these rules does not apply to all categories of case management, then the rule will clarify the affected category(ies).

441—90.1(249A) Definitions.

“Adult” means a person 18 years of age or older on the first day of the month in which service begins.

“Applicant” means a person who has applied for an HCBS waiver or habilitation program.

“Care coordination” means the case management services provided by an integrated health home to members who are also receiving home- and community-based habilitation services pursuant to rule 441—78.27(249A) or HCBS children's mental health waiver services pursuant to rules 441—83.121(249A) through 441—83.129(249A).

“Case management” means the categories of case management: targeted case management, case management provided to members enrolled in a 1915(c) waiver, community-based case management provided through managed care, and integrated health home (IHH) care coordination provided to the habilitation and children's mental health waiver populations.

“Case manager” means the staff person providing all categories of case management services regardless of the entity providing the service or the program in which the member is enrolled, including IHH care coordination.

“Child” means a person other than an adult.

“Chronic mental illness” means a condition present in adults who have a persistent mental or emotional disorder that seriously impairs their functioning relative to such primary aspects of daily living as personal relations, living arrangements, or employment. The definition of chronic mental illness and qualifying criteria are found at rule 441—24.1(225C). For purposes of this chapter, people with mental disorders resulting from Alzheimer's disease or substance abuse shall not be considered chronically mentally ill.

“Community-based case manager” means the employee of a Medicaid-contracted managed care organization (MCO) who provides case management services to MCO-enrolled members.

“Core standardized assessment” or *“CSA”* means an assessment instrument for determining the suitability of non-institutionally based long-term services and supports for an individual. The instrument shall be used in a uniform manner throughout the state to determine an applicant's or member's needs for training, support services, medical care, transportation, and other services and to develop an individual service plan to address such needs. The core standardized assessment shall be performed by a contractor under the direction of the department for the fee-for-service population. MCOs shall perform core standardized assessments for MCO-enrolled members or shall delegate the responsibility for completion of assessments. 441—Chapter 83 designates the assessment and reassessment tools to be used for each HCBS waiver. 441—Chapter 78 designates the assessment and reassessment tools to be used for habilitation.

“Department” means the department of human services.

“Developmental disability” means a severe, chronic disability that is determined through professionally administered screening and evaluations and that:

1. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
2. Is manifested before the age of 22;
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations in three or more of the following areas of major life activity: (a) self-care, (b) receptive and expressive language, (c) learning, (d) mobility, (e) self-direction, (f) capacity for independent living, and (g) economic self-sufficiency; and
5. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

“Fee-for-service member” or *“FFS member”* means a member who is not enrolled with a managed care organization because the member is exempt from managed care organization enrollment.

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“Home- and community-based services” or *“HCBS”* means services provided pursuant to Sections 1915(c) and 1915(i) of the Social Security Act.

“Integrated health home” or *“IHH”* means a provider of health home services that is a Medicaid-enrolled provider and that is determined through the provider enrollment process to have the qualifications, systems and infrastructure in place to provide IHH services pursuant to rule 441—77.47(249A). IHH covered services and member eligibility for IHH enrollment are also governed by rule 441—78.53(249A) and the health home state plan amendment. The IHH provides care coordination services for enrolled habilitation and children’s mental health waiver members.

“Intellectual disability” means a diagnosis of intellectual disability (intellectual developmental disorder), global developmental delay, or unspecified intellectual disability (intellectual developmental disorder). Diagnosis criteria are outlined in rule 441—83.61(249A).

“Major incident” means an occurrence that involves a member who is enrolled in an HCBS waiver, targeted case management, or habilitation services and that:

1. Results in a physical injury to or by the member that requires a physician’s treatment or admission to a hospital;
2. Results in the death of any person;
3. Requires emergency mental health treatment for the member;
4. Requires the intervention of law enforcement;
5. Requires a report of child abuse pursuant to Iowa Code section 232.69, a report of dependent adult abuse pursuant to Iowa Code section 235B.3, or a report of elder abuse pursuant to Iowa Code chapter 235F; or
6. Involves a member’s location being unknown by provider staff who are responsible for protective oversight.

“Managed care organization” or *“MCO”* means the same as defined in rule 441—73.1(249A).

“Medical institution” means an institution that is organized, staffed, and authorized to provide medical care as set forth in the most recent amendment to 42 Code of Federal Regulations Section 435.1009. A residential care facility is not a medical institution.

“Member” means a person who has been determined to be eligible for Medicaid under 441—Chapter 75.

“Minor incident” means an occurrence that involves a member who is enrolled in an HCBS waiver, targeted case management, or habilitation services and that is not a major incident but that:

1. Results in the application of basic first aid;
2. Results in bruising;
3. Results in seizure activity;
4. Results in injury to self, to others, or to property; or
5. Constitutes a prescription medication error.

“Person-centered service plan” or *“service plan”* means a service plan created through the person-centered planning process, directed by the member with long-term care needs or the member’s guardian or representative, to identify the member’s strengths, capabilities, preferences, needs, and desired outcomes.

“Rights restriction” means limitations not imposed on the general public in the areas of communication, mobility, finances, medical or mental health treatment, intimacy, privacy, type of work, religion, place of residence, and people with whom a member may share a residence.

“Targeted case management” means case management services furnished to assist members who are part of a targeted population.

“Targeted population” means people who meet one of the following criteria:

1. An adult who is identified with a primary diagnosis of intellectual disability, chronic mental illness, or developmental disability; or
2. A child who is eligible to receive HCBS intellectual disability waiver services or HCBS children’s mental health waiver services according to 441—Chapter 83.

A member enrolled with a managed care organization or integrated health home is not part of the targeted population.

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441—90.2(249A) Targeted case management. Rule 441—90.2(249A) applies only to the case management category of targeted case management and the defined targeted population.

90.2(1) Eligibility for targeted case management. A person who meets all of the following criteria shall be eligible for targeted case management:

- a. The person is eligible for Medicaid or is conditionally eligible under 441—subrule 75.1(35);
- b. The person is a member of a targeted population;
- c. The person resides in a community setting or qualifies for transitional case management as set forth in subrule 90.2(4);
- d. The person has applied for targeted case management in accordance with the policies of the provider;
- e. The person's need for targeted case management has been determined in accordance with rule 441—90.2(249A); and
- f. The person is not eligible for, or enrolled in, Medicaid managed care.

90.2(2) Determination of need for targeted case management. Assessment at least every 365 days of the need for targeted case management is required as a condition of eligibility under the medical assistance program. The targeted case management provider shall determine the member's initial and ongoing need for service based on diagnostic reports, documentation of provision of services, and information supplied by the member and other appropriate sources. The evidence shall be documented in the member's file and shall demonstrate that all of the following criteria are met:

- a. The member has a need for targeted case management to manage necessary medical, social, educational, housing, transportation, vocational, and other services for the benefit of the member;
- b. The member has functional limitations and lacks the ability to independently access and sustain involvement in necessary services; and
- c. The member is not receiving, under the medical assistance program or under a Medicaid managed health care plan, other paid benefits that serve the same purpose as targeted case management or integrated health home care coordination.

90.2(3) Application for targeted case management. The provider shall process an application for targeted case management no later than 30 days after receipt of the application. The provider shall refer the applicant to the department's service unit or mental health and disability services regions if other services outside the scope of case management are needed or requested.

a. *Application process and documentation.* The application shall include the member's name, the nature of the request for services, and a summary of any evaluation activities completed. For FFS members, the provider shall inform the applicant in writing of the applicant's right to choose the provider of case management services and, at the applicant's request, shall provide a list of other case management services agencies from which the applicant may choose. The provider shall maintain this documentation for at least five years.

b. *Application decision for targeted case management.* The case manager shall inform the applicant, or the applicant's guardian or representative, of any decision to approve, deny, or delay the service in accordance with the notification requirements at 441—subrule 7.7(1).

c. *Denial of applications.* The case manager shall deny an application for service when:

- (1) The applicant is not currently eligible for Medicaid;
- (2) The applicant does not meet the eligibility criteria in 441—subrule 90.2(1);
- (3) The applicant, or the applicant's guardian or representative, withdraws the application;
- (4) The applicant does not provide information required to process the application;
- (5) The applicant is receiving duplicative targeted case management or integrated health home care coordination from another Medicaid provider; or
- (6) The applicant does not have a need for targeted case management.

90.2(4) Transition to a community setting. Managed care organizations must provide transition services to all enrolled members. Fee-for-service targeted case management services may be provided to a member transitioning to a community setting during the 60 days before the member's discharge from a medical institution when the following requirements are met:

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- a. The member is an adult who qualifies for targeted case management and is a member of a targeted population. Transitional case management is not an allowable service for other HCBS programs or populations;
- b. Case management services shall be coordinated with institutional discharge planning, but shall not duplicate institutional discharge planning;
- c. The amount, duration, and scope of case management services shall be documented in the member's service plan, which must include case management services before and after discharge, to facilitate a successful transition to community living;
- d. Payment shall be made only for services provided by Medicaid-enrolled targeted case management providers; and
- e. Claims for reimbursement for case management services shall not be submitted until the member's discharge from the medical institution and enrollment in community services.

441—90.3(249A) Termination of targeted case management services. Rule 441—90.3(249A) applies only to the case management category of targeted case management and the defined targeted population.

90.3(1) Targeted case management shall be terminated when:

- a. The member does not meet eligibility criteria under rule 441—90.2(249A);
- b. The member has achieved all goals and objectives of the service;
- c. The member has no ongoing need for targeted case management;
- d. The member is receiving targeted case management based on eligibility under an HCBS program but is no longer eligible for the program;
- e. The member or the member's guardian or representative requests termination;
- f. The member is unwilling or unable to accept further services; or
- g. The member or the member's guardian or representative fails to provide access to information necessary for the development of the service plan or for implementation of targeted case management.

90.3(2) The provider shall notify the member or the member's guardian or representative in writing of the termination of targeted case management, in accordance with 441—subrule 7.7(1).

441—90.4(249A) Case management services. Rule 441—90.4(249A) applies to all categories of case management and all populations covered by case management.

90.4(1) Covered services. The following shall be included in case management services provided to members, whether FFS members or MCO-enrolled members:

a. *Assessment.* Initial assessments and regular reassessments must be done for each applicant and member to determine the need for any medical, social, educational, housing, transportation, vocational, or other services. The assessments and reassessments shall address all of the applicant's and member's areas of need, strengths, preferences, and risk factors, considering the person's physical and social environment. Applicants and members will receive individualized prior notification of the assessment tool to be used and of who will conduct the assessment. The assessment and reassessment will be done using the core standardized assessment or another tool as designated in 441—Chapter 83 for each waiver population and 441—Chapter 78 for the habilitation population. Initial assessments must be face to face. Reassessments using the interRAI must be done face to face. Only the Supports Intensity Scale® assessment can be done telephonically, and then only when the situation meets the criteria outlined by the American Association on Intellectual and Developmental Disabilities (AAIDD). The off-year assessment (OYA) for the intellectual disability waiver can be done telephonically. A reassessment must be conducted at a minimum every 365 days and more frequently if material changes occur in the member's condition or circumstances. Case managers may participate during the assessment or reassessment process at the request of the applicant or member; the case manager does not assume the role of the assessor.

b. *Person-centered service plan.* At least every 365 days, the case manager shall develop and revise a comprehensive, person-centered service plan in collaboration with the member, the member's service providers, and other people identified as necessary by the member, as practicable. The person-centered service plan will be developed based on the assessment and shall include a crisis

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intervention plan based on the risk factors identified in a risk assessment. The case manager shall document the member's history, including current and past information and social history, and shall update the history annually. The case manager shall gather information from other sources such as family members, medical providers, social workers, guardians, representatives, and others as necessary to form a thorough social history and comprehensive person-centered service plan with the member. The person-centered service plan may also be referred to as a person-centered treatment plan.

(1) The person-centered service plan shall address all service plan components outlined in this chapter and in 441—Chapter 83 for the waiver in which the member is enrolled or 441—Chapter 78 for members enrolled in habilitation.

(2) Person-centered planning shall be implemented in a manner that supports the member, makes the member central to the process, and recognizes the member as the expert on goals and needs. In order for this to occur, there are certain process elements that must be included in the process. These include:

1. The member, guardian or representative must have control over who is included in the planning process, as well as have the authority to request meetings and revise the person-centered service plan (and any related budget) whenever reasonably necessary.

2. The process is timely and occurs at times and locations of convenience to the member, the member's guardian or representative and family members, and others, as practicable.

3. Necessary information and support are provided to ensure that the member or the member's guardian or representative is central to the process and understands the information. This includes the provision of auxiliary aids and services when needed for effective communication.

4. A strengths-based approach to identifying the positive attributes of the member shall be used, including an assessment of the member's strengths and needs. The member should be able to choose the specific planning format or tool used for the planning process.

5. The member's personal preferences shall be considered to develop goals and to meet the member's HCBS needs.

6. The member's cultural preferences must be acknowledged in the planning process, and policies/practices should be consistent with the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care (the National CLAS Standards) of the Office of Minority Health, U.S. Department of Health and Human Services.

7. The planning process must provide meaningful access to members and their guardians or representatives with limited English proficiency (LEP), including low literacy materials and interpreters.

8. Members who are under guardianship or other legal assignment of individual rights, or who are being considered as candidates for these arrangements, must have the opportunity in the planning process to address any concerns.

9. There shall be mechanisms for solving conflict or disagreement within the process, including clear conflict of interest guidelines.

10. Members shall be offered information on the full range of HCBS available to support achievement of personally identified goals.

11. The member or the member's guardian or representative shall be central in determining what available HCBS are appropriate and will be used.

12. The member shall be able to choose between providers or provider entities, including the option of self-directed services when available.

13. The person-centered service plan shall be reviewed at least every 365 days or sooner if the member's functional needs change, circumstances change, or quality of life goals change, or at the member's request. There shall be a clear process for members to request reviews. The case management entity must respond to such requests in a timely manner that does not jeopardize the member's health or safety.

14. The planning process should not be constrained by any case manager's or guardian's or representative's preconceived limits on the member's ability to make choices.

15. Employment and housing in integrated settings shall be explored, and planning should be consistent with the member's goals and preferences, including where the member resides and with whom the member lives.

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(3) Elements of the person-centered service plan. The person-centered service plan shall identify the services and supports that are necessary to meet the member's identified needs, preferences, and quality of life goals. The person-centered service plan shall:

1. Reflect that the setting where the member resides is chosen by the member. The chosen setting must be integrated in, and support full access to, the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree of access as individuals not receiving HCBS.

2. Be prepared in person-first singular language and be understandable by the member or the member's guardian or representative.

3. Note the strengths-based positive attributes of the member at the beginning of the plan.

4. Identify risks, while considering the member's right to assume some degree of personal risk, and include measures available to reduce risks or identify alternate ways to achieve personal goals.

5. Document goals in the words of the member or the member's guardian or representative, with clarity regarding the amount, duration, and scope of HCBS services that will be provided to assist the member. Goals shall consider the quality of life concepts important to the member.

6. Describe the services and supports that will be necessary and specify what HCBS services are to be provided through various resources, including natural supports, to meet the goals in the person-centered service plan.

7. Document the specific person or persons, provider agency and other entities providing services and supports.

8. Ensure the health and safety of the member by addressing the member's assessed needs and identified risks.

9. Document non-paid supports and items needed to achieve the goals.

10. Include the signatures of everyone with responsibility for the plan's implementation, including the member or the member's guardians or representatives, the case manager, the support broker/agent (when applicable), and providers, and include a timeline for review of the plan. The plan must be discussed with family, friends, and caregivers designated by the member so that they fully understand it and their roles.

11. Identify each person and entity responsible for monitoring the plan's implementation.

12. Identify needed services based upon the assessed needs of the member and prevent unnecessary or inappropriate services and supports not identified in the assessed needs of the member.

13. Document an emergency back-up plan that encompasses a range of circumstances (e.g., weather, housing, and staff).

14. Address elements of self-direction through the consumer choices option (e.g., financial management service, support broker/agent, alternative services) whenever the consumer choices option is chosen.

15. Be distributed directly to all parties involved in the planning process.

c. Referral and related activities. The case manager shall assist, as needed, the member in obtaining needed services, such as by scheduling appointments for the member and by connecting the member with medical, social, educational, housing, transportation, vocational or other service providers or programs that are capable of providing needed services to address identified needs and risk factors and to achieve goals specified in the person-centered service plan.

d. Monitoring and follow-up. The case manager shall perform monitoring activities and make contacts that are necessary to ensure the health, safety, and welfare of the member and to ensure that the person-centered service plan is effectively implemented and adequately addresses the needs of the member. At a minimum, monitoring shall include assessing the member, the places of service (including the member's home, when applicable), and all services regardless of the service funding stream. Monitoring shall also include review of service provider documentation. Monitoring of the following aspects of the person-centered service plan shall lead to revisions of the plan if deficiencies are noted:

(1) Services are being furnished in accordance with the member's person-centered service plan, including the amount of service provided and the member's attendance and participation in the service;

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- (2) The member has declined services in the service plan;
- (3) Communication among providers is occurring, as practicable, to ensure coordination of services;
- (4) Services in the person-centered service plan are adequate, including the member's progress toward achieving the goals and actions determined in the person-centered service plan; and
- (5) There are changes in the needs or circumstances of the member. Follow-up activities shall include making necessary adjustments in the person-centered service plan and service arrangements with providers.

e. Contacts. Case managers shall make contacts with the member, the member's guardians or representatives, or service providers as frequently as necessary and no less frequently than necessary to meet the following requirements:

- (1) The case manager shall have at least one face-to-face contact with the member in the member's residence at least quarterly;
- (2) The case manager shall have at least one contact per month with the member or the member's guardians or representatives. This contact may be face to face or by telephone;
- (3) Community-based case management contacts will be made in accordance with the Medicaid contract MED-16-019, or subsequent Medicaid managed care contracts with the department, in those instances where the contract specifies contacts different from this rule.

90.4(2) Exclusions. Payment shall not be made for activities otherwise within the definition of case management services when any of the following conditions exist:

- a.* The activities are an integral component of another covered Medicaid service.
- b.* The activities constitute the direct delivery of underlying medical, social, educational, housing, transportation, vocational or other services to which a member has been referred. Such services include, but are not limited to:
 - (1) Services under parole and probation programs;
 - (2) Public guardianship programs;
 - (3) Special education programs;
 - (4) Child welfare and child protective services; or
 - (5) Foster care programs.
- c.* The activities are components of the administration of foster care programs, including but not limited to the following:
 - (1) Research gathering and completion of documentation required by the foster care program;
 - (2) Assessing adoption placements;
 - (3) Recruiting or interviewing potential foster care parents;
 - (4) Serving legal papers;
 - (5) Conducting home investigations;
 - (6) Providing transportation related to the administration of foster care;
 - (7) Administering foster care subsidies; or
 - (8) Making placement arrangements.

d. The activities for which a member may be eligible are a component of the administration of another nonmedical program, such as a guardianship, child welfare or child protective services, parole, probation, or special education program, except for case management that is included in an individualized education program or individualized family service plan consistent with Section 1903(c) of the Social Security Act.

e. The activities duplicate institutional discharge planning.

441—90.5(249A) Rights restrictions. Rule 441—90.5(249A) applies to all categories of case management and all populations covered by case management. Any effort to restrict the rights of a member to realize the member's preferences or goals must be justified by a specific individualized assessed safety need and documented in the person-centered service plan. The following requirements must be documented in the plan when a safety need has been identified that warrants a rights restriction:

1. The specific and individualized assessed safety need;

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2. The positive interventions and supports used prior to any modifications or additions to the person-centered service plan regarding safety needs;
3. The less intrusive methods of meeting the safety needs that have been tried but were not successful;
4. A clear description of the rights restriction that is directly proportionate to the specific assessed safety need;
5. The regular collection and review of data to measure the ongoing effectiveness of the rights restriction;
6. The established time limits for periodic reviews to determine whether the rights restriction is still necessary or can be terminated;
7. The informed consent of the member to the proposed rights restriction; and
8. An assurance that the rights restriction itself will not cause undue harm to the member.

441—90.6(249A) Documentation and billing.

90.6(1) *Documentation of contacts.* Subrule 90.6(1) applies to all categories of case management and all populations covered by case management.

- a. Documentation of case management services contacts shall include:
 - (1) The name of the individual case manager;
 - (2) The need for, and occurrences of, coordination with other case managers within the same agency or referral or transition to another case management agency; and
 - (3) Other requirements as outlined in rule 441—79.3(249A) to support payment of services.
- b. Targeted case management providers serving FFS members must also adhere to 441—subrule 24.4(4).

90.6(2) *Rounding units of service for case management services.* Subrule 90.6(2) applies only to targeted case management provided to FFS members or case management provided to brain injury or elderly waiver FFS members. For all fee-for-service case management units of service, the following rounding process shall be used:

- a. Add together the minutes spent on all billable activities during a calendar day for a daily total;
- b. For each day, divide the total minutes spent on billable activities by 15 to determine the number of full 15-minute units for that day;
- c. Round the remainder using these guidelines: Round 1 to 7 minutes down to zero units; round 8 to 14 minutes up to one unit; and
- d. Add together the number of full units and the number of rounded units to determine the total number of units to bill for that day.

90.6(3) *Collateral contacts.* Subrule 90.6(3) applies only to targeted case management provided to FFS members or case management provided to brain injury or elderly waiver FFS members. For all fee-for-service case management units of service, the case manager may bill for documented contacts with other entities and individuals if the contacts are directly related to the member's needs and care, such as helping the member access services, identifying needs and supports to assist the member in obtaining services, providing other case managers with useful feedback, and alerting other case managers to changes in the member's needs.

90.6(4) *Billable activities for case management services.* Subrule 90.6(4) applies only to targeted case management provided to FFS members or case management provided to brain injury or elderly waiver FFS members. Billable activities for case management services are limited to the following activities, and any activity included in this list must be billed if the activity has occurred.

- a. Face-to-face meeting with the member:
 - (1) Contact time; and
 - (2) Documentation completed during meeting.
- b. Telephone conversation with the member:
 - (1) Contact time; and
 - (2) Documentation completed during meeting.

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c. Collateral contacts on behalf of the member, including face-to-face, telephone, and email contacts:

- (1) Contact time; and
- (2) Documentation completed during meeting.

d. Individual care plans and person-centered service plans:

- (1) Creation; and
- (2) Revision.

e. Social histories:

- (1) Creation; and
- (2) Revision.

f. Assessments and reassessments:

- (1) Participation during the assessment if requested by the member; and
- (2) Utilization of the assessment for creation of the person-centered service plan.

441—90.7(249A) Case management services provider requirements. Rule 441—90.7(249A) applies to all categories of case management and all populations covered by case management.

90.7(1) Reporting procedures for major incidents.

a. When a major incident occurs or a staff member becomes aware of a major incident:

(1) The staff member shall notify the following persons of the incident by midnight of the next calendar day after the incident:

1. The staff member's supervisor;
2. The member or member's legal guardians; and
3. The member's case manager. The case manager shall create an incident report if a provider has not submitted a report.

(2) By midnight of the next business day after the incident, the staff member who observed or first became aware of the incident shall also report as much information as is known by the staff member about the incident to the member's managed care organization in the format required by the managed care organization. If the member is not enrolled with a managed care organization, or is receiving money follows the person funding, the staff member shall report the information by direct data entry into the Iowa Medicaid portal access (IMPA) system. The case manager is responsible for reporting the incident if the provider of service has not already reported the incident.

(3) The following information shall be reported:

1. The name of the member involved;
2. The date, time, and location where the incident occurred;
3. A description of the incident;
4. The names of all provider staff and others who were present at the time of the incident or who responded after becoming aware of the incident. The confidentiality of other Medicaid-eligible members or non-Medicaid-eligible persons who were present must be maintained by the use of initials or other means;
5. The action taken to manage or respond to the incident;
6. The resolution of or follow-up to the incident; and
7. The date the report is made and the handwritten or electronic signature of the person making the report.

(4) When complete information about the incident is not available at the time of the initial report, the case management services provider must submit follow-up reports until the case manager is satisfied with the incident resolution and follow-up.

(5) The case management services provider shall maintain the completed report in a centralized file with a notation in the member's file.

(6) The case management services provider shall track incident data and analyze trends to assess the health and safety of members served and to determine whether changes need to be made for service implementation or whether staff training is needed to reduce the number or severity of incidents.

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b. When an incident report for a major incident is received from any provider, the case manager shall monitor the situation to ensure that the member's needs continue to be met.

c. When any major incident occurs, the case manager shall reevaluate the risk factors identified in the risk assessment portion of the service plan in order to ensure the continued health, safety, and welfare of the member. Documentation must be made in the person-centered service plan of this review and follow-up activities.

90.7(2) *Reporting procedures for minor incidents.* Minor incidents may be reported in any format designated by the case management services provider. When a minor incident occurs, or a staff member becomes aware of a minor incident, the staff member involved shall submit the completed incident report to the staff member's supervisor within 72 hours of the incident. The completed report shall be maintained in a centralized file with a notation in the member's file.

90.7(3) *Quality assurance.* Case management services providers shall cooperate with quality assurance activities conducted by the Iowa Medicaid enterprise or a Medicaid managed care organization, as well as any other state or federal entity with oversight authority to ensure the health, safety, and welfare of Medicaid members. These activities may include, but are not limited to:

- a.* Postpayment review of case management services;
- b.* Review of incident reports;
- c.* Review of reports of abuse or neglect; and
- d.* Technical assistance in determining the need for service.

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

[Filed 1/14/20, effective 3/18/20]

[Published 2/12/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.

ARC 4898C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to the monthly standard deduction for personal care services at a residential care facility

The Human Services Department hereby amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249.12.

Purpose and Summary

This rule making will continue to allow an annual change in the statewide monthly standard deduction for personal care services provided in a licensed residential care facility (RCF) based on the Consumer Price Index (CPI) for All Urban Consumers. This annual change continues to benefit medically needy members who reside in licensed RCFs because it continues to allow personal care needs to be applied to the spenddown obligation.

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Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 6, 2019, as **ARC 4738C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on January 8, 2020.

Fiscal Impact

There is minimal fiscal impact expected as a result of this rule making.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making action is adopted:

Amend subparagraph **75.1(35)“g”(2)** as follows:

(2) Order of deduction. Spenddown shall be adjusted when a bill for a Medicaid-covered service incurred during the certification period has been applied to meet spenddown if a bill for a covered service incurred prior to the certification period is subsequently received. Spenddown shall also be adjusted when a bill for a noncovered Medicaid service is subsequently received with a service date prior to the Medicaid-covered service. Spenddown shall be adjusted when an unpaid bill for a Medicaid-covered service incurred during the certification period has been applied to meet spenddown if a paid bill for a covered service incurred in the certification period is subsequently received with a service date prior to the date of the notice of spenddown status.

If spenddown has been met and a bill is received with a service date after spenddown has been met, the bill shall not be deducted to meet spenddown.

Incurred medical expenses, including those reimbursed by a state or political subdivision program other than Medicaid, but excluding those otherwise subject to payment by a third party, shall be deducted in the following order:

1. Medicare and other health insurance premiums, deductibles, or coinsurance charges.

EXCEPTION: When some of the household members are eligible for full Medicaid benefits under the Health Insurance Premium Payment Program (HIPPP), as provided in rule 441—75.21(249A), the health insurance premium shall not be allowed as a deduction to meet the spenddown obligation of those persons in the household in the medically needy coverage group.

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2. An average statewide monthly standard deduction for the cost of medically necessary personal care services provided in a licensed residential care facility shall be allowed as a deduction for spenddown. These personal care services include assistance with activities of daily living such as preparation of a special diet, personal hygiene and bathing, dressing, ambulation, toilet use, transferring, eating, and managing medication.

The average statewide monthly standard deduction for personal care services shall be based on the average per day rate of health care costs associated with residential care facilities participating in the state supplementary assistance program for a 30.4-day month as computed in the Compilation of Various Costs and Statistical Data (Category: All; Type of Care: Residential Care Facility; Location: All; Type of Control: All) by multiplying the previous year's average per day rate by the inflation factor increase during the preceding calendar year ending December 31 of the Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics. ~~The average statewide standard deduction for personal care services used in the medically needy program shall be updated and effective the first day of the first month beginning two full months after the release of the Compilation of Various Costs and Statistical Data for the previous fiscal year.~~

3. Medical expenses for necessary medical and remedial services that are recognized under state law but not covered by Medicaid, chronologically by date of submission.

4. Medical expenses for acupuncture, chronologically by date of submission.

5. Medical expenses for necessary medical and remedial services that are covered by Medicaid, chronologically by date of submission.

[Filed 1/9/20, effective 3/18/20]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.

ARC 4899C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to medical and remedial services

The Human Services Department hereby amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4.

Purpose and Summary

This rule making updates and clarifies language to reflect existing prescribed outpatient drug policies for qualified prescribers, reasons for nonpayments of drugs, covered nonprescription drugs, quantity prescribed, drug reimbursement methodology (including dispensing fee limitation) and credits for returned unit dose drugs not consumed. This rule making also adds language regarding initiation of refill requirements with the prohibition of automatic refills without the member's consent and includes legislatively required prior authorization (PA) limitations on medication-assisted treatment (MAT), including opioid overdose treatment, under the pharmacy and medical benefits.

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Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 20, 2019, as **ARC 4763C**.

The Department received seven comments from two respondents regarding the proposed changes: Flora A. Schmidt, Executive Director, Iowa Behavioral Health Association; and Casey Ficek, J.D., Director, Public Affairs, Iowa Pharmacy Association. The comments and corresponding responses from the Department are divided into five topic areas as follows:

1. Nonpayment of drugs. Two comments were received on this topic.

- One respondent commented that the rules, in not allowing payment for drug products administered in a practitioner's office, outpatient clinic or infusion center, may limit access to MAT drugs at opioid treatment programs, MAT unit sites and mental health centers and substance abuse treatment facilities. The respondent requested deletion of the provision or its amendment, with exceptions for behavioral health facilities.

- One respondent commented that not allowing payment for drug products administered in a practitioner's office, outpatient clinic or infusion center, while current policy under Medicaid, has resulted in some access issues for certain therapies provided in an infusion center controlled setting for Medicaid patients and requested reconsideration.

Department response: The Department will further research the access concerns identified in the comments before formalizing the policy in rule. The proposed statement has been removed from this adopted rule making.

2. Prior authorization for medication-assisted treatment drugs. Two comments were received on this topic.

- One respondent recommended a formatting change for the rule language and requested deletion of added language, indicating that it was not in the legislative language for this requirement.

Department response: The Department inserted a line break return after the last drug in the list in subrule 78.28(2). The language "opioid overdose agent" clarifies that naltrexone is approved by the Food and Drug Administration (FDA) for the treatment of opioid overdose. The Department revised the language to clarify concerns.

- One respondent expressed support for the removal of the prior authorization requirements to increase access to treatment for opioid use disorder.

Department response: The Department agrees with the comment. Increased access to treatment was the reason the Department initiated removal of the prior authorization requirement in the administrative rules.

3. Qualified prescriber. One comment was received on this topic.

- One respondent expressed support for the change to eliminate the list of specific qualified prescribers to ensure that the list will not have to be continually updated to reflect future changes in state law.

Department response: The Department agrees with the comment, and this was the reason the Department initiated removal of the prescriber list in the administrative rules.

4. Professional dispensing fee. One comment was received on this topic.

- One respondent expressed concerns about how one dispensing per month may affect patients seeking to utilize medication synchronization services, patients residing in nursing home and long-term care facilities, and prepacked drugs in less than a 30-day supply (for example, oral contraceptives).

Department response: Medication synchronization services are not a currently covered policy under Medicaid, and this rule language will not change that. If a pharmacy makes a business model decision to service nursing homes and long-term care facilities, that pharmacy has the ability to continue billing according to its existing process (for example, less than a month's supply). However, a dispensing fee will only be reimbursed once a month for maintenance drugs. Additionally, the pharmacy may choose to accumulate the billing to once a month as is the current process these pharmacies utilize for controlled substances. Lastly, the dispensing fee programming takes into account the monthly package size in allowing reimbursement of a dispensing fee in accordance with the refill tolerance of 90 percent consumption. Reimbursement of a dispensing fee would be allowed on a 28-day oral contraceptive when

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the refill is allowed on the 25th day. The Department updated the dispensing fee language in this rule making to account for the refill tolerance.

5. Unit dose packaging credits. One comment was received on this topic.

• A respondent commented that returns of unit dose packaging by a pharmacy must be consistent with Iowa Board of Pharmacy's rules and that the Department's rule language would result in pharmacies losing the cost of the medication returned and credited.

Department response: The Department agrees that a pharmacy must follow the Iowa Board of Pharmacy's rules on drug returns and has added that wording to these rules to clarify. This language is consistent with guidance in Informational Letter No. 497 released on April 21, 2006, and in the Prescribed Drugs Provider Manual.

Following review of the comments related to the proposed rule making, the Department has made the following changes from the Notice:

1. Removed proposed subparagraph 78.2(4)"b"(13), which would have prohibited payment for drug products administered in a practitioner's office, outpatient clinic or infusion center.

2. Revised new subrule 78.28(2) in Item 17 to include the clarifications described above. The subrule now reads as follows:

"78.28(2) Notwithstanding the provisions of 78.28(1)"a," under both Medicaid fee-for-service and managed care administration, at least one form of each of the following drugs for medication-assisted treatment as approved by the United States Food and Drug Administration for treatment of substance use disorder or overdose treatment will be available without prior authorization:

"a. Buprenorphine,

"b. Buprenorphine and naloxone combination,

"c. Methadone,

"d. Naltrexone, and

"e. Naloxone.

"For the purpose of this subrule, "medication-assisted treatment" means the medically monitored use of certain substance use disorder medications in combination with treatment services."

3. Added clarifying language to subparagraph 79.1(8)"c"(2) and paragraph 79.1(8)"d" in Item 19. Specifically, the phrase "accounting for the refill tolerance of 90 percent consumption" was added to subparagraph 79.1(8)"c"(2), and the phrase "consistent with the Iowa board of pharmacy's rules on return of drugs" was added to paragraph 79.1(8)"d."

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on January 8, 2020.

Fiscal Impact

Removal of clinical PA for MAT drugs is projected to have the following impacts:

• For the pharmacy benefit: It is estimated removing the PA requirement will result in additional expenditures for this category of drugs. There will be increased prescribing/utilization.

• Pharmacy benefit increased expenditures are estimated at the following: Total dollars before rebates \$80,000 (\$24,000 state share); \$35,000 net of rebates (\$10,500 state share). The state share is based on a blend between the traditional Medicaid and Iowa Health and Wellness Plan populations. This fiscal impact is a combined total for both fee-for-service (FFS) and managed care programs.

• There are no associated programming costs with this change.

• For the medical benefit: There is no fiscal impact as none of these drugs require a PA under the medical benefit.

• Medical contracts: No impact is projected to the medical contracts general fund appropriation.

Enforcement of the dispensing fee allowance on maintenance drugs is projected to have the following impacts:

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- Clarifying the quantity prescribed and dispensing fee allowance could result in savings to the Medicaid program in cases where a pharmacy has been reimbursed greater than one dispensing fee per drug per member per month for maintenance drugs.
- The annualized savings are projected to be as follows per program based on the current dispensing fee of \$10.07 and current utilization:
 - FFS \$31,418 total (state and federal) dollars (based on April 2019 data and annualized).
 - Amerigroup \$336,000 (based on April 2019 data and annualized).
 - UnitedHealthcare \$660,965 (based on March 2019 data and annualized).

For both changes, PA removal and limit of one dispensing fee, the managed care organization (MCO) cost impact is part of the capitation rate setting.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 78.1(18) as follows:

78.1(18) Payment and procedure for obtaining eyeglasses, contact lenses, and visual aids, shall be the same as described in 441—78.6(249A). (Cross reference ~~78.28(3)~~ 78.28(4))

ITEM 2. Adopt the following **new** subrule 78.1(25):

78.1(25) Prior authorization for medication-assisted treatment shall be governed pursuant to subrule 78.28(2).

