



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

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CITATION of Administrative Rules

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

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

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

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

NOTE: In accordance with Iowa Code section 7.17, 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 2011

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
20	Friday, March 18, 2011	April 6, 2011
21	Friday, April 1, 2011	April 20, 2011
22	Friday, April 15, 2011	May 4, 2011

PLEASE NOTE:

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

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

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

EDUCATIONAL EXAMINERS BOARD[282]

Class B license, 13.11(1) IAB 2/23/11 ARC 9382B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	March 16, 2011 1 p.m.
School business official authorization, 22.3, 22.4 IAB 2/23/11 ARC 9381B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	March 16, 2011 1 p.m.

EDUCATION DEPARTMENT[281]

Standards for school business official preparation programs, ch 81 IAB 2/23/11 ARC 9379B	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	March 15, 2011 9 to 10 a.m.
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ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Academic transcripts, 3.1(3) IAB 2/9/11 ARC 9369B	Professional Licensing Bureau Offices 1920 SE Hulsizer Rd. Ankeny, Iowa	March 16, 2011 1 to 4:30 p.m.
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ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality program—scope, services and funding options, 22.1(3)“b,” 22.106, ch 30, 33.1, 33.2 IAB 2/9/11 ARC 9366B	Air Quality Bureau 7900 Hickman Rd. Windsor Heights, Iowa	March 11, 2011 1 to 3 p.m.
Ground heat exchanger (GHEX) loop borehole systems, amend chs 38, 39, 49, 82; adopt ch 48 IAB 3/9/11 ARC 9425B	Room 141 Iowa Western Community College 705 Walnut St. Atlantic, Iowa	April 4, 2011 5 p.m.
	Meeting Room, Public Library 215 S. 2nd St. Cherokee, Iowa	April 5, 2011 4 p.m.
	Meeting Room, Public Library 200 N. 4th St. Clear Lake, Iowa	April 6, 2011 6:30 p.m.
	Iowa Room, Public Library 304 N. Franklin St. Manchester, Iowa	April 7, 2011 6:30 p.m.
	Public Library Washington State Bank Meeting Room 115 W. Washington St. Washington, Iowa	April 11, 2011 5 p.m.
	West Conference Room, Suite I Iowa DNR Water Supply Operations 401 S.W. 7th St. Des Moines, Iowa	April 12, 2011 7 p.m.
Water quality—lake criteria, 61.3(4) IAB 2/23/11 ARC 9371B	Falcon Civic Center 1305 5th Ave. NE Independence, Iowa	March 23, 2011 10 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

State Bank Room Public Library 115 West Washington St. Washington, Iowa	March 23, 2011 4 p.m.
Public Library 200 North Fourth St. Clear Lake, Iowa	March 24, 2011 10 a.m.
Fifth Floor Conference Rooms Wallace State Office Building 502 East 9th St. Des Moines, Iowa	March 25, 2011 1 p.m.
Rock Island Depot 102 Chestnut St. Atlantic, Iowa	March 29, 2011 10 a.m.
Waitt Building Iowa Lakeside Laboratory 1838 Hwy 86 Milford, Iowa	March 29, 2011 6 p.m.
Public Library 803 Braden Ave. Chariton, Iowa	March 31, 2011 4 p.m.

HUMAN SERVICES DEPARTMENT[441]

Medicaid remedial services— coverage as behavioral health intervention under Iowa Plan for Behavioral Health, 77.12, 78.12, 79.1, 79.3(2)“d,” 88.65 IAB 2/23/11 ARC 9399B	First Floor SE Conference Room 1 Hoover State Office Bldg. Des Moines, Iowa	March 16, 2011 10:30 a.m. to 12 noon
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INSURANCE DIVISION[191]

Individual health insurance for children under the age of 19, 15.11(6), 36.13 IAB 2/23/11 ARC 9398B	Division Offices 330 Maple St. Des Moines, Iowa	March 23, 2011 10 a.m.
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MEDICINE BOARD[653]

Continuing education and mandatory training, amendments to ch 11 IAB 3/9/11 ARC 9413B	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	March 29, 2011 2 p.m.
Standards of practice—appropriate pain management, 13.2 IAB 3/9/11 ARC 9414B	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	March 29, 2011 2:30 p.m.
Grounds for discipline—failure by a physician with HIV or HBV to report HIV or HBV status, 23.1 IAB 3/9/11 ARC 9415B	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	March 29, 2011 3 p.m.

NATURAL RESOURCE COMMISSION[571]

Public access to private land for hunting; landowner grants for wildlife habitat, 22.10 to 22.15 IAB 3/9/11 ARC 9423B (See ARC 9325B , IAB 1/12/11)	Fourth Floor West Conference Room Wallace State Office Bldg. 502 E. 9th St. Des Moines, Iowa	March 29, 2011 1 p.m.
Special events and fireworks displays, ch 44 IAB 3/9/11 ARC 9419B	Fifth Floor East and West Conference Rooms Wallace State Office Bldg. 502 E. 9th St. Des Moines, Iowa	March 30, 2011 2 p.m.
Special event permits, 61.7(16) IAB 3/9/11 ARC 9421B	Fifth Floor East and West Conference Rooms Wallace State Office Bldg. 502 E. 9th St. Des Moines, Iowa	March 30, 2011 2 p.m.
Fireworks displays—state parks and recreation areas, rescind ch 65 IAB 3/9/11 ARC 9422B	Fifth Floor East and West Conference Rooms Wallace State Office Bldg. 502 E. 9th St. Des Moines, Iowa	March 30, 2011 2 p.m.
Fishing tournaments, rescind ch 88 IAB 3/9/11 ARC 9420B	Fifth Floor East and West Conference Rooms Wallace State Office Bldg. 502 E. 9th St. Des Moines, Iowa	March 30, 2011 2 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Marital and family therapists and mental health counselors, 31.1, 31.4 to 31.7, 31.10(1), 32.4, 33.2(12) IAB 3/9/11 ARC 9416B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	March 29, 2011 9:30 to 10 a.m.
Dietitians—licensure, continuing education, discipline, amendments to chs 81 to 83 IAB 3/9/11 ARC 9426B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	March 29, 2011 11 a.m. to 12 noon
Podiatrists—renewal notices, 220.9(1) IAB 3/9/11 ARC 9401B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	March 29, 2011 1 to 1:30 p.m.
Discipline for podiatrists, 224.2(12) IAB 3/9/11 ARC 9405B	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	March 29, 2011 1 to 1:30 p.m.

REAL ESTATE COMMISSION[193E]

Enforcement of a protective clause, 11.2 IAB 2/23/11 ARC 9389B	Professional Licensing Conference Room Second Floor 1920 SE Hulsizer Rd. Ankeny, Iowa	March 15, 2011 1 p.m.
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TRANSPORTATION DEPARTMENT[761]

Federal motor carrier safety and hazardous materials regulations, 520.1(1) IAB 3/9/11 ARC 9417B	Motor Vehicle Division Offices 6310 S.E. Convenience Blvd. Ankeny, Iowa	March 30, 2011 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.”

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

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CIVIL REPARATIONS TRUST FUND

Pursuant to Iowa Administrative Code 361—subrule 12.2(1), the Executive Council gives Notice that the Civil Reparations Trust Fund balance as of December 31, 2010, is approximately \$6,214.00. Money in the Civil Reparations Trust Fund is available for use for indigent civil litigation programs or insurance assistance programs. Application forms are available in the office of the State Treasurer by contacting GeorgAnna Madsen, Executive Secretary, State Capitol Room 114, Des Moines, Iowa 50319; telephone (515)281-5368. Applications must be filed on the thirtieth day after the date of publication of this Notice in the Iowa Administrative Bulletin, or on the thirtieth day after the date affixed to the Notice sent by first-class mail, whichever is later. Any person/company that would like to receive future notices should make request in writing to the above-mentioned contact. Rules regarding the Civil Reparations Trust Fund can be found at 361 IAC Chapter 12.

ARC 9425B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 455B.105(3) and 455B.187, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 38, “Private Water Well Construction Permits,” and Chapter 39, “Requirements for Properly Plugging Abandoned Wells,” to adopt new Chapter 48, “Ground Heat Exchanger (GHEX) Loop Borehole Systems,” and to amend Chapter 49, “Nonpublic Water Supply Wells,” and Chapter 82, “Well Contractor Certification,” Iowa Administrative Code.

The purpose of this rule making is to rescind current GHEX language from Chapter 49 and to adopt new GHEX loop borehole rules that standardize the minimum construction requirements for this type of well and create additional protections to Iowa’s groundwater. The new rules will closely correspond to nationwide standards that are being proposed by contractor trade groups and will be more relevant to the actual geological conditions in Iowa.

Any interested persons may file written comments on the proposed amendments on or before April 12, 2011. Written comments or questions regarding the proposed amendments should be directed to Russell Tell, Iowa Department of Natural Resources, 401 S.W. 7th Street, Suite M, Des Moines, Iowa 50309, or by E-mail to russell.tell@dnr.iowa.gov.

Also, the following public hearings will be held, at which time persons may present their views either orally or in writing.

April 4, 2011	5 p.m.	Iowa Western Community College 705 Walnut Street Room 141 Atlantic
April 5, 2011	4 p.m.	Cherokee Public Library Meeting Room 215 South 2nd Street Cherokee
April 6, 2011	6:30 p.m.	Clear Lake Public Library Meeting Room 200 North 4th Street Clear Lake

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

April 7, 2011	6:30 p.m.	Manchester Public Library Iowa Room 304 North Franklin Street Manchester
April 11, 2011	5 p.m.	Washington Public Library Washington State Bank Meeting Room 115 W. Washington Street Washington
April 12, 2011	7 p.m.	Iowa DNR Water Supply Operations West Conference Room 401 S.W. 7th Street, Suite I Des Moines

At the hearings, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code sections 455B.105(3) and 455B.187.

The following amendments are proposed.

ITEM 1. Amend rule **567—38.1(455B)**, definition of “Construction,” as follows:

“*Construction*” means the physical act or process of making a water well or a GHEX loop borehole including, but not limited to, siting, excavation, construction and installation of equipment and materials necessary to maintain and operate the well or the ground-coupled heat exchanger portion of a GHEX loop borehole system.

ITEM 2. Adopt the following **new** definition of “GHEX loop borehole” in rule **567—38.1(455B)**:

“*GHEX loop borehole*” means any ground heat exchange loop borehole; ground-coupled, closed-loop, heat exchange borehole; geothermal borehole; or excavation greater than 20 feet in depth that is drilled, cored, driven, dug, bored, augered, jetted, washed or otherwise constructed into which a closed loop used for a ground heat exchange system is installed.

ITEM 3. Amend rule **567—38.2(455B)** as follows:

567—38.2(455B) Forms. The following application form is currently in use: Application for Private Water Well Construction Permit. ~~42/98-~~ 542-0988.

ITEM 4. Amend subrule 38.3(1) as follows:

38.3(1) When permit required. A landowner or landowner’s agent shall not drill or construct a new private water well or construct a GHEX loop borehole(s) without first obtaining a well construction permit issued by the department or by a county board of supervisors or the board’s designee authorized to issue permits pursuant to this chapter. Examples of private water wells requiring well construction permits include, but are not limited to: domestic wells, livestock wells, irrigation wells, recreational-use wells, monitoring wells, heat pump supply wells or GHEX heat pump loop boreholes, industrial wells, and dewatering wells, except that dewatering wells shall be exempt from the construction standards of 567—Chapter 49 (nonpublic water wells).

ITEM 5. Amend rule **567—38.4(455B)** as follows:

567—38.4(455B) Form of application. Application shall be made on forms supplied by the department. However, counties that have active delegation of authority to issue new private well construction permits pursuant to rule 567—38.15(455B) may develop and use their own application forms subject to the approval of the department. Each application shall list all wells, including nonplugged abandoned wells, on the applicant’s property contiguous to the well site described in the application and shall describe the location of each well site. The location shall be given in the form of a legal land description (section,

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

township and range) to the nearest quarter of a quarter of a quarter of a section, or as a latitude and longitude in degrees to four decimal accuracy. The list of wells to be registered shall include but is not limited to abandoned wells, inactive wells, agricultural drainage wells, irrigation wells, domestic wells and livestock wells. GHEX loop borehole applications shall also include a pre-drilling water well survey as required in 567—subrule 48.7(1).

ITEM 6. Amend rule 567—38.10(455B) as follows:

567—38.10(455B) Expiration of a permit. A private well construction permit shall expire one calendar year from the date of issuance. If construction of the proposed well is not started prior to the expiration date, a new application plus a new nonrefundable fee must be filed with the department or the ~~county board of supervisors~~ local county permitting authority pursuant to rule 567—38.15(455B).

ITEM 7. Amend rule 567—38.12(455B) as follows:

567—38.12(455B) Denial of a permit. The department or contracting county may deny a private well construction permit if granting the permit would lead to the violation of state law, could result in groundwater contamination, would lead to withdrawal from a protected source, or the well could threaten public health or the environment. Examples of wells that could threaten public health or the environment and, therefore, may be denied construction permits include, but are not limited to: in situ mining wells, wells which may result in a negative impact on an identified point source of groundwater contamination and cause leachate plume to spread or migrate, underground injection wells except as provided in 567—subrule 50.6(4) and 567—62.9(455B) and GHEX loop borehole fields located in or nearby contaminated sites or in geologically sensitive areas.

ITEM 8. Adopt the following new definition of “GHEX loop borehole” in rule **567—39.3(455B)**:
“GHEX loop borehole” means any ground heat exchange loop borehole; ground-coupled, closed-loop, heat exchange borehole; geothermal borehole; or excavation greater than 20 feet in depth that is drilled, cored, driven, dug, bored, augered, jetted, washed or otherwise constructed into which a closed loop used for a ground heat exchange system is installed.

ITEM 9. Adopt the following new subrule 39.8(6):

39.8(6) GHEX loop boreholes. Any GHEX loop borehole that cannot be used as a heat exchanger and that does not contain any piping shall be plugged using the appropriate “Class 2” plugging requirements as set forth in subrule 39.8(4) that match the actual geology encountered during drilling operations. All GHEX loop boreholes that contain heat exchanger piping shall be plugged following the requirements for the plugging of GHEX loop boreholes found in 567—subrule 48.10(1).

ITEM 10. Adopt the following new 567—Chapter 48:

CHAPTER 48

GROUND HEAT EXCHANGER (GHEX) LOOP BOREHOLE SYSTEMS

567—48.1(455B) Purpose. The purpose of this chapter is to protect the public health by establishing uniform minimum standards and methods for GHEX borehole installations (also known as ground-coupled, closed-loop, heat exchange borehole installations or geothermal loop boreholes) in order to protect groundwater supplies from contamination.

567—48.2(455B) Definitions.

“Abandoned closed-loop heat exchanger” means a GHEX loop which no longer circulates heat exchange fluid or which has limited use or access.

“Abandoned well” means a well whose use has been permanently discontinued. A well shall be considered abandoned when its condition is such that continued use is impractical or no longer desired.

“Administrative authority” means the county board of health or the county board of health’s designee.

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"Anaerobic lagoon" means an impoundment, the primary function of which is to store and stabilize organic wastes. The impoundment is designed to receive wastes on a regular basis, and the design waste loading rates are such that the predominant biological activity in the impoundment will be anaerobic. An anaerobic lagoon does not include:

1. A runoff control basin which collects and stores only precipitation-induced runoff from an open feedlot feeding operation; or
2. A waste slurry storage basin which receives waste discharges from confinement feeding operations and which is designed for complete removal of accumulated wastes from the basin at least semiannually; or
3. Any anaerobic treatment system which includes collection and treatment facilities for all offgases.

"Annular space" means the open space between the borehole excavation and the well casing or the borehole heat exchanger.

"Backflow prevention device" means any device, method or type of construction to prevent backflow of water, liquids, mixtures, or substances into a well or into the distribution pipes of a potable supply of water from any source other than its intended source.

"Borehole" means any excavation greater than 20 feet in depth that is drilled, cored, driven, dug, bored, augered, jetted, washed, trenched, excavated, or otherwise constructed and that:

1. Contains no casing or well liner pipe, or
2. Contains a well casing or liner pipe that is temporary and that will be extracted upon completion of the well bore and the insertion of the closed-loop heat exchanger loop.

"Cesspool" means a covered excavation, lined or unlined, into which wastes from toilets or urinals are discharged for disposal. Cesspools are not an approved method of sewage disposal.

"Closed loop" means that the recirculated heat transfer fluid is contained within the piping in order to exchange heat, not water, with the ground. The heat transfer fluid is not exposed to the atmosphere.

"Department" means the Iowa department of natural resources.

"Earthen manure storage basin" means an earthen cavity, either covered or uncovered, which, on a regular basis, receives waste discharges from a confinement feeding operation if accumulated wastes from the basin are completely removed at least once each year.

"Flowing borehole" means a borehole that discharges groundwater at or above the land surface without the benefit of a pump.

"Formed manure storage structure" means a structure, either covered or uncovered, used to store manure from a confinement feeding operation, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials. Similar materials may include, but are not limited to, plastic, rubber, fiberglass, or other synthetic materials. Materials used in a formed manure storage structure shall have the structural integrity to withstand expected internal and external load pressures.

"GHEX" means ground heat exchange.

"GHEX borehole construction" means the excavation of the borehole, emplacement of the closed loop, grouting of the loop, and installation of the heat transfer fluid.

"GHEX loop borehole driller" means a well contractor who is certified by the department to install GHEX borehole systems.

"GHEX loop borehole" means any ground heat exchange borehole; ground-coupled, closed-loop, heat exchange borehole; or excavation greater than 20 feet in depth that is drilled, cored, driven, dug, bored, augered, jetted, washed or otherwise constructed into which a closed loop used for ground heat exchange is installed. A GHEX loop borehole is not a water supply well.

"GHEX systems" means the various components of the ground heat exchange systems including the borehole, piping, grout, and heat transfer fluid.

"Grout" means an NSF-approved, natural bentonite-based material suitable for geothermal or water well use that is used to seal the annular space between the GHEX loop piping and the borehole. Grout shall consist of 16.67 percent (minimum) solids bentonite slurry, thermally enhanced bentonite grout, or neat cement with no more than 6 gallons of water per 94-pound sack of Portland cement and no more

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than 6 percent bentonite calculated by dry weight. Grout must be heavier than the drilling fluids. Drilling chips, drilling mud or heavy drilling fluids are not grout.

“Heat transfer fluids” means department-approved solutions that are used inside the piping installed in GHEX systems to exchange the heat with the earth.

“Heavy drilling fluid” means water used for drilling which, because of the natural clay content of the borehole or the addition of bentonite, has a solids density of at least 10 percent by weight or a mud weight of at least 9.25 lb/gal.

“Local administrative authority” means the local board of health or its designee authorized to issue GHEX construction permits pursuant to this chapter.

“Low permeability material” means a geological unit of unconsolidated material (usually clay or till) or bedrock (usually shale) that is all or partially saturated and that has a permeability low enough (10^{-7} cm/sec) to give water in the aquifer artesian head.

“Nonpublic water supply well” means a water supply well which is not used as part of a public water supply system (also known as a “private water supply well”).

“Open feedlot” means an unroofed or partially roofed animal feeding operation in which no crop, vegetation, or forage growth or residue cover is maintained during the period that animals are confined in the operation.

“Open loop” means a heat-exchange system that does not contain the heat transfer fluid in a closed loop. Open loop systems pump water and then discharge it.

“Public water supply well” means a water supply well which is used as part of a public water supply system.

“Runoff control basin” means an impoundment designed and operated to collect and store runoff from an open feedlot.

“Structures” means buildings, cultural features, and wells of any kind, excepting other ground-coupled, closed-loop heat-exchange boreholes in the same system.

“Well” means any excavation that is drilled, cored, driven, dug, bored, augered, jetted, washed or otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, or extracting water from or injecting water into the aquifer.

“Well” does not include an open ditch; drain tiles; an excavation made for obtaining or prospecting for oil, natural gas, minerals, or products mined or quarried; lateral heat exchange systems less than 20 feet deep; or temporary dewatering wells such as those used during the construction of subsurface facilities only for the duration of the construction.

“Well plugging” means the closure of an abandoned well with plugging materials by procedures which will permanently seal the well from contamination by surface drainage and permanently seal off the well from contamination into an aquifer. “Well plugging” includes the proper application of filling and sealing material.

567—48.3(455B) Applicability. These rules apply to all GHEX loop boreholes constructed for the purpose of utilizing the heat-exchange properties of the ground or groundwater. These rules shall apply to all GHEX loop borehole systems constructed 20 feet or greater in depth. They shall also apply to both residential and commercial installations. These rules do not apply to surface water GHEX systems, trench installations less than 20 feet in depth, or other types of GHEX installations less than 20 feet deep.

48.3(1) All GHEX pump and dump well systems, GHEX pump and reinject well systems, GHEX standing column heat-exchange well systems or any other installations which meet the definition of “well” but are not GHEX loop boreholes are regulated by the construction rules found in 567—Chapter 49.

48.3(2) Nonconforming GHEX installations. Any GHEX loop borehole systems which are not constructed in a manner that complies with all of the provisions in these rules are nonconforming. Any nonconforming GHEX loop borehole installation feature shall be modified to meet the requirements of these rules or shall be properly abandoned.

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567—48.4(455B) General. The administrative authority shall have the authority to visit GHEX loop borehole construction sites during any phase of the construction without prior notice. The administrative authority shall by rule require the issuance of permits and the submission of GHEX borehole geologic logs. No GHEX loop borehole shall be initiated until state and any required local well construction permits have been issued by the proper permitting authorities in compliance with 567—Chapter 38. All GHEX loop borehole construction shall be performed by a certified GHEX borehole driller or by the property owner as specified in 567—Chapter 82. The administrative authority may also require increased site assessment, posting of performance bonds, and collection and submission of drill cutting samples, hydrogeological data, and other pertinent information regarding the proposed or actual installation. It shall be the responsibility of the certified GHEX borehole driller to ensure that all state and local GHEX loop borehole construction permits have been issued prior to initiation of GHEX loop borehole construction. It shall also be the responsibility of the certified GHEX borehole driller to ensure that all GHEX loop borehole construction is performed in accordance with the provisions of this chapter.

567—48.5(455B) Variances. Variances from the construction standards found in these rules can only be issued by the department. Local permitting agencies shall not issue variances from these rules. Any permittee who requests a variance must follow the guidelines as found in 567—Chapter 10 and shall submit the request for variance and supporting documentation in written form to the department. The supporting documentation must include detailed information regarding the proposed additional standards or protections that will be used during the installation of the GHEX loop boreholes to provide protection equal to or greater than these rules. The department will provide a written notice to the permittee with information regarding variance approval or rejection. The conditions set by any variance request and any variance approval shall be noted on the GHEX loop borehole construction permit as issued on the department's Private Well Tracking System (PWTS).

567—48.6(455B) Location of GHEX boreholes. The GHEX borehole driller shall consult the administrative authority for assistance in determining a proper distance in such cases where potential hazards to groundwater are not listed in Table 1 or Table 2.

48.6(1) Minimum distances. Any GHEX borehole with properly placed full-length grout shall not be an avenue for fluid migration. The borehole, therefore, can be placed reasonably close to other structures. Some native, undisturbed material should remain between the GHEX borehole and any other existing or future structure. The following minimum lateral distances shall apply for the common sources of contamination listed in the following tables:

a. Minimum lateral separation.

Table 1—Vertical Boreholes: Minimum Lateral Separation Distances
for Vertical GHEX Boreholes

Source	Distance
Public water supply wells defined as “shallow well”	400 feet
Public water supply wells defined as “deep well”	200 feet
Sanitary landfills	500 feet
Earthen manure storage basins; livestock runoff control basins; anaerobic lagoons	400 feet
Domestic wastewater lagoons	200 feet
Industrial wastewater lagoons and basins	200 feet
Nonconforming private water well completed in the same aquifer which will be intersected by the GHEX borehole	50 feet
Nonconforming private water well that is not completed in an aquifer which will be intersected by the GHEX borehole	25 feet

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Source	Distance
Conforming private water well completed in the same aquifer which will be intersected by the GHEX borehole	25 feet
Conforming private water well where the GHEX borehole will not intersect the same aquifer in which the conforming well is completed	10 feet
Preparation or storage area for spray materials, commercial fertilizers or chemicals that may result in groundwater contamination	100 feet
Formed manure storage structures; confinement buildings; feedlot settling facilities; open feedlots; soil absorption fields; any sewage treatment system with an open discharge; pit privy or septic tank discharge line; sewers under pressure	50 feet
Septic tank, concrete vault privy, sewer of tightly joined tile or equivalent material, or sewer-connected foundation drain	25 feet
Aboveground liquid hydrocarbon storage tanks	25 feet
Belowground liquid hydrocarbon storage tanks	100 feet
Road ditches, rights-of-way	10 feet
Streams, ponds, or lakes	25 feet
Sewer of cast iron with leaded or mechanical joints; sewer of plastic pipe with glued or compression joints; independent clear water drains; cisterns; well pits; pump house floor drains; hydrants; frost pits; sewer collector pits and lift stations	10 feet
Structures (buildings, cultural features)	5 feet
Property lines (unless a mutual easement is signed and recorded by both parties)	4 feet

b. *Minimum vertical separation.*

Table 2—Horizontal and Directional Boreholes: Minimum Vertical Separation Distances for Horizontal and Directional GHEX Boreholes

Source	Distance
Homes, basements, garages, and other building structures that do not pose a contamination threat	5 feet
Commercial buildings, buildings warehousing potentially hazardous substances, areas where past or present activity may have contaminated the soils	Consult with the department for appropriate separation distance
Manure storage structures; confinement buildings; feedlot settling facilities; open feedlots; earthen manure storage basins; livestock runoff control basins; anaerobic lagoons; domestic wastewater lagoons; industrial wastewater lagoons or basins; preparation or storage area for spray materials; commercial fertilizers or chemicals that may result in groundwater contamination; liquid hydrocarbon storage	15 feet
Private soil absorption fields; any sewage treatment system with an open discharge; pit privy or septic tank discharge line; septic tank and concrete vault privy; sewer of tightly joined tile or equivalent material; sewer-connected foundation drain; sewers under pressure; liquid hydrocarbon storage	5 feet

48.6(2) Response to contamination. The GHEX borehole driller shall contact the department to determine if the GHEX construction will impact known areas of contamination. The department has

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the right to modify the construction requirements for the loop boreholes, stop the construction until the additional information is collected, or rescind the construction permit based upon actual site conditions found at the time of GHEX borehole installation.