ITEM 3. Amend subrules 78.2(1) to 78.2(6) as follows:

78.2(1) *Qualified prescriber.* All drugs are covered only if prescribed by a legally qualified practitioner (~~physician, dentist, podiatrist, optometrist, physician assistant, or advanced registered nurse practitioner~~). Pursuant to Public Law 111-148, Section 6401, any practitioner prescribing drugs must be enrolled with the Iowa Medicaid enterprise in order for such prescribed drugs to be eligible for payment.

78.2(2) and **78.2(3)** No change.

78.2(4) *Prescription drugs.* Drugs that may be dispensed only upon a prescription are covered subject to the following limitations.

a. Prior authorization is required as specified in the preferred drug list published by the department pursuant to Iowa Code section 249A.20A as amended by 2010 Iowa Acts, Senate File 2088, section 347.

(1) to (3) No change.

(4) Prior authorization for medication-assisted treatment shall be governed pursuant to subrule 78.28(2).

b. Payment is not made for:

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(1) to (7) No change.

(8) Drugs prescribed for fertility purposes, ~~except when prescribed for a medically accepted indication other than infertility, as defined in subparagraph (1).~~

(9) to (12) No change.

78.2(5) Nonprescription drugs.

a. The following drugs that may otherwise be dispensed without a prescription are covered subject to the prior authorization requirements stated below and as specified in the preferred drug list published by the department pursuant to Iowa Code section 249A.20A:

Acetaminophen tablets 325 mg, 500 mg

Acetaminophen elixir 160 mg/5 ml

Acetaminophen solution 100 mg/ml

Acetaminophen suppositories 120 mg

Artificial tears ophthalmic solution

Artificial tears ophthalmic ointment

Aspirin tablets 81 mg, chewable

Aspirin tablets 81 mg, 325 mg, and 650 mg, 81 mg (chewable) oral

Aspirin tablets, enteric coated 325 mg, 650 mg, 81 mg

Aspirin tablets, buffered 325 mg

Bacitracin ointment 500 units/gm

Benzoyl peroxide 5%, gel, lotion

Benzoyl peroxide 10%, gel, lotion

~~Calcium carbonate chewable tablets 500 mg, 750 mg, 1000 mg, 1250 mg~~

~~Calcium carbonate suspension 1250 mg/5 ml~~

~~Calcium carbonate tablets 600 mg~~

~~Calcium carbonate vitamin D tablets 500 mg-200 units~~

~~Calcium carbonate vitamin D tablets 600 mg-200 units~~

~~Calcium citrate tablets 950 mg (200 mg elemental calcium)~~

~~Calcium gluconate tablets 650 mg~~

~~Calcium lactate tablets 650 mg~~

Cetirizine hydrochloride liquid 1 mg/ml

Cetirizine hydrochloride tablets 5 mg

Cetirizine hydrochloride tablets 10 mg

Chlorpheniramine maleate tablets 4 mg

Clotrimazole vaginal cream 1%

Diphenhydramine hydrochloride capsules 25 mg

Diphenhydramine hydrochloride elixir, liquid, and syrup 12.5 mg/5 ml

Epinephrine racemic solution 2.25%

Ferrous sulfate solution 75 mg/0.6 ml (15 mg/0.6 ml elemental iron)

Ferrous sulfate tablets 325 mg

Ferrous sulfate elixir 220 mg/5 ml

Ferrous sulfate drops 75 mg/0.6 ml

Ferrous gluconate tablets 325 mg

Ferrous fumarate tablets 325 mg

Guafenesin 100 mg/5 ml with dextromethorphan 10 mg/5 ml liquid

Ibuprofen suspension 100 mg/5 ml

Ibuprofen tablets 200 mg

Insulin

Lactic acid (ammonium lactate) lotion 12%

Levonorgestrel 1.5 mg

Loperamide hydrochloride liquid 1 mg/5 ml

Loperamide hydrochloride liquid 1 mg/7.5 ml

Loperamide hydrochloride tablets 2 mg

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Loratadine syrup 5 mg/5 ml
 Loratadine tablets 10 mg
 Magnesium hydroxide suspension 400 mg/5 ml
~~Magnesium oxide capsule 140 mg (85 mg elemental magnesium)~~
~~Magnesium oxide tablets 400 mg~~
 Meclizine hydrochloride tablets 12.5 mg, 25 mg oral and chewable
 Miconazole nitrate cream 2% topical and vaginal
 Miconazole nitrate vaginal suppositories, 100 mg
~~Multiple vitamin and mineral~~ Mineral products with prior authorization
 Neomycin-bacitracin-polymyxin ointment
~~Niacin (nicotinic acid) tablets 50 mg, 100 mg, 250 mg, 500 mg~~
 Nicotine gum 2 mg, 4 mg
 Nicotine lozenge 2 mg, 4 mg
 Nicotine patch 7 mg/day, 14 mg/day and 21 mg/day
 Pediatric oral electrolyte solutions
 Permethrin lotion 1%
 Polyethylene glycol 3350 powder
 Pseudoephedrine hydrochloride tablets 30 mg, 60 mg
 Pseudoephedrine hydrochloride liquid 30 mg/5 ml
 Pyrethrins-piperonyl butoxide liquid 0.33-4%
 Pyrethrins-piperonyl butoxide shampoo 0.3-3%
 Pyrethrins-piperonyl butoxide shampoo 0.33-4%
 Salicylic acid liquid 17%
 Senna tablets 187 mg
 Sennosides-docusate sodium tablets 8.6 mg-50 mg
 Sennosides syrup 8.8 mg/5 ml
 Sennosides tablets 8.6 mg
 Sodium bicarbonate tablets 325 mg
 Sodium bicarbonate tablets 650 mg
 Sodium chloride hypertonic ophthalmic ointment 5%
 Sodium chloride hypertonic ophthalmic solution 5%
 Tolnaftate 1% cream, solution, powder
Vitamins, single and multiple with prior authorization

Other nonprescription drugs listed as preferred in the preferred drug list published by the department pursuant to Iowa Code section 249A.20A.

b. No change.

78.2(6) *Quantity prescribed and dispensed.*

a. Quantity prescribed. When it is not therapeutically contraindicated, the legally qualified practitioner shall prescribe ~~a quantity not less than a one-month supply of covered prescription and nonprescription medication sufficient for up to a 31-day supply.~~ Oral contraceptives Contraceptives may be prescribed in ~~90-day~~ three-month quantities.

b. ~~Oral solid forms of covered nonprescription items shall be prescribed and dispensed in a minimum quantity of 100 units per prescription or the currently available consumer package size except when dispensed via a unit dose system.~~

b. Prescription refills.

(1) Prescription refills shall be performed and recorded in a manner consistent with existent state and federal laws, rules and regulations.

(2) Automatic refills.

1. Automatic refills are not allowed. A request specific to each medication is required.

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2. All prescription refills shall be initiated by a request at the time of each fill by the prescriber, Medicaid member or person acting as an agent of the member, based on continued medical necessity.

ITEM 4. Amend rule 441—78.3(249A), introductory paragraph, as follows:

441—78.3(249A) Inpatient hospital services. Payment for inpatient hospital admission is approved when it meets the criteria for inpatient hospital care as determined by the Iowa Medicaid enterprise. All cases are subject to random retrospective review and may be subject to a more intensive retrospective review if abuse is suspected. In addition, transfers, outliers, and readmissions within 31 days are subject to random review. Selected admissions and procedures are subject to a 100 percent review before the services are rendered. Medicaid payment for inpatient hospital admissions and continued stays are approved when the admissions and continued stays are determined to meet the criteria for inpatient hospital care. (Cross reference ~~78.28(5)~~ 78.28(6)) The criteria are available from the IME Medical Services Unit, 100 Army Post Road, Des Moines, Iowa 50315, or in local hospital utilization review offices. No payment will be made for waiver days.

ITEM 5. Amend subrule 78.3(18) as follows:

78.3(18) Preprocedure review by the IME medical services unit is required if hospitals are to be reimbursed for certain frequently performed surgical procedures as set forth under subrule 78.1(19). Preprocedure review is also required for other types of major surgical procedures, such as organ transplants. Criteria are available from the IME medical services unit. (Cross reference ~~78.28(5)~~ 78.28(6))

ITEM 6. Amend subrule 78.4(4) as follows:

78.4(4) Periodontal services. Payment may be made for the following periodontal services:

- a. No change.
- b. Periodontal scaling and root planing is payable once every 24 months when prior approval has been received. Prior approval shall be granted per quadrant when radiographs demonstrate subgingival calculus or loss of crestal bone and when the periodontal probe chart shows evidence of pocket depths of 4 mm or greater. (Cross reference ~~78.28(2)“a”(1)~~ 78.28(3)“a”(1))
- c. No change.
- d. Tissue grafts. Pedicle soft tissue graft, free soft tissue graft, and subepithelial connective tissue graft are payable services with prior approval. Authorization shall be granted when the amount of tissue loss is causing problems such as continued bone loss, chronic root sensitivity, complete loss of attached tissue, or difficulty maintaining adequate oral hygiene. (Cross reference ~~78.28(2)“a”(2)~~ 78.28(3)“a”(2))
- e. Periodontal maintenance therapy requires prior authorization. Approval shall be granted for members who have completed periodontal scaling and root planing at least three months prior to the initial periodontal maintenance therapy and the periodontal probe chart shows evidence of pocket depths of 4 mm or greater. (Cross reference ~~78.28(2)“a”(3)~~ 78.28(3)“a”(3))
- f. and g. No change.

ITEM 7. Amend subparagraph **78.4(5)“c”(2)** as follows:

(2) Correction of problems resulting from conventional treatment including gross underfilling, perforations, and canal blockages with restorative materials. (Cross reference ~~78.28(2)“e”~~ 78.28(3)“c”)

ITEM 8. Amend subrule 78.4(7) as follows:

78.4(7) Prosthetic services. Payment may be made for the following prosthetic services:

- a. and b. No change.
- c. A removable partial denture replacing posterior teeth including six months' postdelivery care when prior approval has been received. Approval shall be granted when the member has fewer than eight posterior teeth in occlusion, excluding third molars, or the member has a full denture in one arch and a partial denture replacing posterior teeth is required in the opposing arch to balance occlusion. When one removable partial denture brings eight posterior teeth in occlusion, no additional removable partial denture will be approved. Six months' postdelivery care is included in the reimbursement for the denture. (Cross reference ~~78.28(2)“b”(1)~~ 78.28(3)“b”(1))

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d. A fixed partial denture (including an acid etch fixed partial denture) replacing anterior teeth when prior approval has been received. Approval shall be granted for members who:

(1) and (2) No change.

High noble or noble metals shall be approved only when the member is allergic to all other restorative materials. (Cross reference ~~78.28(2)“b”(2)~~ 78.28(3)“b”(2))

e. to *n.* No change.

ITEM 9. Amend paragraph **78.4(8)“a”** as follows:

a. Minor treatment to control harmful habits when prior approval has been received. Approval shall be granted when it is cost-effective to lessen the severity of a malformation such that extensive treatment is not required. (Cross reference ~~78.28(2)“e”~~ 78.28(3)“c”)

ITEM 10. Amend subrule 78.6(4) as follows:

78.6(4) *Prior authorization.* Prior authorization is required for the following:

a. to *d.* No change.

e. Approval for press-on prisms shall be granted for members whose vision cannot be adequately corrected with other covered prisms.

(Cross reference ~~78.28(3)~~ 78.28(4))

ITEM 11. Amend rule 441—78.7(249A), introductory paragraph, as follows:

441—78.7(249A) Opticians. Payment will be approved only for certain services and supplies provided by opticians when prescribed by a physician (MD or DO) or an optometrist. Payment and procedure for obtaining services and supplies shall be the same as described in rule 441—78.6(249A). (Cross reference ~~78.28(3)~~ 78.28(4))

ITEM 12. Amend subrule 78.9(10) as follows:

78.9(10) *Private duty nursing or personal care services for persons aged 20 and under.* Payment for private duty nursing or personal care services for persons aged 20 and under shall be approved if determined to be medically necessary. Payment shall be made on an hourly unit of service.

a. No change.

b. Requirements.

(1) Private duty nursing or personal care services shall be ordered in writing by a physician as evidenced by the physician's signature on the plan of care.

(2) Private duty nursing or personal care services shall be authorized by the department or the department's designated review agent prior to payment.

(3) Prior authorization shall be requested at the time of initial submission of the plan of care or at any time the plan of care is substantially amended and shall be renewed with the department or the department's designated review agent. Initial request for and request for renewal of prior authorization shall be submitted to the department's designated review agent. The provider of the service is responsible for requesting prior authorization and for obtaining renewal of prior authorization.

The request for prior authorization shall include a nursing assessment, the plan of care, and supporting documentation. The request for prior authorization shall include all items previously identified as required treatment plan information and shall further include: any planned surgical interventions and projected time frame; information regarding caregiver's desire to become involved in the member's care, to adhere to program objectives, to work toward treatment plan goals, and to work toward maximum independence; and identify the types and service delivery levels of all other services to the member whether or not the services are reimbursable by Medicaid. Providers shall indicate the expected number of private duty nursing RN hours, private duty nursing LPN hours, or home health aide hours per day, the number of days per week, and the number of weeks or months of service per discipline. If the member is currently hospitalized, the projected date of discharge shall be included.

Prior authorization approvals shall not be granted for treatment plans that exceed 16 hours of home health agency services per day. (Cross reference ~~78.28(9)~~ 78.28(10))

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ITEM 13. Amend subparagraph **78.10(3)“b”(10)** as follows:

(10) Vibrotactile aids. Vibrotactile aids are payable only once in a four-year period unless the original aid is broken beyond repair or lost. (Cross reference ~~78.28(4)~~ 78.28(5))

ITEM 14. Amend subparagraphs **78.14(7)“d”(1)** and **(2)** as follows:

(1) Payment for the replacement of a hearing aid less than four years old shall require prior approval except when the member is under 21 years of age. The department shall approve payment when the original hearing aid is lost or broken beyond repair or there is a significant change in the member's hearing that would require a different hearing aid. (Cross reference ~~78.28(4)“a”~~ 78.28(5)“a”)

(2) Payment for a hearing aid costing more than \$650 shall require prior approval. The department shall approve payment for either of the following purposes (Cross reference ~~78.28(4)“b”~~ 78.28(5)“b”):

1. and 2. No change.

ITEM 15. Amend paragraph **78.26(4)“c”** as follows:

c. Preprocedure review by the IME medical services unit is required if ambulatory surgical centers are to be reimbursed for certain frequently performed surgical procedures as set forth under subrule 78.1(19). Criteria are available from the IME medical services unit. (Cross reference ~~78.28(6)~~ 78.28(7))

ITEM 16. Renumber subrules **78.28(2)** to **78.28(11)** as **78.28(3)** to **78.28(12)**.

ITEM 17. Adopt the following **new** subrule 78.28(2):

78.28(2) Notwithstanding the provisions of 78.28(1)“a,” under both Medicaid fee-for-service and managed care administration, at least one form of each of the following drugs for medication-assisted treatment as approved by the United States Food and Drug Administration for treatment of substance use disorder or overdose treatment will be available without prior authorization:

- a. Buprenorphine,
- b. Buprenorphine and naloxone combination,
- c. Methadone,
- d. Naltrexone, and
- e. Naloxone.

For the purpose of this subrule, “medication-assisted treatment” means the medically monitored use of certain substance use disorder medications in combination with treatment services.

ITEM 18. Amend renumbered paragraphs **78.28(12)“a”** and **“b”** as follows:

a. Except as provided in paragraph ~~78.28(11)“b,”~~ 78.28(12)“b,” the following radiology procedures require prior approval:

(1) to (5) No change.

b. Notwithstanding paragraph ~~78.28(11)“a,”~~ 78.28(12)“a,” prior authorization is not required when any of the following applies:

(1) and (2) No change.

(3) The member received notice of retroactive Medicaid eligibility after receiving a radiology procedure at a time prior to the member's receipt of such notice (see paragraph ~~78.28(11)“e”~~ 78.28(12)“e”); or

(4) No change.

ITEM 19. Amend paragraphs **79.1(8)“a”** to **“g”** as follows:

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

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

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

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

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3. The total submitted charge-, represented by the lower of the gross amount due (GAD) as defined by the National Council for Prescription Drug Programs (NCPDP) standards definition, or the ingredient cost submitted plus the state defined professional dispensing fee, determined pursuant to paragraph 79.1(8) "c"; or

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

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

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

2. The total submitted charge-, represented by the lower of the GAD as defined by the NCPDP standards definition, or the ingredient cost submitted plus the state defined professional dispensing fee;

or

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

b. No change.

c. Professional dispensing fee.

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

(2) There is a one-time professional dispensing fee reimbursed per one-month or three-month period, accounting for the refill tolerance of 90 percent consumption, per member, per drug, per strength, billed per provider for maintenance drugs as identified by MediSpan and maintenance nonprescription drugs.

d. For an oral solid dispensed to a patient in a nursing home in unit dose packaging prepared by the pharmacist, an additional one cent per dose shall be added to reimbursement based on acquisition cost or FUL. Payment may be made only for unit-dose-packaged drugs that are consumed by the patient. Any previous charges for unused unit-dose packages returned to the pharmacy must be credited to the Medicaid program, consistent with the Iowa board of pharmacy's rules on return of drugs.

e. 340B-purchased drugs.

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

1. The ~~submitted~~ 340B covered entity actual acquisition cost (not to exceed the 340B ceiling price), submitted in the ingredient cost field, plus the professional dispensing fee pursuant to paragraph 79.1(8) "c";

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

3. For generic prescription drugs and nonprescription drugs only, the FUL pursuant to 79.1(8) "a"(1)"2" plus the professional dispensing fee pursuant to paragraph 79.1(8) "c";

4. The total submitted charge-, represented by the GAD as defined by the NCPDP standards definition; or

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

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

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

(1) The provider's actual acquisition cost-, (not to exceed the FSS price), submitted in the ingredient cost field, plus the professional dispensing fee pursuant to paragraph 79.1(8) "c";

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(2) The average state AAC determined pursuant to paragraph 79.1(8)“b” plus the professional dispensing fee pursuant to paragraph 79.1(8)“c”;

(3) For generic prescription drugs and nonprescription drugs only, the FUL pursuant to 79.1(8)“a”(1)“2” plus the professional dispensing fee pursuant to paragraph 79.1(8)“c”;

(4) The total submitted charge, represented by the GAD as defined by the NCPDP standards definition; or

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

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

(1) The provider’s actual acquisition cost (not to exceed the nominal price paid), submitted in the ingredient cost field, plus the professional dispensing fee pursuant to paragraph 79.1(8)“c”;

(2) The average state AAC determined pursuant to paragraph 79.1(8)“b” plus the professional dispensing fee pursuant to paragraph 79.1(8)“c”;

(3) For generic prescription drugs and nonprescription drugs only, the FUL pursuant to 79.1(8)“a”(1)“2” plus the professional dispensing fee pursuant to paragraph 79.1(8)“c”;

(4) The total submitted charge, represented by the GAD as defined by the NCPDP standards definition; or

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

[Filed 1/14/20, effective 3/18/20]

[Published 2/12/20]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.

ARC 4900C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to Medicaid payments to nursing facilities

The Human Services Department hereby amends Chapter 81, “Nursing Facilities,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4.

Purpose and Summary

The Department adopts these amendments in order to provide clarification on the treatment of depreciation when a change of nursing facility ownership occurs. The amendments clarify leasing arrangements, update the Iowa Medicaid Enterprise (IME) mailing address, and make changes to reflect current operations of IME.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 6, 2019, as **ARC 4740C**. The Department received 34 comments from four respondents on the proposed amendments. A summary of the comments and the corresponding responses from the Department are as follows:

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1. Four respondents asked about the intent of IME in changing the lease rule.

Department response: The Provider Cost Audit and Rate Setting Unit of the Department worked with IME policy staff and the Attorney General's office on the intent of the nursing facility leasing rule. It was determined that the rule should be updated to more clearly present the intent of the rule and clearly identify allowable lessor costs.

2. Two respondents asked whether IME can clearly identify acceptable sources for reporting landlord costs.

Department response: The amendments identify allowable landlord costs. Acceptable sources for these costs would be documentation that can be provided to support the amounts being reported.

3. Two respondents commented that there are specific examples where the landlord may not maintain information on a specific property when it is part of a larger group of properties. The respondents asked that additional information be provided on this topic in the provider manual.

Department response: The Department will make updates to the provider manual based on the rule change.

4. Three respondents asked whether the Department can provide an initial schedule or form for each of the respondents' clients impacted by this rule change and use historical data to populate the form.

Department response: The Department will not provide such a form because the Department does not have access to all historical data for providers.

5. Three respondents asked whether providers will be informed of amounts IME has determined to be allowable, and if so, on what date that information will be given to providers.

Department response: Providers are responsible for supporting cost information included on the financial and statistical report. If adjustments are made by IME to reimbursable costs, those adjustments will be sent to the provider for review, as is the current practice.

6. Two respondents commented that the historical basis only references depreciable fixed assets. The respondents asked if the value of the land or other assets can be used in the calculation.

Department response: The question seems to be related to the calculation of a Reasonable Rate of Return. Paragraph 81.6(11)"m" states "historical cost of the facility." This can include land at its historical cost but would not include other assets.

7. Two respondents commented that in the past, some landlord companies have preferred to not provide their cost information directly to the tenant. The respondents asked if there has been consideration of a separate reporting procedure for the nonrelated party lessors to transmit their cost information to IME.

Department response: If a lessor does not provide the required information or does not support what is provided, the terms of cost should not be included as a reimbursable cost or can be removed from reimbursable cost by IME.

8. Three respondents commented about the verbiage used referring to "tax cost" and asked what the definition of "tax cost" is, what the impact of using tax cost would be, and whether there would be additional record-keeping requirements related to tax cost.

Department response: The use of the words "tax cost" in subrule 81.6(11) was not changed in this rule making, and there is no change to current usage. Tax cost is the historical cost of an asset, and depreciation is to be calculated based on the straight-line basis. Therefore, there is no impact on providers, and there are no additional schedules that need to be created.

9. One respondent asked whether, if there is no existing determination of the financial impact to providers, the Department will consider delaying the effective date until that calculation can be determined.

Department response: There have been no discussions on delaying the rule change.

10. One respondent commented on the area of reporting and that the providers potentially impacted have limited access to historical information that may be necessary to comply with the changes.

Department response: The analysis of the underlying information can be very complex and labor-intensive. The respondent asked whether the rule changes can be delayed until the specific providers are identified and the potential impact determined. There have been no discussions on

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delaying the rule making. If a provider has been through a change of ownership or leases the facility where services are provided, the provider may be impacted.

11. One respondent asked the Department to clarify how the treatment of depreciation will change following a change of ownership.

Department response: The treatment of depreciation following a change of ownership should not change. The asset cost basis and depreciation for assets purchased by the previous owner are carried forward to the new owner. The new owner has been limited to the previous owner's cost basis in the asset (historical cost).

12. One respondent asked the Department to estimate how many providers could be impacted by the proposed rule changes.

Department response: If a provider has been through a change of ownership or leases the facility where services are provided, the provider may be impacted. Based on the FY 2018 financial and statistical reports, there were 146 providers that had some amount of lease expenses reported on Schedule C, line 87 (facility lease), column 1 (expenses per the general ledger). Some of these providers may be leasing space other than the facility where services are provided.

13. One respondent asked if the rule changes impact both related party leases and nonrelated party leases.

Department response: Both related party and nonrelated party leasing arrangements would be impacted.

14. One respondent asked what changes to the annual cost report would need to be implemented.

Department response: It is not anticipated that any changes to the financial and statistical report are necessary based solely on the amendments in this rule making.

15. One respondent asked what changes to the provider manual for cost reporting would be necessary.

Department response: The provider manual will be updated as a result of this rule making.

16. One respondent asked to have IME provide instructions detailing the information that would be required from the prior owner and the new owner based on these rule changes.

Department response: Providers are responsible for being able to support all cost information that is included on the financial and statistical report.

17. One respondent asked if the provisions in the rule making will apply to all providers, including those in other cost-based programs, and not just to leased facilities in the nursing facility program.

Department response: This rule making is only for the nursing facility program.

18. One respondent stated that the respondent's clients are concerned that the use of historical basis as a source of the calculation will not represent the full capital investment of the current property owners, especially those whose properties have undergone physical renovation.

Department response: Any depreciation on improvements or capital assets purchased by the lessor can be allowed depreciation. The cost basis of the items purchased through a change of ownership must be reported, and depreciation must be based on the historical cost of the program in the hands of the original owner when the facility entered the Medicaid program. This does not change with this rule making; however, providers should ensure that depreciation of capital assets that have changed hands through a change in ownership is reported this way.

19. One respondent asked if IME intends to send information or instructional letters limited to those providers that may be impacted by the rule change.

Department response: IME does not intend to send information or instructional letters to only those providers that are impacted. If a provider has been through a change of ownership or leases the facility where services are provided, the provider may be impacted. IME does intend to send a general informational letter about the rule change.

20. One respondent asked if IME is proposing a method or some type of forum for the affected landlords and facility operators to work together to develop a timeline of information-reporting for the calculation of provider payment rates.

Department response: A forum for affected landlords and providers has not been discussed.

No changes from the Notice have been made.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Adoption of Rule Making

This rule making was adopted by the Council on Human Resources on January 8, 2020.

Fiscal Impact

Without having all of the lessors' financial data relating to ownership of the facilities in leasing arrangements and comparing to lease expenses being paid by the facilities, it would be impossible to determine what the impact of these rules would be on the facilities. However, given the scope of the change coupled with the fact that providers do not receive reimbursement at full cost through their per diem, the rule is expected to have a relatively minimal impact.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 81.6(6) as follows:

81.6(6) *Census of ~~public-assistance recipients~~ Medicaid members.* Census figures of ~~public assistance recipients~~ Medicaid members shall be obtained on the last day of the month ending the reporting period.

ITEM 2. Rescind paragraph **81.6(11)“j”** and adopt the following **new** paragraph in lieu thereof:

j. For financial and statistical reports received after March 18, 2020, the depreciation, as limited in this rule, may be included as an allowable patient cost.

(1) Limitation on calculation. Depreciation shall be calculated based on the tax cost using only the straight-line method of computation and recognizing the estimated useful life of the asset as defined in the most recent edition of the American Hospital Association Useful Life Guide.

(2) Limitation—full depreciation. Once an asset is fully depreciated, no further depreciation shall be claimed on that asset.

(3) Change of ownership. Depreciation is further limited by the limitations in subrule 81.6(12).

ITEM 3. Rescind paragraph **81.6(11)“m”** and adopt the following **new** paragraph in lieu thereof:

m. For financial and statistical reports received after March 18, 2020, the following definitions, calculations, and limitations shall be used to determine allowable rent expense on a cost report.

(1) Landlord's other expenses. Landlord's other expenses are limited to amortization, mortgage interest, property taxes unless claimed as a lessee expense, utilities paid by the landlord unless claimed as a lessee expense, property insurance, and building maintenance and repairs.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(2) Reasonable rate of return. Reasonable rate of return means the historical cost of the facility in the hands of the owner when the facility first entered the Medicaid program multiplied by the 30-year Treasury bond rate as reported by the Federal Reserve Board at the date of lease inception.

(3) Nonrelated party leases. When the operator of a participating facility rents from a party that is not a related party, as defined in paragraph 81.6(11)“l,” the allowable cost report rental expense shall be the lesser of:

1. Lessor’s annual depreciation as identified in paragraph 81.6(11)“j” plus the landlord’s other expenses, plus a reasonable rate of return; or

2. Actual rent payments.

(4) Related party leases. When the operator of a participating facility rents from a related party, as defined in paragraph 81.6(11)“l,” the allowable cost report rental expense shall be the lesser of:

1. Lessor’s annual depreciation as identified in paragraph 81.6(11)“j” plus the landlord’s other expenses; or

2. Actual rent payments.

ITEM 4. Amend subparagraph **81.6(16)“h”(5)** as follows:

(5) Submission of request. A facility shall submit a written request for the capital cost per diem instant relief add-on, the enhanced non-direct care rate component limit, or a preliminary evaluation of whether a project may qualify for additional reimbursement to the Iowa Medicaid Enterprise, Provider Cost Audit and Rate Setting Unit, ~~100 Army Post Road~~ P.O. Box 36450, Des Moines, Iowa 50315. A qualifying facility may request one or both types of additional reimbursement.

1. to 3. No change.

ITEM 5. Rescind paragraph **81.10(4)“h”** and adopt the following new paragraph in lieu thereof:

h. Ventilator patients.

(1) Definition. For purposes of this paragraph only, “ventilator patients” means Medicaid-eligible patients who, as determined by the quality improvement organization, require a ventilator at least six hours every day, are inappropriate for home care, and have medical needs that require skilled care.

(2) Reimbursement. In-state nursing facilities shall receive reimbursement for care of ventilator patients equal to the sum of the Medicare-certified hospital-based nursing facility rate plus the Medicare-certified hospital-based nursing facility non-direct care rate component as defined in subparagraph 81.6(16)“f”(3). Facilities may continue to receive this reimbursement at this rate for 30 days after a ventilator patient is weaned from a ventilator if, during the 30 days, the patient continues to reside in the facility and continues to meet skilled care criteria.

ITEM 6. Amend paragraph **81.10(5)“a”** as follows:

a. Supplies or services that the facility shall provide:

(1) Nursing services, social work services, activity programs, individual and group therapy, rehabilitation or habilitation programs provided by facility staff in order to carry out the plan of care for the resident.

(2) Services related to the nutrition, comfort, cleanliness and grooming of a resident as required under state licensure and Medicaid survey regulations.

(3) Medical equipment and supplies including wheelchairs except for customized wheelchairs for which separate payment may be made pursuant to ~~441—subparagraph 78.10(2)“a”(4), 441—paragraph 78.10(2)“d,”~~ medical supplies except for those listed in ~~441—paragraph 78.10(4)“b,”~~ oxygen except under circumstances specified in ~~441—paragraph 78.10(2)“a,”~~ and other items required in the facility-developed plan of care.

(4) Nonprescription drugs ordered by the physician, ~~except for those specified in 441—paragraph 78.1(2)“f.”~~

(5) Fees charged by medical professionals for services requested by the facility that do not meet criteria for direct Medicaid payment.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 7. Amend paragraph **81.13(5)“e”** as follows:

e. Privacy and confidentiality. The resident has the right to personal privacy and confidentiality of personal and clinical records.

(1) Personal privacy includes accommodations, medical treatment, ~~written and telephone communications~~, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room for each resident.

(2) The facility must respect the resident’s right to personal privacy, including the right to privacy in the resident’s oral (that is, spoken or sign language), written, and electronic communications.

~~(2) (3)~~ Except as provided in subparagraph ~~(3) (4)~~ below, the resident may approve or refuse the release of personal and clinical records to any person outside the facility.

~~(3) (4)~~ The resident’s right to refuse release of personal and clinical records does not apply ~~when the resident is transferred to another health care institution or record release is required by law.~~ to the following:

1. The release of personal and clinical records to a health care institution to which the resident is transferred; or

2. A record release that is required by law.

ITEM 8. Rescind paragraph **81.13(5)“i”** and adopt the following **new** paragraph in lieu thereof:

i. Mail. The resident has the right to send and receive mail, and to receive letters, packages and other materials delivered to the facility for the resident, whether delivered by a postal service or by other means, including the right to:

(1) Privacy of such communications consistent with this section; and

(2) Access to stationary, postage, and writing implements at the resident’s own expense.

ITEM 9. Adopt the following **new** paragraph **81.13(5)“q”**:

q. Electronic communication. The resident has the right to have reasonable access to and privacy in the resident’s use of electronic communications, including, but not limited to, email and video communications, and for Internet research:

(1) If accessible to the facility;

(2) At the resident’s expense, if any additional expense is incurred by the facility to provide such access to the resident; and

(3) To the extent that such use may comply with state and federal law.

ITEM 10. Amend subparagraph **81.13(9)“b”(7)** as follows:

(7) Automated data processing requirement.

1. to 3. No change.

4. The facility must transmit MDS data in the ASCH format specified by CMS.

[Filed 1/9/20, effective 3/18/20]

[Published 2/12/20]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.

ARC 4901C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to eliminating the application fee for child support recovery

The Human Services Department hereby amends Chapter 95, “Collections,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 217.6.

HUMAN SERVICES DEPARTMENT[441](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 252B.4.

Purpose and Summary

This rule making aligns the Department's rules about child support recovery with recent legislative changes. 2019 Iowa Acts, Senate File 605, amended Iowa Code chapter 252B to eliminate the customer-paid application fee.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 20, 2019, as **ARC 4764C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on January 8, 2020.

Fiscal Impact

2019 Iowa Acts, Senate File 605, also amended Iowa Code chapter 252B to increase the annual fee for nonassistance child support cases. Because the legislation coupled the loss of the application fee with the increase in the annual fee, there is no fiscal impact in these changes.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 95.2(4) as follows:

95.2(4) Application for services.

~~a.~~ A person who is not on public assistance requesting services under this chapter, except for those persons eligible to receive support services under paragraphs 95.2(2) "a," "b," and "c," shall complete and return Form 470-0188, Application for Nonassistance Support Services, for each parent from whom the person is seeking support.

(+) a. The application shall be returned to the child support recovery unit serving the county where the person resides. If the person does not live in the state, the application form shall be returned to the county in which the support order is entered or in which the other parent or putative father resides.

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~~(2) b.~~ The person requesting services has the option to seek support from one or both of the child's parents.

~~b. An individual who is required to complete Form 470-0188, Application for Nonassistance Support Services, shall be charged an application fee in the amount set by statute. The unit shall charge one application fee for each parent from whom support is sought. The unit shall charge the fee at the time of initial application and any subsequent application for services. The individual shall pay the application fee to the local child support recovery unit before services are provided.~~

ITEM 2. Amend subrule 95.18(3) as follows:

95.18(3) Reapplication for services. A person whose services were denied or terminated may reapply for services under this chapter by completing the application process and paying the application fee described in subrule 95.2(4).

[Filed 1/9/20, effective 3/18/20]

[Published 2/12/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.

ARC 4910C

INSURANCE DIVISION[191]

Adopted and Filed

Rule making related to insurance producers

The Insurance Division hereby amends Chapter 10, "Insurance Producer Licenses and Limited Licenses," Chapter 11, "Continuing Education for Insurance Producers," Chapter 13, "Consent for Prohibited Persons to Engage in the Business of Insurance," and Chapter 48, "Viatical and Life Settlements," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 505.8, 508E.19, 522A.7, 522B.18 and 522E.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 252J, 261, 505, 508E, 522A, 522B and 522E.

Purpose and Summary

The amendments to these chapters are a result of the Division's five-year review of rules. The amendments generally update the chapters by removing unnecessary language, removing duplicative definitions, and reflecting current practices. The most significant changes to Chapter 48 are due to aligning the requirements for viatical settlement brokers to those for producers in Chapters 10 and 11 to establish a uniform process and changing the license and continuing education term to align with the statutes. A reissuance fee is added to Chapters 10 and 48 to correspond to the reinstatement fee. The Division processes only a few of these reissuances each year. Finally, the rule making updates the reinstatement procedures to prohibit reinstatement prior to the end of a suspension period regardless of the timing of the licensure term since this requirement is not expressly stated in the rules and has caused confusion among producers.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 18, 2019, as **ARC 4821C**. A public hearing was held on January 7, 2020, at 10 a.m. at

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the Division's offices, Fourth Floor, Two Ruan Center, 601 Locust Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received.

The Division made a slight change to subrule 10.12(4) to clarify the amount of time a producer has to change the producer's address after a resident license termination. Also, cross-references in subrule 10.10(1) were corrected to reflect the consolidation of rules 191—10.21(261) and 191—10.23(82GA,SF2428). Finally, a cross-reference in subrule 48.3(8) was corrected due to the addition of new paragraphs in subrule 10.10(2).