48.6(3) Easements. GHEX boreholes shall not be located on property that is not owned by the user of the GHEX system unless an easement allowing such placement is agreed upon by the property owners, reviewed and approved by the administrative authority, and legally recorded.

567—48.7(455B) General construction requirements. To minimize the potential contamination of the groundwater, any GHEX borehole shall be planned and constructed to adapt to the geologic conditions of the proposed GHEX borehole site to ensure utilization of every natural protection against contamination of any water-bearing formation(s) and the exclusion of sources of contamination to groundwater.

48.7(1) Pre-drilling water well survey. It shall be the responsibility of the property owner, or an agent identified by the property owner, to conduct a preconstruction water well survey. The preconstruction water well survey shall identify, list, and plot, on a topographic map or aerial photograph, all known private and public water wells within a 250-foot radius of the proposed GHEX construction site property boundaries. This map and a well log for the first GHEX borehole, or exploration borehole, and all directional boreholes are required for each site. The intent of the water well survey is to find and locate actual wells, or receptors, to the uppermost aquifers, particularly those wells completed in the same zone as the proposed GHEX borehole.

a. The applicant shall submit the preconstruction water well survey to the regulatory authority in order to document minimum separation distances between water wells and the GHEX boreholes.

b. The applicant shall also submit to the regulatory authority and the Iowa Geological Survey the well log for the first vertical GHEX borehole, or exploration borehole, and the logs for all horizontal/directional boreholes for each site. Additional well logs for vertical boreholes are required if there is a significant change in the geological formations or if sensitive geological conditions exist that may result in long-term grout failure or groundwater contamination or both.

c. The department may require additional borehole log information when the proposed GHEX loop borehole field is located in any area that may contain one or more sources of contamination or for locations that are geologically sensitive. This information shall include all of the normal well log information and also shall include, but not be limited to, the following additional information:

- (1) Detailed information about any contamination observed during the drilling process;
- (2) Detailed information on the production of water or loss of water from the borehole during borehole construction;
- (3) Depths at which any fractures, voids, caverns or other significant geologic features occur;
- (4) Static water level of any groundwater encountered upon the completion of drilling and prior to grouting;
- (5) Detailed information on each loop heat exchanger that does not easily and fully enter the borehole;
- (6) Detailed borehole backfilling and grouting information including the actual amount of grout and sand utilized and consumed by the borehole construction; and
- (7) Any other information required to successfully install loop heat exchangers that provide long-term protections for the groundwater.

d. All information obtained or developed to fulfill the requirement in paragraph 48.7(1)“c” shall also be provided as addenda for any specification developed for GHEX borehole drilling when the borehole project involves competitive bidding.

48.7(2) Water used in construction. Water used in the construction process shall be obtained from a potable water source that will not result in contamination of the groundwater. Water used for drilling shall be treated with 3 pints of 5.25 percent sodium hypochlorite solution per 100 gallons of water or 0.25 pounds of 65 percent calcium hypochlorite per 100 gallons of water to produce an equivalent concentration of chlorine residual of 50 mg/L.

48.7(3) Closed-loop installation. Closed loops shall be installed in the GHEX borehole as soon as possible after drilling. All GHEX closed-loop boreholes shall have the heat exchanger piping installed

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and the borehole fully grouted within 24 hours of borehole completion. The annular space between the GHEX piping and the borehole must be full-length grouted using a tremie pipe through pumped pressure method from the bottom of the borehole upwards using an approved grout as required in subrule 48.7(5). Any confining layers between major or minor bedrock aquifers shall be subject to additional requirements as defined in subrule 48.8(4).

48.7(4) Temporary borehole protection. Any borehole that is not immediately completed and grouted shall be covered to protect the borehole from surface water, contaminants and foreign objects entering the borehole and the groundwater.

48.7(5) Borehole grouting. All GHEX loop boreholes must be fully grouted from the bottom of the borehole upwards in one continuous motion, except for those boreholes detailed in 48.7(1)“c” where the grouting must be done according to an approved standard developed by the installation of test holes and in 48.8(4) where the grouting must allow for filling of subsurface fractures, caverns, or caves.

a. Grout. All bentonite grouts must be an NSF-approved natural bentonite material consisting of 16.67 percent minimum solids and designated and labeled as a grout for GHEX or water well use. Drilling mud cannot be used as grout. Grout must be heavier than the drilling mud to minimize the risk of grout channeling. Where natural groundwater chemistry has a total hardness greater than or equal to 500 ppm and/or a chloride content of greater than or equal to 1500 ppm, bentonite-based grouts may not be appropriate; in these situations unbentonated sodium bentonite with cement is an appropriate grout mixture, and the cement-based grout must have a low permeability (10^{-7} cm/sec). Any grout subsidence found at the time the upper terminus of the GHEX loop boreholes are excavated and connected to the header pipes must be corrected by the addition of grout material to the borehole until the grout is level with the trench floor.

(1) Thermally enhanced grouts. Thermally enhanced grouts must be mixed to the manufacturer's published specifications to achieve permeability of 10^{-7} cm/sec or less and to achieve uniform mixture of any sand or additives. The department may approve other grouts which have a low permeability (10^{-7} cm/sec). Experimental grouts and grout additives must be approved by the department before use in GHEX installations.

(2) Cementaceous grouts. Neat cement and sand cement grouts may be used as long as they are appropriately mixed to industry standard ratios and are placed using full-depth pressure grouting through a tremie pipe.

(3) Alternative grout products. Grouts that contain additives other than bentonite, sand and cement must be approved by the department before placement will be allowed into a GHEX borehole.

b. Weights. Weights, ballast, and attachments used to facilitate the emplacement of the closed loop, hardware, and appurtenances which will remain in the borehole must be composed of materials approved as safe in water well construction. Lead weights, ballast, and related lead hardware are prohibited.

c. Identification of boreholes. Each GHEX borehole shall be permanently identified and located to within three feet by a means or method approved by the department, and the method of identification and borehole placement shall be documented on the borehole log form. Approved methods include magnetic tape, magnetic wire, survey pins, high resolution GPS, or other methods approved by the department which will allow the buried GHEX borehole to be remotely detectable; or the final borehole perimeter(s) of the borehole field shall be identified by high resolution GPS and the locations shall be recorded on the borehole log form.

48.7(6) Vertical and horizontal heat exchanger piping. The vertical and horizontal piping installed in a GHEX borehole shall conform with the following:

a. Piping used must be high-density polyethylene manufactured from new, non-recycled high-density polyethylene (HDPE), meet the specifications and material designation of PE 3408 or greater, and be manufactured for “GHEX” or “geothermal” applications.

b. The heat exchanger pipe shall have:

(1) A factory-fused U-bend,

(2) A Dimension Ratio (DR) of 11 having a working pressure rated for at least 160 psi or a DR of 9 having a working pressure rated for at least 200 psi, and

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(3) Field connections, field repairs and modifications that follow manufacturers' written instructions for application, testing, protection and use and that are performed by individuals who have completed the pipe manufacturers' training for product handling and fusion methods.

c. Any pipe installed within the GHEX borehole shall have the upper terminus open pipe ends sealed to prevent dirt and debris from entering the pipe. Approved methods include pipe plugs and heat sealing through crimping or by coupling the pipe via the heat fusion method. Under no circumstances shall the loop pipe be sealed using only tape products.

48.7(7) *Outdoor horizontal header and connector piping.* The horizontal piping installed for use in any GHEX system shall conform to the following horizontal piping standard:

a. Horizontal piping must be high-density polyethylene manufactured from new, non-recycled high-density polyethylene (HDPE), meet the specifications and material designation of PE 3408 or greater, and be manufactured for "GHEX" or "geothermal" applications.

b. Piping must have a Dimension Ratio (DR) of 11 having a working pressure rated for at least 160 psi or a DR of 9 having a working pressure rated for at least 200 psi.

c. Buried field connections, connection repairs and piping modifications of horizontal subsurface pipe shall be heat fused by butt, socket, sidewall or electrofusion methods in accordance with the pipe and pipe fitting manufacturers' procedures and standards, and be performed by individuals who have completed the pipe manufacturers' training for product handling and fusion methods. Stub fittings or other types of mechanical connections may only be used if the subsurface location is accessible, as in interior vault connections.

d. Any pipe installed and not immediately connected to other system piping shall have the piping ends sealed to prevent dirt and debris from entering the pipe. Approved methods include pipe plugs and heat sealing through crimping. Under no circumstances shall the loop pipe be sealed using only tape products.

48.7(8) *Fittings.* The material used in the manufacture of the fittings shall be the same base resin material as the connecting closed-loop pipe. Closed-loop pipe fittings buried below grade shall be molded and manufactured to the specifications and requirements of ASTM D-2683 for socket fittings, the specifications and requirements of ASTM D-3261 for butt-welded fittings, and the specifications and requirements of ASTM F-1055 for electrofusion fittings. Mechanical and barbed fittings may not be used if buried or below grade unless the fittings are within a vault or other accessible location.

48.7(9) *Joints.* Joints for the pipe and fittings shall be heat fusion or electrofusion fittings. Heat fusion joints shall be assembled in accordance with the manufacturer's recommended fusion-joining procedures. Electrofusion and mechanical joints shall be assembled in accordance with the instructions of the fittings' manufacturers, and assembly shall be performed by individuals who have completed the pipe manufacturers' training for product handling and fusion methods.

48.7(10) *Pressure testing.* Only leak-free piping may be placed in operation within the borehole and the horizontal piping installation. For vertical piping, the pressure test must be completed before the loop is installed into a GHEX borehole. For horizontal piping, the pressure test shall be completed before the horizontal trench is backfilled. The testing shall be completed using compressed air or potable water at a pressure of 75 psi or 1.5 times the system operating pressure, whichever is greater, for a minimum of 30 minutes. A successful pressure test demonstrates that there is no leakage. After the GHEX piping system has been completed, all system piping must be pressure-tested with air or potable water for 30 minutes minimum at a pressure of 75 psi or 1.5 times the system operating pressure, whichever is greater. If a pressure change indicates that the system has a leak, the leak shall be found and repaired before the system is placed in operation.

48.7(11) *Trench pipe bedding.* Horizontal piping shall include firm, stable, uniform bedding placed under the pipe for continuous support. The pipe bedding shall ensure that the pipe will not be damaged by trench backfill operations, by trench settling, or by system operation.

a. Where rock is encountered in trenching, the rock shall be removed to a depth of not less than six inches below the bottom of the pipe and bedding shall be added as required under 48.7(11) "b." The pipe shall not rest on rock at any point, including joints.

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b. Where trenches are excavated to depths below the bottom of the pipe, bedding shall be added beneath the pipe as required. Such bedding shall be of clean sand, gravel, or similar select material that is compacted sufficiently to provide the support required.

c. When the piping is placed in the trench, care shall be used to ensure that the trench bottom is smooth and free from sharp or angular objects. Care shall be used when transitioning piping through a bend or corner to ensure that the pipe does not fold or kink. In corners where the trench sidewall will come in contact with the piping, the sidewall shall be contoured to allow a smooth, supported radius for the pipe.

d. The initial backfill shall embed the pipe with a minimum of four inches on each side, shall include a minimum of four-inch cover, and shall be of clean native granular materials. Embedment soils must be free from refuse, organic material, cobble, boulders, large rocks or stones, and frozen clods that may damage the structural integrity of the pipe or the connections. Flowable fill material(s) may be used as long as the material(s) meets the requirements of this rule.

e. An insulated copper tracer wire or other approved tracer product or conductor shall be installed adjacent to all subsurface horizontal GHEX piping to facilitate discovery of the buried piping. One end shall be brought aboveground inside or outside the building or vault wall. The tracer wire shall not be less than 18 AWG insulated. The insulation of the tracer wire shall not be yellow in color.

f. The trench shall be backfilled from the top of the compacted initial backfill to finish grade using suitable material. Compacting equipment may be used for the final backfill to minimize settling.

48.7(12) Heat transfer fluids. All heat transfer fluids used in GHEX systems must be food-grade, USP-grade, or approved for incidental food contact applications by NSF. Fluids that meet USDA guidelines as “generally accepted as safe” may be used with department approval. Additives used for treatment of heat transfer fluids must be NSF-approved for drinking water applications or meet USDA guidelines as “generally accepted as safe.” Additives shall be mixed only in concentrations recommended by the manufacturer. A permanent sign must be attached to the injection point(s) specifying what heat transfer fluid the system currently contains and that only approved heat transfer fluids may be used in the system.

567—48.8(455B) GHEX borehole construction criteria for different geological conditions.

48.8(1) Installation of closed-loop heat exchange boreholes in difficult geological settings. In areas of the state where contamination may be an issue and/or where geological features may exist that require additional GHEX loop field design considerations, borehole construction considerations, and/or borehole stabilization and grouting considerations, the GHEX loop boreholes shall be installed with increased oversight from the department or the local permitting authority or both. The department may require the collection of additional information on contaminated sites, local geological features, and test borehole logs and cutting samples before construction permitting is approved and the GHEX loop field production drilling is initiated. In addition, the department may place conditions on the GHEX borehole construction including, but not limited to, contaminated groundwater study, hydrogeological study, borehole field location study, limitations on maximum borehole depth, additional grouting requirements, and any other construction-related enhancements necessary to ensure borehole integrity, system operation, and aquifer protections. All additional information as required by the department and all information assembled as part of 48.7(1) shall be provided as addenda for any specification developed for GHEX borehole drilling when the project involves competitive bidding. The approximate location and the description of the known difficult geological settings can be found in the Iowa DNR document 542-0075, “GHEX Loop Drilling in Difficult Geological Settings,” which may be obtained by contacting the department.

48.8(2) GHEX boreholes constructed in unconsolidated materials. Water-saturated, fine-grained earth materials (e.g., loess, sand, sandstone) may tend to flow during drilling and create large voids. Borehole stability will be the goal of the driller, and there may be innovative ways to accomplish stability, including the use of traditional water well construction tools such as casing, liner, gravel-pack, fill, and various grouting media and methods. Techniques used to stabilize the borehole will be allowed if the stabilization technique uses clean, nonorganic, native materials, bentonite or cementitious products and the products used do not allow the movement of groundwater out of the aquifer via the borehole.

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48.8(3) GHEX boreholes drilled in glacial till-dominated terrains may encounter several aquifers or water-bearing zones (e.g., loess/till contact, till/bedrock contact, interbedded sand and gravel units, basal glacial drift sand and gravel units). Care shall be used in placement of the borehole grout to protect any local aquifers from any vertical movement of grout and groundwater.

48.8(4) GHEX boreholes constructed in bedrock. Numerous areas of Iowa are underlain by bedrock geology that can include highly porous zones, cavernous or fractured areas within the bedrock, or other features associated with the bedrock that cause borehole stabilization, water production, grout loss issues, and interference with existing boreholes and water wells. Extreme care must be used to ensure the stability and effectiveness of the grout materials within the borehole. Borehole stabilization techniques shall not allow the migration of stabilizing material (especially bentonite, sand, ag-lime, or other materials that tend to “flow”) to any well. Hole stabilization utilizing rock chips, sand, ag-lime, cement, bentonite, and other traditional water well construction materials is allowed. However, since individual boreholes can encounter more than one such porous zone, it is required that each porous zone be stabilized separately, and each section of borehole between the porous zones be full-length grouted to prevent groundwater from migrating along the borehole from one porous zone to another. When a borehole encounters fractures or voids that may result in grout instability and subsidence, the well driller shall follow the requirements set forth in paragraphs 48.8(4) “a” to “c.”

a. Small fractures. Small fractures may be filled by using dense bentonite grout, cementitious grouts, or with chipped bentonite plugging material as long the material used will allow the borehole grout column to remain stable.

b. Large fractures and voids. Large fractures and voids may be filled with clean fill (gravel, pea stone, limestone chips, bentonite chips) as long as care is used to place the fill material to ensure that it does not bridge in the borehole and that the grout placed above the fractures or voids remains stable. Under no circumstances shall the borehole be filled entirely with clean fill material. Grout must always be used in the areas of the borehole that do not include large fractures or voids.

c. Areas of extreme borehole instability. In areas where the borehole is so unstable that the loop cannot be successfully placed to full depth or where the borehole will not allow the grout column to remain in place, the well driller shall utilize a well casing to stabilize the borehole. Any permanent casing must be properly grouted between the outside of the casing and the borehole wall to eliminate any vertical pathway that allows groundwater or grout to migrate into the unstable area.

48.8(5) Abandonment of borehole because of instability. If a borehole cannot be utilized because of any bedrock instability, the borehole must be properly plugged as stated in 567—48.10(455B).

48.8(6) Flowing boreholes. Boreholes that encounter permeable formations which result in groundwater movement from any given zone within the borehole must be stabilized to prevent the vertical movement of groundwater. This movement can be either upward or downward and includes flowing onto the ground surface. The type of grout used, the density of the grout prepared, and the method used for grout placement shall ensure that the grout will confine each zone and not wash away due to groundwater under pressure.

48.8(7) Interconnection of aquifers. GHEX boreholes shall not penetrate a confining unit which separates major bedrock aquifers. When a major bedrock aquifer is utilized, the confining layer below must not be penetrated.

a. The following major bedrock aquifers shall not be interconnected by a GHEX borehole:

- (1) Cretaceous Dakota Formation.
- (2) Mississippian System.
- (3) Silurian-Devonian Systems.
- (4) Ordovician System above the St. Peter Sandstone (Galena aquifer, Maquoketa Formation).
- (5) Cambrian-Ordovician Systems – St. Peter Sandstone through the St. Lawrence Formation (Jordan aquifer).
- (6) “Dresbach” aquifer – Galesville Member, Eau Claire Formation, and Mt. Simon Formation.

b. Information regarding bedrock aquifers can be found in “Iowa’s Groundwater Basics” as published by the Iowa department of natural resources (Iowa Geological and Water Survey Educational Series 6), or by contacting the Iowa Geological and Water Survey.

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c. Minor confining units. Confining units within and between minor bedrock aquifers must be restored to ensure the integrity of the confining unit. Proper grouting of the confining bed shall include consideration of the porosity and permeability of the bedrock aquifers and use of a grout product that will minimize the possibility of grout migration and subsidence.

d. Exploration borehole. The first exploration borehole may be drilled to any depth to determine the thermal conductivity of the earth materials. If, however, the exploration borehole is to be used as a GHEX borehole, then any confining unit between major bedrock aquifers which was breached by the drilling of this exploration borehole must be sealed with grout and the grout allowed sufficient time to achieve set and stability before the installation of the heat exchange closed loop above the confining unit. The base of the GHEX loop must be at least 10 feet above the top of the confining layer. Subsequent GHEX boreholes in the same borehole field shall also terminate at least 10 feet above the top of the confining unit. The top of the confining unit is determined by the exploration borehole and any subsequent boreholes which encounter the same or equivalent geologic unit.

567—48.9(455B) Disposal of drilling wastewater. Drilling fluid, drilling mud, drill cuttings and drill site wastewater generated during the construction of GHEX installations shall be properly disposed of at the time of construction.

48.9(1) Drilling fluids or drill cuttings shall not be disposed of in a stream or storm sewer nor shall these materials be discharged into a sanitary sewer without permission of the owner and operator of the wastewater treatment facility.

48.9(2) All GHEX borehole construction-related wastewater that reaches waters of the United States is subject to the management requirements for well construction-related wastewater found in 567—Chapter 64 and General Permit No. 6 (GP6). GP6 requires notification to the Iowa DNR Field Services Office in the region where the construction is taking place, the development of an adequate well water pollution prevention plan, placement of adequate best management practices (BMPs) for wastewater treatment, periodic inspection of the BMPs, and documentation of compliance.

48.9(3) Reasonable care should be used so that GHEX borehole-related wastewater does not create a nuisance to adjoining property owners.

567—48.10(455B) Abandonment and plugging of GHEX boreholes. Any GHEX borehole that will not be used for the purpose intended must be properly plugged so that the abandoned boreholes do not become a potential contamination hazard to nearby drinking water wells or the groundwater. Proper plugging will be dependent on the individual borehole.

48.10(1) Borehole with closed-loop pipe contained within the borehole. If the GHEX borehole was completed and conforms to this chapter and contains closed-loop pipe still within the borehole, the closed-loop pipe shall be disconnected from the header pipe if connection exists, and each closed-loop pipe shall be pressure-grouted with approved grout. The heat transfer fluids displaced by the grouting of the closed-loop pipe shall be contained and disposed of properly. Any grout subsidence found during loop borehole excavation shall be replaced with grout.

48.10(2) Any GHEX borehole that does not contain closed-loop pipe shall be plugged in accordance with the appropriate Class II well plugging requirements as found in 567—subrule 39.8(6).

567—48.11(455B) GHEX system-related devices.

48.11(1) *Flow measurement device.* All GHEX systems shall include a flow measurement device that is placed in a readily accessible location.

48.11(2) *Water make-up lines.* All water make-up lines connected to a GHEX loop borehole system must be protected with an approved backflow prevention device.

567—48.12(455B) Waste disposal prohibition. Under no circumstances shall any GHEX test holes, boreholes, or heat exchanger installation be used for the disposal of debris, solid waste, septic tank sludge

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or effluents, or any other type of unauthorized disposal of waste materials, or as a receptacle for field tile drainage or other surface water sources.

These rules are intended to implement Iowa Code chapter 455B.

ITEM 11. Adopt the following new definition of “GHEX loop borehole” in rule ~~567—49.2(455B)~~:
 “*GHEX loop borehole*” means any ground heat exchange loop borehole; ground-coupled, closed-loop, heat exchange borehole; geothermal borehole; or excavation greater than 20 feet in depth that is drilled, cored, driven, dug, bored, augered, jetted, washed or otherwise constructed into which a closed loop used for a ground heat exchange system is installed.

ITEM 12. Amend rule 567—49.3(455B), introductory paragraph, as follows:

567—49.3(455B) Applicability. The provisions contained herein apply to all nonpublic water supply wells constructed for the purpose of domestic, livestock, irrigation, recreation, and commercial or industrial use. They shall also apply to existing water wells undergoing reconstruction. GHEX loop borehole systems are not covered by these provisions but are regulated under Iowa Administrative Code 567—Chapter 48.

ITEM 13. Amend rule 567—49.5(455B) as follows:

567—49.5(455B) Variances. Variances to these rules may be granted by the administrative authority if sufficient information is provided to substantiate equal protection and the need for such action. Variance requests and reasoning shall be in writing. Variance approvals or rejections shall also be in writing. Where permitting authority has not been delegated to the county, the department will review and grant or deny any variance requests within that jurisdiction. A statement of variance approval or denial and all conditions required as part of an approved variance shall be noted in the “variance” and “special conditions” areas of the private well construction permit issued on the department’s Private Well Tracking System (PWTS).

ITEM 14. Amend rule 567—49.29(455B) as follows:

567—49.29(455B) Closed circuit vertical heat exchangers or GHEX loop borehole systems. ~~These provisions apply to closed circuit vertical heat exchanger construction~~ Provisions that apply to GHEX loop boreholes and closed-loop heat exchangers are found in 567—Chapter 48.

~~49.29(1) Piping used must be 160 psi pressure-rated high-density polyethylene or polybutylene.~~

~~49.29(2) Connection to piping must use socket fusion or butt fusion joining methods.~~

~~49.29(3) Piping must be pressure tested with air or potable water for 15 minutes at a pressure of 1.5 times the system operating pressure after installation in the borehole.~~

~~49.29(4) The annular space between the vertical heat exchanger piping and the borehole must be grouted as required in subrule 49.9(3) using an approved grouting method and material. Grout shall be placed at least in the top 40 feet. Any confining layers between aquifers shall be replaced with grout. Grouting must be performed within 24 hours of completion of the borehole.~~

~~49.29(5) Only food grade or USP grade propylene glycol or calcium chloride may be used as heat transfer fluid. Any other materials or additives must be NSF approved for drinking water applications. A permanent sign must be attached to the heat pump specifying that only approved heat transfer fluids may be used.~~

~~49.29(6) A flow measurement device must be installed on each system.~~

~~49.29(7) Water make-up lines to the vertical heat exchanger must be protected with a backflow prevention device.~~

ITEM 15. Amend rule ~~567—82.1(455B)~~, definitions of “Certified well contractor” and “Well services,” as follows:

“*Certified well contractor*” means a well contractor who has successfully passed an examination prescribed by the department to determine the applicant’s qualifications to perform well drilling services or GHEX loop borehole services or pump services ~~or both~~.

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“*Well services*” means ~~both~~ well drilling services ~~and~~ or GHEX borehole drilling services or pump services.

ITEM 16. Adopt the following **new** definitions in rule **567—82.1(455B)**:

“*GHEX loop borehole driller*” means a person certified by the department to perform GHEX loop borehole services.