Adoption of Rule Making

This rule making was adopted by Douglas Ommen, Iowa Insurance Commissioner, on January 22, 2020.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. While these rules do add a reissuance fee, the Division has only processed five such reissuances since 2017.

Jobs Impact

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

Waivers

These rules do not include a provision for the waiver of a rule because the Division's general waiver rules of 191—Chapter 4 apply.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 10.1(2) as follows:

10.1(2) These rules are authorized by Iowa Code section 505.8 and are intended to implement Iowa Code chapters 252J, ~~264~~ 272D and 522B.

ITEM 2. Amend rule 191—10.2(522B) as follows:

191—10.2(522B) Definitions. In addition to the definitions in 191—1.1(502,505), the following definitions apply:

“*Appointment*” means a notification filed with the division or its designated vendor that an insurer has established an agency relationship with a producer. A company filing such a request must verify that the producer is licensed for the appropriate line(s) of authority.

“*Birth month*” means the month in which a producer was born.

“*Business entity*” means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.

~~“*Commissioner*” means the Iowa insurance commissioner.~~

~~“*CSAC*” means college student aid commission.~~

“*CSRU*” means child support recovery unit.

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~~“Division” means the Iowa insurance division.~~

“Home state” means the District of Columbia ~~and~~ or any state or territory of the United States in which a producer maintains the producer’s principal place of residence or principal place of business and is licensed to act as a producer.

“Individual” means a private or natural person, as distinguished from a partnership, corporation or association.

“Insurance” means any of the lines of insurance listed in ~~subrule 10.7(1)~~ rule 191—10.7(522B).

“License” means the division’s authorization for a person to act as a producer for the authorized lines of insurance.

“License number” means the National Insurance Producer Registry (NIPR) national producer number (NPN) issued to all licensees whose license records exist in the state producer licensing database (SPLD). For purposes of this definition, “state producer licensing database (SPLD)” means the national database of producers maintained by the National Association of Insurance Commissioners (NAIC), its affiliates or subsidiaries.

“National Insurance Producer Registry” or “NIPR” means the nonprofit affiliate of the National Association of Insurance Commissioners (NAIC). The NIPR’s ~~Web site~~ website is www.NIPR.com.

“Negotiate” means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract provided that the person engaged in that act either sells insurance or obtains insurance for purchasers.

“NIPR Gateway” means the communication network developed and operated by NIPR that links state insurance regulators with the entities they regulate to facilitate the electronic exchange of producer information regarding license applications, license renewals, appointments and terminations.

“Nonresident” means a person whose home state is not Iowa.

“Notification” means a written or electronic communication from a producer to the division.

“Person” means an individual or a business entity.

“Producer” or “insurance producer” means a person required to be licensed in this state to sell, solicit or negotiate insurance.

“Producer renewal notice” means an electronic communication issued by the division to inform a producer about license renewal.

“Resident” means a person whose home state is Iowa.

“Sell” means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.

“Solicit” or “solicitation” means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

“Termination” means that an insurer has ended its agency relationship with a producer.

“Termination for cause” means that an insurer has ended its agency relationship with a producer for one of the reasons set forth in Iowa Code section 522B.11.

“Uniform application” means the National Association of Insurance Commissioners’ uniform application for resident and nonresident insurance producer licensing, as it appears on the NAIC ~~Web site~~ website.

ITEM 3. Amend subrule 10.3(3) as follows:

10.3(3) A person shall not advise an Iowa resident to cancel, not renew, or otherwise change an existing insurance policy unless that person holds an Iowa producer license regarding the line of insurance for which the advice is given. This subrule ~~shall~~ does not apply to a licensed attorney or certified public accountant who does not sell or solicit insurance.

ITEM 4. Amend subrule 10.4(2) as follows:

10.4(2) Examinations are conducted by the outside testing service on contract with the division. Applications and fees for examinations and for initial producer licensing will be submitted either to the outside testing service on contract with the division or as directed by the division. Instructions are available at on the division’s Web site: www.iid.state.ia.us website.

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ITEM 5. Amend subrule 10.4(5) as follows:

10.4(5) Amendments to producer licenses shall be done either by an outside vendor or by the division, as directed by the division. Any licensed producer desiring to become licensed in an additional line of authority ~~shall~~ must:

a. Submit a completed uniform application form through the NIPR Gateway or as directed by the division, specifying the line(s) of authority requested to be added. Instructions are available at on the division's ~~Web site: www.iid.state.ia.us~~ website; and

b. For each line of authority requested to be added, pass any required examination.

ITEM 6. Amend subrule 10.4(7) as follows:

10.4(7) To receive a license for excess and surplus lines, the applicant must have successfully completed the excess and surplus lines examination and also have successfully completed either: (1) the examinations for property and casualty lines of authority; or (2) the ~~examination~~ examinations for personal lines of authority and the commercial insurance subject examination.

ITEM 7. Amend rule 191—10.6(522B) as follows:

191—10.6(522B) Issuance of license.

10.6(1) ~~A In order to be issued a producer license, a person who meets~~ must meet the requirements of Iowa Code sections 522B.4 and 522B.5, or section 522B.7, ~~and of and~~ rule 191—10.5(522B), unless otherwise denied licensure pursuant to Iowa Code section 522B.11 or rule 191—10.20(522B), ~~shall be issued a producer license. A The initial term of a producer license shall remain in effect for an initial term of is three years and ends~~ after the last day of the applicant's birth month of the year the license was issued, unless revoked or suspended. A license may be continually renewed pursuant to rule 191—10.8(522B) as long as the proper fees are paid and home state continuing education requirements are met. A renewal term is three years. If not renewed, a producer license automatically terminates on the last day of the month of the initial or renewal term.

10.6(2) No change.

10.6(3) The license shall contain the producer's name, address, license number, date of issuance, date of expiration, the line(s) of authority held, and any other information the division deems necessary. The license number shall be the same as the producer's National Insurance Producer Registry (NIPR) national producer number (NPN).

10.6(4) If the division issues or renews a producer license and subsequently determines that payment for the license or renewal was returned to the division by a bank without payment, or that the credit card company does not approve, ~~or~~ cancels, or refuses amounts charged to the credit card, the license ~~shall~~ must be immediately suspended until the payments are made and any fees or penalties charged by the division are paid, at which time the license may be reinstated. The individual may request a hearing within 30 days of receipt of the division's ~~by the division~~ notice that the license was suspended.

ITEM 8. Amend rule 191—10.7(522B) as follows:

191—10.7(522B) License lines of authority. In addition to the lines of authority listed in Iowa Code subsection 522B.6(2), the following lines of authority also are available for issuance in Iowa: crop₂, surety₂, and reciprocal (any other line of insurance issued in another state and for which Iowa grants authority to sell, solicit or negotiate in this state).

ITEM 9. Amend rule 191—10.8(522B) as follows:

191—10.8(522B) License renewal.

10.8(1) Upon request by a licensed producer, the division ~~shall~~ must electronically transmit a producer renewal notice to ~~a licensed producer~~ at the producer's last-known electronic mail address as it appears in division records. If the division has received notification that the electronic address of record is no longer valid, no renewal notice will be transmitted.

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10.8(2) A producer must apply for license renewal ~~within 60~~ during the 90 days prior to the expiration date of the license. Failure to apply to renew a license and pay appropriate fees prior to the expiration date of the license will result in expiration of the license.

10.8(3) and **10.8(4)** No change.

10.8(5) Nonresident producer licenses may only be renewed ~~only~~ through the NIPR Gateway, or as otherwise directed by the division.

ITEM 10. Amend rule 191—10.9(522B) as follows:

191—10.9(522B) License reinstatement.

10.9(1) A resident producer may reinstate an expired license up to 12 months after the license expiration date by proving that during the ~~CE~~ applicable continuing education (CE) term the producer met the CE requirements found in 191—Chapter 11; and by paying a reinstatement fee and a license renewal fees fee. A resident producer who fails to apply for license reinstatement within 12 months of the license expiration date must apply for a new license.

10.9(2) A nonresident producer may reinstate an expired license up to 12 months after the expiration date by submitting a request through the NIPR Gateway and by paying a reinstatement fee and a license renewal fee. ~~After the 12-month period, a~~ A nonresident producer must apply for a new license who fails to apply for a license reinstatement within 12 months of the license expiration date must apply for license reissuance.

10.9(3) No change.

ITEM 11. Amend rule 191—10.10(522B) as follows:

191—10.10(522B) Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance.

10.10(1) Terminology. The term “reinstatement” as used in this rule means the reinstatement of a suspended license. The term “reissuance” as used in this rule means the issuance of a new license following ~~either the revocation of a license, the suspension and subsequent termination of a license, or the forfeiture of a license in connection with a disciplinary matter, including but not limited to proceedings pursuant to rules rule 191—10.21(252J,272D), 191—10.22(261) and 191—10.23(82GA,SF2428).~~ This rule does not apply to the reinstatement of an expired license or the issuance of a new license that is not in connection with a disciplinary matter.

10.10(2) Application required. Any producer whose license has been revoked or suspended by order, or who forfeited a license in connection with a disciplinary matter, ~~may~~ must apply to the commissioner for reinstatement or reissuance in accordance with the terms of the order of revocation or suspension or the order accepting the forfeiture.

a. All proceedings for reinstatement or reissuance ~~shall~~ must be initiated by the applicant, who shall file with the commissioner an ~~application for reinstatement or reissuance of a license~~ Iowa Insurance Producer Application for Reinstatement or an Iowa Insurance Producer Application for Reissuance. An applicant is not eligible for reinstatement or reissuance until the applicant has satisfied the other prescribed requirements of rule 191—10.4(522B), including the timing requirements of subrule 10.4(4).

b. An application for reinstatement or reissuance ~~shall~~ must allege facts which, if established, will be sufficient to enable the commissioner to determine that the basis of revocation, suspension, or forfeiture of the applicant’s license no longer exists and ~~that it will be in the public interest for the application to be granted~~ must disclose whether the producer has engaged in any conduct that is listed as a cause for licensing action under Iowa Code section 507B.4 or 522B.11(1) that was not included in the order for suspension, revocation, or forfeiture.

c. An application for reinstatement or reissuance must allege sufficient facts to enable the commissioner to determine that it will be in the public interest for the application to be granted. The commissioner may determine it is not in the public interest if the producer has engaged in any conduct that is listed as a cause for licensing action under Iowa Code section 507B.4 or 522B.11(1) that was not included in the order for suspension, revocation, or forfeiture.

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d. The burden of proof to establish such facts shall be on the applicant.

~~e.~~ e. A producer may request reinstatement of a suspended license prior to the end of the suspension term; however, reinstatement will not be effected until the suspension period has ended.

~~d.~~ f. Unless otherwise provided by law, if the order of revocation, ~~or suspension, or acceptance of forfeiture~~ did not establish terms upon which reinstatement or reissuance may occur, or if the license was forfeited, an initial application for reinstatement or reissuance may not be made until at least one year has elapsed from the date of the order of the suspension (notwithstanding paragraph ~~10.10(2)“e”~~ 10.10(2)“e”), revocation, or acceptance of the forfeiture of a license.

10.10(3) Proceedings. All proceedings upon the application for reinstatement or reissuance, including matters preliminary and ancillary thereto, shall be held in accordance with Iowa Code chapter 17A. Such application shall be docketed in the original case in which the ~~original~~ license was suspended, revoked, or forfeited, if a case exists.

10.10(4) Order. An order of reinstatement or reissuance ~~shall~~ must be based upon a written decision ~~which that~~ incorporates findings of fact and conclusions of law. An order granting an application for reinstatement or reissuance may impose such terms and conditions as the commissioner or the commissioner's designee deems ~~desirable~~ appropriate, which may include one or more of the types of disciplinary sanctions provided by Iowa Code section 522B.11. The order ~~shall be~~ is a public record, ~~available to the public,~~ and may be disseminated in accordance with Iowa Code chapter 22.

10.10(5) Voluntary forfeiture. A request for submission of voluntary forfeiture of a license ~~shall~~ must be made in writing ~~to~~ as prescribed by the commissioner. Forfeiture of a license is effective upon ~~the submission of the request~~ unless a contested case proceeding is pending at the time ~~the request is submitted~~ of the submission. If a contested case proceeding is pending ~~at the time of the request,~~ the forfeiture becomes effective when and upon such conditions as required by order of the commissioner. A forfeiture made during the pendency of a contested case proceeding is considered a disciplinary action and ~~shall~~ must be published in the same manner as is applicable to any other form of disciplinary order.

10.10(6) Suspension in relation to expiration date. When a producer's license has been suspended for a period of time ~~which that~~ extends beyond the producer's license expiration date, the license ~~will terminate~~ terminates at the license expiration date, and the producer must request ~~reinstatement~~ reissuance pursuant to subrule 10.10(2). However, reissuance will not be effected until the suspension period has ended. If suspension for a period of time ends prior to the producer's license expiration date and the producer has met all applicable requirements, ~~the division shall~~ the commissioner must reinstate the license ~~at as soon as practicable but no earlier than~~ at as soon as practicable but no earlier than the end of the suspension period. ~~The~~ However, the commissioner is not prohibited from denying an application for reinstatement or reissuance or bringing an additional immediate action if the producer has engaged in misconduct during the period of suspension any additional violation of Iowa Code section 507B.4 or 522B.11(1) or otherwise failed to meet all of the applicable requirements.

ITEM 12. Amend rules 191—10.11(522B) to 191—10.13(522B) as follows:

191—10.11(522B) Temporary licenses. An Iowa resident may apply for a temporary license pursuant to Iowa Code section 522B.10. The applicant ~~should~~ must submit a written request to the division ~~which that~~ includes the reason for the request and the length of time for which the temporary license is requested. Temporary licenses will be issued for 90 days, with extensions allowed, but in no event for longer than 180 days, pursuant to Iowa Code section 522B.10.

191—10.12(522B) Change in name, address or state of residence.

10.12(1) If a producer's name is changed, the producer must file notification with the division through the NIPR Gateway at www.NIPR.com, unless the division instructs otherwise, within 30 days of the name change. The notification must include the producer's:

- a. Prior name;
- b. License number; and
- c. New name.

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~~Notification shall be filed through the NIPR Gateway at www.NIPR.com, unless the division instructs the producer otherwise.~~

10.12(2) Address change. If a resident or nonresident producer's address is changed, the producer must file notification with the division through the NIPR Gateway at www.NIPR.com, unless the division instructs otherwise, within 30 days of the address change. The notification must include the producer's:

- a. Name;
- b. License number;
- c. Previous address; and
- d. New address. A producer may designate a business address instead of a resident address at the option of the producer.

~~Notification shall be filed through the NIPR Gateway at www.NIPR.com, unless the division instructs the producer otherwise.~~

10.12(3) No change.

10.12(4) Issuance of an Iowa nonresident producer license is contingent on proper licensure in the nonresident producer's home state. Termination of the producer's resident license will be deemed termination of the Iowa nonresident producer license unless the producer ~~timely~~ files a change of address pursuant to this rule within 30 days of the termination of the resident license.

10.12(5) If a producer has provided an ~~E-mail~~ email address to the division, the division ~~has the option to~~ may send information to the producer through the ~~E-mail~~ email address rather than through the mail.

191—10.13(522B) Reporting of actions.

10.13(1) A producer ~~shall~~ must report to the division any actions required to be reported by Iowa Code section 522B.16.

10.13(2) A producer ~~shall~~ must report to the division all ~~CSAC or CSRU or centralized collection unit of the department of revenue~~ actions taken under or in connection with Iowa Code chapter ~~261 or 252J or 272D~~ and all court orders entered in such actions.

10.13(3) No change.

ITEM 13. Amend subrule 10.15(2) as follows:

10.15(2) Insurers ~~shall~~ must file and pay for initial appointments using the NIPR Gateway, except that insurers authorized under Iowa Code chapter 518 or 518A ~~shall~~ must file appointments directly with the division ~~by arrangement with the division~~.

ITEM 14. Amend subrule 10.15(7) as follows:

10.15(7) Insurance companies ~~are required to~~ must file the name, address, and electronic address of a contact person for the company, to whom the billing statements will be sent. Insurance companies ~~are required to~~ must notify the division if there is a change of the person appointed as the contact person or if a change of the address of such contact occurs. If ~~a~~ an insurance company fails to notify the division of such a change, ~~the division shall charge~~ the insurance company must pay a \$100 fee.

ITEM 15. Amend rules 191—10.16(522B) to 191—10.21(252J) as follows:

191—10.16(522B) Appointment renewal.

10.16(1) On or about December 1 of each year, the division or its designee will deliver reminders to insurance companies that appointment renewals are imminent. Appointments ~~shall~~ must be renewed electronically via the NIPR Gateway at www.NIPR.com.

10.16(2) On or about January 2 of each year, a list of the producers currently appointed with each insurance company and a billing statement will be provided to each insurance company via the NIPR Gateway. The billing statement ~~may~~ must not be altered, amended or used for appointing or terminating producers.

10.16(3) and 10.16(4) No change.

10.16(5) Insurance companies ~~are required to~~ must file the name, address, and electronic address of a contact person for the company, to whom the appointment renewals will be sent. Insurance companies

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~~are required to~~ must notify the division if a change of the address of such contact occurs. If ~~a an~~ an insurance company fails to notify the division of such a change of address, ~~the division shall charge~~ the insurance company must pay a \$100 fee.

191—10.17(522B) Appointment terminations.

10.17(1) When an insurance company terminates its relationship with a producer, the company ~~shall~~ must notify the division using the NIPR Gateway. The termination must be filed within 30 days of the date the insurer terminated its agency relationship with the producer. The company ~~shall~~ must also notify the producer that the producer's appointment has been ~~ceased~~ terminated.

10.17(2) and **10.17(3)** No change.

10.17(4) When an insurer terminates an appointment for cause pursuant to Iowa Code section 522B.14, the notification of termination may be filed according to subrule 10.17(1). The supporting documents required by Iowa Code section 522B.14 ~~shall~~ must be submitted to the division within ten days of the filing of the notification. The documents ~~shall~~ must include a certification by an officer or authorized representative of the insurer.

191—10.18(522B) Licensing of a business entity.

10.18(1) *Application.* A business entity may apply for an Iowa insurance license. For purposes of this rule, upon approval of an application by the division, the business entity ~~shall~~ will be classified as a producer and ~~shall be~~ is subject to all standards of conduct and reporting requirements applicable to producers.

10.18(2) *Requirements.*

a. To qualify for such a license, the business entity must:

(1) File a completed NAIC uniform business entity application through the NIPR Gateway or as directed by the division. For purposes of this subrule, "uniform business entity application" means the National Association of Insurance Commissioners' uniform business entity application for resident and nonresident business entities, as the application appears on the NAIC ~~Web site~~ website;

(2) to (4) No change.

b. The designated responsible producer ~~shall~~ must maintain an active Iowa producer license. If the license of the designated responsible producer terminates or lapses for any reason, the business entity must supply the division with a substitute designated responsible producer within ten days. If the business entity does not provide a substitute, the division ~~shall~~ must immediately terminate the license, and the entity ~~shall~~ must submit a new application and pay the appropriate license fee.

10.18(3) *License term.* A business entity license issued under this rule ~~shall be~~ is effective for three years and one month, including the year of application, beginning on the first day of the month of the business entity's formation date and ending with the last day of the month of the business entity's formation date. By arrangement with the division, a business entity may choose a different month for its license term.

10.18(4) *License renewal.* Upon request by a business entity, the division ~~shall~~ must electronically transmit a renewal notice to the electronic mail address of the business entity on file with the division on or before the first day of the month preceding the renewal month. The renewal fee must be received by the division or its designated vendor on or before the license expiration date. All business entities must renew their licenses through the NIPR Gateway or as otherwise directed by the division.

10.18(5) and **10.18(6)** No change.

191—10.19(522B) Use of senior-specific certifications and professional designations in the sale of life insurance and annuities.

10.19(1) No change.

10.19(2) *Scope.* This rule ~~shall apply~~ applies to any solicitation, sale or purchase of, or advice made in connection with, a life insurance or annuity product by a producer.

10.19(3) *Authority.*

a. This rule is promulgated under the authority of Iowa Code chapters 507B and 522B.

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b. Nothing in this rule ~~shall limit~~ limits the division's authority to enforce existing provisions of law.

10.19(4) No change.

191—10.20(522B) Violations and penalties.

10.20(1) A producer who sells, solicits or negotiates insurance, directly or indirectly, in violation of this chapter ~~shall be~~ is deemed to be in violation of Iowa Code section 522B.2 and is subject to the penalties provided in Iowa Code section 522B.17.

10.20(2) No change.

10.20(3) Any company or company representative who aids and abets a producer in the above-described violation ~~shall be~~ is deemed to be in violation of Iowa Code section 522B.2 and is subject to the penalties provided in Iowa Code section 522B.17.

10.20(4) No change.

10.20(5) If a producer fails to provide to the division any notification required either by Iowa Code chapter 522B or by this chapter, including but not limited to notification of a change of address, notification of change of name, or notification of administrative criminal action as required by rules 191—10.12(522B) and 191—10.13(522B), within the required time, the producer ~~shall~~ must pay a late fee of \$100 for each notification unless otherwise ordered pursuant to Iowa Code section 522B.6(7) or 522B.17. A business entity that fails to make a notification to the division as required by rule 191—10.18(522B) within the required time ~~shall~~ must pay a late fee of \$100 for each notification unless otherwise ordered pursuant to Iowa Code section 522B.6(7) or 522B.17.

10.20(6) In the event that the division denies a request to renew a producer license or denies an application for a producer license, the commissioner ~~shall~~ must provide written notification to the producer or applicant of the denial or failure to renew, including the reason therefor. The producer or applicant may request a hearing within 30 days of receipt of the notice to determine the reasonableness of the division's action. The hearing ~~shall~~ must be held within 30 days of the date of the receipt of the written demand by the applicant, unless otherwise agreed to by the producer, and ~~shall~~ be held pursuant to 191—Chapter 3.

10.20(7) No change.

191—10.21(252J,272D) Suspension for failure to pay child support or state debt.

10.21(1) The commissioner must deny the producer's application for license issuance, renewal, reinstatement, or reissuance; suspend a current license; or revoke a currently suspended license upon receipt of a certificate of noncompliance from the CSRU according to the procedures in Iowa Code chapter 252J or upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures in Iowa Code chapter 272D. In addition to the procedures set forth in Iowa Code chapters 252J and 272D, this rule applies.

~~**10.21(1)**~~ **10.21(2)** Upon receipt of a certificate of noncompliance from the child support recovery unit (CSRU), the commissioner shall must issue a notice to the producer that the producer's pending application for licensure, pending request for renewal, or current license will be suspended the division will, unless the certificate of noncompliance is withdrawn, deny the producer's application for license issuance, renewal, reinstatement, or reissuance; suspend a current license; or revoke a currently suspended license 30 days after the date mailing of the notice. Notice shall must be sent to the producer's last-known address by ~~regular mail~~ restricted certified mail, return receipt requested, or in accordance with the division's rules for service.

~~**10.21(2)**~~ **10.21(3)** The notice ~~shall~~ must contain the following items:

a. A statement that the commissioner intends to ~~suspend the producer's application, request for renewal or current insurance license~~ deny the producer's application for license issuance, renewal, reinstatement, or reissuance; suspend a current license; or revoke a currently suspended license in 30 days unless the certificate of noncompliance is withdrawn.

b. A statement that the producer must contact the CSRU agency that issued the certificate of noncompliance ("the issuing agency") to request a withdrawal of the certificate of noncompliance;

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~~e.~~ A statement that the producer's application, request for renewal or current license will be suspended if the certificate of noncompliance is not withdrawn;

~~d. c.~~ A statement that the producer does not have a right to a hearing before the division, but that the producer may file an application for a hearing in district court pursuant to Iowa Code section 252J.9 or 272D.9, as applicable;

~~e. d.~~ A statement that the filing of an application with the district court will stay the proceedings of the division; and

~~f. e.~~ A copy of the certificate of noncompliance.

10.21(4) Producers must keep the commissioner informed of all actions taken by the district court or the issuing agency in connection with the certificate of noncompliance. Producers must provide to the commissioner, within seven days of filing or issuance, copies of all applications filed with the district court pursuant to an application of hearing, of all court orders entered in such actions, and of all withdrawals of certificates of noncompliance.

~~10.21(3) 10.21(5)~~ The filing of an application for hearing with the district court will stay all In the event an applicant or licensed producer timely files an application for hearing in district court and the division is notified of such a filing, the commissioner's denial, suspension, or revocation proceedings will be stayed until the division is notified by the district court, the issuing agency, the licensee, or the applicant of the resolution of the application. Upon receipt of a court order lifting the stay or otherwise directing the commissioner to proceed, the commissioner shall continue with the intended action described in the notice.

~~10.21(4) 10.21(6)~~ If the division commissioner does not receive a withdrawal of the certificate of noncompliance from the CSRU issuing agency or a notice from a clerk of court, the issuing agency, the licensee, or the applicant that an application for hearing has been filed, the division shall suspend the producer's application, request for renewal or current license commissioner must deny the producer's application for license issuance, renewal, reinstatement, or reissuance; suspend a current license; or revoke a currently suspended license 30 days after the notice is issued.

~~10.21(5) 10.21(7)~~ Upon receipt of a withdrawal of the certificate of noncompliance from the CSRU issuing agency, suspension or revocation proceedings shall must halt and the named producer shall must be notified that the proceedings have been halted. If the producer's license has already been suspended, the producer must apply for reinstatement and the license shall must be reinstated if the producer is otherwise in compliance with division rules. If the producer's application for licensure was stayed, application processing must resume. All fees required for license renewal, or license reinstatement, or reissuance must be paid by producers and all continuing education requirements must be met before a producer license will be renewed or reinstated after a license suspension or revocation pursuant to this subrule chapter.

10.21(8) The commissioner must notify the producer in writing through regular first-class mail, or such other means as the commissioner deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a producer license, and must similarly notify the producer when the producer license is reinstated following the commissioner's receipt of a withdrawal of the certificate of noncompliance.

10.21(9) Notwithstanding any statutory confidentiality provision, the division may share information with the CSRU or the centralized collection unit of the department of revenue for the sole purpose of identifying producers subject to enforcement under Iowa Code chapter 252J or 272D.

ITEM 16. Rescind and reserve rule **191—10.22(261)**.

ITEM 17. Rescind and reserve rule **191—10.23(82GA,SF2428)**.

ITEM 18. Amend rules 191—10.24(522B) to 191—10.26(522B) as follows:

191—10.24(522B) Administration of examinations.

10.24(1) The division will may enter into a contractual relationship with an outside testing service, in compliance with Iowa law, to provide the licensing examinations for all lines of authority which require an examination.

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10.24(2) ~~The~~ If contracted, the outside testing service will must administer all examinations for license applicants.

10.24(3) Any contract to implement subrule 10.24(1) ~~shall~~ must require the outside testing service to:

a. to e. No change.

191—10.25(522B) Forms. An original of each form necessary for the producer's licensure, appointment and termination may be downloaded from the NAIC ~~Web site~~ website, and the division's ~~Web site~~ (www.iid.state.ia.us) website will provide a link to that site. Exact, readable, high-quality copies may be made therefrom. ~~A self-addressed, stamped envelope must be submitted with each request.~~

191—10.26(522B) Fees.

10.26(1) Fees may be paid by check, money order, or credit card.

10.26(2) The fee for an examination ~~shall~~ may be set by the outside testing service under contract with the division and must be approved by the division.

10.26(3) and **10.26(4)** No change.

10.26(5) The fee for reinstatement or reissuance of a producer license is ~~a total of the renewal fee plus \$100.~~ In addition, applicable issuance or renewal fees will be assessed.

10.26(6) and **10.26(7)** No change.

ITEM 19. Rescind **191—Chapter 10**, implementation sentence, following rule 191—10.26(522B).

ITEM 20. Amend rule 191—10.51(522A,86GA,SF487) as follows:

191—10.51(522A,86GA,SF487 522E) Limited licenses.

10.51(1) *Limited licenses for vehicle rental companies and counter employees.*

a. No change.

b. Definitions. For purposes of this subrule, in addition to the definitions in rule 191—1.1(502,505), the definitions of Iowa Code chapter 522A ~~and the following definitions shall apply:~~

~~“Division” means the commissioner of insurance and the Iowa insurance division.~~

~~“Division Web site” means the Web site for the division, www.iid.iowa.gov.~~

~~“File” means to submit information to the division. A submission is considered filed when it is received by the division.~~

~~“Vehicle rental counter employee limited license” means a license issued to an individual employed by a rental company authorized as a limited licensee as defined by Iowa Code section 522A.2.~~

~~“Vehicle rental counter employee limited license application” means the form used by an individual to apply for a counter employee license, pursuant to Iowa Code section 522A.3.~~

~~“Vehicle rental limited license” means a license issued to a rental company authorized as a limited licensee as defined by Iowa Code section 522A.2.~~

~~“Vehicle rental limited license application” means the form used by a vehicle rental company to apply for a limited license, pursuant to Iowa Code section 522A.3.~~

c. Requirement to hold a license.

(1) A rental company that desires to offer or sell insurance set forth in Iowa Code section 522A.3 in connection with the rental of a vehicle ~~shall~~ must file a vehicle rental limited license application with the division and, at the discretion of the division, receive a vehicle rental limited license.

(2) A counter employee who desires to offer or sell insurance products ~~shall~~ must file a vehicle rental counter employee limited license application with the division and, at the discretion of the division, receive a vehicle rental counter employee limited license.

d. Limited license application process for vehicle rental company.

(1) To obtain a limited license, a vehicle rental company ~~shall~~ must file a completed vehicle rental limited license application with the division and pay a fee of \$50 for a license. The vehicle rental limited license application form is available on the ~~division Web site~~ division's website.

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(2) If the vehicle rental limited license application is approved, the division ~~shall~~ must issue a vehicle rental limited license. The vehicle rental limited license term ~~shall be~~ is from the date of approval through the third December 31 after the vehicle rental limited license is issued.

e. Limited license application process for counter employees.

(1) No change.

(2) To obtain a vehicle rental counter employee limited license, an individual ~~shall~~ must successfully complete an examination and submit to the division a completed vehicle rental counter employee limited license application, pursuant to Iowa Code section 522A.3. The vehicle rental counter employee limited license application form is available on the ~~division Web site~~ division's website.

(3) If the application is approved, the division ~~shall~~ must issue a vehicle rental counter employee limited license. Vehicle rental counter employee limited license applications ~~shall~~ will be deemed approved if not disapproved by the division within 30 days of receipt by the division. The vehicle rental counter employee limited license term ~~shall be~~ is from the date of approval through the third December 31 after the license is issued.

(4) The vehicle rental counter employee limited license ~~shall~~ will automatically terminate:

1. and 2. No change.

f. Duties of vehicle rental limited licensees.

(1) No change.

(2) A vehicle rental limited licensee ~~shall~~ must obtain and administer an examination for all vehicle rental counter employee limited license candidates. The content of the examination and the manner of its administration must be approved by the division.

(3) and (4) No change.

(5) The vehicle rental limited licensee must notify the division of the termination of employment of any of its vehicle rental counter employee limited licensees. The vehicle rental limited licensee ~~shall~~ must file reports of terminations semiannually on January 1 and July 1.

g. License renewal.

(1) All vehicle rental limited licenses and vehicle rental counter employee limited licenses ~~shall~~ must be issued with an expiration date of the December 31 at the end of the license terms and must be renewed before the end of the license terms.

(2) Each year, the division ~~shall~~ must mail to the vehicle rental limited licensee's latest electronic mail or mailing address appearing in the division's records a renewal form for use in renewing the vehicle rental limited license and all of the vehicle rental counter employee limited licenses that will expire that year.

(3) The vehicle rental limited licensee ~~shall~~ must complete the renewal form for its license if applicable and for all of the vehicle rental counter employee limited licenses that will expire that year and ~~shall~~ must return the completed renewal form and applicable fee to the division on or before December 31 of the renewal year or all licenses listed on the renewal form ~~shall~~ will expire.

(4) No change.

h. Limitation on fees. A vehicle rental limited licensee ~~shall~~ is not be required to pay license and renewal fees of more than \$1,000 in aggregate in any calendar year.

i. Change in name or address.

(1) Vehicle rental limited licensees ~~shall~~ must file written notification with the division of a change in name or address within 30 days of the change. This requirement applies to any change in any locations at which the vehicle rental limited licensee is doing business.

(2) Vehicle rental limited licensees ~~shall~~ must file written notification with the division of changes in names or addresses of vehicle rental counter employee limited licensees. If the change of name is by a court order, a copy of the order shall be included with the notification. The limited licensee ~~shall~~ must file reports of name and address changes semiannually on January 1 and July 1.

j. Violations and penalties.

(1) A rental company or counter employee who sells insurance in violation of this rule ~~shall be deemed to be~~ is in violation of Iowa Code chapter 522A and is subject to the penalties provided in Iowa Code section 522A.3.

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(2) No change.

10.51(2) Limited licenses for persons who sell portable electronics insurance.

a. *Purpose.* The purpose of this subrule is to govern the qualifications of and procedures for the licensing of persons offering or selling any form of portable electronics insurance in this state, pursuant to 2015 Iowa Acts, ~~Senate File 487~~ Iowa Code chapter 522E.

b. *Definitions.* For purposes of this subrule, in addition to the definitions in rule 191—1.1(502,505), the definitions of 2015 Iowa Acts, Senate File 487, and the following definitions shall Iowa Code chapter 522E apply:

~~“Division” means the commissioner of insurance and the Iowa insurance division.~~

~~“Division Web site” means the Web site for the division, www.iid.iowa.gov.~~

~~“File” means to submit information to the division. A submission is considered filed when it is received by the division.~~

~~“Portable electronics insurance limited license” means a portable electronics insurance license as defined by 2015 Iowa Acts, Senate File 487, section 1.~~

~~“Portable electronics insurance limited license application” means the form used by a portable electronics vendor to apply for a portable electronics insurance limited license.~~

c. *Requirement to hold a portable electronics insurance limited license.* A person that desires to offer or sell any form of portable electronics insurance in this state ~~shall~~ must:

(1) Be licensed as an insurance producer pursuant to Iowa Code chapter 522B;

(2) Submit an application to the division and, at the discretion of the division, receive a portable electronics insurance limited license pursuant to 2015 Iowa Acts, ~~Senate File 487, sections 2, 3 and 4,~~ Iowa Code sections 522E.2, 522E.3, and 522E.4 and this subrule; or

(3) Be an endorsee in compliance with ~~2015 Iowa Acts, Senate File 487, sections 6 and 7,~~ Iowa Code sections 522E.6 and 522E.7 and this subrule.

d. *Application process for portable electronics insurance limited license.*

(1) To obtain a portable electronics insurance limited license, a portable electronics vendor ~~shall~~ must submit to the division a completed portable electronics insurance limited license application and the appropriate fee, as required by 2015 Iowa Acts, ~~Senate File 487, section 3~~ Iowa Code section 522E.3.

(2) If the application is approved, the division ~~shall~~ must issue a portable electronics insurance limited license. The portable electronics insurance limited license term ~~shall be~~ is from the date of approval through the third December 31 after the portable electronics insurance limited license was issued.

e. *Portable electronics insurance limited license renewal.*

(1) All portable electronics insurance limited licenses ~~shall~~ must be issued for a license period as defined in 2015 Iowa Acts, ~~Senate File 487, section 1,~~ Iowa Code section 522E.1 and must be renewed triennially.

(2) Not less than 60 days before the end of the license period, the division ~~shall~~ must mail a renewal form to the portable electronics insurance limited licensee at the last-known electronic mail or mailing address appearing in the division’s records.

(3) The portable electronics insurance limited licensee ~~shall~~ must complete and return to the division the completed renewal form and the applicable fee, as required by 2015 Iowa Acts, ~~Senate File 487, section 5~~ Iowa Code section 522E.5, on or before the expiration date of the portable electronics insurance limited license, or the licensee’s portable electronics insurance limited license ~~shall~~ will expire and the authority of all endorsees to sell under the portable electronics insurance limited license also ~~shall~~ will expire.

f. *Change in name or address.* A portable electronics insurance limited licensee ~~shall~~ must file written notification with the division of a change in name or address within 30 days of the change. This requirement applies to any change in any location at which the portable electronics insurance limited licensee is doing business.

g. *Violations and penalties.* A portable electronics vendor or endorsee that sells insurance in violation of this rule ~~shall be deemed to be~~ is in violation of 2015 Iowa Acts, ~~Senate File 487,~~ Iowa

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Code chapter 522E and is subject to the penalties in 2015 Iowa Acts, Senate File 487, section 8 Iowa Code chapter 522E.