“*GHEX loop borehole services*” means the drilling of GHEX loop boreholes, the fusion and installation of loop borehole heat exchanger piping into the borehole, the placement of loop borehole filling and sealing materials and grout, and the plugging of unused GHEX loop boreholes and loop borehole systems.

ITEM 17. Amend subrule 82.2(1) as follows:

82.2(1) *Certified well contractor requirement.* All well services shall be performed by a certified well contractor pursuant to this chapter, except that a person may perform well services on the person’s own property without being certified. A certified well contractor shall notify the department or the county prior to performing water well drilling services for a well or GHEX loop borehole services that ~~does~~ do not have the required construction permits. A certified well contractor shall notify the department prior to drilling a water well if the use of the water requires a water use allocation and the owner has not applied for or been issued a water use allocation.

ITEM 18. Amend subrule 82.2(2) as follows:

82.2(2) *Certified well contractor present.* A certified well contractor shall be present at the well site or the GHEX borehole site and in direct charge of the well services being performed or provided.

ITEM 19. Amend subrule 82.3(1) as follows:

82.3(1) *Classifications.* There shall be three classifications of certified well contractors:

a. Certified well contractor.

(1) Well driller.

(2) GHEX borehole driller.

~~(2)~~ (3) Pump installer.

b. Provisionally certified well contractor.

(1) Well driller.

(2) GHEX borehole driller.

~~(2)~~ (3) Pump installer.

c. Well plugging contractor.

ITEM 20. Amend subrule 82.3(2) as follows:

82.3(2) *Certified well contractor.* In order to be certified as a certified well contractor, an applicant shall have met the experience requirements; successfully completed the well contractor examination for well drilling services, GHEX borehole driller, or pump services ~~or both,~~ and the general examination; been issued a certificate by the department; and renewed the certification in accordance with rules 567—82.10(455B) and 567—82.11(455B).

ITEM 21. Amend paragraph **82.3(3)“d”** as follows:

d. Successfully complete, with a passing score, the general well contractor certification examination for and at least one of the specialty examinations for well drilling services, GHEX loop borehole services, or pump services ~~or both.~~

ITEM 22. Amend subrule 82.6(1) as follows:

82.6(1) All applicants shall meet the experience requirements as shown below. Educational programming approved by the department may be substituted for up to one-half of any experience requirement at the rate of one CEU for each 100 hours of required experience.

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CLASSIFICATION	EXPERIENCE
Certified Well Contractor (well driller)	Two years' employment and 2000 hours' work experience in Class 1 and Class 2 well construction
Certified Well Contractor (GHEX loop borehole driller)	Two years' employment and 2000 hours' work experience in GHEX loop borehole construction or a combination of at least 1000 hours' work experience in well construction and at least 1000 hours' work experience in loop borehole construction
Certified Well Contractor (pump installer)	Two years' employment and 1000 hours' work experience in the installation, repair, and maintenance of water systems
Provisionally Certified Well Contractor	One-half of the employment and experience required for full certification
Well Plugging Contractor	None

ITEM 23. Amend subrule 82.6(2) as follows:

82.6(2) Applicable experience review committee. The department may appoint a peer review committee to help evaluate relevant well services work experience submitted by applicants for certification. The committee should consist of three members recommended by the Iowa Water Well Association, three members of the Iowa Geothermal Association, two members recommended by the Iowa Environmental Health Association, one member recommended by the Iowa Groundwater Association and one member recommended by the Iowa Environmental Council. Committee recommendations shall be considered by the department, which shall make the final determination of eligibility.

ITEM 24. Amend subrule 82.7(3) as follows:

82.7(3) *Certification fees.* The certification fee for well drilling contractors and GHEX loop borehole drilling contractors shall be \$75 for each one-half year of a two-year period from the date of issuance to June 30 of the next even-numbered year. The certification fee for pump installation contractors and well plugging contractors shall be \$75 for each one-half year of the first year of certification and \$50 for each additional one-half year period to June 30 of the next even-numbered year.

ITEM 25. Amend subrule 82.7(6) as follows:

82.7(6) *Certification renewal fees.* The certification renewal fee for certified well drilling and certified GHEX loop borehole drilling contractors shall be \$300 for the two-year period. The certification renewal fee for pump installers and well plugging contractors shall be \$200 for the two-year period.

ITEM 26. Amend subrule 82.7(8) as follows:

82.7(8) *Recertification fee.*

a. Contractors who have not earned sufficient CEUs for certification renewal and who wish to recertify within two years after expiration of their certification must retake and pass the written examination and pay a certification fee of \$1000.

b. Contractors who have earned sufficient CEUs but have not completed and submitted the required certification renewal documents and payment, and who wish to recertify within two years after expiration of their certification, must retake and pass the written examinations and pay a certification fee of \$300 plus the actual penalty fee as noted in 82.7(5).

ITEM 27. Amend subrule 82.8(1) as follows:

82.8(1) *Type of examination.* There will be four examinations available:

a. A general fundamentals examination for well drilling, GHEX loop borehole drilling and pump installation contractors.

b. An examination for well drillers.

c. An examination for GHEX loop borehole drillers.

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- ~~e.~~ d. An examination for pump installers.
~~d.~~ e. An examination for well plugging contractors.

ITEM 28. Amend subrule 82.8(2) as follows:

82.8(2) Required examinations. Well drilling contractors, GHEX loop borehole drilling contractors, and pump installers must take and pass the general fundamentals examination and at least one of the specialty examinations. Examinations may be taken at the same time and place or at different times. Work shall be limited to the specialty in which proficiency has been demonstrated by written examination. Well plugging contractors must take and pass the well plugging examination only.

ITEM 29. Amend subrule **82.8(3)**, introductory paragraph, as follows:

82.8(3) Examination application. A person wishing to take the examination required to become a certified well contractor shall complete the Well Contractor Certification Examination Application, Form 43970. ~~A listing of dates and locations of examinations is available from the department upon request.~~ The application form requires the applicant to indicate educational background, training and past experience in providing well services. The completed application and the application fee shall be sent to the director and addressed to the Iowa Department of Natural Resources, Well Contractor Certification, 401 SW 7th Street, Suite M, Des Moines, Iowa 50309. Application for examination must be received by the department at least ~~60~~ 30 days prior to the date of the examination.

ITEM 30. Amend subrule 82.9(2) as follows:

82.9(2) Certification by registration without testing.

a. A well contractor who is engaged in performing pump services on or prior to June 30, 2004, and who registers as a pump installer with the department by June 30, 2004, shall be deemed to have met the certification requirements of this chapter without examination. The experience requirement will apply. Beginning July 1, 2004, a pump installer seeking an initial well contractor certification shall meet the testing requirements for certification established in this chapter.

b. A well contractor who is currently certified by the department as a well driller and who is engaged in performing GHEX loop borehole services on or prior to June 30, 2011, and who registers as a GHEX loop borehole driller with the department by June 30, 2011, shall be deemed to have met the certification requirements of this chapter without examination. The experience requirement will apply. Beginning July 1, 2011, any well contractor seeking well contractor certification as a GHEX loop borehole driller shall meet the minimum experience and testing requirements for GHEX loop borehole driller certification established in this chapter.

ITEM 31. Amend subrule 82.11(1) as follows:

82.11(1) CEU requirements. Continuing education must be earned during two-year periods between April 1 and March 31 of even-numbered years. A certified well contractor holding well driller certification, GHEX loop borehole driller certification, or both either well driller or GHEX loop borehole driller certification and pump installer ~~certifications~~ certification must earn 1.6 units or 16 contact hours during each two-year period. A certified well contractor holding only pump installer certification must earn 1.0 units or 10 contact hours during each two-year period. A well plugging contractor may be required to earn 0.2 units or 2 contact hours during each two-year period as determined by the department, provided the well plugging contractor is notified of the requirement at the beginning of the renewal period. Newly certified (previously uncertified) well contractors who are certified after April 1 of even-numbered years will not be required to earn CEUs until the next two-year period.

ITEM 32. Amend subrule 82.11(3) as follows:

82.11(3) CEU approval. All activities for which continuing education credit will be granted must be approved by an accredited college or university, an issuing agency, or by the department, and shall be related to well services, GHEX loop borehole services, relevant aspects of Iowa groundwater law, well construction, well maintenance, well abandonment practices, well contractor safety (no more than 0.2 CEU per renewal), water system maintenance, and Iowa hydrogeologic conditions which protect groundwater and water supplies.

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ITEM 33. Amend subrule 82.12(1), introductory paragraph, as follows:

82.12(1) *Submission of records and samples.* Each certified well contractor shall submit drilling records to the local county permitting authority and copies of drilling records and drill cutting samples, when required, to the Iowa Geological and Water Survey, Department of Natural Resources, Oakdale Campus, University of Iowa, Iowa City, Iowa 52242, telephone (319)338-1575, or as otherwise directed by the department, as follows:

ITEM 34. Amend paragraph **82.12(1)“a”** as follows:

a. Within 30 days of completion of any water well used as part of a public water supply, a well used for withdrawal of water for which a permit is required by rule 567—50.1(455B), or wells used to monitor groundwater quantity or quality required by the department if so directed by the Iowa geological and water survey (IGS), department of natural resources. The certified well contractor must submit the drilling records and samples required by subrules 82.12(2), ~~and 82.12(3), and 82.12(4).~~

ITEM 35. Amend paragraph **82.12(1)“b”** as follows:

b. Within 30 days of the completion of any water well used as part of a nonpublic water supply or other water wells used to access groundwater. The certified well contractor must submit the drilling records and samples required by subrules 82.12(2), ~~and 82.12(3), and 8.12(4).~~

ITEM 36. Reletter paragraph **82.12(1)“c”** as **82.12(1)“d.”**

ITEM 37. Adopt the following **new** paragraph **82.12(1)“c”**:

c. Within 30 days of the completion of GHEX loop boreholes. The certified well contractor must submit the drilling records and samples required by subrules 82.12(2), 82.12(3) and 82.12(4).

ITEM 38. Amend relettered paragraph **82.12(1)“d”** as follows:

d. Prior to constructing a water well to be used as part of a nonpublic water supply, GHEX loop borehole, or other water well used to access groundwater, the certified well contractor must contact the local health department in the county in which the water well is to be located to determine if submittal of drill cutting samples is required.

ITEM 39. Amend subrule 82.12(2), introductory paragraph, as follows:

82.12(2) *Drilling records.* Drilling records must be submitted on the ~~water~~ well driller’s log form provided by the Iowa geological and water survey, department of natural resources.

ITEM 40. Amend paragraph **82.12(3)“a”** as follows:

a. Location and legal description (quarter section, section number, township, range and county) or by global positioning system (GPS) in the degree decimal degree format (ddd.dddd).

ITEM 41. Reletter paragraphs **82.12(3)“b”** to **“l”** as **82.12(3)“c”** to **“m.”**

ITEM 42. Adopt the following **new** paragraph **82.12(3)“b”**:

b. Diagram of well or GHEX borehole field placement on property.

ITEM 43. Amend relettered paragraph **82.12(3)“k”** as follows:

k. Casing depth, grouting schedule, including materials used and method of placement, and description of the well casing and liner pipe or if a GHEX borehole system the diameter and DR of loop pipe, the depth to the U-bend assembly, the manufacturer of the pipe, and a description of any pipe end weight added to each loop.

ITEM 44. Adopt the following **new** paragraph **82.12(3)“n”**:

n. Any additional information compiled as a result of increased department oversight as noted in 567—48.4(455B), 567—subrule 48.7(1), and 567—subrule 48.8(1).

ITEM 45. Amend subrule 82.12(4) as follows:

82.12(4) *Cutting samples.* Drill cutting samples shall be collected at intervals of 5 feet and at each pronounced change in geological formation. The Iowa geological and water survey, department of natural resources, will provide drill cutting bags.

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ITEM 46. Amend paragraph **82.13(1)“h”** as follows:

h. Knowingly causing or allowing a hazardous or potentially hazardous condition due to well construction ~~to exist~~ or GHEX loop borehole construction.

ITEM 47. Amend paragraph **82.13(1)“i”** as follows:

i. ~~Drilling~~ Well drilling, GHEX borehole drilling, or reconstructing a well without a construction permit.

ITEM 48. Adopt the following **new** paragraph **82.13(2)“e”**:

e. *Elimination of hazard.* Elimination of the hazard created during well services or GHEX borehole drilling.

ARC 9418B**HUMAN SERVICES DEPARTMENT[441]****Notice of Termination**

Pursuant to the authority of Iowa Code section 249A.4 and 2010 Iowa Acts, House File 2526, section 11(22), the Department of Human Services hereby terminates rule-making proceedings under the provisions of Iowa Code section 17A.4(1)“b” for proposed rule making relating to Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on October 6, 2010, as **ARC 9138B**. The Notice proposed adding coverage for assisted living services under the Medicaid home- and community-based services (HCBS) elderly waiver.