~~This rule is~~ These rules are intended to implement Iowa Code chapter chapters 252J, 272D, 522A, 522B, and 2015 Iowa Acts, Senate File 487 522E.

ITEM 21. Amend rules 191—11.1(505,522B) to 191—11.5(505,522B) as follows:

191—11.1(505,522B) Statutory authority—purpose—applicability.

11.1(1) These rules are adopted pursuant to the general rule-making authority of the insurance commissioner in Iowa Code chapters 505 and 522B to establish continuing education requirements for resident and nonresident insurance producers.

11.1(2) No change.

11.1(3) These rules do not apply to:

- a. No change.
- b. A resident producer who holds qualification in ~~one of the following~~ the surety or credit lines of authority: ~~surety; or credit life, accident and health insurance.~~
- c. Licensed attorneys who are also producers who submit proof of completion of continuing legal education for the appropriate calendar years during the CE term, ~~pay the continuing education fee set forth in subrule 11.14(1) and otherwise comply with the producer license renewal procedures set forth in 191—Chapter 10.~~
- d. and e. No change.

191—11.2(505,522B) Definitions. In addition to the definitions in rules 191—1.1(502,505) and 191—10.2(522B), the following definitions apply:

“Approved subject” or “approved course” means any educational presentation which has been approved by the division.

“Attendance record” means a record on which a CE provider requires attendees of a CE course to sign in at the time of entrance to the course.

“CE” means continuing education as ~~defined~~ referenced in Iowa Code chapter 522B.

“CE provider” means any individual or entity that is approved to offer continuing education courses in Iowa.

“CE term” means the period of time that begins either on the date when a new producer's insurance license is issued or on the date after the expiration date of an existing producer's license and that ends on the following license expiration date.

“Credit” means continuing education credit. One credit is 50 minutes of instruction or reading material in an acceptable topic.

~~*“License”* means the division's authorization for a person to act as an insurance producer for the authorized lines of insurance.~~

~~*“National Insurance Producer Registry” or “NIPR”* means the nonprofit affiliate of the National Association of Insurance Commissioners (NAIC). Its Web site is www.licenseregistry.com.~~

~~*“NIPR Gateway”* means the communication network developed and operated by NIPR that links state insurance regulators with the entities they regulate to facilitate the electronic exchange of producer information regarding license applications, license renewals, appointments and terminations.~~

“Proctored” or “independently proctored” means the supervision by a CE provider or disinterested third party over the conduct of a producer while that producer is completing an examination that is part of a self-study CE course.

“Producer” or “insurance producer” means a person required to be licensed in this state to sell, solicit or negotiate insurance.

“Resident” means a person residing permanently in Iowa.

“Roster” means a listing of all licensed attendees at an approved course and includes the Iowa course number, the National Insurance Producer Registry (NIPR) National Producer Number (NPN), the date the course was completed, and the actual number of credits earned by each producer.

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“*Self-study course*” means an educational program that consists of a self-study manual and comprehensive examination. A self-study course may be an ~~on-line~~ online course.

191—11.3(505,522B) Continuing education requirements for producers.

11.3(1) Every licensed resident producer must complete a minimum of 36 credits for each CE term in courses approved by the division. Three of these credits must be in the subject of ethics. By the end of the last business day of the producer’s CE term, the division must receive from the producer proof of completion of the CE courses and payment of the CE fee.

11.3(2) to 11.3(6) No change.

11.3(7) A producer may elect to comply with the CE requirements by taking and passing the appropriate licensing examination for each qualification held by the producer.

~~a.—A producer who holds property and casualty lines of authority must successfully complete the commercial insurance subject examination.~~

~~b.—A producer who holds an excess and surplus line of authority must successfully complete the examination for the excess and surplus line of authority and the commercial insurance subject examination.~~

11.3(8) ~~For a~~ A resident producer who only holds qualification ~~only~~ for a crop insurance line of authority ~~and who is requesting renewal of a producer license on or after January 1, 2010, the producer must be able to~~ needs only to demonstrate the following ~~each time renewal of a license is requested to renew:~~

~~a.~~ No change.

~~b.~~ The producer has completed 18 credits of continuing education, 3 of which must be in the area of ethics, ~~except that a producer who is requesting renewal of a producer license during 2010 must demonstrate that the producer has completed 9 credits of continuing education, 3 of which must be in the area of ethics.~~

191—11.4(505,522B) Proof of completion of continuing education requirements.

11.4(1) *Producer duties.*

~~a.~~ Producers ~~are required to~~ must demonstrate compliance with the CE requirements at the time of license renewal. Procedures for completing the license renewal process are outlined in 191—Chapter 10.

~~b.~~ Producers ~~are required to~~ must maintain a record of all CE courses completed by keeping the original certificates of completion for four years after the end of the year of attendance.

11.4(2) *Insurer duties regarding federal flood insurance.* An insurer authorized to do business in Iowa ~~shall~~ must demonstrate to the division, upon the division’s request, that producers appointed by the insurer have complied with all continuing education guidelines as established by the National Flood Insurance Program (NFIP).

191—11.5(505,522B) Course approval.

11.5(1) No change.

11.5(2) Any approved active CE provider ~~shall~~ must submit a request for approval of any course, program of study, or subject for continuing education credit to the division on an NAIC uniform form. If an outside vendor is retained by the division for course reviews, requests for approval ~~shall~~ must be filed directly with the vendor.

11.5(3) Requests for course approval ~~which~~ that do not include all required information will be returned as incomplete.

11.5(4) Except as provided in subrule 11.5(5), requests for approval ~~shall~~ must be submitted at least 30 days prior to the beginning of the course. A request for renewal of a previously approved course ~~shall~~ must be submitted at least 30 days prior to the end of the 24-month approval period. Requests received later may be disapproved.

11.5(5) A request for approval of any self-study course that is part of a recognized national designation program may be filed within 60 days after the course is completed. This course will be

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reviewed and may be approved for up to the number of credits awarded for passage of the national examination in topics that are otherwise approvable under these rules. ~~This subrule applies only to national designation programs such as AAI, ARM, CIC, CEBS, ChFC, CFP, CLU, CPCU, FLMI, LUTCF, RHU and similar courses as determined by the division.~~

11.5(6) An insurance producer who attends a classroom course offered by a college, university or governmental agency that has not been approved by the division may make application for approval of the provider and course for CE credit. The application must be filed within 60 days of attendance at the course and must contain sufficient materials to allow for a thorough evaluation of the provider, course content, and instructor qualifications. To be eligible for CE credit, the course must meet all division guidelines for course approval. All course review fees must be paid by the producer.

11.5(7) A CE course must be offered for a minimum of one credit. Fractional credits will not be awarded. The total credit ~~which~~ that may be awarded for a CE course is limited to 36 credits, except that credit for a self-study course as defined in paragraph 11.3(4) "b" ~~shall be~~ is limited to 18 CE credits.

11.5(8) and **11.5(9)** No change.

11.5(10) Within 30 days of course approval, CE providers ~~shall~~ must inform the division or its vendor, as directed by the division, of the dates and locations that the course will be offered. Failure to timely file the dates and locations ~~will subject~~ subjects the CE provider to penalty and suspension or rescission of course approval.

11.5(11) No change.

ITEM 22. Strike "shall" wherever it appears in rules **191—11.10(505,522B)** and **191—11.11(505,522B)** and insert "must" in lieu thereof.

ITEM 23. Amend rule 191—11.12(505,522B) as follows:

191—11.12(505,522B) Outside vendor. The division may enter into a contractual arrangement with a qualified outside vendor to assist the division with any or all continuing education services. ~~Fees charged by the outside vendor will be subject to division approval and will be paid by the CE provider. Course approval fees are nonrefundable.~~

ITEM 24. Amend subrule 11.14(1) as follows:

11.14(1) The fees for approval and renewal of CE providers, CE courses and registration of instructors shall be set by the outside vendor retained by the division and are subject to approval by the division. Course approval fees are nonrefundable.

ITEM 25. Amend rule 191—13.1(505,522B) as follows:

191—13.1(505,522B) Purpose and authority. The purpose of these rules is to implement the provisions of 18 U.S.C. Section 1033 and Iowa Code section 522B.16B. The Iowa insurance commissioner has jurisdiction under 18 U.S.C. Section 1033 to grant requests for consent to engage in the business of insurance. ~~Insurance companies, producers, and individuals shall comply with these rules beginning January 1, 2010.~~

ITEM 26. Amend rule 191—13.2(505,522B), introductory paragraph, as follows:

191—13.2(505,522B) Definitions. For the purpose of this chapter, the definitions in rule 191—1.1(502,505) and the following definitions shall apply:

ITEM 27. Rescind the definitions of "Commissioner" and "Division" in rule **191—13.2(505,522B)**.

ITEM 28. Amend rule 191—13.4(505,522B) as follows:

191—13.4(505,522B) Applications for consent. The prohibited person must file with the division an application for consent as set forth in this rule.

13.4(1) Except as provided in subrule 13.4(2), a prohibited person who is, or seeks to be, employed in any capacity in the business of insurance in Iowa shall must complete and file an application for consent using the ~~"Short Form Application for Written Consent to Engage in the Business of Insurance~~

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Pursuant to 18 U.S.C. § 1033 and 1034.” The form is, in a format prescribed by the division, available on the division’s Web site at www.iid.state.ia.us website or is available by request from the division.

13.4(2) No change.

13.4(3) An application must include:

a. Two 2" × 2" recent passport-type identical photographs attached to the upper right hand corner of the first page of as indicated on the application for consent.

b. A certified copy of the applicant’s criminal history record both from the applicant’s state of residence and from the state in which the felony was committed if different from the state of residence. A Record Check Request form may be obtained from the Iowa division of criminal investigation at: www.state.ia.us/government/dps/dci/crimhist.htm www.dps.state.ia.us.

c. A certified copy of all court documents that demonstrate completion and performance of all conditions imposed by the court.

d. and *e.* No change.

13.4(4) No change.

ITEM 29. Amend rule 191—13.6(505,522B) as follows:

191—13.6(505,522B) Review of application by the division.

13.6(1) ~~A completed application shall be reviewed by the commissioner, and the following shall be considered~~ The commissioner must consider the following when reviewing a completed application:

a. to *c.* No change.

13.6(2) and **13.6(3)** No change.

13.6(4) If the commissioner determines that the applicant does seem to constitute a significant threat to the public, the commissioner shall deny the application. Notice of the denial ~~shall~~ must be sent to the applicant via certified mail to the address on record with the division, return receipt requested. The prohibited person ~~shall have~~ may request a hearing with the commissioner within 30 days to request a hearing with the commissioner from the date of mailing of the division’s notice.

13.6(5) The application and materials supplied with the application ~~or,~~ provided at the request of the division and ~~any information,~~ or obtained by the division during the course of its review, including materials and testimony received at a hearing regarding an application, shall be considered information submitted to the ~~insurance~~ division or obtained by the ~~insurance~~ division in the course of an investigation for purposes of Iowa Code section 505.8(8), and the commissioner shall keep such information confidential. A consent issued by the commissioner ~~shall be deemed~~ is a public record for purposes of Iowa Code chapter 22; however, Iowa Code section 505.8(9) also shall apply.

ITEM 30. Amend rule 191—13.8(505,522B) as follows:

191—13.8(505,522B) Change in circumstances.

13.8(1) *Failure to disclose.* In the event that the division determines that the prohibited person receiving the consent made materially false or misleading statements, or failed to disclose material information in the application for consent, the consent shall be suspended or revoked. The prohibited person ~~shall have~~ may request a hearing with the commissioner within 30 days to request a hearing with the commissioner from the date of mailing of the division’s notice.

13.8(2) *New felony.*

a. A prohibited person who previously received consent from the commissioner to participate in the business of insurance ~~shall~~ must immediately notify the division if that person is subsequently convicted of an offense under the Act, or of any felony offense involving dishonesty or breach of trust.

b. The entry of a new conviction ~~shall~~ automatically ~~terminate~~ terminates the prior consent.

c. When the division becomes aware of the new conviction, it ~~will~~ must inform the prohibited person in writing, via certified mail to the address on record with the division, return receipt requested, that the consent previously issued has been revoked.

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d. No change.

13.8(3) Violation of terms of consent. If the commissioner determines that a prohibited person has violated the terms of a consent, the commissioner shall immediately terminate the consent. The division must inform the prohibited person in writing, via certified mail to the address on record with the division, return receipt requested, that the consent previously issued has been terminated. The prohibited person ~~shall have~~ may request a hearing with the commissioner within 30 days to request a hearing with the commissioner from the date of mailing of the division's notice.

13.8(4) No change.

ITEM 31. Amend rule 191—13.10(505,522B) as follows:

191—13.10(505,522B) Violations and penalties. A prohibited person who engages in the business of insurance without the consent of the commissioner or otherwise in violation of this chapter shall be deemed to be in violation of Iowa Code section 522B.2 and ~~shall be~~ is subject to the penalties provided in Iowa Code section 522B.17.

ITEM 32. Amend rules 191—48.2(508E) and 191—48.3(508E) as follows:

191—48.2(508E) Definitions. For purposes of this chapter, the definitions in Iowa Code chapter 508E are incorporated by reference. In addition to those definitions and the definitions in rule 191—1.1(502,505), the following definitions shall apply:

“Commissioner’s Web site” means the Web site of the commissioner and of the Iowa insurance division, www.iid.state.ia.us.

“Life settlement” means a viatical settlement in which the viator has not been diagnosed as terminally or chronically ill. For purposes of these rules, unless otherwise distinguished, the term “life settlement” shall be synonymous with viatical settlement.

“Renewal year” means the last year of the viatical settlement license three-year term.

191—48.3(508E) License requirements.

48.3(1) Viatical settlement provider.

a. To be considered for licensure as a viatical settlement provider pursuant to Iowa Code section 508E.3, a person must ~~complete the viatical settlement provider application form found at the commissioner’s Web site,~~ file with the commissioner the a completed viatical settlement provider application in the format prescribed by the commissioner, and include the payment of pay an application fee in the amount of \$100. ~~An application shall not be deemed filed until all information necessary to process the application has been received by the commissioner. In addition to complying with Iowa Code section 508E.3, the applicant also shall, and~~ provide the following:

(1) to (8) No change.

b. A form for the antifraud plan that is required to be submitted with an application pursuant to Iowa Code section 508E.3, to meet the requirements of Iowa Code section 508E.15, can be found on the ~~commissioner’s Web site~~ division’s website.

c. and d. No change.

48.3(2) Viatical settlement broker.

a. To be considered for licensure as a viatical settlement broker pursuant to Iowa Code section 508E.3, a person must ~~complete the viatical settlement broker application form found at the commissioner’s Web site,~~ file the a completed viatical settlement broker application in the format prescribed by the commissioner, and include the payment of pay an application fee in the amount of \$100. In addition to finding compliance with Iowa Code section 508E.3, the commissioner also shall find that the applicant:

(1) to (3) No change.

b. A form for the antifraud plan that is required to be submitted with an application pursuant to Iowa Code section 508E.3, to meet the requirements of Iowa Code section 508E.15, can be found on the ~~commissioner’s Web site~~ division’s website.

c. No change.

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48.3(3) No change.

48.3(4) *License term.*

a. No change.

b. A viatical settlement provider license is valid for ~~one year~~ three years and automatically terminates on the last day of the month of the anniversary of the issue date unless renewed pursuant to subrule 48.3(6).

c. A viatical settlement broker license is valid for an initial term of ~~one year~~ three years from the last day of the applicant's anniversary month following the issuance of the license, and automatically terminates on the last day of the month of the initial term unless renewed pursuant to subrule 48.3(6).

d. and e. No change.

48.3(5) *Continuing education for viatical settlement broker.*

a. An individual licensed as a viatical settlement broker ~~shall~~ must complete ~~15~~ 36 credits of approved continuing education during every ~~two license terms~~ term. A license term is as set forth in paragraph 48.3(4) "c," and, for purposes of this rule, the ~~two term continuing education requirement shall be called the "CE reporting term."~~ 48.3(4) "c."

b. The required continuing education credits shall include a minimum of:

(1) ~~Thirteen~~ Thirty-three credits related to life insurance, viatical settlements and viatical settlement transactions; and

(2) ~~Two~~ Three credits in ethics.

c. No change.

d. The license of a viatical settlement broker who fails to comply with this continuing education requirement ~~shall~~ will terminate.

e. No change.

f. A viatical settlement broker cannot carry over excess continuing education credits from one ~~CE reporting license term~~ continuing education credits earned in excess of the viatical settlement broker's CE reporting term requirements.

g. and h. No change.

i. A viatical settlement broker cannot receive continuing education credit for the same course twice in one ~~CE reporting license term~~ continuing education credit. A viatical settlement broker cannot receive continuing education credit both for the classroom portion and for the examination portion of a national designation program as defined in 191—subrule 11.5(5).

j. to m. No change.

48.3(6) *License renewal.* A viatical settlement provider license or a viatical settlement broker license may be renewed as follows:

a. A viatical settlement provider license may be renewed by payment of \$100 within ~~60~~ 90 days prior to the expiration date of the license and by demonstration that the viatical settlement provider continues to meet the requirements of Iowa Code section 508E.3 and subrule 48.3(1), has provided biographical affidavits not older than one year prior to the renewal date on all persons listed in subparagraph 48.3(1) "a"(4), has provided business character reports for any new persons listed in subparagraph 48.3(1) "a"(4), and has provided the reports required by rule ~~48.7(508E)~~ 191—48.7(508E).

(1) If renewal is approved, the license will be renewed effective the last day of the month of the anniversary of the issue date in the renewal year, will be valid for ~~one year~~ three years, and will automatically terminate on the last day of the month of the anniversary of the issue date in the following renewal year unless renewed pursuant to this subrule 48.3(6).

(2) No change.

b. A viatical settlement broker license may be renewed by demonstration of completion of continuing education as required in subrule 48.3(5) and payment of \$100 within ~~60~~ 90 days prior to the expiration date of the license. If renewal is approved, the license will be renewed effective the last day of the month of the anniversary of the issue date in the renewal year, will be valid for ~~one year~~ three years, and will automatically terminate on the last day of the month of the anniversary of the issue date in the following renewal year unless renewed pursuant to this subrule 48.3(6).

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c. to e. No change.

48.3(7) License reinstatement.

a. A viatical settlement broker may reinstate an expired license up to 12 months after the license expiration date by proving that during the ~~CE reporting~~ license term the viatical settlement broker met the CE requirements found in subrule 48.3(5), and by paying to the commissioner a reinstatement fee and license renewal fee. A viatical settlement broker who fails to apply for license reinstatement within 12 months of the license expiration date must apply for a new license.

b. No change.

48.3(8) Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance.

a. The term “reinstatement” as used in this subrule means the reinstatement of a suspended license. The term “reissuance” as used in this subrule means the issuance of a new license following either the revocation of a license, the suspension and subsequent termination of a license, or the forfeiture of a license in connection with a disciplinary matter. This subrule does not apply to the reinstatement of an expired license or the issuance of a new license after the reinstatement period has passed that is not in connection with a disciplinary matter.

b. Any viatical settlement broker whose license has been revoked or suspended by order, or who forfeited a license in connection with a disciplinary matter, ~~may~~ must apply to the commissioner for reinstatement or reissuance in accordance with the terms of the order of revocation or suspension or the order accepting the forfeiture.

(1) and (2) No change.

(3) A viatical settlement broker may request reinstatement of a suspended license prior to the end of the suspension term; however, reinstatement will not be effected until the suspension period has ended.

(4) Unless otherwise provided by law, if the order of revocation or suspension did not establish terms upon which reinstatement or reissuance may occur, or if the license was forfeited, an initial application for reinstatement or reissuance may not be made until at least one year has elapsed from the date of the order of the suspension (notwithstanding ~~191—paragraph 10.10(2)“e”~~ 191—paragraph 10.10(2)“e”), revocation, or acceptance of the forfeiture of a license.

c. All proceedings upon the application for reinstatement or reissuance, including matters preliminary and ancillary thereto, shall be held in accordance with Iowa Code chapter 17A. Such application shall be docketed in the original case in which the ~~original~~ license was suspended, revoked, or forfeited, if a case exists.

d. An order of reinstatement or reissuance ~~shall~~ must be based upon a written decision ~~which~~ that incorporates findings of fact and conclusions of law. An order granting an application for reinstatement or reissuance may impose such terms and conditions as the commissioner or the commissioner’s designee deems ~~desirable~~ appropriate, which may include one or more of the types of disciplinary sanctions provided by this chapter or by Iowa Code chapter 508E. The order ~~shall be~~ is a public record, ~~available to the public,~~ and may be disseminated in accordance with Iowa Code chapter 22.

e. A ~~request for~~ submission of voluntary forfeiture of a license ~~shall~~ must be made in writing to in the format prescribed by the commissioner. Forfeiture of a license is effective upon the submission of the request unless a contested case proceeding is pending at the time the request is submitted of the submission. If a contested case proceeding is pending ~~at the time of the request,~~ the forfeiture becomes effective when and upon such conditions as required by order of the commissioner. A forfeiture made during the pendency of a contested case proceeding is considered a disciplinary action and shall must be published in the same manner as is applicable to any other form of disciplinary order.

f. No change.

g. When a viatical settlement broker’s license has been suspended for a period of time ~~which~~ that extends beyond the viatical settlement broker’s license expiration date, the license ~~will terminate~~ terminates at the license expiration date, and the viatical settlement broker must request ~~reinstatement~~ reissuance pursuant to this subrule 48.3(7). However, reissuance will not be effected until the suspension period has ended. If suspension for a period of time ends prior to the viatical settlement broker’s license expiration date, and the viatical settlement broker has met all applicable requirements, the commissioner

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~~shall~~ must reinstate the license ~~at~~ as soon as practicable but no earlier than the end of the suspension period pursuant to paragraph 48.3(8) “b.” The commissioner is not prohibited from denying an application for reinstatement or reissuance or bringing an additional immediate action if the viatical settlement broker has engaged in misconduct during the period of suspension.

48.3(9) to **48.3(11)** No change.

48.3(12) Fees.

- a. Fees shall be paid by check, money order, or credit card.
- b. The fee for an examination ~~shall~~ may be set by the outside testing service under contract with the division and must be approved by the division.
- c. The ~~annual~~ fee for issuance or renewal of a viatical broker, legal entity or provider license is \$100.
- d. The fee for reinstatement or reissuance of a viatical broker, legal entity or provider license is ~~the sum of the renewal fee plus \$100.~~ In addition, applicable issuance or renewal fees will be assessed.
- e. No change.

ITEM 33. Rescind rule 191—48.11(252J) and adopt the following new rule in lieu thereof:

191—48.11(252J,272D) Suspension for failure to pay child support or state debt. The division must follow the procedures in rule 191—10.21(252J,272D) relating to producer suspension for failure to pay child support or state debt for viatical settlement brokers, replacing “producer” with “viatical settlement broker.”

ITEM 34. Rescind and reserve rule **191—48.12(261).**

ITEM 35. Rescind and reserve rule **191—48.13(272D).**

ITEM 36. Amend **191—Chapter 48**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 508E, 252J, ~~264~~ and 272D.

[Filed 1/23/20, effective 3/18/20]

[Published 2/12/20]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.

ARC 4902C

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Rule making related to beginning farmer program changes

The Iowa Finance Authority hereby amends Chapter 44, “Iowa Agricultural Development Division,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 16, subchapter VIII, part 5, as amended by 2019 Iowa Acts, House File 768, section 7.

Purpose and Summary

2019 Iowa Acts, House File 768, creates a Beginning Farmer Tax Credit Program. Pursuant to 2019 Iowa Acts, House File 768, section 7, the Authority is directed to adopt rules that are necessary for the administration of the program. This rule making sets forth the eligibility criteria for eligible taxpayers

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and qualified beginning farmers, the requirements of an agricultural lease agreement upon which the tax credit is based, the process to be followed when a lease is amended, the application process and the required content of the tax credit application, and the procedure for calculating tax credit awards.

The rule making also updates outdated statutory references and amends the Beginning Farmer Loan Program's eligibility criteria and related definitions to clarify the differences between the loan program and the tax credit program.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 23, 2019, as **ARC 4729C**.

The Authority received a comment from a stakeholder about paragraph 44.6(2)"b." The stakeholder expressed concern that the meaning of "term," as used in that paragraph, was unclear. The Authority revised the paragraph to clarify the beginning of the "term" of a tax credit and thus clarify the overall meaning of "term." The stakeholder approved the revised paragraph 44.6(2)"b."

Specifically, the Authority revised paragraph 44.6(2)"b" to indicate when the tax credit "term" begins to clarify how long the tax credit "term" will last. The Authority also incorporated a sentence from Iowa Code section 16.82(7) that indicates the tax credit shall not be carried back to a tax year prior.

Also, the Authority added a new paragraph 44.6(3)"e" to allow any applicant wishing to appeal a decision of the Iowa Agricultural Development (IAD) Board to appeal directly to the IAD Board.

Finally, the Authority made one technical change that was not a result of public comment.

Adoption of Rule Making

This rule making was adopted by the Authority on January 8, 2020.

Fiscal Impact

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

Jobs Impact

After analysis and review of this rule making, the impact on jobs is expected to be positive. The Beginning Farmer Tax Credit program is likely to create additional opportunities for individuals who wish to begin farming in Iowa.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 265—Chapter 18.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making actions are adopted:

IOWA FINANCE AUTHORITY[265](cont'd)

ITEM 1. Amend rule 265—44.1(16) as follows:

265—44.1(16) General.

44.1(1) *Description of Iowa agricultural development ~~division (IADD)~~ (IAD) board.* The ~~IADD~~ IAD board consists of five members appointed by the governor. The executive director of the Iowa finance authority or the executive director's designee shall serve as an ex officio nonvoting member. Members are appointed for staggered six-year terms. The appointed members shall elect a chairperson and vice chairperson annually, and other officers as the appointed members determine.

44.1(2) *Division organization and personnel.* The executive director of the authority may organize the division and employ necessary qualified personnel.

~~44.1(2)~~ **44.1(3)** *General course and method of operations.* The ~~IADD~~ IAD board generally meets on a monthly basis or at the call of the chairperson or whenever two appointed members so request. The purpose of the meetings shall be to review progress in implementation and administration of programs, to consider and act upon proposals for assistance, and take other actions as necessary and appropriate.

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

ITEM 2. Amend rule 265—44.2(16) as follows:

265—44.2(16) Definitions.

“Act” means Iowa Code chapter 16.

“Agricultural asset” means agricultural land, located in this state, including any agricultural improvements, machinery, equipment, and other depreciable agricultural property, ~~crops or livestock used for farming purposes.~~

“Agricultural development board” or *“IAD board”* means the agricultural development board created in Iowa Code section 16.2C and described in rule 265—44.1(16).

“Agricultural asset transfer agreement” means any commonly accepted written agreement which specifies the terms of the transfer of operation of the agricultural asset. The agreement may be made on a cash basis or a commodity share basis.

“Agricultural improvements” means any improvements, buildings, structures or fixtures suitable for use in farming which are located on agricultural land. “Agricultural improvements” includes a single-family dwelling located on agricultural land which is or will be occupied by the beginning farmer and structures attached to or incidental to the use of the dwelling.

“Agricultural land” means land located in Iowa suitable for use in farming and which is or will be operated as a farm.

“Agricultural lease agreement” or *“agreement”* means an agreement for the transfer of agricultural assets, that must at least include a lease of agricultural land, from an eligible taxpayer to a qualified beginning farmer as provided in 2019 Iowa Acts, House File 768, section 9.

“Application” means a completed instrument on a form approved by IADD.

“Authority” means the Iowa finance authority created in Iowa Code section 16.1A.

“Beginning farmer” means an individual, partnership, family farm corporation, or family farm limited liability company, with a low or moderate net worth that engages in farming or wishes to engage in farming.

“BFCF” means beginning farmer custom farming tax credit program.

“BFCF eligible applicant” means an individual, partnership, family farm corporation or family farm limited liability company that has a net worth of not more than the maximum allowable net worth. The applicant must also satisfy all of the criteria contained in Iowa Code sections 16.79 and 16.81 and the provisions of these rules relating to recipient eligibility.

“BFLP” means beginning farmer loan program.

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“BFLP eligible applicant beginning farmer” means an individual who has a net worth of not more than the maximum allowable net worth. The applicant must also be a beginning farmer, as defined in Iowa Code section 16.75, who satisfies all of the criteria contained in the Act and provisions of these rules relating to recipient eligibility a beginning farmer who also meets the requirements of a first-time farmer as defined in Section 147(c) of the Internal Revenue Code.

“BFTC” means beginning farmer tax credit program.

“BFTC eligible applicant” means an individual, partnership, family farm corporation or family farm limited liability company that has a net worth of not more than the maximum allowable net worth. The applicant must also satisfy all of the criteria contained in Iowa Code sections 16.79 and 16.80 and the provisions of these rules relating to recipient eligibility.

“Bond purchaser” means any lender or any person, as defined in Iowa Code section 4.1(20), who purchases an authority bond under the individual agricultural development bond program.

“Cash basis rent agreement” means an agreement whereby operation of the agricultural asset is transferred via a fixed cash payment per annum.

“Commodity share basis agreement” means an agreement whereby operation of the agricultural asset is transferred via a risk-sharing mechanism, whereby the agricultural asset owner receives a portion of the production as payment for use of the agricultural asset.

“Custom farming contract” means any commonly accepted written contract which specifies the terms of the work to be performed by the beginning farmer for an Iowa landowner or tenant or livestock owner. The contract must provide for the production of crops or livestock located on agricultural land. The taxpayer will pay the BFCF eligible applicant on a cash basis, and the total amount paid for each tax year that the tax credit is claimed must equal at least \$1,000. The contract must be in writing for a term of not more than 24 months. A contract is not allowed if the taxpayer and BFCF eligible applicant are: persons who hold a legal or equitable interest in the same agricultural land or livestock; related family members, such as spouse, child, stepchild, brother, or sister; or partners in the same partnership which holds a legal or equitable interest.

“Eligible taxpayer” means a taxpayer who is eligible to participate in the beginning farmer tax credit program, including by meeting all the criteria provided in paragraph 44.6(1)“a.”

“Farm” means a farming enterprise which is generally recognized as a farm rather than a rural residence.

“Farming” means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing, the production of livestock, aquaculture, hydroponics, the production of forest products, or other activities designated by the authority.

“Flex lease agreement” means an agreement whereby operation of the agricultural asset is transferred via a combination of fixed cash payments and, at times, additional payment based on the production or other variables.

“IADD” means the Iowa agricultural development division of the Iowa finance authority.

“Lender” means any regulated bank, trust company, bank holding company, mortgage company, national banking association, savings and loan association, life insurance company, state or federal governmental agency or instrumentality, or other financial institution or entity authorized and able to make mortgage loans or secured loans in this state.

“Low income farmer” means a farmer who cannot obtain financing to purchase agricultural property without the assistance of an LPP loan with the authority.

“Low or moderate net worth” means a net worth that does not exceed the maximum allowable net worth defined in this rule.

“LPP” means loan participation program.

“LPP eligible applicant” means an individual who has a net worth of not more than the maximum allowable net worth. The applicant must be a low income farmer who cannot obtain financing to purchase agricultural property without the assistance of an LPP loan and who satisfies all of the criteria contained in the Act and the provisions of these rules relating to recipient eligibility.

“LPP loan” means the “last-in/last-out” loan participation requested by the lender from the authority.

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~~“Maximum allowable net worth” for calendar year 2013 is \$691,172. The means the maximum allowable net worth for each calendar year, which shall be increased or decreased as of January 1 of such calendar year from the previous year by an amount equal to the percentage increase or decrease (September to September) in the United States Department of Agriculture “Index of Prices Paid for Commodities and Services, Interest, Taxes, and Farm Wage Rates” reported as of October 1 of the immediately preceding calendar year. The maximum allowable net worth will be rounded to the nearest thousand dollars. The authority will post the maximum allowable net worth for each calendar year on its website at www.iowafinanceauthority.gov.~~

“Net worth” means total assets minus total liabilities as determined in accordance with generally accepted accounting principles with appropriate exceptions and exemptions reasonably related to an equitable determination of the net worth of the individual, partnership, limited liability company or corporation. Assets shall be valued at fair market value.

“Participated loan” means a loan or loans, any portion of which is participated to the authority by the lender.

“Qualified beginning farmer” means a beginning farmer who is eligible to participate in the beginning farmer tax credit program by meeting the criteria set forth in paragraph 44.6(1) “b.”

“Total assets” means all assets including but not limited to cash, crops or feed on hand, livestock held for sale, breeding stock, marketable bonds and securities, securities not readily marketable, accounts receivable, notes receivable, cash invested in growing crops, net cash value of life insurance, machinery, equipment, cars, trucks, farm and other real estate including life estates and personal residence, value of beneficial interest in a trust, government payments or grants, and any other assets.

“Total assets” shall not include items used for personal, family or household purposes by the applicant; but in no event shall any property be excluded, to the extent a deduction for depreciation is allowable for federal income tax purposes. All assets shall be valued at fair market value by the lender. The value shall be what a willing buyer would pay a willing seller in the locality. A deduction of 10 percent may be made from fair market value of farm and other real estate.

“Total liabilities” means all liabilities including but not limited to accounts payable, notes or other indebtedness owed, taxes, rent, amount owed on any real estate contract or real estate mortgage, judgments, accrued interest payable, and any other liabilities. Liabilities shall be determined on the basis of generally accepted accounting principles.

In only those cases where the liabilities include an amount for deferred tax liability that causes the applicant’s net worth to change from exceeding the maximum allowable net worth to an amount no greater than the maximum allowable net worth, the applicant is required to have a certified public accountant prepare the financial statement and provide supporting calculations and documentation acceptable to the board.

“USDA” means the United States Department of Agriculture.

“USDA-NASS” means the United States Department of Agriculture’s National Agricultural Statistics Service.

~~“Veteran” means the same as defined in Iowa Code section 35.1.~~

ITEM 3. Rescind rule 265—44.3(16) and adopt the following **new** rule in lieu thereof:

265—44.3(16) Beginning farmer loan program eligibility. A loan to or on behalf of a beginning farmer shall be provided only if the following criteria are satisfied:

1. The beginning farmer is an individual and a resident of Iowa.
2. The agricultural land and agricultural improvements or depreciable agricultural property the beginning farmer proposes to purchase will be located in the state.
3. The beginning farmer has sufficient education, training, or experience in the type of farming for which the beginning farmer requests the loan and must demonstrate that education, training, or experience to the satisfaction of the authority.
4. If the loan is for the acquisition of agricultural land, the beginning farmer has or will have access to adequate working capital, farm equipment, machinery, or livestock. If the loan is for the acquisition of depreciable agricultural property, the beginning farmer has or will have access to adequate

IOWA FINANCE AUTHORITY[265](cont'd)

working capital or agricultural land. In the loan application, the beginning farmer must demonstrate to the satisfaction of the authority that the beginning farmer has or will have access to adequate working capital, farm equipment, machinery, or livestock.

5. The beginning farmer shall materially and substantially participate in farming.

6. The agricultural land and agricultural improvements shall only be used for farming by the beginning farmer, the beginning farmer's spouse, or the beginning farmer's minor children.

ITEM 4. Strike "eligible applicant" and "eligible applicants" wherever they appear in rule **265—44.4(16)** and insert "beginning farmer" and "beginning farmers," respectively, in lieu thereof.