The Department has engaged in efforts to develop and implement assisted living as a service under the HCBS elderly waiver since 2004. Despite these years of effort, the Department has been unable to reach agreement with the assisted living providers on the proposed rules. The providers’ perceived loss of revenue coupled with the continuing service documentation requirements and the service payment proration requirements have inhibited the progression of these proposed rules. Service documentation and the payment proration requirements are a requirement of the Centers for Medicare and Medicaid Services (CMS).

ARC 9413B**MEDICINE BOARD[653]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 272C.2, the Board of Medicine hereby proposes to amend Chapter 11, “Continuing Education and Mandatory Training for Identifying and Reporting Abuse,” Iowa Administrative Code.

The purpose of Chapter 11 is to provide guidance to physicians on continuing medical education requirements for licensure. The proposed amendments update language in Chapter 11 and establish mandatory continuing education for chronic pain management and end-of-life care.

The Board approved this Notice of Intended Action during a regularly scheduled meeting on February 11, 2011.

MEDICINE BOARD[653](cont'd)

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on March 29, 2011. Such written materials should be sent to Mark Bowden, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by E-mail to mark.bowden@iowa.gov.

There will be a public hearing on March 29, 2011, at 2 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapter 272C.

The following amendments are proposed.

ITEM 1. Amend **653—Chapter 11**, title, as follows:

CONTINUING EDUCATION AND MANDATORY TRAINING
FOR IDENTIFYING AND REPORTING ABUSE REQUIREMENTS

ITEM 2. Amend rule 653—11.4(272C) as follows:

653—11.4(272C) Continuing education and mandatory training requirements for renewal or reinstatement. A licensee shall meet the requirements in this rule to qualify for renewal of a permanent or special license or reinstatement of a permanent license.

11.4(1) Continuing education and mandatory training for identifying and reporting abuse requirements for renewal or reinstatement.

a. Continuing education for permanent license renewal. Except as provided in these rules, a total of 40 hours of category 1 activity or board-approved equivalent shall be required for biennial renewal of a permanent license. This may include up to 20 hours of credit carried over from the previous license period and category 1 activity acquired within the current license period.

(1) and (2) No change.

~~(3) A licensee shall maintain a file containing records documenting continuing education activities, including dates, subjects, duration of programs, registration receipts where appropriate and any other relevant material, for four years after the date of the activity. The board may audit this information at any time within the four years. If the board conducts an audit of continuing education activities, a licensee shall respond to the board and provide all materials requested, within 30 days of a request by board staff or within the extension of time if one had been granted. Failure to comply with this provision is grounds for discipline.~~

(3) Category 1 CME activity. A licensee shall complete the mandatory training as part of a category 1 CME activity or an approved training program. A licensee may apply the category 1 CME activity credit received for the training during the license period in which the training occurred toward the 40 hours of continuing education required for biennial renewal.

(4) CME documentation. A licensee shall maintain documentation of the mandatory training including dates, subjects, duration of programs, and proof of participation, for five years after the date of the training.

(5) CME audits. The board may audit CME documentation at any time within the five-year period. If the board conducts an audit of mandatory training, a licensee shall respond to the board and provide all materials requested, within 30 days of a request made by board staff or within the extension of time if one has been granted.

(6) Grounds for discipline. A licensee may be subject to disciplinary action for failure to comply with subrule 11.4(1).

b. No change.

~~*c. Mandatory training for identifying and reporting child and dependent adult abuse for permanent or special license renewal.* The licensee shall complete the training as part of a category 1 activity or an approved training program. The licensee may utilize category 1 activity credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1)“a.”~~

MEDICINE BOARD[653](cont'd)

(1) Training to identify child abuse. A licensee who regularly provides primary health care to children ~~shall indicate on the renewal application the completion of~~ must complete at least two hours of training in child abuse identification and reporting in the previous every five years. “A licensee who regularly provides primary health care to children” means all emergency physicians, family ~~practitioners~~ physicians, general practice physicians, pediatricians, and psychiatrists, and any other physician who regularly provides primary health care to children.

(2) Training to identify dependent adult abuse. A licensee who regularly provides primary health care to adults ~~shall indicate on the renewal application the completion of~~ must complete at least two hours of training in dependent adult abuse identification and reporting in the previous every five years. “A licensee who regularly provides primary health care to adults” means all emergency physicians, family ~~practitioners~~ physicians, general practice physicians, internists, obstetricians, gynecologists, and psychiatrists, and any other physician who regularly provides primary health care to adults.

(3) Combined training to identify child and dependent adult abuse. A licensee who regularly provides primary health care to adults and children ~~shall indicate on the renewal application the completion of~~ must complete at least two hours of training on in the identification and reporting of abuse in dependent adults and children every five years. ~~This~~ The training may be completed through separate courses as identified in subparagraphs (1) and (2) above or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. “A licensee who regularly provides primary health care to children and adults” means all emergency physicians, family ~~practitioners~~ physicians, general practice physicians, internists, and psychiatrists, and any other physician who regularly provides primary health care to children and adults.

~~(4) A licensee shall maintain a file containing records documenting mandatory training for identifying and reporting abuse, including dates, subjects, duration of programs, and proof of participation, for five years after the date of the training. The board may audit this information at any time within the five-year period. If the board conducts an audit of mandatory training for identifying and reporting abuse, a licensee shall respond to the board and provide all materials requested, within 30 days of a request made by board staff or within the extension of time if one had been granted. Failure to comply with this provision is grounds for discipline.~~

d. Mandatory training for chronic pain management for permanent or special license renewal. A licensee who regularly provides primary health care to patients must complete at least two hours of training for chronic pain management every five years. “A licensee who regularly provides primary health care to patients” means all emergency physicians, family physicians, general practice physicians, internists, neurologists, pain medicine specialists, psychiatrists, and any other physician who regularly provides primary health care to patients.

e. Mandatory training for end-of-life care for permanent or special license renewal. A licensee who regularly provides primary health care to patients must complete at least two hours of training for end-of-life care every five years. “A licensee who regularly provides primary health care to patients” means all emergency physicians, family physicians, general practice physicians, internists, neurologists, pain medicine specialists, psychiatrists, and any other physician who regularly provides primary health care to patients.

11.4(2) to 11.4(4) No change.

11.4(5) Cost of continuing education and mandatory training for identifying and reporting abuse for renewal or reinstatement. ~~It is the responsibility of each~~ Each licensee ~~to finance the~~ is responsible for all costs of continuing education and training.

ARC 9414B

MEDICINE BOARD[653]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medicine hereby proposes to amend Chapter 13, “Standards of Practice and Principles of Medical Ethics,” Iowa Administrative Code.

The purpose of rule 653—13.2(148,272C) is to set standards of practice for physicians who diagnose and treat patients suffering with acute or chronic pain. The proposed amendments require physicians to use patient-physician agreements when a patient’s chronic pain is treated with controlled substances or opiates and encourage physicians to use the Iowa Prescription Monitoring Program database and to conduct drug testing on patients when treating chronic pain with controlled substances or opiates.

The Board approved this Notice of Intended Action during a regularly scheduled meeting on February 11, 2011.

Any interested person may present written comments on these proposed amendments not later than 4:30 p.m. on March 29, 2011. Such written materials should be sent to Mark Bowden, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by E-mail to mark.bowden@iowa.gov.

There will be a public hearing on March 29, 2011, at 2:30 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medicine is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapters 148 and 272C.

The following amendments are proposed.

ITEM 1. Amend paragraph **13.2(5)“g”** as follows:

g. Physician-patient agreements. A physician ~~treating~~ who treats patients for chronic pain with controlled substances or opiates shall ~~consider establishing~~ establish a physician-patient ~~agreements~~ pain management agreement with each patient being treated that ~~specify~~ specifies the rules for medication use and the consequences for misuse. In preparing an agreement, a physician shall evaluate the case of each patient on its own merits, taking into account the nature of the risks to the patient and the potential benefits of treatment. A sample physician-patient pain management agreement may be found at the board’s Web site at <http://medicalboard.iowa.gov/>.

ITEM 2. Reletter paragraph **13.2(5)“i”** as **13.2(5)“j.”**

ITEM 3. Adopt the following **new** paragraph **13.2(5)“i”**:

i. Drug testing. A physician who treats patients for chronic pain shall consider utilizing drug testing to ensure that patients are receiving appropriate therapeutic levels of prescribed medications and are not abusing other drugs.

ITEM 4. Renumber subrule **13.2(7)** as **13.2(8)**.

ITEM 5. Adopt the following **new** subrule 13.2(7):

13.2(7) Prescription monitoring program. The Iowa board of pharmacy has established a prescription monitoring program pursuant to Iowa Code sections 124.551 to 124.558 to assist physicians and pharmacists in monitoring the prescription of controlled substances to patients. The board strongly recommends that physicians utilize the prescription monitoring program when prescribing controlled substances to patients. A link to the prescription monitoring program may be found at the board’s Web site at <http://medicalboard.iowa.gov/>.

ARC 9415B**MEDICINE BOARD[653]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3(1)“f,” the Board of Medicine hereby proposes to amend Chapter 23, “Grounds for Discipline,” Iowa Administrative Code.

The purpose of Chapter 23 is to set forth grounds for discipline of physicians licensed by the Board. The proposed amendments establish as grounds for discipline a physician’s failure to report the physician’s HIV or HBV status to an expert review panel established by a hospital and to an expert review panel established by the Department of Public Health.

The Board approved this Notice of Intended Action to amend Chapter 23 during a regularly scheduled meeting on February 11, 2011.

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on March 29, 2011. Such written materials should be sent to Mark Bowden, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by E-mail to mark.bowden@iowa.gov.

There will be a public hearing on March 29, 2011, at 3 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medicine is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

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

The following amendments are proposed.

ITEM 1. Renumber subrules **23.1(31)** to **23.1(44)** as **23.1(34)** to **23.1(47)**.

ITEM 2. Adopt the following **new** subrules 23.1(31) to 23.1(33):

23.1(31) Failure by a physician with HIV or HBV who practices in a hospital setting, and who performs exposure-prone procedures, to report the physician’s HIV or HBV status to an expert review panel established by a hospital under Iowa Code section 139A.22(1) or to an expert review panel established by the department of public health under Iowa Code section 139A.22(3).

23.1(32) Failure by a physician with HIV or HBV who practices outside a hospital setting, and who performs exposure-prone procedures, to report the physician’s HIV or HBV status to an expert review panel established by the department of public health under Iowa Code section 139A.22(3).

23.1(33) Failure by a physician subject to the reporting requirements of 23.1(31) and 23.1(32) to comply with the recommendations of an expert review panel established by the department of public health pursuant to Iowa Code section 139A.22(3), with hospital protocols established pursuant to Iowa Code section 139A.22(1), or with health care facility procedures established pursuant to Iowa Code section 139A.22(2).

ARC 9423B**NATURAL RESOURCE COMMISSION[571]****Amended Notice of Intended Action**

Pursuant to the authority of Iowa Code sections 456A.19 and 483A.3B(3)“c”(1), the Natural Resource Commission hereby gives notice that the comment period for the Notice of Intended Action published in the January 12, 2011, Iowa Administrative Bulletin as **ARC 9325B** has been extended.

Additionally, the application and the landowner access agreement are available for review and comment on the DNR Web site: http://dnrdev.iowa.gov/wildlife/privatelands/mgt_access.html.

NATURAL RESOURCE COMMISSION[571](cont'd)

Any interested person may make written suggestions or comments on the proposed amendments on or before March 29, 2011. Such written comments should be directed to Kelly Smith, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319; fax (515)281-6794; or E-mail kelly.smith@dnr.iowa.gov. Persons who wish to convey their views orally should contact Kelly Smith at (515)281-6247 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

Additionally, another public hearing will be held March 29, 2011, at 1 p.m. in the Fourth Floor West Conference Room of the Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and confine their remarks to the subject of the amendments.

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

ARC 9419B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 455A.5(6)“a,” the Natural Resource Commission hereby gives Notice of Intended Action to rescind Chapter 44, “Boating, Special Events,” and to adopt new Chapter 44, “Special Events and Fireworks Displays,” Iowa Administrative Code.

Currently, the statutory requirements regarding rules for snowmobile and all-terrain vehicle (ATV) special events are not addressed in Natural Resource Commission rules, and the existing Chapter 44 contains only special event permit requirements for boating. Therefore, the Natural Resource Commission is proposing to rescind the current chapter and to adopt a comprehensive new Chapter 44 that establishes special event permit requirements for ATVs and snowmobiles and includes the special event rules for parks and recreation areas, forestry, fishing tournaments, dog trials, and fireworks displays currently found elsewhere in the Iowa Administrative Code. (See **ARC 9420B**, **ARC 9421B** and **ARC 9422B** published herein.) The proposed new Chapter 44 also addresses the Department’s new centralized special events application system and establishes fees to operate and maintain the system.