ITEM 5. Amend subrule 44.5(1) as follows:

44.5(1) Program summary. The loan participation program is intended to assist lenders and LPP eligible applicants (hereinafter referred to as "borrower(s)") beginning farmers by purchasing a portion of a loan made by a lender to a ~~borrower~~ beginning farmer for the purchase of agricultural property.

a. *Supplement to ~~borrower's~~ beginning farmer's down payment.* The LPP loan can be used to supplement the ~~borrower's~~ beginning farmer's down payment so that the ~~borrower~~ beginning farmer can more readily secure a loan (the "participated loan") from a lender.

b. *Last-in/last-out collateral position.* The program enables lenders to request a "last-in/last-out" LPP loan from the authority. The lender, on behalf of the ~~borrower~~ beginning farmer, shall apply for the LPP loan on application forms provided by the authority.

c. *Lender's certification.* The lender and the ~~borrower~~ beginning farmer shall certify that the information included in the application and any other documents submitted for consideration is true and correct to the best of their knowledge.

d. *LPP loan in conjunction with BFLP loan.* The loan participation program may be used in conjunction with the authority's beginning farmer loan program, provided the ~~borrower~~ beginning farmer meets the criteria for both programs.

ITEM 6. Amend paragraph **44.5(3)"e"** as follows:

e. *Machinery and equipment.* The participated loan can be used for the purchase of agricultural machinery and equipment for which an income tax deduction for depreciation is allowed in computing state and federal income taxes. This machinery and equipment must be used in the ~~borrower's~~ beginning farmer's farming operation.

ITEM 7. Amend subrule 44.5(5) as follows:

44.5(5) Program parameters.

a. *Purchase price impact.* Maximum LPP loan amount and loan terms will be determined by the ~~IADD~~ IAD board.

b. *LPP interest rate.* The ~~IADD~~ IAD board will set the interest rate on the LPP loan.

c. *LPP loans outstanding.* Loans under the program may be issued more than once, provided that the outstanding LPP loan totals do not exceed the maximum amount set by the ~~IADD~~ IAD board.

ITEM 8. Amend subrule 44.5(6) as follows:

44.5(6) LPP loan application procedures.

a. *Financial statement.* Lenders may use their own form of financial statement. The authority may require other forms deemed necessary and appropriate to document the eligibility of the ~~borrower~~ beginning farmer and the ~~borrower's~~ beginning farmer's ability to make principal and interest payments.

If the ~~borrower~~ beginning farmer or the ~~borrower's~~ beginning farmer's spouse is involved in a business, partnership, limited liability company, or corporation, either related or unrelated to the ~~borrower's~~ beginning farmer's farming operation, a financial statement from this entity must also be submitted with the application.

b. *Income statement.* A copy of the ~~borrower's~~ beginning farmer's prior three years' federal income tax returns (if available) shall be submitted.

c. *Background letter.* The application will also include a background letter on the ~~borrower~~ beginning farmer, documenting to the satisfaction of the authority sufficient training, experience and access to capital.

IOWA FINANCE AUTHORITY[265](cont'd)

d. Credit evaluation. ~~The lender will submit a credit evaluation of the project for which an LPP loan is sought.~~ The lender will evaluate the ~~borrower's~~ beginning farmer's net worth and ability to pay principal and interest and certify the sufficiency of security for the participated loan. The authority will review the application and make its own credit evaluation prior to issuance of an LPP loan.

e. and f. No change.

g. Recording documents and fees. Any recording or filing fees or transfer taxes associated with the participated loan will be paid by the ~~borrower~~ beginning farmer or lender and not the authority. Also, the authority will have no responsibility with respect to the preparation, execution, or filing of any declaration of value or groundwater hazard statements.

ITEM 9. Amend subrule 44.5(7) as follows:

44.5(7) Loan administration procedures.

a. Lender's responsibilities. The lender is responsible for servicing the participated loan following accepted standards of loan servicing and for transferring LPP loan payments to the authority.

(1) At the request of ~~IADD~~ the authority, the lender shall:

1. On an annual basis, provide the authority with copies of a current financial statement or a current tax return, or both.

2. Provide copies of insurance to the authority with the lender named as loss payee. The lender will apply payments to the participated loan according to the IADD-approved amortization schedule(s) or on a pro-rata basis.

(2) The lender shall not, without prior consent of the authority:

1. Make or consent to any substantial alterations in the terms of any participated loan instrument;

2. Make or consent to releases of security or collateral unless replaced with collateral of equal value on the participated loan;

~~3. Use the collateral purchased with funds from the participated loan as security for any other loan without prior written consent of the authority;~~

~~4. 3.~~ Accelerate the maturity of the participated loan;

~~5. 4.~~ Sue upon any participated loan instrument;

~~6. 5.~~ Waive any claim against any ~~borrower~~ beginning farmer, cosignor, guarantor, obligor, or standby creditor arising out of any instruments.

b. to d. No change.

e. Subsequent loans. Any loan or advance made by a lender to a ~~borrower~~ beginning farmer subsequent to the beginning farmer's obtaining an LPP loan under the program and secured by collateral or security pledged for the participated loan will be subordinate to the participated loan.

f. Events of loan default.

(1) Default will occur when the participated loan payment is 30 days past due. Notice to cure will be sent by the lender to the ~~borrower~~ beginning farmer with a copy sent to the authority; and the lender will take appropriate steps to cure the default through mediation, liquidation, or foreclosure if needed.

(2) and (3) No change.

g. Applying principal and interest payments. Lenders shall receive all payments of principal and interest. All payments made prior to liquidation or foreclosure shall be made according to the IADD-approved amortization schedule(s) or on a pro-rata basis. All accrued interest must be paid to zero at least annually on the anniversary date of the note.

h. No change.

ITEM 10. Amend subrule 44.5(8) as follows:

44.5(8) Right to audit. The authority shall have, at any time, the right to audit records of the lender and the ~~borrower~~ beginning farmer relating to any participated loan made under the program.

ITEM 11. Amend rule 265—44.6(16) as follows:

265—44.6(16) Beginning farmer tax credit program.

44.6(1) Eligibility.

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a. Eligible taxpayer. A taxpayer is eligible to participate in the beginning farmer tax credit program if the taxpayer meets all of the following requirements:

(1) The taxpayer is a person who may acquire or otherwise obtain or lease agricultural land in this state pursuant to Iowa Code chapter 9H or 9I. However, the taxpayer must not be a person who may acquire or otherwise obtain or lease agricultural land exclusively because of an exception provided in one of those chapters or in a provision of another chapter of the Iowa Code, including but not limited to Iowa Code chapter 10, 10D, or 501 or section 15E.207.

(2) The taxpayer has entered into an agricultural lease agreement with a qualified beginning farmer to lease agricultural land as provided in 2019 Iowa Acts, House File 768, section 9.

(3) The taxpayer has not been at fault for terminating a prior agreement under the program or another agreement in which the taxpayer was allowed to claim a tax credit under Iowa Code section 175.37 as it existed prior to January 1, 2015, or Iowa Code section 16.80 as it existed prior to January 1, 2018.

(4) If the agreement includes the lease of a confinement feeding operation structure as defined in Iowa Code section 459.102, the taxpayer is not a party to a pending administrative or judicial action, including a contested case proceeding under Iowa Code chapter 17A, relating to an alleged violation involving an animal feeding operation as regulated by the department of natural resources, regardless of whether the pending action is brought by the department or the attorney general.

(5) The taxpayer is not a partner of a partnership, shareholder of a family farm corporation, or member of a family farm limited liability company that is the lessee of an agricultural asset that is part of an agricultural lease agreement.

b. Qualified beginning farmer. A beginning farmer must meet all of the following criteria to be eligible for participation in the beginning farmer tax credit program:

(1) Is a resident of the state. If the beginning farmer is a partnership, all partners must be residents of the state. If the beginning farmer is a family farm corporation, all shareholders must be residents of the state. If the beginning farmer is a family farm limited liability company, all members must be residents of the state.

(2) Has sufficient education, training, or experience in farming. If the beginning farmer is a partnership, at least one partner who is not a minor must have sufficient education, training, or experience in farming. If the beginning farmer is a family farm corporation, at least one shareholder who is not a minor must have sufficient education, training, or experience in farming. If the beginning farmer is a family farm limited liability company, at least one member who is not a minor must have sufficient education, training, or experience in farming.

(3) Has access to adequate working capital and production items.

(4) Will materially and substantially participate in farming. If the beginning farmer is a partnership, family farm corporation, or family farm limited liability company, at least one of the partners, shareholders, or members who is not a minor must materially and substantially participate in farming.

(5) Does not own more than 10 percent ownership interest in an agricultural asset included in the agreement.

(6) Is of majority age pursuant to Iowa Code section 599.1 and is legally able to enter into a contract.

~~44.6(1)~~ **44.6(2)** General provisions.

a. A beginning farmer tax credit is allowed only for agricultural assets that are subject to an agricultural lease agreement entered into by an eligible taxpayer and a qualifying beginning farmer participating in the beginning farmer tax credit program established pursuant to 2019 Iowa Acts, House File 768, section 7.

a. b. Term. The term of the credit shall be equal to the term of the agricultural assets transfer agreement, except that any unused credit may be carried forward for a period of ten years. A tax credit in excess of the eligible taxpayer's tax liability for the tax year is not refundable but may be credited to the tax liability for a period set forth in Iowa Code section 16.82, if unused in the tax year the credits are earned. Credits may not be carried back to past tax years. A tax credit shall not be carried back to a tax year prior to the tax year in which the eligible taxpayer redeems the tax credit. The term of the

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credit shall begin in the crop year in which the IAD board approves the award. The maximum term of the credit shall not exceed the term of the agricultural lease agreement.

~~*b. Fees.* The authority may charge reasonable and necessary fees to defray the costs of this program.~~

~~*c. Expiration of lease.* The BFTC eligible applicant will continue to be eligible for the term of the lease. Upon expiration of the lease, both the taxpayer and BFTC eligible applicant must reapply to continue the tax credit.~~

44.6(2) 44.6(3) Application procedures.

a. The authority shall prepare and make available appropriate forms to be used in making application for the tax credit, including forms for both the taxpayer and the ~~BFTC eligible applicant~~ qualified beginning farmer.

b. Each application shall include, but not be limited to, the following:

(1) Taxpayer information: name, and address, email address if available, and social security number, length of the lease, type of lease, and location of the agricultural asset to be leased or tax identification number. ~~In addition, the application shall have attached to it a copy of the lease agreement between the parties.~~ The taxpayer shall also indicate the length of the lease, the type of lease, and the location of the agricultural asset to be leased.

(2) ~~BFTC eligible applicant~~ Qualified beginning farmer information: name and address, email address if available, and location of the asset to be leased. In addition, the application shall have attached to it a copy of the ~~BFTC eligible applicant's most recent~~ qualified beginning farmer's current financial statement (generally prepared one month preceding application submission). The application will also include a background letter on the ~~BFTC eligible applicant~~ qualified beginning farmer documenting to the satisfaction of the authority that the beginning farmer has sufficient education, training, or experience in farming and has access to adequate working capital and production items. This letter may be submitted by one or more of the following: ~~the BFTC eligible applicant~~ qualified beginning farmer, the taxpayer or another third party.

(3) A copy of the agricultural lease agreement that conforms to the requirements set forth in subrule 44.6(4).

c. Complete applications shall be processed in the order they are received by the authority.

d. Authority staff will review applications for completeness and eligibility and make recommendations to the IAD board. The IAD board will review applications and recommendations from authority staff and make recommendations to the authority. Upon review of the recommendations of the IAD board, the authority will approve, defer, or deny each application.

e. Any applicant wishing to appeal a decision of the IAD board can appeal directly to the IAD board.

~~**44.6(3) Execution of an agricultural assets transfer agreement.** In addition to the requirements of rule 265—44.6(16), both the taxpayer and the BFTC eligible applicant shall execute an agricultural assets transfer agreement. The form used shall be a commonly accepted form and signed by all parties.~~

~~**44.6(4) Procedures following tax credit approval.** Either the BFTC eligible applicant or the taxpayer shall immediately notify the authority of any material changes in the agricultural assets transfer agreement. Written approval from the authority is required if the change impacts the amount of the tax credit awarded. The authority shall act upon these changes pursuant to Iowa Code section 16.80.~~

44.6(4) Requirements of an agricultural lease agreement.

a. The agricultural lease agreement must meet the following requirements:

(1) The agreement must include the lease of agricultural land located in this state, including any improvements, and may provide for the rental of agricultural equipment as defined in Iowa Code section 322F.1.

(2) The agreement must include provisions which describe the consideration paid for the agreement in a manner that allows the authority to calculate the value of the lease in order to determine the tax credit amount as provided in 2019 Iowa Acts, House File 768, section 11.

(3) The agreement must be in writing and signed by all parties.

IOWA FINANCE AUTHORITY[265](cont'd)

(4) The agreement must be for at least two years, but not more than five years. The agreement may be renewed by the eligible taxpayer and qualified beginning farmer for a term of at least two years, but not more than five years.

(5) The agreement shall not include a lease or rental of equipment intended as a security.

b. The agreement cannot be assigned, and the agricultural land subject to the agreement shall not be subleased.

c. The agricultural assets shall not be leased or rented at a rate that is substantially higher than the market rate for similar agricultural assets leased or rented within the same community. As used in this paragraph, when referring to an agricultural asset that is cropland, "substantially higher" means not more than 30 percent above the average cash rent paid for cropland rented in the same county according to the most recent cash rent survey for cropland published by a unit of Iowa State University of Science and Technology recognized by the authority.

44.6(5) Changes to an agricultural lease agreement.

a. The underlying lease for agricultural land may only be amended without submitting a new application if any of the following apply:

(1) The terms of the amended lease are more favorable to the qualified beginning farmer, including but not limited to the rent payment being reduced.

(2) A party has changed their name.

(3) The owner of an agricultural asset is changed to the owner's estate or trust upon the eligible taxpayer's death.

b. If the eligible taxpayer and the qualified beginning farmer are amending an agricultural lease agreement but none of the conditions of paragraph 44.6(5) "a" apply, then the eligible taxpayer must submit a new application for a tax credit.

c. If an amendment to an agreement changes the total amount that will be paid to the eligible taxpayer under the agreement, the eligible taxpayer shall notify the authority in a manner and form prescribed by the authority within 30 days of the date the amendment is executed by the parties.

(1) If the amendment will reduce the total amount paid to the eligible taxpayer under the agreement, the authority shall recalculate and reduce the eligible taxpayer's tax credit award under 2019 Iowa Acts, House File 768, section 12.

(2) If the amendment will increase the total amount paid to the eligible taxpayer under the agreement, the tax credit award shall not be increased unless the eligible taxpayer submits an amended application to the authority on the relevant form available on the authority's website and that meets the requirements of 2019 Iowa Acts, House File 768, section 10. If the amended application is approved under 2019 Iowa Acts, House File 768, section 10, the authority may increase the amount of the tax credit award. The increased amount of the tax credit award shall be subject to the aggregate award limitation in 2019 Iowa Acts, House File 768, section 12, for the calendar year in which the increased award is made.

d. Paragraph 44.6(5) "c" does not apply to an amendment to an agreement that requires a new application under paragraph 44.6(5) "b" in order to be valid.

e. An eligible taxpayer or qualified beginning farmer may terminate an agreement as provided in the agreement or by law. The eligible taxpayer must notify the authority of the termination within 30 days of the date of termination in the manner and form prescribed by the authority.

f. Expiration of lease. Prior to the expiration of the lease, the qualified beginning farmer will continue to be eligible for the term of the lease. Upon expiration of the lease, both the taxpayer and qualified beginning farmer must reapply to continue the tax credit.

44.6(6) Procedure for calculating tax credit awards.

a. The amount of the tax credit for a cash rent agreement equals 5 percent of the amount of rent received for each year.

b. For a commodity share agreement, the amount of the tax credit shall equal 15 percent of the gross amount that the eligible taxpayer would receive as a rent payment from the sale of the eligible taxpayer's share of the crop in each harvest year.

IOWA FINANCE AUTHORITY[265](cont'd)

c. To calculate the credit for a commodity share agreement, the authority will use the following assumptions:

(1) Fifty percent of the leased land is allocated to corn and 50 percent of the leased land is allocated to soybeans, unless the lease specifies a different allocation of corn and soybeans. If the lease specifies a different allocation of corn and soybeans, then the leased land will be allocated proportionally, in accordance with the terms of the lease.

(2) For all years of the lease, the prices used for corn and soybeans will be the average prices for the last five years excluding the highest and lowest prices based on the USDA-NASS statewide data calculated at the time the application is approved.

(3) For all years of the lease, the commodity yields used for corn and soybeans will be the past ten-year average per-bushel yields for the same county where the leased land is located excluding the years of highest and lowest per-bushel yields based on the USDA-NASS data calculated at the time the application is approved.

(4) If the lease specifies a crop other than corn and soybeans, the relevant price and yield data from USDA-NASS for that crop will be used.

d. To calculate the credit for a commodity share agreement, the authority will use the following formula: (1/2 acres leased multiplied by corn yield multiplied by corn price multiplied by percentage of owner's share multiplied by .15) plus (1/2 acres leased multiplied by soybean yield multiplied by soybean price multiplied by owner's share multiplied by .15) = the amount of the tax credit. If the lease specifies a different allocation of corn and soybeans, then the leased acres will be in accordance with the terms of the lease.

e. The amount of the tax credit for a flex lease agreement equals the sum of the following amounts:

(1) The portion of the lease that is based on rent will be calculated as a cash rent agreement.

(2) The portion of the lease that is based on crop yield will be calculated as a commodity share agreement.

(3) If the flexible or bonus portion of the lease is based on crop production, the annual yield used to calculate the bonus will be the yield defined in subparagraph 44.6(6) "c"(3). If the annual yield is above the yield needed to trigger the bonus, the taxpayer will be awarded additional tax credits. The formula for calculating the tax credit will be yield above lease bonus trigger multiplied by price multiplied by percentage of owner's share multiplied by 0.15.

(4) For other factors used in a flex lease agreement, the relevant data used will be the past ten-year average per-bushel yield for the same county where the leased land is located excluding the highest and lowest years based on the USDA-NASS data.

f. The amount of the tax credit shall be reduced by the percent ownership interest of the qualifying beginning farmer in the agricultural asset.

ITEM 12. Rescind and reserve rule 265—44.7(16).

[Filed 1/21/20, effective 3/18/20]

[Published 2/12/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.

ARC 4926C

NURSING BOARD[655]

Adopted and Filed

**Rule making related to child abuse and dependent
adult abuse mandatory reporter training**

The Board of Nursing hereby amends Chapter 3, "Licensure to Practice—Registered Nurse/Licensed Practical Nurse," Iowa Administrative Code.

NURSING BOARD[655](cont'd)

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 147.10, 232.69(3)“e,” 235B.16(5)“f” and 272C.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 232.69 and 235B.16.

Purpose and Summary

2019 Iowa Acts, House File 731, amends Iowa Code sections 232.69(3) and 235B.16(5), which govern mandatory child abuse and dependent adult abuse reporter training requirements for certain professionals. This rule making amends Chapter 3 to conform to those changes and requires that nurses who must make reports for child abuse or dependent adult abuse, or both, comply with the training requirements provided in the amended Iowa Code sections 232.69 and 235B.16 every three years.

This rule making also amends Chapter 3 to remove references to wallet cards because the Board no longer issues physical wallet cards to licensees.

This rule making also amends Chapter 3 to clarify that a passing score on the Internet-based Test of English as a Foreign Language (TOEFL®) test is an 84 with a speaking score of at least 26.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 6, 2019, as **ARC 4743C**. A public hearing was held on December 6, 2019, at 9 a.m. at the Board’s office, Suite B, 400 S.W. Eighth Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on January 15, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 655—Chapter 15.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making actions are adopted:

NURSING BOARD[655](cont'd)

ITEM 1. Amend rule ~~655—3.1(17A,147,152,272C)~~, definition of “Fees,” as follows:

“Fees” means those fees collected which are based upon the cost of sustaining the board’s mission to protect the public health, safety and welfare. The nonrefundable fees set by the board are as follows:

1. to 9. No change.

10. For a ~~duplicate or reissued wallet card or original certificate to practice~~ recognizing Iowa licensure as a registered nurse, licensed practical nurse, or advanced registered nurse practitioner, \$20.

11. to 14. No change.

ITEM 2. Amend paragraph ~~3.6(2)“c”~~ as follows:

c. The ability to read, write, speak, and understand the English language as determined by passing the TOEFL® or IELTS™ test. ~~A~~ For the TOEFL® test, a passing score is as follows: 560 for the TOEFL® paper-based test; or 220 for the TOEFL® computer-based test; or 84 for the TOEFL® Internet-based test; ~~and~~ with a speaking score of at least 26. For the IELTS™ test, a passing score is as follows: an overall score of 6.5 and a speaking score of 7.0 ~~for the IELTS™ test~~. An applicant shall be exempt from taking either the TOEFL® or IELTS™ test when all of the following requirements are met: (1) the nursing education was completed in a college, university, or professional school located in Australia, Barbados, Canada (except Quebec), Ireland, Jamaica, New Zealand, South Africa, Trinidad and Tobago, or the United Kingdom; (2) the language of instruction in the nursing program was English; and (3) the language of the textbooks in the nursing program was English.

ITEM 3. Amend paragraph ~~3.7(3)“b”~~ as follows:

b. Mandatory reporter training.

(1) The ~~course~~ course(s) shall be a the curriculum approved provided by the Iowa department of ~~public health~~ human services.

(2) A licensee who regularly examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of ~~two hours of~~ training in child abuse identification and reporting as required by Iowa Code section 232.69(3) “b” in the previous ~~five~~ three years or condition(s) for rule suspension as identified in subparagraph ~~3.7(3)“b”(6)~~ 3.7(3)“b”(5).

(3) A licensee who regularly examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of ~~two hours of~~ training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5) “b” in the previous ~~five~~ three years or condition(s) for rule suspension as identified in subparagraph ~~3.7(3)“b”(6)~~ 3.7(3)“b”(5).

~~(4) A licensee who regularly examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training on abuse identification and reporting in dependent adults and children or condition(s) for rule suspension as identified in subparagraph 3.7(3)“b”(6). Training may be completed through separate courses as identified in subparagraphs 3.7(3)“b”(2) and (3) or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse.~~

~~(5) (4)~~ The licensee shall maintain written documentation for ~~five~~ three years after mandatory training as identified in subparagraphs ~~3.7(3)“b”(2) to (4) and (3)~~, including program date(s), content, duration, and proof of participation.

~~(6) (5)~~ The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

1. Is engaged in active duty in the military service of this state or the United States.

2. Holds a current exemption based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 655—Chapter 5.

~~(7) (6)~~ The board may select licensees for audit of compliance with the requirements in subparagraphs ~~3.7(3)“b”(1) to (6)~~ (5).

NURSING BOARD[655](cont'd)

ITEM 4. Rescind subrule **3.7(6)**.

ITEM 5. Renumber subrule **3.7(7)** as **3.7(6)**.

ITEM 6. Amend renumbered subrule 3.7(6) as follows:

3.7(6) *Reissue of a an original certificate or wallet card*. The board shall reissue a an original certificate or current wallet card recognizing Iowa licensure upon receipt of a written request from the licensee, ~~return of the original document~~ and payment of the fee as specified in rule 655—3.1(17A,147,152,272C). No fee shall be required if an error was made by the board on the original document.

[Filed 1/23/20, effective 3/18/20]

[Published 2/12/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.

ARC 4927C

NURSING BOARD[655]

Adopted and Filed

Rule making related to continuing education and child and dependent adult abuse mandatory reporter training

The Board of Nursing hereby amends Chapter 5, "Continuing Education," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 147.76 and 272C.2(1).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 272C.2.

Purpose and Summary

2019 Iowa Acts, House File 731, amends Iowa Code sections 232.69(3) and 235B.16(5), which govern mandatory child abuse and dependent adult abuse identification and reporting training requirements for certain professionals. This rule making amends Chapter 5 to conform to the new statutory language and clarifies that the proof of completion issued by the Department of Human Services shall satisfy the Board's documentation requirements.

This rule making also clarifies that the subject matter of the licensee's continuing education should be applicable to the licensee's practice area.

This rule making also expands the list of entities that may approve a continuing education offering. Due to the expansion of the list of approving entities, licensees will have access to a broader range of courses and will more easily be able to find courses that are applicable to their practice areas. Additionally, this rule making removes the requirement for Board staff to approve coursework under the special approval process for the added approving entities.

This rule making also eliminates the 90-day response deadline to submit documentation for continuing education make-up credit to reflect internal procedural changes to the process of reviewing incomplete continuing education submissions.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 6, 2019, as **ARC 4744C**. A public hearing was held on December 6, 2019, at 9 a.m. at the

NURSING BOARD[655](cont'd)

Board's office, Suite B, 400 S.W. Eighth Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on January 15, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 655—Chapter 15.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **5.2(4)“a”** as follows:

a. Appropriate subject matter for continuing education credits reflects the educational needs of the nurse learner and the health needs of the consumer. Appropriate subject matter is limited to offerings that are scientifically founded, applicable to the licensee's practice area, and predominantly for professional growth. The following areas are deemed appropriate subject matter for continuing education credit:

- (1) Nursing practice related to health care of patients/clients/families in any setting.
- (2) Professional growth and development related to nursing practice roles with a health care focus.
- (3) Sciences upon which nursing practice, nursing education, or nursing research is based, e.g., nursing theories and biological, physical, behavioral, computer, social, or basic sciences.
- (4) Social, economic, ethical and legal aspects of health care.
- (5) Management of or administration of health care, health care personnel, or health care facilities.
- (6) Education of patients or patients' significant others, students, or personnel in the health care field.

ITEM 2. Amend paragraph **5.2(5)“a”** as follows:

a. Informal offerings approved by the following entities:

- (1) ~~Board-approved providers~~ Iowa board of nursing.
- (2) Other ~~approved providers from~~ state boards of nursing that have mandatory continuing education requirements.
- (3) American Nurses Credentialing Center (ANCC) Commission on Accreditation.
- (4) National League for Nursing (NLN).
- (5) National Federation of Licensed Practical Nurses Continuing Education (NFLPN) and the NFLPN Education Foundation.

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- (6) National Association for Practical Nurse Education and Service, Inc. (NAPNES).
- (7) American Association of Nurse Practitioners (AANP).
- (8) National Association of Pediatric Nurse Practitioners (NAPNAP).
- (9) Accreditation Council for Continuing Medical Education (ACCME).
- (10) American Medical Association (AMA) Continuing Medical Education.
- (11) International Association for Continuing Education and Training (IACET).
- (12) American Psychological Association (APA).
- (13) National Commission for Health Education Credentialing.
- (14) National Board of Public Health Examiners.
- (15) National Commission for Certifying Agencies (NCCA).
- (16) Commission for Case Manager Certification (CCMC).
- (17) National Council for Behavioral Health.

ITEM 3. Amend paragraph **5.2(10)“b”** as follows:

b. The licensee must submit verification of completion of the mandatory reporter training ~~course~~ approved course(s) provided by the Iowa department of public health human services in the previous five three years as specified in 655—subrule 3.7(3). The proof of completion issued by the Iowa department of human services shall satisfy the documentation requirements of subrule 5.2(6).

ITEM 4. Amend paragraph **5.2(10)“d”** as follows:

d. If submitted materials are incomplete or unsatisfactory, the licensee shall be notified. The licensee shall be given the opportunity to submit make-up credit to cover the deficit found through the audit. ~~The deadline for receipt of the documentation for this make-up credit is within 90 days of the board office notification.~~ The licensee may be reaudited during the next renewal period when make-up credit has been accepted. The make-up credit shall not be reused for the current renewal period.

[Filed 1/23/20, effective 3/18/20]

[Published 2/12/20]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.

ARC 4903C

PHARMACY BOARD[657]

Adopted and Filed

Rule making related to expedited partner therapy

The Board of Pharmacy hereby amends Chapter 6, “General Pharmacy Practice,” Chapter 7, “Hospital Pharmacy Practice,” Chapter 8, “Universal Practice Standards,” and Chapter 18, “Centralized Prescription Filling and Processing,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 147.76.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 139A.41.

Purpose and Summary

The amendments allow a pharmacist to fill a non-patient-specific prescription when the prescription is issued pursuant to Iowa Code section 139A.41 for the purpose of expedited partner therapy to treat a sexually transmitted chlamydia or gonorrhea infection in an unnamed partner or partners.

PHARMACY BOARD[657](cont'd)

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 9, 2019, as **ARC 4693C**. The Board received two comments from the public, both in support of the amendments with no suggested changes. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on January 8, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 6.10(1) as follows:

6.10(1) Required information. The label affixed to or on the dispensing container of any prescription drug or device dispensed by a pharmacy pursuant to a prescription drug order shall bear the following:

a. and *b.* No change.

c. ~~Except~~ The name of the patient or, if such drug is prescribed for an animal, the species of the animal and the name of its owner, except as provided in 657—subrule 8.19(7) for epinephrine auto-injectors, or 657—subrule 8.19(8) for opioid antagonists, the name of the patient or, if such drug is prescribed for an animal, the species of the animal and the name of its owner; or 657—subrule 8.19(9) for expedited partner therapy.

d. to *g.* No change.

h. The initials or other unique identification of the dispensing pharmacist, unless the identification of the pharmacist involved in each step of the prescription filling process is electronically documented and retrievable.

ITEM 2. Adopt the following **new** subrule 6.13(4):

6.13(4) Expedited partner therapy. When a pharmacy dispenses a prescription drug pursuant to Iowa Code section 139A.41 and 657—subrule 8.19(9) for expedited partner therapy, a pharmacy is only required to maintain the information about the patient who is known to the pharmacy.

PHARMACY BOARD[657](cont'd)

ITEM 3. Amend rule 657—7.12(124,126,155A) as follows:

657—7.12(124,126,155A) Drugs in the emergency department. Drugs maintained in the emergency department are kept for use by or at the direction of prescribers in the emergency department. Drugs shall be administered or dispensed only to emergency department patients. For the purposes of this rule, “emergency department patient” means a patient who is examined and evaluated in the emergency department and includes the partner or partners of a patient treated pursuant to Iowa Code section 139A.41.

7.12(1) and 7.12(2) No change.

7.12(3) *Drug dispensing.* Only a pharmacist or prescriber may dispense any drugs to an emergency department patient pursuant to the provisions of this rule.

a. No change.

b. *Prescriber responsibility.* Except as provided in subrule 7.12(4), a prescriber who authorizes the dispensing of a prescription drug to an emergency department patient is responsible for the accuracy of the dispensed drug and for the accurate completion of label information pursuant to this paragraph, including when any portion of the dispensing process is delegated to a licensed nurse under the supervision of the prescriber.

(1) Except as provided in subrule 7.12(4), at the time of delivery of the drug the prescriber shall be responsible for ensuring that the dispensing container bears a label with at least the following information:

1. Name and address of the hospital;
2. Date dispensed;
3. Name of prescriber;
4. Name of patient, except when the drug is dispensed for one or more unnamed partners receiving expedited partner therapy pursuant to Iowa Code section 139A.41;
5. Directions for use; and
6. Name, quantity, and strength of drug.

(2) No change.

7.12(4) No change.

ITEM 4. Amend paragraph 8.19(1)“a” as follows:

a. *Written, electronic, or facsimile prescription.* In addition to the electronic prescription application and pharmacy prescription application requirements of this rule, a written, electronic, or facsimile prescription shall include:

(1) No change.

(2) The name and address of the patient except as provided in subrule 8.19(7) for epinephrine auto-injectors, ~~and in~~ subrule 8.19(8) for opioid antagonists, or subrule 8.19(9) for expedited partner therapy.

(3) to (5) No change.

ITEM 5. Adopt the following new subrule 8.19(9):

8.19(9) Expedited partner therapy. Pursuant to Iowa Code section 139A.41, a physician, physician assistant, or advanced registered nurse practitioner may issue a prescription to one or more sexual partners of an infected patient for an oral antibiotic intended to treat a sexually transmitted chlamydia or gonorrhea infection. The prescription shall comply with all requirements of subrule 8.19(1) as applicable to the form of the prescription except that the prescription shall not be required to contain the patient name and address. The prescription shall indicate the antibiotic is being issued for the purpose of expedited partner therapy. Provisions requiring a preexisting patient-prescriber relationship shall not apply to a prescription issued pursuant to this subrule.

ITEM 6. Amend rule 657—8.21(155A) as follows:

657—8.21(155A) Prospective drug use review.

PHARMACY BOARD[657](cont'd)

8.21(1) For purposes of promoting therapeutic appropriateness and ensuring rational drug therapy, a pharmacist shall review the patient record, information obtained from the patient, and each prescription drug or medication order to identify:

1. a. Overutilization or underutilization;
2. b. Therapeutic duplication;
3. c. Drug-disease contraindications;
4. d. Drug-drug interactions;
5. e. Incorrect drug dosage or duration of drug treatment;
6. f. Drug-allergy interactions;
7. g. Clinical abuse/misuse;
8. h. Drug-prescriber contraindications.

Upon recognizing any of the above, the pharmacist shall take appropriate steps to avoid or resolve the problem and shall, if necessary, include consultation with the prescriber. The review and assessment of patient records shall not be delegated to pharmacy technicians or pharmacy support persons but may be delegated to registered pharmacist-interns under the direct supervision of the pharmacist.

8.21(2) A pharmacist shall be exempt from the requirements of subrule 8.21(1) when dispensing a prescription issued to an unnamed patient for an oral antibiotic pursuant to Iowa Code section 139A.41.

ITEM 7. Amend subrule 18.3(4) as follows:

18.3(4) Central fill label requirements. The label affixed to the prescription container filled by a central fill pharmacy on behalf of an originating pharmacy shall include the following:

a. to c. No change.

d. ~~Except~~ The name of the patient or, if such drug is prescribed for an animal, the species of the animal and the name of its owner, except as provided in 657—subrule 8.19(7) for epinephrine auto-injectors, or 657—subrule 8.19(8) for opioid antagonists, the name of the patient or, if such drug is prescribed for an animal, the species of the animal and the name of its owner; or 657—subrule 8.19(9) for expedited partner therapy.

e. to h. No change.

i. The initials or other unique identification of the pharmacist who performed drug use review, unless the identification of the pharmacist involved in each step of the prescription filling process is electronically documented and retrievable.

[Filed 1/13/20, effective 3/18/20]

[Published 2/12/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.

ARC 4904C

PHARMACY BOARD[657]

Adopted and Filed

Rule making related to synthetic cathinones

The Board of Pharmacy hereby amends Chapter 10, "Controlled Substances," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 124.201 and 124.301.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 124.201.

PHARMACY BOARD[657](cont'd)

Purpose and Summary

This rule making temporarily places into Schedule I of the Iowa Uniform Controlled Substances Act six synthetic cathinones in response to scheduling action of the same nature by the U.S. Drug Enforcement Administration.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 9, 2019, as **ARC 4692C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on January 8, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making action is adopted:

Amend subrule 10.39(5) as follows:

10.39(5) Amend Iowa Code section 124.204(6) "i" by adding the following new ~~subparagraph~~ subparagraphs:

(27) 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one. Other names: N-ethylpentylone or ephylone.

(28) N-Ethylhexedrone, its optical, positional, and geometric isomers, salts and salts of isomers. Other name: 2-(ethylamino)-1-phenylhexan-1-one.

(29) alpha-pyrrolidinohexanophenone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: alpha-PHP; alpha-pyrrolidinohexiophenone; 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one.

(30) 4-Methyl-alpha-ethylaminopentiophenone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 4—MEAP; 2-(ethylamino)-1-(4-methylphenyl)pentan-1-one.

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(31) 4'-Methyl-alpha-pyrrolidinohexiophenone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: MPHP; 4'-methyl-alpha-pyrrolidinohexanophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one.

(32) alpha-Pyrrolidinoheptaphenone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: PV8; 1-phenyl-2-(pyrrolidin-1-yl)heptan-1-one.

(33) 4'-Chloro-alpha-pyrrolidinovalerophenone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 4-chloro- α -PVP; 4'-chloro-alpha-pyrrolidinopentiophenone; 1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one.