Any interested person may make written suggestions or comments on the proposed rules on or before March 30, 2011. Such written comments should be directed to Jeff Kopaska, Boone Wildlife Research Station, 1436 255th Street, Boone, Iowa 50036; or E-mail jeff.kopaska@dnr.iowa.gov. Persons who wish to convey their views orally should contact Jeff Kopaska at (515)432-2823, ext. 109.

There will be a public hearing on March 30, 2011, at 2 p.m. in the Fifth Floor East and West Conference Rooms of the Wallace State Office Building, 502 E. 9th Street, Des Moines, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and confine their remarks to the subject of the proposed rules.

Any person who intends to attend the hearing and has special requirements, such as those related to hearing or mobility impairments, should contact the Department to advise of specific needs.

These rules are intended to implement Iowa Code sections 321G.16, 321I.17, 461A.3, 461A.4, 461A.42, 461A.47, 461A.57, 462A.16, 481A.22, and 481A.38.

The following amendment is proposed.

NATURAL RESOURCE COMMISSION[571](cont'd)

Rescind 571—Chapter 44 and adopt the following **new** chapter in lieu thereof:

CHAPTER 44
SPECIAL EVENTS AND FIREWORKS

571—44.1(321G,321I,461A,462A,481A) Scope. The purpose of this chapter is to provide rules on the issuance of permits for special events and fireworks displays held on public land, waters, and ice of the state.

571—44.2(321G,321I,461A,462A,481A) Definitions. For the purposes of this chapter, the following definitions shall apply:

“Accredited postsecondary institution or program” means an institution or program listed in the U.S. Department of Education’s database of accredited postsecondary institutions and programs.

“Administrative processing fee” means the fee collected for the processing of each special event application that is submitted.

“All-terrain vehicle” or *“ATV”* means a motorized flotation-tire vehicle with not less than three and not more than six low-pressure tires that is limited in engine displacement to less than 1,000 cubic centimeters and in total dry weight to less than 1,000 pounds and that has a seat or saddle designed to be straddled by the operator and handlebars for steering control.

“Centralized special events application system” means the Web-based system used by applicants to submit applications for special events as permitted under this chapter. Approved applications shall be placed on a calendar of events Web page, accessible from the department’s homepage, to inform the general public of scheduled events on public, or when applicable, private, land, water, and ice.

“Department” means the Iowa department of natural resources.

“Field and retriever meet or trial” means an event held on either private or public land where the skill of dogs in pointing, retrieving, trailing, or chasing any game bird, game animal, or fur-bearing animal is demonstrated. For purposes of this chapter, “field and retriever meet or trial” is included in the definition of “special event” unless otherwise specified.

“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; and (3) prizes or other inducements are awarded. For purposes of this chapter, “fishing tournament” is included in the definition of “special event” unless otherwise specified.

“Friends group” means an organization incorporated under Iowa Code chapter 504 or prior statutory authority as a not-for-profit group which has been formed solely for the purpose of promoting and enhancing a particular state park, recreation area, or the Iowa state park system, or any combination of the three.

“Off-road motorcycle” or *“ORM”* means a two-wheeled motor vehicle that has a seat or saddle designed to be straddled by the operator and handlebars for steering control and that is intended by the manufacturer for use on natural terrain. “Off-road motorcycle” includes a motorcycle that was originally issued a certificate of title and registered for highway use under Iowa Code chapter 321, but which contains design features that enable operation over natural terrain.

“Off-road utility vehicle” or *“OHV”* means a motorized flotation-tire vehicle with not less than four and not more than eight low-pressure tires that is limited in engine displacement to less than 1,500 cubic centimeters and in total dry weight to not more than 1,800 pounds and that has a seat that is of bucket or bench design, not intended to be straddled by the operator, and a steering wheel or control levers for control. A motorized vehicle that was previously titled or is currently titled under Iowa Code chapter 321 shall not be registered or operated as an off-road utility vehicle.

“Permit” means a document issued by the department that enumerates all stipulations, requirements, and contingencies that the applicant must accept and adhere to throughout the duration of the approved special event.

NATURAL RESOURCE COMMISSION[571](cont'd)

“*Public land*” means land under the jurisdiction of the natural resource commission.

“*Public water*” means water and ice under the jurisdiction of the natural resource commission.

“*Sailing school*” means an organization that provides basic and advanced sailing instruction by U.S. Sailing-certified instructors and is affiliated with a yacht club, an accredited postsecondary institution or program, a private or public primary or secondary school, a scouting organization, or a religious institution.

“*Snowmobile*” means a motorized vehicle weighing less than 1,000 pounds which uses sled-type runners or skis, endless belt-type tread with a width of 48 inches or less, or any combination of runners, skis, or tread and which is designed for travel on snow or ice. “Snowmobile” does not include an all-terrain vehicle, as defined in Iowa Code section 321I.1, which has been altered or equipped with runners, skis, belt-type tracks, or treads.

“*Special event*” means an organized race, tournament, exhibition, demonstration, or other planned event which is conducted on public land, water, or ice according to a prearranged schedule and in which general public interest is manifested through the charging of an admission fee, the awarding of prizes, promotion of competition among participants, or attendance solicitation through advertising or invitation; or which, due to its nature, size, or length, adversely impacts the use of the area by the public.

“*Vessel*” means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water or ice.

DIVISION I
SPECIAL EVENTS

571—44.3(321G,321I,461,462A,481A) Permit required. A permit is required in order to conduct a special event on any public land, water, or ice. A permit is also required for a field and retriever meet or trial held on private land.

571—44.4(321G,321I,461A,462A,481A) Permit conditions. The department may impose permit conditions not specifically covered herein as deemed necessary to protect the resource or to ensure public safety. Such conditions shall be included in the permit issued by the department.

44.4(1) Use of concessionaire. If the state park or recreation area where a special event is being held has a concessionaire, the sale of food or drinks shall be governed pursuant to 571—Chapter 14. If a concessionaire chooses not to provide services during the special event, the event sponsor may bring in other concession operations as approved by the department.

44.4(2) Special permit conditions for fishing tournaments. In addition to permit conditions deemed necessary by rule 571—44.4(321G,321I,461A,462A,481A), the department may include some or all of the following permit conditions for fishing tournaments:

- a. Release of live fish.
- b. Fish measured to length and released from boat.
- c. Multiple weigh-ins when water temperatures exceed 70°F.
- d. Aerated live wells.
- e. Designated release areas.
- f. Designated release persons.

571—44.5(321G,321I,461A,462A,481A) Application procedures. The following procedures shall be used to apply for a special event permit:

44.5(1) Applications shall be made and submitted through the department’s centralized special events application system.

44.5(2) Applications—when submitted.

a. *Events for current year.* Applications may be submitted anytime during the calendar year in which the special event is to begin but no later than 30 days prior to the special event.

b. *Events for the next year.* Applications for a special event that will start in the next calendar year shall not be submitted until September 1 of the current year.

NATURAL RESOURCE COMMISSION[571](cont'd)

44.5(3) The number of special events to be held at any area on the same day may be restricted if deemed necessary to avoid congestion within the area or to protect the resource.

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.

44.5(5) Submission of an application does not guarantee issuance of a permit.

44.5(6) Permits are nontransferable.

571—44.6(321G,321I,462A) Alternate dates for snowmobile, boating, all-terrain vehicle, off-highway vehicle, and off-road motorcycle special events. An applicant may submit and the department may approve both a primary date and an alternate date for snowmobile, boating, ATV, ORM, and OHV special events. However, if both a primary date and an alternate date are approved, the primary date shall be used unless circumstances beyond the control of the applicant prevent its use. If the alternate date must be used for the event, the applicant shall contact the program coordinator at least one week in advance of the date on which the event shall take place to obtain final approval to use the alternate date. The program coordinator shall document this approval in writing. Upon approval of an alternate date, the applicant shall notify the local conservation officer, and the program coordinator shall update the calendar of events.

571—44.7(321G,321I,461A,462A,481A) Insurance coverage. The applicant shall secure liability insurance for the special event and shall name the department as an additional insured. Insurance information shall be available at the time the application is submitted. The applicant shall have a copy of the insurance policy available at the event location to present to department personnel if requested. These requirements shall not apply to events sponsored by a friends group. The department reserves the right to waive these requirements on a case-by-case basis.

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.

571—44.9(321G,461A) Structures placed on ice during a special event. The following requirements apply to the placement, construction, or erection of structures on ice during a special event:

44.9(1) Vendor information provided on application. The applicant shall identify the names and addresses of any vendors who will be on site during the special event.

44.9(2) Owner information. The full name, street address, and city of the structure's owner shall be displayed legibly on all sides of the structure, in block letters at least four inches in height, and in a color contrasting to the background.

44.9(3) Accessibility. Structures shall not be locked when in use.

44.9(4) Reflectors. Reflectors shall be attached to all sides of the structure in such a manner to enable them to reflect light at all times from sunrise to sunset.

571—44.10(462A) Boating special events—registration exemptions.

44.10(1) A vessel entered in a boating special event shall not be required to be registered pursuant to Iowa Code sections 462A.4 and 462A.5 but shall be labeled with an identifying number or letter that is at least four inches high and is in a color contrasting to the vessel. The identifying number or letter shall be located in a prominent spot on the exterior of the vessel, other than on the bow.

44.10(2) The sponsor of the boating special event shall maintain a list containing:

a. The names and addresses of all persons participating in the event.

NATURAL RESOURCE COMMISSION[571](cont'd)

b. A description of each vessel in the event. The description of each vessel shall include the identifying number or letter of the vessel as required by 44.10(1).

571—44.11(462A) Mississippi River or Missouri River. Upon notification and proof that a United States Coast Guard (U.S.C.G.) permit has been secured, the department shall not require a special event application for fireworks displays or boating special events on the Mississippi River or the Missouri River. The regional U.S.C.G. office issuing permits for Mississippi River and Missouri River events is located in St. Louis, Missouri. This rule does not apply to fishing tournaments.

571—44.12(321G,321I,461A,462A,481A) Other requirements and permits. The applicant for a permit is responsible for ensuring full compliance with the requirements of Iowa Code chapters 321G, 321I, 461A, 462A, and 481A, and any other Iowa Code chapters and rules promulgated under those chapters that may be applicable to special events. The applicant shall also acquire and comply with all applicable state and local permits issued by other state and local agencies necessary to hold the special event.

571—44.13(321G,321I,461A,462A,481A) Authority to cancel or stop a special event. If a peace officer or any department employee determines that a permit is being violated, or that safety concerns warrant canceling or stopping the special event, the peace officer or department employee has the authority to cancel or stop the special event.

571—44.14(321G,321I,461A,462A,481A) Nonexclusive use of area. Issuance of a permit does not grant the applicant exclusive use of the public land, water, or ice that is the subject of the permit unless the permit explicitly provides otherwise.

DIVISION II
FIREWORKS DISPLAYS

571—44.15(461A) Entities eligible for permits. Permits for fireworks displays shall be issued only to qualified entities, such as political subdivisions of the state of Iowa, and to community or civic organizations, such as chambers of commerce, junior chambers of commerce (Jaycees), rotary clubs, and Elks Lodges and similar fraternal benefit associations or societies. Permits shall not be issued to individuals. Permits are not transferable to another entity and do not relieve the sponsoring entity from obtaining any other permits required by the state or its political subdivisions.

571—44.16(461A) Permit conditions. The department may impose permit conditions not specifically required in these rules for any fireworks display special event as deemed necessary to protect the resource or ensure public safety. Conditions shall be included in the permit that the applicant or sponsoring organization receives if the event is approved.

571—44.17(461A) Application procedures. The following procedures shall be used to apply for a permit:

44.17(1) Applications shall be made and submitted through the department's centralized special events application system.

44.17(2) Applications—when submitted.

a. Events for current year. Applications may be submitted anytime during the calendar year in which the fireworks display is to begin but no later than 30 days prior to the display.

b. Events for the next year. Applications for a fireworks display that will start in the next calendar year shall not be submitted until September 1 of the current year.

44.17(3) The number of fireworks displays or other special events at any one public land, water or ice location during a given day may be restricted if deemed necessary to avoid congestion with the public or competing events and to protect the resource.

NATURAL RESOURCE COMMISSION[571](cont'd)

44.17(4) The applicant shall certify in the application that the fireworks display shall be conducted by a competent operator. The location of the display shall be determined by the department representative in charge of the area.

44.17(5) Submission of an application does not guarantee issuance of a permit by the department.

571—44.18(461A) Fireworks display procedures.

44.18(1) The sponsoring entity shall take adequate safety precautions to ensure that persons not actively involved in conducting the display remain a safe distance from the firing area and any areas containing set pieces.

44.18(2) The department representative in charge of the area in which the display is conducted or any state peace officer may halt any display when the character, location, weather, or firing of the display makes it hazardous to property or dangerous to any person.

44.18(3) Any fireworks that remain unfired after the display is concluded shall be immediately disposed of by the operator or the sponsoring entity in a manner that is safe for the particular type of fireworks.

44.18(4) The sponsoring entity shall make arrangements for firefighting equipment and emergency medical services to be on the scene at all times during the firing of the display.