[Filed 1/13/20, effective 3/18/20]

[Published 2/12/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.

ARC 4905C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rule making related to Iowa care for yourself program

The Public Health Department hereby amends Chapter 8, "Iowa Care for Yourself (IA CFY) Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 135.11(1).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 135.11(1).

Purpose and Summary

These amendments update Chapter 8 to reflect the current practices of the IA CFY Program.

Recognizing the value of screening and early detection of breast and cervical cancer, Congress passed the Breast and Cervical Cancer Mortality Prevention Act of 1990 and in 1993 authorized additional preventative health services to participants in the National Breast and Cervical Cancer Early Detection Program (NBCCEDP). The Breast and Cervical Cancer Early Detection Program (BCCEDP) provides screening for breast and cervical cancer.

In addition, the Well-Integrated Screening and Evaluation for Women Across the Nation Program (WISEWOMAN) provides preventative screening for cardiovascular disease risk factors. Cardiovascular-related lifestyle interventions, tailored to each individual's cardiovascular screening results and the individual's readiness to make lifestyle behavior changes, are also offered to participants. These two programs are funded through cooperative agreements with the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (CDC). Iowa first received CDC funding in 1993 for the BCCEDP and began providing early detection services in 1995. Iowa received funding for WISEWOMAN as a research study in 2001 and started providing limited services in 2003. The current framework of services as a standard program was implemented in 2018.

The rules in Chapter 8 allow the services offered through the BCCEDP and WISEWOMAN to be offered in Iowa under one program, the IA CFY Program. The purposes of the IA CFY Program are to provide breast and cervical cancer screening and diagnostic services and cardiovascular risk factor screening and intervention services to low-income, uninsured, underinsured and underserved individuals, to provide public and professional development, and to support community partnerships enhancing statewide breast and cervical cancer and cardiovascular disease control activities. Chapter

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8 covers agencies designated by contracting county boards of health to provide community-based IA CFY Program services and to receive funds from the Department for that purpose. The designated agencies facilitate the essential screening and diagnostic services consistent with CDC and IA CFY Program guidelines.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 20, 2019, as **ARC 4766C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board of Health on January 8, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's waiver and variance provisions contained in 641—Chapter 178.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making action is adopted:

Amend **641—Chapter 8** as follows:

CHAPTER 8
IOWA CARE FOR YOURSELF (IA CFY) PROGRAM

641—8.1(135) Definitions. For purposes of this chapter, the following definitions apply:

“*Abnormal screen*” means a suspicion of breast or cervical cancer or laboratory values of total cholesterol or blood glucose and average blood pressure reading in the range defined by the CDC according to National Heart, Lung and Blood Institute guidelines.

1. A suspicion of breast cancer includes clinical breast examination findings of: palpable breast mass, breast dimpling, nipple retraction, bloody nipple discharge, palpable lymph nodes around clavicle or axilla, nipple erythema and scaliness, a mammography result of breast imaging reporting and data systems (BI-RADS) category 4 (suspicious abnormality suggesting need for biopsy) or category 5 (highly

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suggestive of malignancy) (ICD-9 ~~793.8~~ 10 R92.0, R92.1, R92.2, R92.8), breast biopsy result of ductal cancer in situ (ICD-10 D05.10, D05.11, D05.12), lobular cancer in situ (ICD-9 ~~233.0~~ 10 D05.00, D05.01, D05.02); or breast or lymph node (or other) biopsy result of breast cancer.

2. Suspicion of cervical cancer is a Pap test result of atypical squamous cells cannot exclude high-grade squamous intraepithelial lesions (ASC-H) (ICD-9 ~~795.02~~ 10 R87.611 or R87.622), atypical glandular cells (AGC) (ICD-9 ~~795.00~~ 10 R87.619 or R87.629), low-grade squamous intraepithelial lesions (LSIL) (ICD-9 ~~622.11 or 795.03~~ 10 R87.612 or R87.622), or high-grade squamous intraepithelial lesions (HSIL) (ICD-9 ~~622.12 or 795.04~~ 10 R87.613 or R87.623), leukoplakia of the cervix (ICD-9 ~~622.2~~ 10 N88.0), or cervical biopsy result of cervical intraepithelial neoplasia II (ICD-10 N.87.1) or III (ICD-9 ~~622.10, 622.11, 622.12, 795.03, or 795.04~~ 10 D06.0, D06.1, D06.7 or D06.9), or cancer in situ (ICD-9 ~~233.1~~ 10 D06.0, D06.1, D06.7 or D06.9).

3. Abnormal value means laboratory values of total cholesterol or blood glucose (HbA1c if diagnosed diabetic) and average blood pressure reading in the range defined by the CDC according to National Heart, Lung and Blood Institute guidelines.

“ACR” or “*American College of Radiology*” means one of the Food and Drug Administration-recognized accreditation bodies for minimum quality standards for personnel, equipment, and record keeping in facilities that provide ~~mammography~~ breast imaging.

“*Advanced registered nurse practitioner*” means an individual licensed to practice under 655—Chapter 7.

“*Alert value*” means laboratory values of total cholesterol, ~~or~~ blood glucose and or average blood pressure reading in the range defined by the CDC according to National Heart, Lung and Blood Institute guidelines.

“BCCPTA” or “*Breast and Cervical Cancer Prevention and Treatment Act of 2000*” means a federal law that provides each state with the option of extending Medicaid eligibility to ~~women~~ individuals who were diagnosed with breast or cervical cancer through the National Breast and Cervical Cancer Early Detection Program.

“*BCCT option of Medicaid*” or “*breast and cervical cancer treatment option of Medicaid*” means the optional program of medical aid designed for ~~women~~ individuals who are unable to afford regular medical service and are diagnosed with breast or cervical precancer or cancer through the National Breast and Cervical Cancer Early Detection Program or through funds from ~~Susan G. Komen for the Cure~~ family planning centers, community health centers, or nonprofit organizations. The individuals who receive screening or services meet eligibility requirements established by the Iowa care for yourself program. The BCCT option of Medicaid is financed by federal and state payment sources and is authorized by Title XIX of the Social Security Act.

“*Benign*” means a noncancerous condition that does not spread to other parts of the body.

“*Biopsy*” means the removal of a sample or an entire abnormality for microscopic examination to diagnose a problem. Examples of a sampling would be a core biopsy or incisional biopsy; an example of entire removal would be an excisional biopsy.

“*BI-RADS*” or “*breast imaging reporting and data systems*” means a standardized reporting system for mammography, breast ultrasound and breast magnetic resonance imaging (MRI) reports.

“*Blood glucose*” means a simple sugar found in the blood that is an important energy source in living organisms and is a component of many carbohydrates.

“*Blood pressure*” means the ~~pressure or tension~~ force of the blood within against the systemic arteries, ~~maintained by the contraction of the left ventricle, the resistance of the arterioles and capillaries, the elasticity of the arterial walls, as well as the viscosity and volume of the blood; expressed as relative to the ambient atmospheric pressure~~ circulatory system. The systolic blood pressure is the force caused when the heart contracts and pushes out the blood. The diastolic blood pressure is when the heart relaxes and fills with blood.

“*BMI*” or “*body-mass index*” means a ~~number calculated from a person’s weight and height~~ index for relating weight to height. BMI provides a reliable indicator of body fatness for most people and is used to screen for weight categories that may lead to health problems.

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“Breast ultrasound” means the use of an imaging technique commonly used to screen for tumors and other breast abnormalities. The breast ultrasound uses high-energy sound waves that are bounced off internal tissues and make echoes to produce a pictorial representation of the internal structure detailed image of the inside of the breast.

“Cancer” means a malignant tumor of potentially unlimited growth of new cells that expand locally by invasion and systemically by metastasis group of diseases involving abnormal cell growth with the potential to invade or spread to other parts of the body.

“Carcinoma in situ” means cell changes in which malignant cells are localized and may press against adjoining tissue but have not penetrated or spread beyond their site of origin a group of abnormal cells found only in the place where they first formed in the body.

“Cardiologist” means a physician licensed to practice under Iowa Code chapter 148 who specializes in the study of the heart and its action and diseases.

“Cardiovascular disease” means a broad term used to describe a range of diseases that affect the heart and, in some cases, blood vessels.

“Cardiovascular disease risk factors” means identifiable factors that make some people more susceptible than others to cardiovascular disease. Cardiovascular disease risk factors include:

1. Obesity.
2. Physical inactivity.
3. High blood pressure.
4. High blood cholesterol.
5. Diabetes.
6. Tobacco use.

Risk factors that cannot be changed are age, gender and family history. The more cardiovascular disease risk factors a person has increases the person’s chance of developing cardiovascular disease.

“Case management” means the IA CFY program component that involves establishing, brokering, and sustaining a system of available clinical and essential support services for all ~~women~~ individuals enrolled in the program.

“CBE” or “clinical breast examination” means complete examination of a ~~woman’s~~ an individual’s breast and axilla with palpation by a health care provider, ~~including examination of the breast in both the upright and supine positions~~ trained to recognize many different types of abnormalities and warning signs.

“CDC” means the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services, a federal agency that conducts and supports health promotion, prevention and preparedness activities in the U.S., with the goal of improving overall public health.

“Cholesterol” means a waxy, fat-like substance made in the liver and other cells and found in certain foods, such as foods from animals, for example, dairy products, eggs and meat. Types of cholesterol are as follows:

1. Low density lipoprotein or LDL, also called “bad” cholesterol. LDL can cause buildup of plaque on the walls of arteries. The more LDL there is in the blood, the greater the risk of ~~heart~~ cardiovascular disease.
2. High density lipoprotein or HDL, also called “good” cholesterol. HDL helps the body get rid of bad cholesterol in the blood. If levels of HDL are low, risk of ~~heart~~ cardiovascular disease increases.
3. Very low density lipoprotein or VLDL. VLDL is similar to LDL cholesterol in that it contains mostly fat and not much protein.
4. Total cholesterol means the sum of the very low, low and high density lipoproteins.

“CLIA” or “Clinical Laboratory Improvement Act Acts of 1988” means the law which established federal regulatory standards that apply to all clinical laboratory testing performed on humans in the U.S. These standards establish minimum quality standards for personnel and quality assurance methods that monitor patient test management and assess quality control, proficiency testing, and personnel handling of laboratory and pathology specimens.

“CLIA-waived tests” means simple laboratory examinations and procedures that are cleared by the federal government for home use; that employ methodologies that are so simple and accurate that

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erroneous results would be negligible; or that pose no reasonable risk of harm to the patient if the test is performed incorrectly.

“CMS” or “Centers for Medicare and Medicaid Services” is a federal agency within the United States Department of Health and Human Services that administers health care programs, including Medicare, Medicaid, the children’s health insurance program (CHIP) and health insurance exchanges, in partnership with state governments.

“Colposcopy” means a medical procedure that allows close examination of the surface of the cervix with a high-powered microscope.

“Community referral” means the act, action or instance of directing a participant to a community resource to direct individuals elsewhere to obtain needed information, mutual support or community resources through help lines or other methods.

“Community resource” means a source of information, service or expertise that is available within the community, including respite care services, health and mental health services and other social services.

“Cooperative agreement” means a signed contract between the department and another party, for example, a health care provider. This contract facility, which allows the department to pay the health care provider facility for providing services to IA CFY program participants.

“CPT” or “current procedural terminology” is a listing of descriptive terms and identifying codes for uniform language to report medical services and procedures performed by qualified health care professionals and allows clinicians, statisticians, politicians, health insurance programs, health planners and others to speak a common language.

“Creditable coverage” means any insurance that pays for medical bills incurred for the screening, diagnosis, or treatment of breast and cervical cancer. Creditable coverage as described by the Health Insurance Portability and Accountability Act of 1996 includes, but is not limited to, group health plans or health insurance coverage consisting of medical care under any hospital or medical service policy, health maintenance organization, Medicare Part A or B, Medicaid, armed forces insurance, or state health risk pool. A woman An individual who has creditable coverage shall not be eligible for coverage under the breast and cervical cancer treatment option of Medicaid.

“Creditable coverage circumstances” means those instances in which a woman an individual has creditable coverage but is not actually covered for treatment of breast or cervical cancer.

1. When there is a preexisting-condition exclusion or when the annual or lifetime limit on benefits has been exhausted, a woman an individual is not considered to have creditable coverage for this treatment.

2. If the woman an individual has limited coverage, such as a high deductible, limited drug coverage, or a limited number of outpatient visits, she the individual is still considered to have creditable coverage and is not eligible for coverage under the breast and cervical cancer treatment option of Medicaid.

3. If the woman an individual has a policy with a limited scope of coverage, such as only dental, vision, or long-term care, or has a policy that covers only a specific disease or illness, she the individual is not considered to have creditable coverage unless the policy provides coverage for breast and cervical cancer treatment.

4. For the purposes of this program, eligibility for Indian Health Services or tribal health care is not considered creditable coverage (according to P.L. 107-121, the Native American Breast and Cervical Cancer Treatment Technical Amendment Act of 2001).

“Cytology” means the scientific study of cells branch of biology that studies the structure and function of a cell.

“Cytopathology” means the scientific study of cells in disease branch of pathology that studies and diagnoses disease on the cellular level.

“Cytotechnologist” means a medical technician trained in the identification of cells and cellular a laboratory professional who studies cells and cellular abnormalities.

“Department” means the Iowa department of public health.

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“DHS” or “department of human services” means the Iowa department of human services, a state agency that provides a wide range of services, including health care coverage for low-income uninsured individuals diagnosed with breast or cervical cancer or precancer and requiring treatment.

“Diagnostic mammography” means a radiological examination performed for appropriate clinical indications, such as breast mass(es), other breast signs or symptoms (spontaneous nipple discharge, skin changes), or special cases, such as a history of breast cancer with breast conservation or augmented breasts.

“Family planning clinic” means a Title X family planning program site dedicated to the provision of family planning and related preventive health services to low-income and underserved populations.

“FDA” or “Food and Drug Administration” means the federal governmental body which certifies that a mammography breast imaging facility meets minimum quality standards for personnel, equipment, and record keeping.

“Follow-up” means the IA CFY program component that involves a system for seeking information about or reviewing an abnormal condition, rescreening, or recall for annual visits.

“Glucose” means a simple sugar that is an important carbohydrate in biology. Cells use glucose as a source of energy and a metabolic intermediate.

“Gynecologist” means a physician licensed to practice under Iowa Code chapter 148 who specializes in diseases of the reproductive organs in women.

“HbA1c” or “glycosylated hemoglobin” means a clinical laboratory test for the purposes of monitoring blood glucose control of a participant diagnosed with diabetes diagnosing diabetes or determining control of diabetes over the past two to three months.

“Health care provider” means any physician, pharmacist, advanced registered nurse practitioner, or physician assistant who is licensed authorized to practice by the state of Iowa; who is performing within the scope of the practice as defined by state law; and who provides care to IA CFY program-enrolled women individuals.

“Heart disease” means a broad term used to describe a range of diseases that affect the heart and, in some cases, blood vessels. The term is often used interchangeably with “cardiovascular disease,” which generally refers to conditions that involve narrowed or blocked blood vessels that can lead to a heart attack, chest pain (angina) or stroke.

“Heart disease risk factors” means identifiable factors that make some people more susceptible than others to heart disease. Heart disease risk factors include:

1. Being overweight.
2. Lack of physical activity.
3. High blood pressure.
4. High blood cholesterol.
5. Diabetes.
6. Cigarette smoking.

Risk factors that cannot be changed are age and family history. The more heart disease risk factors a person has increases the person’s chance of developing heart disease.

“IA BCCEDP” or “Iowa breast and cervical cancer early detection program” means a comprehensive breast and cervical cancer screening program established and funded under Title XV of the federal Public Health Service Act and administered by the Iowa department of public health, with the delegated responsibility of implementation and evaluation from the CDC, Division of Cancer Prevention and Control.

“IA CFY program” or “Iowa care for yourself program” means an integrated comprehensive breast and cervical cancer screening program and cardiovascular risk factor screening and intervention program administered by the Iowa department of public health.

“IA WISEWOMAN” or “Iowa well-integrated screening and evaluation for women across the nation” means a cardiovascular-related risk factor screening and intervention program to provide standard preventive screening services, including blood pressure measurements, cholesterol testing, blood glucose testing, and lifestyle interventions that target poor nutrition, physical inactivity, and

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tobacco use. The program is authorized by the federal government and administered by the CDC to help reduce deaths and disability from ~~heart~~ cardiovascular disease and stroke.

"ICD-9 ICD-10" or *"International Classification of Disease, 9th 10th edition"* means a standardized classification of diseases, injuries, and reasons of death, by cause and anatomic localization, which is systematically put into a number of up to ~~six~~ seven digits and which allows clinicians, statisticians, politicians, health planners and others to speak a common language, both in the United States and internationally.

"Infrastructure" means the basic framework of sufficient staff and adequate support systems to plan, implement, and evaluate the components of the IA CFY program.

"In need of treatment" means that a medical or surgical intervention is required because of an abnormal finding of breast or cervical cancer or precancer that was determined as a result of a screening or diagnostic procedure for breast or cervical cancer/precancer ~~under the NBCCEDP~~.

"Intervention" means services that promote a ~~heart-healthy~~ cardiovascular-healthy diet and physical activity and that are based on screening results, which include blood pressure, cholesterol, blood glucose, weight, height, personal medical history, family medical history, and health behavior and readiness-to-change assessments.

"MATT MAB" or *"medical advisory ~~task force~~ board"* means ~~an advisory board~~ a body that may be utilized by the IA CFY program to offer knowledge and experience as related to the fields of expertise of the members of the ~~task force~~ board. Duties of the MATT MAB may include, but are not limited to, the following:

1. Reviewing and making recommendations for clinical service expansion.
2. Reviewing program-developed clinical protocols.
3. Providing recommendations related to other clinical and participant-related issues.
4. Providing input related to quality assurance issues.
5. Reviewing program screening and diagnostic data.

"MDEs" or *"minimum data elements"* means a set of standardized data elements used to collect ~~demographic and clinical information on women whose screening or diagnosis was paid for with IA CFY program funds~~. MDEs were developed by the CDC, Division of Cancer Prevention and Control, to ensure that consistent and complete information is collected on women whose screening or diagnosis was paid for with IA CFY program funding patient-level screening records on individuals served through the NBCCEDP in order to evaluate whether programs are meeting clinical standards and programmatic priorities.

"Medicaid" means a health care program that assists low-income families or individuals in paying for doctor visits, hospital stays, long-term medical care, custodial care costs and more; the program of medical aid designed for those unable to afford regular medical service, is financed by federal and state payment sources, and authorized by Title XIX of the Social Security Act and administered by the Iowa department of human services.

"Medicare" means the program of federal payment source for health benefits, especially for the aged, which is authorized by Title XVIII of the Social Security Act.

"NBCCEDP" or *"National Breast and Cervical Cancer Early Detection Program"* means a program established with the passage of the Breast and Cervical Cancer Mortality Prevention Act of 1990 (Public Law 101-354). The law authorizes the CDC to establish a program of grants to states, tribes, and territories for ~~the purpose of increasing the early detection of breast and cervical cancer, particularly among low-income, uninsured, and underserved women~~ individuals.

"Nonprofit organization" means a group organized for purposes other than generating profit and in which no part of the organization's income is distributed to its members, directors, or officers, except under limited circumstances.

"Oncologist" means a physician licensed to practice under Iowa Code chapter 148 who is a specialist in treating or studying the physical, chemical, and biologic properties and features of neoplasms, including causation, pathogenesis, and treatment.

"Outreach" means the IA CFY program component that involves recruiting targeted populations or ~~women~~ individuals who never or rarely utilize preventive health services.

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"Pap test" means the Papanicolaou screening test that collects cells from the cervix for examination under a microscope. The Pap test can detect abnormal cells or precancerous cells before cancer develops.

"Pathologist" means a physician licensed to practice under Iowa Code chapter 148 who is a specialist in identifying diseases by studying cells and tissues under a microscope.

"Patient navigation" means an IA CFY program component that assists individuals in overcoming health care system barriers and facilitates timely access to quality screening and diagnostics as well as initiation of breast or cervical cancer treatment services.

"Pharmacist" means an individual licensed to practice under Iowa Code chapter 155A.

"Physician" means an individual licensed to practice under Iowa Code chapter 148.

"Physician assistant" means an individual licensed to practice under Iowa Code chapter 148C.

"Precancerous" means a condition ~~that may become, or is likely to become,~~ or lesion involving abnormal cells that are associated with an increased risk of developing into cancer.

"Program and fiscal management" means the IA CFY program component that includes planning, organizing, directing, coordinating, managing, budgeting for, and evaluating program activities.

"Quitline Iowa" means a toll-free, statewide smoking cessation telephone counseling hotline through which trained counselors provide ~~ea~~ler assistance in making an individualized tobacco use quit plan and provide ongoing support through optional follow-up calls.

"Radiologist" means a physician licensed to practice under Iowa Code chapter 148 who specializes in ~~creating and interpreting pictures of areas inside the body. The pictures are produced with the branch of medicine that diagnoses injuries and diseases using medical imaging procedures such as X-rays, sound waves, or other types of energy.~~

"Rarely or never been screened" means, as defined for the NBCCEDP, that ~~a woman~~ an individual has not had cervical cancer screening within the last five years or has never been screened for cervical cancer.

"Recruitment" means the IA CFY program component that involves enrolling targeted populations or ~~women~~ individuals for preventive health services.

"Referral" means the IA CFY program component that involves directing ~~women~~ individuals with ~~abnormal~~ abnormal/alert screening results to appropriate resources for follow-up action.

"Screening mammography" means the use of X-ray of the breasts of asymptomatic ~~women~~ individuals in an attempt to detect abnormal lesions of the breast when they are small, nonpalpable, and confined to the breast.

"Service delivery" means providing, either directly or through contractual arrangements, comprehensive breast and cervical cancer screening and ~~heart~~ cardiovascular disease and stroke risk factor screening, diagnosis, and treatment services through tracking of screening intervals, timeliness of diagnosis, and timeliness of treatment of ~~women~~ individuals.

"Surgeon" means a physician licensed to practice under Iowa Code chapter 148 who treats disease, injury, or deformity by physical operation or manipulation.

"Surveillance" means the IA CFY program component that involves the systematic collection, analysis, and interpretation of health data.

~~*"Susan G. Komen for the Cure"* means an international organization with a network of volunteers working through local affiliates and Komen Race for the Cure® events to eradicate breast cancer as a life-threatening disease by advancing research, education, screening, and treatment.~~

~~*"TBS" or "the Bethesda system"* means a system that was developed to provide uniform diagnostic terminology for reporting cervical or vaginal cytologic findings to facilitate communication between the laboratory and the clinician diagnoses, used for reporting Pap test results.~~

"Triglycerides" means a type of fat that is carried in the blood by very low density lipoproteins. Excess calories, alcohol, or sugar in the body are converted into triglycerides and stored in fat cells throughout the body.

~~*"WISEWOMAN" or "Well-Integrated Screening and Evaluation for Women Across the Nation"* means a national program that offers blood pressure, diabetes, and cholesterol risk factor screening, lifestyle intervention, and referral services in an effort to prevent cardiovascular disease.~~

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641—8.2(135) Components of the Iowa care for yourself (IA CFY) program. The IA CFY program shall include the following key components:

8.2(1) Program and fiscal management shall be conducted by ensuring strategic planning, implementation, coordination, integration, and evaluation of all programmatic activities and administrative systems, as well as the development of key communication channels and oversight mechanisms to aid in these processes. Program management shall ensure that infrastructure adequately supports service delivery.

8.2(2) Service delivery of specific and appropriate clinical procedures to detect breast and cervical abnormalities and ~~heart~~ cardiovascular disease or stroke risk factors for ~~women~~ individuals enrolled in the IA CFY program shall be directly provided or provided through contractual arrangements.

a. The IA CFY program shall cover breast and cervical cancer screening and diagnostic services including, but not limited to, the following when those services are provided by a participating health care provider who has a cooperative agreement with the ~~IA CFY program~~ Iowa department of public health. Payment shall be based on Medicare Part B participating-provider rates as released annually at the beginning of each calendar year.

(1) Physical examinations that include two ~~recorded~~ blood pressures pressure measurements in addition to one or more of the following screening services: CBE, pelvic examination, or Pap test;

(2) Height and weight measurements, when provided in conjunction with one or more of the screening services listed in subparagraph 8.2(2)“a”(1) above;

(3) Mammography (screening and diagnostic);

(4) Breast ultrasound, when used as an adjunct to mammography;

(5) Fine-needle aspiration of breast cysts;

(6) Breast biopsies, excisional and nonexcisional (physician charges only; hospital charges are not covered);

(7) Colposcopy of the cervix, with or without biopsy;

(8) Surgical consultations for diagnosis of breast and cervical cancer;

(9) Pathology charges for breast and cervical biopsies;

(10) Anesthesia for ~~breast biopsies~~ program-approved CPT and ICD-10 codes (health care provider charges only; hospital charges and supplies are not covered).

b. Breast and cervical cancer-related services not covered by the IA CFY program include, but are not limited to, the following:

(1) Services not related to breast or cervical cancer screening or diagnosis;

(2) Treatment procedures and services;

(3) Services provided by nonparticipating providers;

(4) Hospital charges for breast biopsies and anesthesia;

(5) Inpatient services.

c. The IA CFY program shall cover cardiovascular disease-related services for ~~those select~~ participants enrolled in the IA CFY program for WISEWOMAN services for whom at least one breast or cervical cancer screening service was paid for using federal funds. Cardiovascular disease-related services shall include, but not be limited to, the following when ~~those services are provided by a~~ participating health care provider who that has a cooperative agreement with the IA CFY program department provides those services. Payment shall be based on Medicare Part B participating-provider rates as released annually at the beginning of each calendar year.

(1) Physical examinations that include two ~~recorded~~ blood pressures pressure measurements;

(2) Height and weight measurements;

(3) Fasting lipid panel that includes total cholesterol, HDL cholesterol, LDL cholesterol, triglycerides; and

(4) Diabetes screening:

1. For a ~~nondiagnosed diabetic~~ an individual who has not been diagnosed with diabetes, fasting blood glucose; and

2. For a ~~diagnosed diabetic~~ an individual who has been diagnosed with diabetes, glycosylated hemoglobin (HbA1c).

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d. Cardiovascular disease-related services not covered by the IA CFY program include, but are not limited to, the following:

- (1) A follow-up diagnostic visit to a health care provider if one or more screening values are in the CDC-defined abnormal value range;
- (2) Repeat laboratory testing;
- (3) Any additional testing;
- (4) Medication; and
- (5) Treatment.

e. IA CFY program cardiovascular intervention shall be conducted as a component of the program for all ~~women~~ individuals who are eligible and enrolled to receive ~~IA CFY program~~ WISEWOMAN services.

f. A health care provider ~~who~~ that has a cooperative agreement with the IA CFY program shall be subject to the following:

(1) The health care provider agrees that reimbursement of procedures and services provided shall not exceed the amount ~~that would be~~ paid under Medicare Part B participating-provider rates as released annually at the beginning of each calendar year.

(2) A mammography health care provider shall ensure that the provider's facility has current FDA certification and ACR or state of Iowa accreditation and is a Medicare and Medicaid-approved facility utilizing BI-RADS and following ACR guidelines for mammography report content.

(3) A board-certified radiologist must be immediately available to determine selection of views and readings when a diagnostic mammogram is performed.

(4) The health care provider shall submit obtained cytology and pathology specimens to a CLIA-certified laboratory for processing. The laboratory shall provide cytological reading and analysis of cervical and vaginal Pap tests by certified/registered cytotechnologists. Cytology (Pap) ~~tests~~ test results shall be reported using current TBS terminology. The laboratory shall provide board-certified pathologists or experienced certified cytotechnologists to rescreen all analyses and readings of cervical and breast biopsies.

(5) The health care provider shall practice according to the current standards of medical care for breast and cervical cancer early detection, diagnosis, and treatment.

(6) Service delivery may be provided in a variety of settings. Service delivery, however, ~~must,~~ include:

1. Providing screening services for specific geographic areas;
2. Providing a point of contact for scheduling appointments;
3. Providing age and income eligibility screening;
4. Providing breast and cervical cancer screening and ~~heart~~ cardiovascular disease and stroke screening to eligible ~~women~~ individuals;
5. Providing referral and follow-up for ~~women~~ individuals who have alert-value cardiovascular disease screening results;
6. Providing the required reporting system for screening and follow-up activities;
7. Providing population-based education, outreach, and recruitment activities;
8. Providing IA CFY program cardiovascular intervention as a component of the program for all ~~women~~ individuals eligible for and enrolled to receive IA ~~CFY~~ WISEWOMAN program services; and
9. Submitting data within 60 days of service date to establish screening documentation.

(7) The health care provider shall ensure compliance with this chapter and other terms and conditions included in the cooperative agreement.

8.2(3) Referral, tracking, and follow-up utilizing a data system to monitor each enrolled ~~woman's~~ individual's receipt of screening/rescreening, diagnostic, and treatment procedures shall be conducted by the IA CFY program and contracted county board of health designated agency staff.

a. The enrolled ~~woman~~ individual shall be notified by contracted county board of health designated agency staff of the results of the service, whether the results are normal, benign, or abnormal.

b. The data system shall provide tracking of appropriate and timely clinical services following an abnormal test result or diagnosis of cancer.

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c. If the enrolled ~~woman~~ individual has an abnormal Pap test or breast screening or an alert-value ~~heart~~ cardiovascular disease risk factor, the health care provider shall provide to the ~~woman~~ individual with a comprehensive referral directing her to appropriate ~~additional~~ diagnostic or treatment services.

d. The comprehensive referral shall be written. Follow-up shall be conducted to determine whether services were timely, completed, or met.

8.2(4) The IA CFY program and contracted county board of health designated agency staff shall provide case management and shall assist participants whose cancer or precancerous breast or cervical condition was diagnosed through the program in obtaining needed treatment services.

8.2(5) IA CFY program staff shall use quality assurance and improvement techniques including use of established standards, systems, policies and procedures to monitor, assess and identify practical methods for improvement of the program and its components.

a. Quality assurance tools shall include utilizing FDA and ACR minimum standards for mammography facilities and CLIA minimum standards for cytopathology and pathology laboratories.

b. Quality assurance measures shall contribute to the identification of corrective actions to be taken to remedy problems found as a result of investigating quality of care.

8.2(6) Professional development shall be provided by the IA CFY program and contracted county board of health designated agency staff through a variety of channels and activities that enable professionals to perform their jobs competently, identify needs and resources, and contribute to ensuring that health care delivery systems provide positive clinical outcomes.

8.2(7) Using a variety of methods and strategies to reach priority populations, the IA CFY program and contracted county board of health designated agency staff shall provide population-based public education and recruitment that involve the systematic design and delivery of clear and consistent messages about breast and cervical cancer and the benefits of early detection. Outreach activities should focus on women individuals who have never or rarely been screened and should work toward the removal of barriers to care (i.e., the need for child care, respite care, interpreter services and transportation) through collaborative activities with other community organizations.

8.2(8) The IA CFY program may develop coalitions and partnerships to bring together groups and individuals that establish a reciprocal agreement for sharing resources and responsibilities to achieve the common goal of reducing breast and cervical cancer mortality and ~~heart~~ cardiovascular disease and stroke mortality.

8.2(9) The IA CFY program shall conduct surveillance utilizing continuous, proactive, timely and systematic collection, analysis, interpretation and dissemination of breast and cervical cancer screening and ~~heart~~ cardiovascular disease and stroke risk factor behaviors and incidence, prevalence, survival, and mortality rates. Epidemiological studies shall be conducted utilizing MDEs and other data sources to establish trends of disease, diagnosis, treatment, and research needs. Program planning, implementation, and evaluation shall be based on the epidemiological evidence.

8.2(10) Evaluation of the program shall be conducted through systematic documentation of the operations and outcomes of the program, compared to a set of explicit or implicit standards or objectives.

641—8.3(135) Participant eligibility criteria. An applicant for the IA CFY program must satisfy the criteria outlined in this rule. If an applicant does not meet these criteria, the applicant shall be provided information by contracted county board of health designated agency staff regarding IowaCare Iowa health and wellness, health insurance marketplace, free care, or sliding-fee clinics available in the area in which the applicant lives.

8.3(1) Age. An applicant for the IA CFY program must satisfy ~~only~~ one of these criteria to participate in the IA CFY program.

a. Women If the applicant is 50 through 64 years of age, the program's priority population, shall the applicant may receive annual breast and cervical (if appropriate) cancer screening.

b. Women If the applicant is 40 through 64 years of age shall, the applicant may receive cardiovascular risk factor screening in addition to breast and cervical cancer screening services.

c. Women If the applicant is 40 through 49 years of age shall, the applicant may receive annual breast and cervical (if appropriate) cancer screening.

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~~d. Women~~ If the applicant is under 40 years of age, ~~if and~~ symptomatic for breast cancer, ~~shall~~ the applicant may receive breast and cervical cancer screening services based upon funding availability. EXCEPTION: This categorized group is not eligible for cardiovascular services under this program.

~~e. Women~~ If the applicant is 65 years of age and older ~~shall~~ and the applicant does not have Medicare Part B coverage, the applicant may be eligible to receive annual breast and cervical (if appropriate) cancer screening ~~if they do not have Medicare Part B coverage.~~ EXCEPTION: This categorized group is not eligible for cardiovascular services under this program.

8.3(2) Income.

a. IA CFY program income guidelines are based upon 250 percent of the federal poverty level, which is set annually by CMS. New IA CFY program income guidelines will be adjusted following any change in CMS guidelines.

b. Self-declaration of income may be accepted.

c. Eligibility shall be based on net income for the household.

d. Assets shall not affect income status and shall not be counted when eligibility under the IA CFY program is determined.

8.3(3) Insurance.

a. The IA CFY program shall determine ~~a woman~~ an individual to be uninsured if the ~~woman~~ individual does not have health insurance coverage.

b. The IA CFY program shall determine ~~a woman~~ an individual to be underinsured if the ~~woman~~ individual has health insurance with unreasonably high copayments, deductibles, or coinsurance or the insurance does not cover IA CFY program-covered services.

c. ~~Women~~ Individuals who have creditable coverage, Medicaid, or Medicare Part B are ~~not~~ eligible if declaring a barrier to services. EXCEPTIONS: IowaCare, Medicaid with spenddown, Iowa family planning network.

8.3(4) Residency.

a. ~~A woman~~ An individual must be a resident of Iowa or of a state that shall enroll ~~a woman~~ an individual in the BCCT option of Medicaid if the ~~woman~~ individual is screened or diagnosed by the IA CFY program.

b. ~~A woman~~ An individual who is a resident of a state that does not accept ~~women~~ individuals into the BCCT option of Medicaid and who chooses to continue to receive services in the IA CFY program must be informed that ~~she~~ the individual may not be able to have ~~her~~ the individual's treatment paid for by the BCCT option of Medicaid if ~~she~~ the individual does not receive services in ~~her~~ the individual's state of residence.

c. Proof and length of residency in Iowa are not required. EXCEPTION: An individual is not eligible for cardiovascular services if the individual is not a resident of Iowa.

8.3(5) Ineligible. The IA CFY program does not provide coverage for:

a. Men.

~~b. Women with Medicare Part B coverage.~~

~~e. b.~~ Women Individuals 39 years of age and younger unless they have symptoms of breast cancer.

641—8.4(135) Participant application procedures for IA CFY program services.

8.4(1) Enrollment. After ~~a woman~~ an individual is determined eligible for services:

a. The ~~woman~~ individual must complete, sign, and return a consent and release form to the IA CFY program. The date on the signed form shall be the participant's enrollment date.

b. Upon enrollment, the participant must select an IA CFY program health care ~~provider and~~ facility.

c. The individual is eligible for services for 12 months from the enrollment date, subject to restrictions in program coverage as provided in rule 641—8.5(135).

~~e. d.~~ If a participant is unable to access a particular health care provider due to unavailability of appointments or if a participant requests to change to another health care provider, designated agency staff shall assist the participant in choosing another IA CFY program health care provider who is available ~~in the participant's area.~~

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8.4(2) Reenrollment.

- a. A participant's continued eligibility for program coverage shall be determined annually.
- b. No more than 45 days prior to the end of the 12-month coverage period, the IA CFY program shall contact the participant to see if ~~she~~ the participant wishes to reenroll in the program.
- c. If a participant wishes to reenroll, ~~she~~ the participant must complete, sign and return a consent and release form before receiving any further services.

8.4(3) Termination of enrollment. The IA CFY program shall terminate a participant's enrollment if the participant:

- a. Requests termination from the program;
- b. No longer meets the criteria set forth in rule 641—8.3(135);
- c. Does not return a signed IA CFY program consent and release form; or
- d. Refuses to receive screening and diagnostic services through an IA CFY program health care provider.

641—8.5(135) Priority for program expenditures.

8.5(1) In the event the IA CFY program director determines ~~that~~ there are inadequate funds to meet ~~participants'~~ program needs, either attributable to a reduction in federal funding from the CDC or to a projected enrollment of ~~women~~ individuals in excess of anticipated enrollment, the program director may restrict new applicants' participation in the IA CFY program as follows:

- a. First priority shall be given to ~~women~~ individuals 50 through 64 years of age.
- b. Second priority shall be given to ~~women~~ 40 through 49 individuals under 50 years of age who are symptomatic.
- c. Third priority shall be given to ~~women~~ individuals 40 through 49 years of age who are asymptomatic.
- d. Fourth priority shall be given to ~~women~~ individuals 65 years of age and older who do not have Medicare Part B coverage.

8.5(2) In the event that the financial demand abates, the program director shall withdraw the financial shortfall determination, at which time ~~women~~ individuals shall be eligible for program services in accordance with rule 641—8.3(135).

641—8.6(135) Right to appeal. If an individual disagrees with or is dissatisfied with program eligibility, the covered-service determination, or the decision of the program, the individual has the right to appeal the decision or action.

8.6(1) The appeal shall be in writing and shall be submitted, within ten working days of the decision or action, to the designated agency personnel with whom the individual has been working.

8.6(2) The designated agency staff shall contact a state IA CFY program staff person and shall provide the information regarding the appeal to the staff person.

8.6(3) State IA CFY program staff shall confer with the bureau chief supervising the IA CFY program and provide a decision to the designated agency staff within five business days. A decision made by state IA CFY program staff shall be delivered by telephone, if possible, to the individual making the appeal and shall be followed by a written notification of the decision. The decision of state IA CFY program staff shall be considered a final agency decision in accordance with Iowa Code chapter 17A.

641—8.7(135) Verification for the breast or cervical cancer treatment (BCCT) option of Medicaid. The Iowa department of public health and the Iowa department of human services have coordinated to develop procedures for ~~women~~ individuals to access Medicaid coverage for treatment of breast or cervical cancer or precancerous conditions.

8.7(1) Before referring ~~a woman~~ an individual to ~~her~~ the individual's county of residence's local office of the department of human services, a contracted county board of health designated agency staff member shall document the following regarding the ~~woman~~ individual:

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a. The ~~woman is currently~~ individual was enrolled in the IA CFY program. ~~To be considered enrolled in the program, the woman must meet program age guidelines, have when diagnosed;~~ has had at least one of the basic screening services (Pap test, screening mammogram, ~~or CBE or MRI~~) or diagnostic procedures paid for by the IA CFY program or with Susan G. Komen for the Cure funds; from family planning centers, community health centers, or nonprofit organizations; and must be in need of treatment for breast or cervical cancer or precancerous conditions; or

b. The ~~woman~~ individual was enrolled in NBCCEDP and has moved to Iowa. To be considered enrolled in NBCCEDP, the ~~woman~~ individual must meet the Iowa program age guidelines; have had at least one of the basic screening services (Pap test, screening mammogram, ~~or CBE or MRI~~) or a diagnostic procedure paid for by the NBCCEDP or with Susan G. Komen for the Cure funds; from family planning centers, community health centers, or nonprofit organizations; and be in need of treatment for breast or cervical cancer or precancerous conditions; and

c. The ~~woman~~ individual has creditable coverage circumstances or has no creditable coverage for breast or cervical cancer treatment.

8.7(2) The BCCT option of Medicaid is administered by the Iowa department of human services under ~~441 Iowa Administrative Code Chapter 75 441—Chapter 75~~, “Conditions of Eligibility.”

These rules are intended to implement Iowa Code sections 135.11(1) and 135.39 and 42 U.S.C. Section 300k, as amended.

[Filed 1/13/20, effective 3/18/20]

[Published 2/12/20]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.

ARC 4906C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rule making related to lead-based paint

The Public Health Department hereby amends Chapter 70, “Lead-Based Paint Activities,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 135.105A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 135.105A.

Purpose and Summary

These amendments consist of several changes grouped into the following categories: dust-lead hazard adjustment, deletion of and addition to definitions, deletion of rules that the program no longer deems necessary, and clarification of training requirements.

The United States Environmental Protection Agency (EPA) recently adjusted the dust-lead hazard threshold for floors and window sills. The changes in this area were driven by recent evidence and science in the field, and were made effective in January 2020. Iowa is an authorized state for lead-based paint activities and must be in compliance with EPA regulations.

The other changes are related to definitions, training provider requirements/course, and outdated program rules and language. These changes are needed to reflect current practices and requirements.

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Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 20, 2019, as **ARC 4773C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board of Health on January 8, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's waiver and variance provisions contained in 641—Chapter 178.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend rule **641—70.2(135)**, definitions of “Chewable surface,” “Clearance level” and “Dust-lead hazard,” as follows:

“*Chewable surface*” means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. Surfaces can be considered chewable even if there is no evidence of teeth marks.

“*Clearance level*” means the value at which the amount of lead in dust on a surface following completion of interim controls, lead abatement, paint stabilization, standard treatments, ongoing lead-based paint maintenance, rehabilitation, or renovation is a dust-lead hazard and fails clearance testing. The clearance level for a single-surface dust sample from a floor is greater than or equal to ~~40~~ 10 micrograms per square foot. The clearance level for a single-surface dust sample from an interior windowsill is greater than or equal to ~~250~~ 100 micrograms per square foot. The clearance level for a single-surface dust sample from a window trough is greater than or equal to 400 micrograms per square foot.

“*Dust-lead hazard*” means surface dust in residential dwellings or child-occupied facilities that contains a mass-per-area concentration of lead greater than or equal to ~~40~~ 10 micrograms per square foot on floors, ~~250~~ 100 micrograms per square foot on interior windowsills, and 400 micrograms per square foot on window troughs based on wipe samples. A dust-lead hazard is present in a residential dwelling or child-occupied facility when the weighted arithmetic mean lead loading for all single-surface

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or composite samples of floors and interior windowsills is greater than or equal to ~~40~~ 10 micrograms per square foot on floors, ~~250~~ 100 micrograms per square foot on interior windowsills, and 400 micrograms per square foot on ~~widow~~ window troughs based on wipe samples. A dust-lead hazard is present on floors, interior windowsills, or window troughs in an unsampled residential dwelling in a multifamily dwelling if a dust-lead hazard is present on floors, interior windowsills, or window troughs, respectively, in at least one sampled residential unit on the property. A dust-lead hazard is present on floors, interior windowsills, or window troughs in an unsampled common area in a multifamily dwelling if a dust-lead hazard is present on floors, interior windowsills, or window troughs, respectively, in at least one sampled common area in the same common area group on the property.

ITEM 2. Adopt the following new definition of “Public housing agency” in rule ~~641—70.2(135)~~:

“Public housing agency” or “PHA” means a state, county, municipality, or other governmental entity or public body which is authorized to engage in or assist in the development or operation of low-income housing. A PHA must be approved by the U.S. Department of Housing and Urban Development (HUD).

ITEM 3. Rescind the definitions of “Certified elevated blood lead (EBL) inspection agency” and “Elevated blood lead (EBL) inspection agency” in rule ~~641—70.2(135)~~.

ITEM 4. Amend rule ~~641—70.3(135)~~ as follows:

~~641—70.3(135) Lead professional certification.~~ A person or a firm shall not conduct lead abatement, renovation, clearance testing after lead abatement, lead-free inspections, lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, visual risk assessments, clearance testing after renovation, or interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR Part 35 unless the person or firm has been certified by the department in the appropriate discipline. However, persons who perform these activities within residential dwellings that they own are not required to be certified, unless the residential dwelling is occupied by a person other than the owner or a member of the owner’s immediate family while these activities are being performed. In addition, elevated blood lead (EBL) inspections shall be conducted only by certified elevated blood lead (EBL) inspector/risk assessors employed by or under contract with ~~a certified elevated blood lead (EBL) inspection agency~~ the department, a local board of health, or a public housing agency. In addition, persons who perform renovation under the supervision of a certified lead-safe renovator, certified lead abatement contractor, or certified lead abatement worker and who have completed on-the-job training are not required to be certified. However, on-the-job training does not meet the training requirement for work conducted pursuant to 24 CFR Part 35. Lead professionals and firms shall not state that they have been certified by the state of Iowa unless they have met the requirements of ~~641—70.5(135)~~ and been issued a current certificate by the department. ~~Elevated blood lead (EBL) inspection agencies must be certified by the department. Elevated blood lead (EBL) inspection agencies shall not state that they have been certified by the state of Iowa unless they have met the requirements of 641—70.5(135) and been issued a current certificate by the department.~~

ITEM 5. Amend paragraphs ~~70.4(1)“p”~~ and “q” as follows:

p. The training program shall notify the department ~~in writing~~ within 30 days of changing the address specified on its training program approval application or transferring the records from that address.

q. A training program shall notify the department ~~in writing~~ at least 7 days in advance of offering an approved course. The notification shall include the date(s), time(s), and location(s) where the approved course will be held. A training program shall notify the department at least 24 hours in advance of canceling an approved course.

ITEM 6. Adopt the following new subrule 70.4(5):

70.4(5) To be approved for the training of elevated blood lead (EBL) inspector/risk assessors, a course must be at least eight training hours with a minimum of two hours devoted to hands-on activities

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and shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

- a. Role and responsibility of an elevated blood lead (EBL) inspector/risk assessor.
- b. Background information on childhood lead poisoning prevention programs in Iowa.
- c. EBL lead inspection protocol described in this chapter and the EBL inspection protocol recommended by HUD.
- d. Environmental and medical case management of lead-poisoned children.
- e. Health effects of lead poisoning including an in-depth review of the scientific studies demonstrating the health effects of lead poisoning.
- f. Chelation therapy including at what levels it is recommended and when it might not be needed.
- g. Risk of childhood lead exposure from adult occupations or hobbies.
- h. Case scenarios.*
- i. The course shall conclude with a course test. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course. The student may take the course test no more than three times within six months of completing the course. If an individual does not pass the course test within six months of completing the course, the individual must retake the appropriate approved course.
- j. The instructor shall provide an introduction of the online certification system used by the department. The instructor shall advise each student on the procedures needed to apply to the department for certification and provide information to each student on the procedures needed for taking the state certification examination. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.
- k. All of the course materials must be provided to each student. The materials may be provided electronically unless an individual student requests that the materials be provided on paper.

ITEM 7. Amend paragraph **70.5(1)“d”** as follows:

d. If wishing to become a certified elevated blood lead (EBL) inspector/risk assessor, documentation of successful completion of ~~8 hours of training from the department's childhood lead poisoning prevention program. This training shall cover the roles and responsibilities of an elevated blood lead (EBL) inspector/risk assessor and the environmental and medical case management of elevated blood lead (EBL) children~~ an eight-hour elevated blood lead (EBL) inspector/risk assessor course.

ITEM 8. Rescind and reserve subrule **70.5(5)**.

ITEM 9. Amend subrule 70.6(3), introductory paragraph, as follows:

70.6(3) A certified elevated blood lead (EBL) inspector/risk assessor must conduct elevated blood lead (EBL) inspections according to the following standards. Elevated blood lead (EBL) inspections shall be conducted only by a certified elevated blood lead (EBL) inspector/risk assessor. This protocol may be used for children who do not meet the definition of an EBL child as defined in this chapter as long as the inspection is authorized by the department, a local board of health, or a public housing agency.

ITEM 10. Amend subrule 70.6(7) as follows:

70.6(7) A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician must conduct visual risk assessments according to the following standards. Provided that all of the following standards are met, a certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician may remotely conduct a visual risk assessment using technology that allows for adequate visual evaluation of the painted surfaces. Visual risk assessments shall be conducted only by a certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician.

- a. Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child under the age of six years shall be collected.

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b. A visual inspection for risk assessment shall be undertaken to locate the existence of deteriorated paint and other potential lead-based paint hazards and to assess the extent and causes of the paint deterioration. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall assess each component in each room, including each exterior side. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall identify the following conditions as potential lead-based paint hazards:

- (1) All interior and exterior surfaces with deteriorated paint.
- (2) Horizontal hard surfaces, including but not limited to floors and windowsills, that are not smooth or cleanable.
- (3) Dust-generating conditions, including but not limited to conditions causing rubbing, binding, or crushing of surfaces known or presumed to be coated with lead-based paint.
- (4) Bare soil in the play area and dripline of the home.

c. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall prepare a written report for each residential dwelling or child-occupied facility where a visual risk assessment is conducted. No later than three weeks after completing the visual risk assessment, the certified lead inspector/risk assessor, certified elevated blood lead (EBL) inspector/risk assessor, or certified sampling technician shall send a copy of the report to the property owner and to the person requesting the visual risk assessment, if different. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall maintain a copy of the report for no less than three years. The report shall include, at least:

- (1) Date of each visual risk assessment;
- (2) Address of building;
- (3) Date of construction;
- (4) Apartment numbers (if applicable);
- (5) The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;
- (6) Name, signature, and certification number of each certified sampling technician, certified lead inspector/risk assessor, or certified elevated blood lead (EBL) inspector/risk assessor conducting the visual risk assessment;
- (7) Name and certification number of the certified firm(s) conducting the visual risk assessment;
- (8) A statement that all painted or finished components must be assumed to contain lead-based paint;
- (9) Specific locations of painted or finished components identified as likely to contain lead-based paint and likely to be lead-based paint hazards;
- (10) Specific locations of bare soil in the play area and the dripline of a home;
- (11) If a remote visual risk assessment is conducted, a description of the methodologies used;
- ~~(11)~~ (12) Information for the owner and occupants on how to reduce lead hazards in the residential dwelling or child-occupied facility;
- ~~(12)~~ (13) Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745;
- ~~(13)~~ (14) Information regarding Iowa's prerenovation notification requirements found in 641—Chapter 69₂, and information regarding Iowa's regulations for renovation found in 641—Chapter 70; and
- ~~(14)~~ (15) The report shall contain the following statement:

“The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by a sampling technician, lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135).”

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ITEM 11. Rescind and reserve subrule **70.6(12)**.

ITEM 12. Amend subrule 70.10(1) as follows:

70.10(1) When the department finds that the applicant, certified lead professional, ~~certified elevated blood lead (EBL) inspection agency~~, or certified firm has committed any of the following acts, the department may deny an application for certification, may suspend or revoke a certification, may prohibit specific work practices, may require a project conducted by persons or firms that are not certified or a project where prohibited work practices are being used to be halted, may require the cleanup of lead hazards created by the use of prohibited work practices, may impose a civil penalty, may place on probation, may require additional education, may require reexamination of the state certification examination, may issue a warning, may refer the case to the office of the county attorney for possible criminal penalties pursuant to Iowa Code section 135.38, or may impose other sanctions allowed by law as may be appropriate.

- a. Failure or refusal to comply with any requirements of this chapter.
- b. Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required by rules 641—70.3(135) to 641—70.7(135).
- c. to *ab*. No change.
- ac. Unethical conduct. This includes, but is not limited to, the following:
 - (1) Verbally or physically abusing a client or coworker.
 - (2) Improper sexual conduct with or making suggestive, lewd, lascivious, or improper remarks or advances to a client or coworker.
 - (3) Engaging in a professional conflict of interest.
 - (4) Mental or physical inability reasonably related to and adversely affecting the ability of the firm or individual to practice in a safe and competent manner.
 - (5) Being adjudged mentally incompetent by a court of competent jurisdiction.
 - (6) Habitual intoxication or addiction to drugs.
 1. The inability of a lead professional to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.
 2. The excessive use of drugs which may impair a lead professional's ability to practice with reasonable skill or safety.
 3. Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.
 - (7) Registration on a state sex offender registry.

ITEM 13. Renumber subrule **70.10(3)** as **70.10(2)**.

ITEM 14. Adopt the following **new** subrule 70.10(3):

70.10(3) Reinstatement.

- a. Any individual, training program, or firm that has been revoked, denied, or suspended may apply to the department in accordance with the terms and conditions of the order of revocation or suspension, unless the order of revocation provides that the certification is permanently revoked.
- b. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the certification was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of the voluntary surrender.

[Filed 1/13/20, effective 3/18/20]

[Published 2/12/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.

ARC 4928C**PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed****Rule making related to medical cannabidiol program**

The Public Health Department hereby amends Chapter 154, “Medical Cannabidiol Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 124E.11.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 124E.

Purpose and Summary

These amendments are primarily intended to address concerns raised by MedPharm Iowa, LLC (MPI) and the Administrative Rules Review Committee (ARRC) at the July 2019 ARRC meeting regarding **ARC 4489C** where a session delay was imposed by the ARRC for Items 1, 4, 7, 10, 11, 12, 13, 15, 21, 22, and 24 in **ARC 4489C**. The Department met with representatives from MPI to understand the details of the concerns raised and appeared at the ARRC meeting in October as requested for a special review of this rule making. These amendments are intended to address the concerns raised by MPI and the ARRC. All session-delayed items are addressed in this rule making with the exception of **ARC 4489C**, Item 4, which relates to health care practitioner certification, duties and prohibitions.

In addition to the aforementioned, these amendments clarify that while manufacturers must continue to track all cannabis plants at all times, plants can be assigned to a “batch” for tracking at the time of harvest instead of at the time of planting. Additional amendments include:

- Revisions to the definitions of “batch” and “batch number” to accomplish the objective described above;
- Revisions to allow a manufacturer to designate a single employee for the transport of medical cannabidiol to dispensaries;
- Revisions to allow a manufacturer to use product samples returned from a laboratory for research and development or to conduct stability studies;
- Revisions to the processes for product recalls to allow for a more thorough investigation prior to recall; and
- Revisions to simplify a manufacturer’s data disclosures in relation to crop inputs and plant batches.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 20, 2019, as **ARC 4772C**. No public comments were received.

In its Notice of Intended Action, **ARC 4772C**, published in the November 20, 2019, Iowa Administrative Bulletin, the Department proposed removing the specific restriction on advertising that was previously session-delayed. The Department agreed to remove the specific restriction on advertising based on existing rules of the Board of Medicine. At its meeting on January 8, 2020, the State Board of Health expressed concerns with removing the advertising restriction and voted to approve these amendments with the exception of Item 2 as proposed in **ARC 4772C**. Item 2 of the Notice was not adopted, and the remaining items have been renumbered accordingly.

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Adoption of Rule Making

This rule making was adopted by the State Board of Health on January 8, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's waiver and variance provisions contained in 641—Chapter 178.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend rule **641—154.1(124E)**, definitions of “batch” and “batch number,” as follows:

~~“Batch” means a set of cannabis plants that are grown, harvested, and processed together, such that they are exposed to substantially similar conditions throughout cultivation and processing specifically identified quantity of dried flower and other cannabis plant matter that is uniform in strain or cultivar, harvested at the same time, and cultivated using the same pesticides and other crop inputs.~~

~~“Batch number” means a unique numeric or alphanumeric identifier assigned to a batch of cannabis plants by a manufacturer when the batch is first planted harvested. The batch number shall contain the manufacturer’s number and a sequence to allow for inventory and traceability.~~

ITEM 2. Amend subrule 154.16(7) as follows:

~~**154.16(7) Recall of medical cannabidiol products.** The department may require a manufacturer to recall medical cannabidiol from dispensaries when there is potential for serious health consequences from use of the products as determined by the department. Situations that may require a recall include but are not limited to: Medical cannabidiol products may be recalled in the following ways:~~

~~*a.* After consultation with the department’s medical director, it is determined that the distribution, sale, or use of the medical cannabidiol creates or poses an immediate and serious threat to human life or health; and~~

~~*b.* Other procedures available to the department to prevent or remedy a situation would result in an unreasonable delay that may place the health of patients at risk.~~

~~*a.* By manufacturer. Recalls may be undertaken voluntarily and at any time by a licensed manufacturer.~~

~~*b.* By department. If the department determines, based on an evaluation of the health hazard presented, that there is a reasonable probability that use of, or exposure to, a violative medical cannabidiol product will cause a serious adverse health consequence or death, the department may~~

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require a manufacturer to recall such violative medical cannabidiol products from dispensaries. An evaluation of the health hazard presented by medical cannabidiol being considered for recall shall be conducted by an ad hoc committee of scientists appointed by the director of the department and shall take into account, but need not be limited to, each of the following factors:

- (1) Whether any disease or injuries have already occurred from the use of the medical cannabidiol.
- (2) Whether any existing conditions could contribute to a clinical situation that could expose humans to a health hazard. Any conclusion shall be supported as completely as possible by scientific documentation and/or statements that the conclusion is the opinion of the individual(s) making the health hazard determination.
- (3) Assessment of hazard to various segments of the population, e.g., children, who are expected to be exposed to the product being considered, with particular attention paid to the hazard to those individuals who may be at greatest risk.
- (4) Assessment of the degree of seriousness of the health hazard to which the populations at risk would be exposed.
- (5) Assessment of the likelihood of occurrence of the hazard.
- (6) Assessment of the consequences (immediate or long-range) of occurrence of the hazard.
- (7) The findings of the department during a directed inspection of the licensed manufacturing facility.

ITEM 3. Amend subrule 154.22(4) as follows:

154.22(4) *Vehicle requirements for transport.*

- a. A manufacturer shall ensure that all medical cannabidiol transported on public roadways is:
 - (1) Packaged in tamper-evident, bulk containers;
 - (2) Transported so it is not visible or recognizable from outside the vehicle; and
 - (3) Transported in a vehicle that does not bear any markings to indicate that the vehicle contains medical cannabidiol or bears the name or logo of the manufacturer.
- b. When the motor vehicle contains medical cannabidiol, manufacturer employees who are transporting the medical cannabidiol on public roadways shall:
 - (1) Travel directly to a dispensary or other department-approved locations; and
 - (2) Document refueling and all other stops in transit, including:
 1. The reason for the stop;
 2. The duration of the stop; and
 3. The location of the stop.
- c. If the vehicle must be stopped due to an emergency situation, the employee shall notify 911 and complete an incident report on a form approved by the department.
- d. Under no circumstance shall any person other than a designated manufacturer employee have actual physical control of the motor vehicle that is transporting the medical cannabidiol.
- e. ~~A manufacturer shall staff all motor vehicles with a minimum of two employees when transporting medical cannabidiol between a manufacturing facility and a dispensary. At least one employee shall remain with the motor vehicle at all times that the motor vehicle contains medical cannabidiol.~~ A single employee may transport medical cannabidiol to the laboratory.
- f. ~~Each~~ An employee in a transport motor vehicle shall have telephone or other communication access with the manufacturer's personnel and have the ability to contact law enforcement via telephone or other method at all times that the motor vehicle contains medical cannabidiol.
- g. An employee shall carry the employee's identification card at all times when transporting or delivering medical cannabidiol and, upon request, produce the identification card to the department or to a law enforcement officer acting in the course of official duties.

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h. A manufacturer shall not leave a vehicle that is transporting medical cannabidiol unattended overnight.

ITEM 4. Amend subrule 154.23(1) as follows:

154.23(1) *Return of medical cannabidiol from dispensaries and laboratory.* ~~A manufacturer shall collect at no charge medical cannabidiol waste from dispensaries and from the laboratory that has tested samples submitted by the manufacturer. A manufacturer shall:~~

a. A manufacturer shall collect at no charge medical cannabidiol waste from dispensaries. A manufacturer shall:

(1) Collect medical cannabidiol waste from each dispensary on a schedule mutually agreed upon by the manufacturer and dispensary;

~~e.~~ (2) Dispose of medical cannabidiol waste as provided in subrule 154.23(2); and

~~d.~~ (3) Maintain a written record of disposal that includes:

~~(1)~~ 1. The tracking number assigned at the time of the dispensing, if available, or the name of the patient, if the tracking number is unavailable, when the medical cannabidiol was returned to the dispensary from a patient or primary caregiver;

~~(2)~~ 2. The date the medical cannabidiol waste was collected;

~~(3)~~ 3. The quantity of medical cannabidiol waste collected; and

~~(4)~~ 4. The type and lot number of medical cannabidiol waste collected.

~~b.~~ Collect medical cannabidiol waste from a laboratory on a schedule mutually agreed upon by the manufacturer and laboratory; A manufacturer shall collect at no charge medical cannabidiol and medical cannabidiol waste from a laboratory that has tested samples submitted by the manufacturer. A manufacturer shall:

(1) Collect medical cannabidiol and medical cannabidiol waste from a laboratory on a schedule mutually agreed upon by the manufacturer and laboratory.

(2) Maintain a written record of return that includes:

1. The date the medical cannabidiol and medical cannabidiol waste were collected;

2. The quantity of medical cannabidiol and medical cannabidiol waste collected; and

3. The type and lot number of medical cannabidiol collected.

(3) A manufacturer may use medical cannabidiol returned from a laboratory for research and development or retained samples, but a manufacturer shall not introduce medical cannabidiol returned from a laboratory into lots or products intended for sale.

(4) A manufacturer shall dispose of medical cannabidiol waste returned from a laboratory as provided in subrule 154.23(2).

ITEM 5. Amend subrule 154.25(2) as follows:

154.25(2) *Crop inputs and plant batches.*

~~*a.* All crop inputs used by a manufacturer must be approved by the department prior to the first application of the input. A manufacturer shall email a request for approval of a crop input to the department. The subject line of the email shall read, "RESPONSE REQUIRED - Crop input approval request." The department shall have up to 48 hours to respond with an approval or denial. A manufacturer may proceed with the application if the department does not reply within 48 hours of receiving the request. A crop input will remain approved unless or until the department withdraws the approval because of newly discovered product safety concerns. The department shall give a manufacturer written notification 48 hours before withdrawing an approval of a crop input.~~

~~*b. a.* The manufacturer shall use the department's secure sales and inventory tracking system to maintain an electronic record of all crop inputs. The record shall include the following:~~

~~(1) The date of input application;~~

~~(2) The name of the employee applying the crop input;~~

~~(3) The crop input that was applied;~~

~~(4) The plants that received the application; and~~

~~(5) The amount of crop input that was applied; and~~

~~(6)~~ (5) A copy of or electronic link to the safety data sheet for the crop input applied.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~*e. b.* At the time of planting harvesting, all plants shall be tracked in a batch process with a unique batch number that shall remain with the batch through final processing into medical cannabidiol.~~

~~*d.* A manufacturer shall record any removal of plants from the batch, including the reason for removal, on a record maintained at the manufacturing facility for at least five years.~~

~~*e. c.* Each batch or part of a batch of cannabis plants that contributes to a lot of medical cannabidiol shall be recorded in the department's secure sales and inventory tracking system or other manifest system.~~

ITEM 6. Amend subrule 154.40(7) as follows:

~~**154.40(7) Recall of medical cannabidiol products.** The department may require a dispensary to recall medical cannabidiol from the dispensary facility and patients when there is potential for serious health consequences from use of the products as determined by the department. Situations that may require a recall include but are not limited to: If the department determines, based on an evaluation of the health hazard presented, that there is a reasonable probability that use of, or exposure to, a violative medical cannabidiol product will cause a serious adverse health consequence or death, the department may require a dispensary to recall such violative medical cannabidiol products from the dispensary facility and from patients. An evaluation of the health hazard presented by medical cannabidiol being considered for recall shall be conducted by an ad hoc committee of scientists appointed by the director of the department and shall take into account, but need not be limited to, each of the following factors:~~

~~*a.* After consultation with the department's medical director, it is determined that the distribution, sale, or use of the medical cannabidiol creates or poses an immediate and serious threat to human life or health, and~~

~~*b.* Other procedures available to the department to prevent or remedy a situation would result in an unreasonable delay that may place the health of patients at risk.~~

~~*a.* Whether any disease or injuries have already occurred from the use of the medical cannabidiol.~~

~~*b.* Whether any existing conditions could contribute to a clinical situation that could expose humans to a health hazard. Any conclusion shall be supported as completely as possible by scientific documentation and/or statements that the conclusion is the opinion of the individual(s) making the health hazard determination.~~

~~*c.* Assessment of hazard to various segments of the population, e.g., children, who are expected to be exposed to the product being considered, with particular attention paid to the hazard to those individuals who may be at greatest risk.~~

~~*d.* Assessment of the degree of seriousness of the health hazard to which the populations at risk would be exposed.~~

~~*e.* Assessment of the likelihood of occurrence of the hazard.~~

~~*f.* Assessment of the consequences (immediate or long-range) of occurrence of the hazard.~~

~~*g.* The findings of the department during a directed inspection of the licensed manufacturing facility.~~

[Filed 1/21/20, effective 3/18/20]

[Published 2/12/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.

ARC 4907C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rule making related to student loan default

The Public Health Department hereby rescinds Chapter 195, "Student Loan Default/Noncompliance with Agreement for Payment of Obligation," Iowa Administrative Code.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Legal Authority for Rule Making

This rule making is adopted under the authority provided in 2019 Iowa Acts, Senate File 304.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, Senate File 304.

Purpose and Summary

2019 Iowa Acts, Senate File 304, repeals Iowa Code sections 261.121 through 261.127, eliminating the statutory authority for Chapter 195. This rule making rescinds Chapter 195.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 20, 2019, as **ARC 4765C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board of Health on January 8, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's waiver and variance provisions contained in 641—Chapter 178.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making action is adopted:

Rescind and reserve **641—Chapter 195**.

[Filed 1/13/20, effective 3/18/20]

[Published 2/12/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.

ARC 4932C**SECRETARY OF STATE[721]****Adopted and Filed****Rule making related to felony conviction verification**

The Secretary of State hereby amends Chapter 28, “Voter Registration File (I-Voters) Management,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 17A.3 and 47.1.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 48A.30.

Purpose and Summary

This rule making is one of several new measures Iowa Secretary of State Paul Pate’s office is taking to ensure the integrity of Iowa’s felon database. Felons are currently barred from voting in Iowa unless their rights have been restored. Iowa’s felon database contains more than 100,000 entries.

The Secretary of State’s office has partnered with the Iowa Judicial Branch to ensure information provided by the courts to the Secretary of State’s office pursuant to Iowa Code section 48A.30, regarding felony convictions, is accurate. This includes a six-step verification process. Three of those steps are new, and the others have been enhanced.

The intent of this rule making is to clarify the roles of the Iowa Judicial Branch, the Secretary of State’s office and county auditors regarding the felon database. The changes to the rule require the Secretary of State’s office to verify a felony conviction prior to forwarding the voter’s information so county auditors can complete the cancellation process.

In addition to adding verification steps for new convictions, the Secretary of State’s office will also be conducting a manual review of all database entries. The goal is for the review to be completed prior to the November 3, 2020, general election.

Secretary Pate’s office will utilize federal funds to pay for additional staff and review of the felon data.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 18, 2019, as **ARC 4804C**. A public hearing was held on January 10, 2020, at 2 p.m. at the Iowa Capitol Building, Room 22, Des Moines, Iowa.

Two members of the public commented during the hearing. Daniel Zeno, a representative of the American Civil Liberties Union (ACLU), echoed the organization’s written comments, which are detailed below. Eric Van Kerckhove, who is the mayor of Palo, Iowa, and a convicted felon, shared his experience with the restoration process, reregistering to vote, and running for public office. Mayor Van Kerckhove also shared ideas on how the Secretary of State’s office might reach out to individuals who have had their rights restored and encourage them to register and participate in elections.

The Secretary of State received written comments from the Iowa Bar Association, the ACLU, and the Brennan Center.

The Iowa State Bar Association’s Criminal Law Section wanted to ensure that a verification of a defendant’s identity would occur before the defendant’s voter registration was canceled. The fifth of six verifications occurs in the county auditor’s office, where the information received from the courts is compared to the list of registered voters in the county. In accordance with rule 721—28.4(48A), the Secretary of State’s office is working with the courts to be able to include Iowa Department of

SECRETARY OF STATE[721](cont'd)

Transportation (DOT) ID numbers and sex designation with the information auditors are sent, which will provide additional data points to ensure that only individuals who have been convicted of a felony have their registration canceled. The final verification of the cancellation occurs when the voter is sent a notice that explains why the voter's registration was canceled.

The ACLU's comments stated: (1) "Proposed rule 28.4(2) should expand on the process through which the Secretary and the Judicial Branch will collaborate 'to obtain documentation about felony convictions in a timely, efficient fashion'" and (2) "The proposed rulemaking should be amended to ensure that proper notice is given to voters incorrectly removed from the list of persons with felony convictions provided by the Iowa Judicial Branch." The ACLU's first comment was addressed at length at the Administrative Rules Review Committee meeting on January 10, 2020. The Iowa Secretary of State's office, a member of the Executive Branch, does not have rule-making authority over the Judicial Branch. The language in the rule was drafted in partnership with the Judicial Branch, and proof of conviction documentation is currently being provided through remote access to Iowa Courts Online. The ACLU's second comment addresses the Secretary of State's review of convictions occurring prior to 2020, which is not a part of this rule making.

The Brennan Center's comments requested different matching criteria, which would require exact matches of a voter's date of birth and social security number, and matches of a first name, short version or long version, and last name. The last name must be the voter's current last name or a last name recorded in the statewide voter registration database. Iowa law does not require voters to provide their social security number when registering to vote, and accordingly not every voter registration record has a social security number affiliated with it. Additionally, not all voters update their voter registration when a name change occurs. Therefore, adopting this approach would cause some convicted felons to remain on the voter rolls and to believe they are eligible to vote, which puts them at risk for reoffending. Additionally, in the unlikely event of an erroneous match, voters are mailed a cancellation notice and given the opportunity to contact their county auditor if they believe the cancellation was in error. The Brennan Center also requested that the Secretary of State's office send a notice to voters as a part of the office's review of convictions prior to 2020, which is not a part of this rule making.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Secretary of State on January 22, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Secretary of State for a waiver of the discretionary provisions, if any, pursuant to 721—Chapter 10.

Review by Administrative Rules Review Committee

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

SECRETARY OF STATE[721](cont'd)

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making action is adopted:

Amend rule 721—28.4(48A) as follows:

721—28.4(48A) Cancellations and restorations of voter registration due to felony conviction.

28.4(1) Based upon information provided to the state registrar by the state or federal judicial branch and by the governor, the state registrar shall maintain a list of ~~convicted~~ felons convicted in State of Iowa District Courts and the United States District Courts of the Northern and Southern Districts of Iowa and a list of convicted felons whose voting rights have been restored by the governor of Iowa. Periodically, these lists shall be matched with I-VOTERS. Based upon predetermined search criteria, a list of likely matches of ineligible voters shall be produced for each county and provided to each county registrar.

28.4(2) The state registrar has a demonstrated institutional need for documentation that sufficiently establishes an individual defendant's felony conviction. Therefore, the state registrar shall collaborate with the judicial branch to obtain documentation about felony convictions in a timely, efficient fashion, which shall include documentation sufficient to establish an individual defendant's felony conviction. When the state registrar receives felony conviction information from the United States attorney pursuant to Iowa Code section 48A.30(1) "d," the state registrar shall request documentation sufficient to establish conviction of an offense classified as a felony under federal law. The state registrar shall verify any conviction information provided pursuant to Iowa Code section 48A.30(1) "d" prior to adding an individual to the list of convicted felons maintained pursuant to subrule 28.4(1).

28.4(2) 28.4(3) Within ~~45~~ 30 days of the receipt of the list produced by the state registrar in accordance with subrule 28.4(1), the county registrar shall review the list of likely matches, determine the accuracy of the search results based on first name, last name, date of birth and social security number and cancel the registrations of those voters found to be ineligible to vote. The county registrar may also utilize sex, Iowa driver's license or nonoperator's identification numbers, and previous names, if available, to determine the accuracy of the search results. If the county registrar has questions regarding a felony conviction, the county registrar shall contact the court of conviction's clerk of court. Notice shall be sent to the voter at the voter's address in the voter registration file pursuant to Iowa Code section 48A.30(2). The notice shall be sent by forwardable mail and shall provide the voter an opportunity to have the county registrar review any relevant information that establishes the voter's eligibility to vote. When inclusion of a voter's name on the list of likely matches is found to be inaccurate, the registrar shall mark the record as a "no match" and provide that information to the state registrar.

28.4(3) 28.4(4) New applicants for registration entered into I-VOTERS by a county registrar shall be electronically matched against the list of convicted felons in the file, and applicants disqualified due to felony conviction shall not be registered as voters. The county registrar shall notify the registration applicant of the applicant's disqualification in the same manner as provided for in subrule 28.4(2) above.

[Filed 1/24/20, effective 3/18/20]

[Published 2/12/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.

ARC 4908C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to special registration plates

The Department of Transportation hereby amends Chapter 401, "Special Registration Plates," Iowa Administrative Code.

TRANSPORTATION DEPARTMENT[761](cont'd)

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 307.12, 321.34 and 321.166.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 321.34 as amended by 2019 Iowa Acts, Senate File 638, section 35.

Purpose and Summary

These amendments conform Chapter 401 to 2019 Iowa Acts, Senate File 638, section 35, which amends Iowa Code section 321.34 to provide for the creation of new blackout license plates. In accordance with Senate File 638, the Department began taking orders for the new blackout license plates on July 1, 2019. The amendments also make technical changes throughout the chapter to update the Vehicle and Motor Carrier Services Bureau's name and to accommodate electronic submission of license plate applications, which further streamlines the application process.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 6, 2019, as **ARC 4736C**.

The Department received comments from a person who wants to obtain blackout license plates with the person's amateur radio call letters and asked that the administrative rules authorize blackout plates for amateur radio operators. The Department consulted with the Department's legal counsel, and the Department is not able to accommodate this specific request because Iowa Code requires the radio operator plate to be consistent with the design and color of the regular registration plate (i.e., standard country/city design). The Department did offer the person the option to request a personalized blackout license plate with the person's amateur radio call letters, but because current subrule 401.6(2) prohibits the use of a zero on personalized plates, and this person's amateur radio call sign contains the character zero, the person was not satisfied with the option to substitute the zero with the letter "O." Therefore, the Department committed to evaluating the possibility of initiating a new rule making to remove the prohibition on using the number zero from personalized plates. Initiating a new rule making to accomplish this change will allow the Department to gather sufficient stakeholder input on the change as well as allow for necessary computer programming changes.

Item 20 was not adopted because it proposed to add a reference to 2019 Iowa Acts, Senate File 638, which has now been codified in the 2020 Iowa Code.

Adoption of Rule Making

This rule making was adopted by the Department on January 16, 2020.

Fiscal Impact

This rule making has no fiscal impact beyond that imposed by its authorizing legislation. 2019 Iowa Acts, Senate File 638, section 35, established the fees for the new blackout plates. The fee for initial issuance of one set of standard (nonpersonalized) blackout plates is \$35, and the fee for annual renewal of the plates is \$10. Section 35 allows any blackout plates issued to be personalized and retains the usual fees for personalized plates established in Iowa Code section 321.34(5), which are an additional \$25 for initial issuance of the plates and \$5 for annual renewal of the plates. The authorizing legislation and the rules adopted pursuant to the legislation will have a positive fiscal impact on Iowa's Road Use Tax Fund, since Senate File 638, section 35, requires that all fees authorized for the blackout plates be deposited in the Road Use Tax Fund. Although it is difficult to predict the long-term ordering and adoption rates, the plates appear to be popular. As of December 31, 2019, there were approximately 92,000 blackout plates in use, and approximately 28 percent of the plates issued were personalized. Based on those numbers

TRANSPORTATION DEPARTMENT[761](cont'd)

and for that time frame, approximately \$4 million in additional revenue was collected that will inure to the benefit of the Road Use Tax Fund. This positive impact will grow as additional orders are received in the future.

Jobs Impact

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

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.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **401.2(1)“b”** as follows:

b. ~~Collegiate~~ Application for blackout plates, collegiate plates, personalized plates, and special registration plates that have eligibility requirements must be requested using an application form submitted to the department in a manner prescribed by the department. Unless otherwise specified, completed application forms applications for these plates shall be submitted to the department at the following address: Office of Vehicle and Motor Carrier Services Bureau, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278. Application forms Applications may be obtained from the office of vehicle and motor carrier services bureau or from any county treasurer's office. Application forms Applications are also available on the department's website at www.iowadot.gov.

ITEM 2. Amend rule 761—401.4(321) as follows:

761—401.4(321) Gift certificates. Gift certificates for blackout plates, collegiate plates, personalized plates, and special registration plates that have eligibility requirements may be purchased using the prescribed plate application ~~form~~. Gift certificates for special registration plates that counties have in their inventories may be purchased from county treasurers' offices.

ITEM 3. Amend rule 761—401.5(321) as follows:

761—401.5(321) Amateur radio call letter plates. Application for amateur radio call letter plates shall be made to the county treasurer ~~on a form~~ in a manner prescribed by the department. The number of the amateur radio license issued by the Federal Communications Commission shall be listed on the application.

ITEM 4. Amend subrule 401.6(1) as follows:

401.6(1) Application. Application for personalized plates shall be submitted to the department ~~on a form~~ in a manner prescribed by the department.

ITEM 5. Amend subrule 401.7(1) as follows:

401.7(1) Application. Application for collegiate plates shall be submitted to the department ~~on a form~~ in a manner prescribed by the department. The applicant may request letter-number designated

TRANSPORTATION DEPARTMENT[761](cont'd)

collegiate plates or personalized collegiate plates. Collegiate plates for motorcycles, autocycles and small trailers are not available.

ITEM 6. Amend subrule 401.8(1) as follows:

401.8(1) Application for Medal of Honor plates shall be submitted to the department ~~on a form~~ in a manner prescribed by the department. The applicant shall attach a copy of the official government document verifying receipt of the medal of honor.

ITEM 7. Amend subrule 401.10(1) as follows:

401.10(1) Application for emergency medical services (EMS) plates shall be submitted to the department ~~on a form~~ in a manner prescribed by the department. The applicant and the applicant's service director shall sign the application ~~form~~ certifying that the applicant is a current member of a paid or volunteer emergency medical services agency. For purposes of this subrule, "service director" means a service director as defined in Iowa department of public health rule 641—132.1(147A).

ITEM 8. Adopt the following new rule 761—401.12(321):

761—401.12(321) Blackout plates.

401.12(1) *Application.* Application for blackout plates shall be submitted to the department in a manner prescribed by the department. The applicant may request letter-number designated blackout plates or personalized blackout plates. Blackout plates are available for autocycles, motor trucks, motor homes, multipurpose vehicles, motorcycles, trailers and travel trailers.

401.12(2) *Characters.* Personalized blackout plates shall be issued in accordance with subrule 401.6(2).

ITEM 9. Amend subrule 401.15(3) as follows:

401.15(3) The ~~office~~ of vehicle and motor carrier services bureau may consult with other organizations, law enforcement authorities, and the general public concerning the decal design.

ITEM 10. Amend subrule 401.15(4) as follows:

401.15(4) Within 60 days after receiving the application, the ~~office~~ of vehicle and motor carrier services bureau shall advise the organization of the department's approval or denial of the application. The department reserves the right to approve or disapprove any decal design.

ITEM 11. Amend paragraph **401.18(1)“d”** as follows:

d. The ~~office~~ of vehicle and motor carrier services bureau may consult with other organizations, law enforcement authorities, and the general public concerning distinguishing processed emblems.

ITEM 12. Amend subrule 401.18(4) as follows:

401.18(4) *Application process.*

a. Applications for either letter-number designated or personalized combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal, or combat medical badge special registration plates shall be submitted to the department ~~on a form~~ in a manner prescribed by the department. The applicant shall attach to the application a copy of an official government document verifying award of the combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal or combat medical badge to the applicant.

b. No change.

c. Applications for personalized civil war sesquicentennial or fallen peace officers special registration plates shall be submitted to the department ~~on a form~~ in a manner prescribed by the department.

ITEM 13. Amend rule 761—401.19(321) as follows:

761—401.19(321) Legion of Merit plates. Application for special plates with a Legion of Merit processed emblem shall be submitted to the department ~~on a form~~ in a manner prescribed by the department. The applicant shall attach a copy of the official government document verifying receipt of the Legion of Merit. Personalized plates with a Legion of Merit processed emblem are not available.

TRANSPORTATION DEPARTMENT[761](cont'd)

Pursuant to Iowa Code section 321.34, an applicant is eligible for one set of Legion of Merit plates at a reduced annual registration fee of \$15 for one vehicle owned. However, an applicant may obtain additional Legion of Merit plates upon payment of the regular annual registration fee.

ITEM 14. Amend subrule 401.20(1), introductory paragraph, as follows:

401.20(1) Application. Application for special plates with a persons with disabilities processed emblem shall be submitted to the county treasurer ~~on a form~~ in a manner prescribed by the department.

ITEM 15. Amend subrule 401.21(1) as follows:

401.21(1) Application for special plates with an ex-prisoner of war processed emblem shall be submitted to the department ~~on a form~~ in a manner prescribed by the department. The applicant shall attach a copy of an official government document verifying that the applicant was a prisoner of war. If the document is not available, a person who has knowledge that the applicant was a prisoner of war shall sign a statement to that effect on the application ~~form~~.

ITEM 16. Amend rule 761—401.22(321) as follows:

761—401.22(321) National guard plates. Application for special plates with a national guard processed emblem shall be submitted to the department ~~on a form~~ in a manner prescribed by the department. The unit commander of the applicant shall sign the application ~~form~~ confirming that the applicant is a member of the Iowa national guard.

ITEM 17. Amend rule 761—401.23(321) as follows:

761—401.23(321) Pearl Harbor plates. Application for special plates with a Pearl Harbor processed emblem shall be submitted to the department ~~on a form~~ in a manner prescribed by the department. The applicant shall attach a copy of an official government document verifying that the applicant was stationed at Pearl Harbor, Hawaii, as a member of the armed forces on December 7, 1941.

ITEM 18. Amend rule 761—401.24(321), introductory paragraph, as follows:

761—401.24(321) Purple Heart, Silver Star and Bronze Star plates. Application for special plates with a Purple Heart, Silver Star, or Bronze Star processed emblem shall be submitted to the department ~~on a form~~ in a manner prescribed by the department. To verify receipt of the medal, the applicant shall attach a copy of one of the following:

ITEM 19. Amend rule 761—401.25(321), introductory paragraph, as follows:

761—401.25(321) U.S. armed forces retired plates. Application for special plates with a United States armed forces retired processed emblem shall be submitted to the department ~~on a form~~ in a manner prescribed by the department. A person is considered to be retired if the person is recognized by the United States armed forces as retired from the United States armed forces. To verify retirement from the United States armed forces, the applicant shall attach a copy of one of the following:

[Filed 1/16/20, effective 3/18/20]

[Published 2/12/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.

ARC 4909C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to driver education

The Department of Transportation hereby amends Chapter 634, "Driver Education," Iowa Administrative Code.

TRANSPORTATION DEPARTMENT[761](cont'd)

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 307.12 and 321.178.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 307.12; 321.178 as amended by 2019 Iowa Acts, Senate File 319; and 321.178A.

Purpose and Summary

This rule making amends Chapter 634 to incorporate amendments that align with existing legal authority and Department practice, eliminate outdated or irrelevant requirements or options, and promote consistency by organizing the requirements for behind-the-wheel driver education instructors according to whether the instructor is a licensed teacher, a licensed teacher with an expired teaching license, a peace officer or a retired peace officer, or is not a licensed teacher.

The most significant amendments modernize the certification process for a behind-the-wheel driver education instructor under the authority of the Department in Iowa Code section 321.178. A person providing parent-taught driver education under the authority in Iowa Code section 321.178A is not considered a behind-the-wheel driver education instructor and is therefore not subject to the same certification requirements that make up the majority of this rule making. A behind-the-wheel driver education instructor is certified by the Department and authorized by the Iowa Board of Educational Examiners to provide the “street or highway driving” portion of a driver education program and can be a licensed teacher or a person who is not a licensed teacher. This is different than a classroom driver education instructor, who can only be a licensed teacher and is regulated exclusively by the Iowa Board of Educational Examiners.

Certified behind-the-wheel driver education instructor requirements. There are approximately 700 behind-the-wheel driver education instructors in Iowa certified by the Department and authorized by the Iowa Board of Educational Examiners. The current rules lack specificity regarding the difference in the requirements a person must meet to provide behind-the-wheel instruction depending on if the person is a licensed teacher, a peace officer or retired peace officer, or is not a licensed teacher. Therefore, the goals of this rule making are to spell out the differences where necessary and to apply the same requirements consistently amongst behind-the-wheel instructors while comprehensively modernizing the behind-the-wheel certification process. Improvements include offering instructor refresher course options that are more tailored to the specific audience’s existing skill set and professional experience, and that provide value and are more convenient, including electronic training options. The amendments also reduce burdens by making the instructor refresher course biennial (rather than annual) and offering a new way for an instructor with an expired behind-the-wheel certification to regain certified status without having to retake the entire instructor preparation course.

The new requirement to complete the instructor refresher course biennially begins January 1, 2021, and will apply to all certified behind-the-wheel instructors. The Department currently offers a robust and well-received annual behind-the-wheel instructor refresher course in person and is actively working on developing additional course opportunities, including via webinar or an online training module. Currently, a licensed teacher is not required to participate in any behind-the-wheel refresher course if the teacher has maintained a valid teacher’s license, whereas a behind-the-wheel instructor who is not a licensed teacher has always been required to attend the refresher course annually. The instructor refresher course provides an excellent opportunity to review trends and improvements in the area of driver education that are specific to behind-the-wheel instruction, as well as identify updates to the laws governing traffic safety and driver education, and therefore is considered a necessary component of the behind-the-wheel certification process to yield consistency in driver education. However, in recognizing that certain categories of behind-the-wheel instructors are required to maintain a specific skill set as part of their profession, for example, a licensed teacher or a peace officer, the Department plans to develop refresher course content that is specifically tailored, rather than subjecting a licensed

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teacher or peace officer to course content that does not take into account their existing skill sets and specific needs when it comes to behind-the-wheel driver education instruction.

These amendments incorporate the changes made in 2019 Iowa Acts, Senate File 319, which amends Iowa Code section 321.178 to exempt peace officers and retired peace officers from the requirement to be authorized by the Iowa Board of Educational Examiners to provide behind-the-wheel driver education instruction. A peace officer or retired peace officer must still meet other requirements under the rules to be certified by the Department to provide behind-the-wheel driver education, except a peace officer or retired peace officer will not be required to complete the initial behind-the-wheel instructor classroom and behind-the-wheel driving preparation course under subparagraph 634.6(6)“a”(3).

These amendments also align the Department’s reasons for disqualification of a behind-the-wheel instructor with the reasons for which the Iowa Board of Educational Examiners may deny an application for licensure, certification or authorization under rule 282—11.35(272). By aligning the Department’s disqualification reasons with the Board’s requirements, there will be less chance for inconsistency and unequal treatment for persons providing behind-the-wheel driver education instruction.

Parent-taught driver education. A parent providing parent-taught driver education under Iowa Code section 321.178A is not subject to the behind-the-wheel certification requirements as an instructor who teaches at a school-offered or commercial driver education program, so the majority of this rule making does not apply to parent-taught driver education. However, the Department did identify an improvement to the rules governing parent-taught driver education that will provide a teaching parent and the student greater flexibility. These amendments remove the requirement for a student and parent to restart the course if the student and parent start an approved course before they receive Departmental approval to begin the course. Making this change will help avoid situations where a student is required to retake an approved course that the student had already started or completed simply because the student began too soon, and instead allows the focus to remain on whether the course is approved and appropriate and the remaining requirements are properly met.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 20, 2019, as **ARC 4771C**. No public comments were received. In paragraph 634.6(5)“b,” the word “otherwise” was removed. No other changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on January 16, 2020.

Fiscal Impact

These amendments alter the application and certification process for behind-the-wheel driver education instructors but do not impose any fees and, therefore, do not have a fiscal impact.

Jobs Impact

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

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.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s

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meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend rule 761—634.1(321) as follows:

761—634.1(321) Information and location. Applications, forms and information regarding this chapter are available by mail from the ~~Office of Driver and Identification Services Bureau~~, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at ~~(515)237-3153~~ (515)244-8725; ~~or~~ by facsimile at ~~(515)237-3071~~ (515)239-1837; or on the department's website at www.iowadot.gov.

ITEM 2. Amend rule 761—634.2(321) as follows:

761—634.2(321) Definition Definitions.

"Behind-the-wheel instruction" means the street or highway driving instruction component of an approved driver education course.

"Instructor," for purposes of this chapter, means a person certified to provide behind-the-wheel instruction.

"Laboratory instruction" includes instruction received by a student while the student is in the driver education vehicle or adjacent to it as referred to in paragraphs 634.4(2) "c" and 634.4(2) "d" and may also include range or simulation as referred to in paragraphs 634.4(2) "h" and 634.4(2) "i."

"Serious injury" means the same as defined in Iowa Code section 702.18.

"Teacher" means the same as defined in Iowa Code section 272.1.

ITEM 3. Amend subrule 634.4(1) as follows:

634.4(1) Course approval. Any school district, area education agency, merged area school, other agency or ~~individual person~~ planning to offer a driver education course must receive course approval, which includes approval of all teachers and instructors listed on the application, from the department prior to the beginning of the first class that is offered and annually thereafter. The agency or institution or individual person shall complete a form provided by the department to apply for course approval in a manner determined by the department. Course approval will be issued for a calendar year or remainder of a calendar year. The approval expires on December 31 and must be renewed annually. The approval is valid for one calendar year or a remaining calendar year and expires on December 31. The application for course renewal shall be submitted to the department within 60 days of the expiration date, unless otherwise approved by the department.

ITEM 4. Amend subrule 634.4(2) as follows:

634.4(2) Course requirements. Driver education courses provided by approved programs must comply with the following:

a. No change.

b. Each student shall be scheduled to receive classroom ~~and~~ or laboratory instruction each week of the course but in no case shall laboratory instruction conclude later than 30 days after classroom instruction is completed.

c. to j. No change.

k. The driver education teacher or instructor shall verify at the beginning of each course that each student possesses a valid instruction permit or driver's license. Each student shall be responsible for possessing an instruction permit or driver's license throughout all laboratory instruction and report any suspension, revocation or cancellation of the instruction permit or driver's license to the driver education teacher or instructor prior to attending laboratory instruction.

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ITEM 5. Amend rule 761—634.6(321) as follows:

761—634.6(321) Teacher Instructor qualifications, application and certification.

634.6(1) *Behind-the-wheel instructor qualifications.* To qualify to be a driver education teacher, the teacher provide behind-the-wheel instruction, the person must:

634.6(1) a. Hold a valid driver's license that permits unaccompanied driving, other than a motorized bicycle license or a temporary restricted license.

634.6(2) b. Have a clear driving record for the previous two years. A clear driving record means the individual person has:

~~a.~~ (1) Not been identified as a candidate for driver's license suspension under the habitual violator provisions of rule 761—615.13(321) or the serious violation provisions of rule 761—615.17(321).

~~b.~~ (2) No driver's license suspensions, revocations, denials, cancellations, disqualifications or bars.

~~c.~~ (3) Not committed an offense that would result in driver's license suspension, revocation, denial, cancellation, disqualification or bar.

~~d.~~ (4) No record of an accident for which the individual was convicted of a moving traffic violation a contributive motor vehicle accident that caused the death or serious injury of another person.

(5) No record of two or more contributive motor vehicle accidents in a two-year period.

~~c.~~ Meet the requirements for either a licensed teacher in 282—subrule 13.28(4) or a certified behind-the-wheel instructor in this chapter.

634.6(2) *Behind-the-wheel instructor's certification requirements.* Except as otherwise provided in this chapter, the following requirements shall apply to a behind-the-wheel instructor:

a. An applicant for an initial behind-the-wheel instructor's certification or a renewal shall apply to the department in a manner determined by the department.

(1) If the application is for an initial behind-the-wheel instructor's certification, instructor approval is valid for a calendar year or the remainder of a calendar year. The instructor approval expires on December 31 but remains valid for an additional 30 days after the expiration date.

(2) If the application is to renew a behind-the-wheel instructor's certification, a person shall do all of the following:

1. Apply to the department annually. Instructor approval is valid for a calendar year or the remainder of a calendar year. The instructor approval expires on December 31 but remains valid for an additional 30 days after the expiration date. An application for renewal of instructor approval shall be submitted within 60 days of the expiration date, unless otherwise approved by the department.

2. Provide behind-the-wheel instruction for a minimum of 12 clock hours during each calendar year.

b. Beginning January 1, 2021, a person shall complete at least one state-sponsored or state-approved behind-the-wheel instructor refresher course biennially. The state-sponsored or state-approved course may include electronic completion or remote attendance options, as approved by the department. The department may develop a special course for licensed teachers or peace officers who qualify to provide behind-the-wheel instruction under subrule 634.6(3) or 634.6(5), which shall be reserved only for licensed teachers or peace officers who qualify as behind-the-wheel instructors.

c. Upon certification, but prior to providing behind-the-wheel instruction, the person shall be:

(1) Authorized by the Iowa board of educational examiners to provide behind-the-wheel driving instruction.

(2) Employed by a public or licensed commercial or private provider of the approved driver education course.

634.6(3) *Instructor's certification for licensed teachers.* A teacher licensed by the Iowa board of educational examiners as provided in 282—subrule 13.28(4) shall be included as an approved instructor on an annual driver education course approval as referenced in subrules 634.4(1) and 634.8(1), and except for the requirements in paragraphs 634.6(2) "a" and 634.6(2) "c," a teacher shall meet the requirements in subrule 634.6(2) to be certified by the department to provide behind-the-wheel instruction.

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634.6(4) Instructor application and certification for a teacher with an expired teacher's license. A teacher who holds an expired initial, standard, exchange, or master educator license with an endorsement for driver education as provided in 282—subrule 13.28(4) shall meet the requirements in subrule 634.6(2) to be certified by the department to provide behind-the-wheel instruction.

634.6(5) Instructor application and certification for active peace officers and retired peace officers.

a. A person who is an active peace officer or a retired peace officer as referenced in Iowa Code section 321.178 shall do all of the following to be certified by the department to provide behind-the-wheel instruction:

(1) Be at least 25 years of age.

(2) Submit Form 431233 certifying the person's status as an active or retired peace officer.

(3) Meet all other requirements of subrule 634.6(2), except peace officers or retired peace officers who otherwise qualify under this subrule are not required to meet the requirement of subparagraph 634.6(2) "c"(1).

b. A retired peace officer is only required to submit Form 431233, required under paragraph 634.6(5) "a," to the department once unless the form is invalid or not accepted by the department.

634.6(6) Instructor application and certification for persons other than licensed teachers, peace officers or retired peace officers.

a. A person who is not licensed by the Iowa board of educational examiners to provide classroom driver education as provided in 282—subrule 13.28(4), who does not hold an expired teacher's license as referenced in subrule 634.6(4), or who is not a peace officer or a retired peace officer as referenced in Iowa Code section 321.178, shall do all of the following to be certified by the department to provide behind-the-wheel instruction:

(1) Be at least 25 years of age.

(2) Meet the requirements in subrule 634.6(2), except that a person certified under this subrule shall complete the instructor refresher course referenced in paragraph 634.6(2) "b" annually until January 1, 2021, and thereafter shall complete the course biennially.

(3) Have successfully completed the instructor preparation requirements of this subrule, as evidenced by written attestations on a form provided by the department from both the classroom instructor and behind-the-wheel observer. The person seeking a behind-the-wheel certification must apply to the department within 12 months of completion of the instructor preparation course. The department-approved instructor preparation course shall:

1. Consist of 24 clock hours of classroom instruction and 12 clock hours of observed behind-the-wheel instruction.

2. Include, at a minimum, classroom instruction on topics including the psychology of the young driver, behind-the-wheel teaching techniques, and driving route selection. Classroom instruction shall be delivered by staff from a driver education teacher preparation program that is approved by the Iowa board of educational examiners. The duration of a classroom instruction section shall not exceed four hours. Video-conferencing may be used for course delivery.

3. Include observation of behind-the-wheel instruction provided by a person licensed to teach driver education who is specially trained by a driver education teacher preparation program that is approved by the Iowa board of educational examiners and that is designed to observe, coach, and evaluate behind-the-wheel instructor candidates. The duration of a behind-the-wheel session shall not exceed four hours. A dual-controlled motor vehicle must be used.

b. Reserved.

634.6(7) Behind-the-wheel certification—reissuance.

a. A person whose behind-the-wheel certification has expired and is past the renewal period may be reissued a behind-the-wheel certification without having to retake the behind-the-wheel instructor preparation course only if the person meets all of the following criteria:

(1) The person held a valid behind-the-wheel certification within the two years immediately preceding the application.

(2) The person provided a minimum of 12 clock hours of behind-the-wheel instruction within the two years immediately preceding the application.

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(3) The person completed at least one state-sponsored or state-approved behind-the-wheel instructor refresher course within the two calendar years immediately preceding the application unless otherwise exempt under this chapter.

(4) The person completed a minimum of 12 clock hours shadowing a teacher licensed by the Iowa board of educational examiners as provided in 282—subrule 13.28(4) through a department-approved driver education program within 90 days immediately preceding the application.

b. Upon certification, but prior to providing behind-the-wheel instruction, the person shall do all of the following:

(1) Be authorized by the Iowa board of educational examiners to provide behind-the-wheel driving instruction unless otherwise exempt under this chapter.

(2) Be employed by a public or licensed commercial or private provider of the approved driver education course and work under the supervision of a person licensed by the Iowa board of educational examiners as provided in 282—subrule 13.28(4).

ITEM 6. Amend rule 761—634.7(321) as follows:

761—634.7(321) ~~Behind-the-wheel instructor's certification~~ Instructor disqualification, investigation and cancellation. ~~The following applies to departmental certification of a person who is qualified to provide the street or highway driving component of an approved driver education course.~~

~~**634.7(1) Qualifications.** To qualify for the behind-the-wheel driving instructor certification, the applicant must:~~

~~*a.* Be at least 25 years of age.~~

~~*b.* Hold a valid driver's license that permits unaccompanied driving, other than a motorized bicycle license or a temporary restricted license.~~

~~*c.* Have a clear driving record for the previous two years. A clear driving record means the individual has:~~

~~(1) Not been identified as a candidate for driver's license suspension under the habitual violator provisions of rule 761—615.13(321) or the serious violation provisions of rule 761—615.17(321).~~

~~(2) No driver's license suspensions, revocations, denials, cancellations, disqualifications or bars.~~

~~(3) Not committed an offense that would result in driver's license suspension, revocation, denial, cancellation, disqualification or bar.~~

~~(4) No record of an accident for which the individual was convicted of a moving traffic violation.~~

~~*d.* Have successfully completed the instructor preparation requirements of this rule, as evidenced by written attestations on a form provided by the department from both the classroom instructor and behind-the-wheel observer.~~

~~**634.7(2) 634.7(1) Disqualifications.** An individual A person shall be disqualified ~~for the~~ by the department from certification as a behind-the-wheel driving instructor ~~certification~~ for any of the following reasons: for which the executive director of the Iowa board of educational examiners would deny an application for licensure, certification or authorization as provided in rule 282—11.35(272).~~

~~*a.* The individual has been convicted of child abuse or sexual abuse of a child.~~

~~*b.* The individual has been convicted of a felony.~~

~~*c.* The individual's application is fraudulent.~~

~~*d.* The individual's teaching license or behind-the-wheel instructor's certification from another state is suspended or revoked.~~

~~**634.7(3) 634.7(2) Investigation.** The department may investigate an applicant for a behind-the-wheel instructor's certification or an instructor to determine if the applicant or instructor meets the requirements for certification. The investigation may include but is not limited to an inquiry into the applicant's or instructor's criminal history from the department of public safety.~~

~~**634.7(4) Certification.**~~

~~*a.* To obtain a behind-the-wheel instructor's certification, an individual meeting the qualifications shall apply to the department on a form provided by the department. The certification shall be issued for a calendar year or remainder of a calendar year. The certification expires on December 31 but remains~~

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valid for an additional 30 days after the expiration date. The certification shall be renewed within 30 days of the expiration date.

~~b. To renew a behind-the-wheel instructor's certification, a person meeting the qualifications must:~~

~~(1) Provide behind-the-wheel instruction for a minimum of 12 clock hours during the previous calendar year.~~

~~(2) Participate in at least one state-sponsored or state-approved behind-the-wheel instructor refresher course.~~

~~634.7(5) Instructor preparation requirements.~~ The department shall develop the curriculum in consultation with the Iowa driver education teacher preparation programs approved by the board of educational examiners and in consultation with the American Driver and Traffic Safety Education Association. Instructor preparation shall meet the following requirements:

~~a. Instructor preparation shall consist of 24 clock hours of classroom instruction and 12 clock hours of observed behind-the-wheel instruction.~~

~~b. At a minimum, classroom instruction shall focus on topics such as the psychology of the young driver, behind-the-wheel teaching techniques, and route selection. Classroom instruction shall be delivered by staff from a driver education teacher preparation program approved by the board of educational examiners. The duration of a classroom session shall not exceed four hours. Video conferencing may be used for course delivery.~~

~~c. Observation of behind-the-wheel instruction shall be provided by a person licensed to teach driver education who is specially trained by a driver education teacher preparation program approved by the board of educational examiners to observe, coach, and evaluate behind-the-wheel instructor candidates. The duration of a behind-the-wheel session shall not exceed four hours. A dual-control motor vehicle must be used.~~

~~d. The individual seeking a behind-the-wheel certification must apply to the department within 12 months of the completion of the course.~~

~~634.7(6) 634.7(3) Cancellation.~~ The department shall cancel the behind-the-wheel instructor's certification of an individual who no longer qualifies under paragraph 634.7(1) "c" or who no longer meets the qualifications for a behind-the-wheel instructor's certification this chapter.

~~634.7(7) Approved driver education course.~~ To provide the street or highway driving component of an approved driver education course, an individual holding a behind-the-wheel instructor's certification must be employed by a public or licensed commercial or private provider of the approved driver education course and work under the supervision of a person licensed to teach driver education.

ITEM 7. Amend rule 761—634.8(321) as follows:

761—634.8(321) Private and commercial driver education schools. The department licenses private and commercial driver education schools as follows:

634.8(1) Instructor and course Course approval. Prior to licensing Before becoming licensed, a driver education school, the department shall approve the school's course, classroom instructors and laboratory instructors must receive course approval, which includes approval of all teachers and instructors listed on the application, from the department prior to the beginning of the first class that is offered and annually thereafter. Street or highway driving Behind-the-wheel instruction must be provided by a person qualified as a classroom driver education instructor or a person certified by the department and authorized by the board of educational examiners who meets the instructor requirements in rule 761—634.6(321). Written evidence Evidence of these the approvals and certifications must be submitted to the department upon application for a license, upon renewal of a license, and upon reinstatement of a license following cancellation.

634.8(2) Application and fees. Application for license issuance or renewal shall be made to the department ~~on forms provided in a manner determined by the department.~~ The fee for a license or the renewal of a license is \$25. The fee must be paid by cash, money order or check, unless the department approves payment of the fee by electronic means. A money order or check must be for the exact amount and should be made payable to the Treasurer, State of Iowa, or the Department of Transportation.

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634.8(3) Issuance and renewal. A license to teach driver education shall be issued for a calendar year or remainder of a calendar year. The license expires on December 31 but remains valid for an additional 30 days after the expiration date. The license shall be renewed application for renewal shall be submitted to the department within 30 60 days of the expiration date, unless otherwise approved by the department.

634.8(4) Cancellation. A license to teach driver education shall be canceled if the course, teacher, or instructor is no longer approved or the person providing only behind-the-wheel instruction for driver education is no longer certified by the department and authorized by the Iowa board of educational examiners.

ITEM 8. Amend rule 761—634.11(321) as follows:

761—634.11(321) Driver education—teaching parent. As an alternative to a driver education course offered by a course provider approved under rule 761—634.4(321), a teaching parent may instruct a student in an approved course of driver education.

634.11(1) Definitions. As used in this rule:

“*Approved course*” means a driver education curriculum approved by the department that meets the requirements of Iowa Code section 321.178A and is appropriate for teaching-parent-directed driver education and related ~~street or highway driving~~ behind-the-wheel instruction.

“*Clear driving record*” means the ~~individual~~ person currently and during the prior two-year period has not been identified as a candidate for suspension or revocation of a driver’s license under the habitual offender or habitual violator provisions of rule 761—615.9(321) or rule 761—615.13(321); is not subject to a driver’s license suspension, revocation, denial, cancellation, disqualification, or bar; and has no record of a conviction for a moving traffic violation determined to be the cause of a motor vehicle accident.

“*Course vendor*” means a third-party vendor that makes available commercially an approved course.

“*Student*” means a person between the ages of 14 and 21 years who is within the custody and control of the teaching parent and who holds a valid Iowa noncommercial instruction permit.

“*Teaching parent*” means the same as defined in Iowa Code section 321.178A.

634.11(2) Application to serve as a teaching parent.

a. A person who wishes to provide driver education as a teaching parent to a student shall submit an application on a form provided by the department to the ~~office of driver and identification services at the address indicated on the form~~ bureau.

b. to d. No change.

634.11(3) Instruction by a teaching parent.

a. No change.

b. The teaching parent shall select the course to be used from the list of approved courses posted on the department’s ~~Internet site~~ website and shall purchase the course directly from the applicable course vendor.

c. No person shall provide driver education as a teaching parent ~~until~~ unless approved by the department, and the department shall not recognize driver education that was:

(1) ~~Provided by a person before the person’s approval as a teaching parent.~~

(2) (1) Provided by a person who ~~has not been~~ is not approved as a teaching parent.

(3) (2) Provided to a person who is not a student as defined in subrule 634.11(1).

(4) (3) Offered under a course other than an approved course.

634.11(4) Course completion—certificate of completion.

a. Upon the student’s completion of an approved course, the teaching parent shall apply for a certificate of completion on behalf of the student. The teaching parent shall provide evidence showing the student’s completion of an approved course and substantial compliance with the requirements of Iowa Code section 321.178A, by affidavit signed by the teaching parent on a form provided by the department. The teaching parent shall include with the application all documentation, statements, certifications, and logs required by Iowa Code section 321.178A. The application and all required

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documentation, statements, certifications, and logs shall be submitted to the ~~office of driver and identification services at the address indicated on the form~~ bureau.

b. to d. No change.

634.11(5) Course approval.

a. A vendor that wishes to offer a driver education curriculum as an approved course in Iowa shall submit an application on a form provided by the department to the ~~office of driver and identification services at the address indicated on the form~~ bureau, along with a copy of all proposed curriculum materials. A vendor that wishes to offer an electronic curriculum may provide a uniform resource locator (URL) for the proposed electronic materials but must also provide physical copies of the proposed materials.

b. and c. No change.

d. If the proposed curriculum is approved, the department shall issue a certificate of approval to the vendor designating the curriculum as an approved course and shall list the approved course on the department's ~~Internet site~~ website. Course approval will be issued for one calendar year or for the remainder of a calendar year. The approval expires on December 31 and must be renewed annually by the submission of an application on a form provided by the department and all required materials as set forth in this subrule at least 60 days prior to the expiration date, unless otherwise approved by the department. ~~Notwithstanding this paragraph, a course approval issued before December 31, 2014, shall not expire until December 31, 2015.~~

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.