44.18(5) The sponsoring entity is totally responsible for cleanup of the fireworks display site at the conclusion of the display.

571—44.19(461A) Fees. A nonrefundable administrative fee of \$25 shall be charged for processing each fireworks display application.

571—44.20(461A) Insurance. The sponsoring entity for a fireworks display shall provide proof of liability insurance naming the applicant and the department as an additional insured in the sum of not less than \$1 million. The department may, at its discretion, require a greater amount. Insurance information shall be available at the time the application is submitted.

571—44.21(461A) Concessions. If the state park or recreation area has a concessionaire on site, sales of food and other items during the display shall be governed pursuant to 571—Chapter 14. If a concessionaire chooses not to provide services during the event, the sponsoring entity may then bring in other concession operations as approved by the department.

These rules are intended to implement Iowa Code sections 321G.16, 321I.17, 461A.3, 461A.4, 461A.42, 461A.47, 461A.57, 462A.16, 481A.22, and 481A.38.

ARC 9421B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 61, “State Parks and Recreation Areas,” Iowa Administrative Code.

The proposed amendment rescinds the subrule regarding special event permits. This subrule will be updated and merged with other Department rules governing special events set forth in proposed 571—Chapter 44, “Special Events and Fireworks Displays.” (See **ARC 9419B** published herein.)

NATURAL RESOURCE COMMISSION[571](cont'd)

Any interested person may make written suggestions or comments on the proposed amendment on or before March 30, 2011. Such written material should be directed to Sherry Arntzen, State Parks Bureau, Department of Natural Resources, 502 E. Ninth Street, Wallace State Office Building, Des Moines, Iowa 50319-0034. Comments may be sent by fax to (515)281-6794 or by E-mail to Sherry.Arntzen@dnr.iowa.gov. Persons who wish to convey their views orally should contact Sherry Arntzen at (515)242-6233.

There will be a public hearing on March 30, 2011, at 2 p.m. in the Fifth Floor East and West Conference Rooms in the Wallace State Office Building, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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 of Natural Resources to advise of specific needs.

This amendment is intended to implement Iowa Code sections 461A.3, 461A.35 and 461A.57.

The following amendment is proposed.

Rescind and reserve subrule **61.7(16)**.

ARC 9422B

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455A.59(6), the Natural Resource Commission hereby gives Notice of Intended Action to rescind Chapter 65, “Fireworks Displays—State Parks and Recreation Areas,” Iowa Administrative Code.

The proposed amendment rescinds Chapter 65. These rules will be updated and merged with other Department rules governing special events set forth in proposed 571—Chapter 44, “Special Events and Fireworks Displays.” (See **ARC 9419B** published herein.)

Any interested person may make written suggestions or comments on the proposed amendment on or before March 30, 2011. Such written material should be directed to Sherry Arntzen, State Parks Bureau, Department of Natural Resources, 502 E. Ninth Street, Wallace State Office Building, Des Moines, Iowa 50319-0034. Comments may be sent by fax to (515)281-6794 or by E-mail to Sherry.Arntzen@dnr.iowa.gov. Persons who wish to convey their views orally should contact Sherry Arntzen at (515)242-6233.

There will be a public hearing on March 30, 2011, at 2 p.m. in the Fifth Floor East and West Conference Rooms in the Wallace State Office Building, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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 of Natural Resources to advise of specific needs.

This amendment is intended to implement Iowa Code sections 461A.42 and 461A.57.

The following amendment is proposed.

Rescind and reserve **571—Chapter 65**.

ARC 9420B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 462A.16 and 481A.38, the Natural Resource Commission hereby gives Notice of Intended Action to rescind Chapter 88, “Fishing Tournaments,” Iowa Administrative Code.

The proposed amendment rescinds Chapter 88. These rules will be updated and merged with other Department rules governing special events set forth in proposed 571—Chapter 44, “Special Events and Fireworks Displays.” (See **ARC 9419B** published herein.)

Any interested person may make written suggestions or comments on the proposed amendment on or before March 30, 2011. Such written material should be directed to Jeff Kopaska, Fisheries Bureau, Department of Natural Resources, 1436 255th Street, Boone Wildlife Research Station, Boone, Iowa 50036. Comments may be sent by fax to (515)432-2835 or by E-mail to Jeff.Kopaska@dnr.iowa.gov. Persons who wish to convey their views orally should contact Jeff Kopaska at (515)432-2823, ext. 109.

There will be a public hearing on March 30, 2011, at 2 p.m. in the Fifth Floor East and West Conference Rooms in the Wallace State Office Building, 502 E. Ninth Street, Des Moines, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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 of Natural Resources to advise of specific needs.

This amendment is intended to implement Iowa Code sections 462A.16 and 481A.38.

The following amendment is proposed.

Rescind and reserve **571—Chapter 88**.

ARC 9416B**PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science hereby gives Notice of Intended Action to amend Chapter 31, “Licensure of Marital and Family Therapists and Mental Health Counselors,” Chapter 32, “Continuing Education for Marital and Family Therapists and Mental Health Counselors,” and Chapter 33, “Discipline for Marital and Family Therapists and Mental Health Counselors,” Iowa Administrative Code.

These proposed amendments would add the definition of “mental health setting,” define educational requirements for licensure for marital and family therapists and mental health counselors, remove from the continuing education chapter language that has been added to the common chapter for all disciplines

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

in the Professional Licensure Division, and amend language in the discipline chapter to be consistent with the Iowa Code.

Any interested person may make written comments on the proposed amendments no later than March 29, 2011, addressed to Judy Manning, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail jmanning@idph.state.ia.us.

A public hearing will be held on March 29, 2011, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 154D and 272C.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition in rule **645—31.1(154D)**:

“*Mental health setting*” means a setting where an applicant is providing mental health services including the diagnosis, treatment, and assessment of emotional and mental health disorders and issues.

ITEM 2. Amend rule 645—31.4(154D), introductory paragraph, as follows:

645—31.4(154D) Educational qualifications for marital and family therapists. The applicant must complete the required semester credit hours, or equivalent quarter hours, of graduate level coursework in each of the content areas identified in 31.4(2); no course may be used more than once. The applicant must present proof of ~~meeting~~ completion of the following educational requirements for licensure as a marital and family therapist:

ITEM 3. Amend subrule 31.5(3) as follows:

31.5(3) An applicant who has obtained American Association for Marriage and Family Therapy (AAMFT) clinical membership ~~and has provided a transcript sent directly from the school to the board~~ is considered to have met the educational and clinical experience requirements of ~~rules 31.4(154D) and rule 645—31.5(154D).~~ The applicant shall request that proof of current clinical membership be sent directly from AAMFT to the board.

ITEM 4. Amend rule 645—31.6(154D), introductory paragraph, as follows:

645—31.6(154D) Educational qualifications for mental health counselors. The applicant must complete three semester credit hours, or equivalent quarter hours, of graduate level coursework in each of the content areas identified in 31.6(2); no course may be used to fulfill more than one content area. The applicant must present proof of ~~meeting~~ completion of the following educational requirements for licensure as a mental health counselor:

ITEM 5. Rescind subrule 31.6(2) and adopt the following **new** subrule in lieu thereof:

31.6(2) Content-equivalent program. Applicants must present an official transcript verifying completion of a master’s degree or a doctoral degree from a college or university accredited by an agency recognized by the United States Department of Education which is content-equivalent to a master’s degree in counseling with emphasis in mental health counseling. Graduates from non-CACREP accredited mental health counseling programs shall provide an equivalency evaluation of their educational credentials by the Center for Credentialing and Education, Inc. (CCE), Web site <http://cce-global.org>. The professional curriculum must be equivalent to that stated in these rules. Applicants shall bear the expense of the curriculum evaluation.

a. The degree of an applicant who entered a program of study prior to July 1, 2012, will be considered “content-equivalent” if the degree includes 45 semester hours (or equivalent quarter hours) and successful completion of graduate-level coursework in each of the areas in subparagraphs (1) to (12). If the applicant has taught a graduate-level course in any of the areas in subparagraphs (1) to (12) at a college or university accredited by an agency recognized by the United States Department of Education, that course may be credited toward the coursework requirement.

(1) Counseling theories.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- (2) Supervised counseling practicum.
- (3) Human growth and development. Studies that provide an understanding of the nature and needs of individuals at all developmental levels. Studies in this area include, but are not limited to, the following:
 1. Theories of human development across the life span;
 2. Major theories of personality development; and
 3. Human behavior, including an understanding of developmental crises, disability, psychopathology, and cultural factors as they affect both normal and abnormal behavior.
- (4) Social and cultural foundations. Studies that provide an understanding of issues and trends in a multicultural and diverse society. Studies in this area include, but are not limited to, the following:
 1. Multicultural and pluralistic trends, including characteristics and concerns of diverse groups;
 2. Attitudes and behavior based on factors such as age, race, religious preference, physical disability, sexual orientation, ethnicity and culture, gender, socioeconomic status, and intellectual ability; and
 3. Individual and group interventions with diverse populations.
- (5) Helping relationships. Studies that provide an understanding of counseling and consultation processes. Studies in this area include, but are not limited to, the following:
 1. Helping skills and counseling and consultation theories, including coverage of relevant research and factors considered in applications;
 2. Counselor or consultant characteristics and behaviors that influence helping processes, including gender and ethnicity differences, verbal and nonverbal behaviors and personal characteristics, orientations, and skills; and
 3. Client or consultee characteristics and behaviors that influence helping processes, including gender and ethnicity differences, verbal and nonverbal behaviors and personal characteristics, traits, capabilities, life circumstances, and developmental levels.
- (6) Groups. Studies that provide an understanding of group development, dynamics, counseling theories, and group counseling methods and skills. Studies in this area include, but are not limited to, the following:
 1. Principles of group dynamics, including group process components, developmental stage theories, and group members' roles and behaviors;
 2. Group leadership styles and approaches, including characteristics of various types of group leaders and leadership styles;
 3. Theories of group counseling, including commonalities, distinguishing characteristics, and pertinent research and literature; and
 4. Group counseling methods, including group counselor orientations and behaviors, ethical considerations, appropriate selection criteria and methods, and methods of evaluation of effectiveness.
- (7) Career and lifestyle development. Studies that provide an understanding of career development and the interrelationships among work, family, and other life factors. Studies in this area include, but are not limited to, the following:
 1. Career development theories and decision-making models;
 2. Career, avocational, educational and labor market sources, print media, computer-assisted career guidance, and computer-based career information;
 3. Career development program planning;
 4. Interrelationships among work, family, and other life factors such as multicultural and gender issues, as related to career development;
 5. Career and educational placement, follow-up and evaluation; and
 6. Assessment instruments relevant to career planning and decision making.
- (8) Diagnosis and assessment treatment procedures. Studies that provide an understanding of individual and group approaches to assessment and evaluation. Studies in this area include, but are not limited to, the following:
 1. Theoretical and historical bases for assessment techniques and methods of interpretation of appraisal data and information;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

2. Types of educational and psychological appraisal as appropriate to the helping process;
3. Validity, including evidence for establishing content, construct, and empirical validity;
4. Reliability, including methods of establishing stability and internal and equivalence reliability;
5. Major appraisal methods, including environmental assessment, performance assessment, individual and group test and inventory methods, behavioral observations, and computer-managed and computer-assisted methods;
6. Psychometric statistics, including types of test scores, measures of central tendency, indices of variability, standard errors and correlations; and
7. Gender, ethnicity, language, disability, and cultural factors related to the assessment and evaluation of individuals and groups.

(9) Research and program evaluation. Studies that provide an understanding of types of research methods, basic statistics, and ethical and legal considerations in research. Studies in this area include, but are not limited to, the following:

1. Basic types of research methods, including qualitative, quantitative-descriptive, and quantitative-descriptive-experimental designs;
2. Basic statistics, including both univariate and bivariate hypothesis testing;
3. Uses of computers for data management and analyses; and
4. Ethical and legal considerations in research.

(10) Professional orientation. Studies that provide an understanding of all aspects of professional functioning, including history, roles, organizational structures, ethics, standards, and credentialing. Studies in this area include, but are not limited to, the following:

1. History of the helping professions, including significant factors and events;
2. Professional roles and functions, including similarities with and differences from other types of professionals;
3. Professional organizations (primarily ACA, its divisions, and its branches), including membership benefits, activities, services to members, and current emphases;
4. Ethical standards of the ACA and their evolution, legal issues, and applications to various professional activities (e.g., appraisal and group work);
5. Professional preparation standards and their evolution and current applications; and
6. Professional credentialing, including certification, licensure, and accreditation practices and standards, and the effects of public policy on these issues.

(11) Supervised counseling internship that provides an opportunity for the trainee to perform under supervision a variety of activities that a regularly employed staff member in a setting would be expected to perform. A regularly employed staff member is defined as a person occupying the professional role to which the trainee is aspiring. The internship follows a supervised practicum experience. A three-semester-hour internship includes the following:

1. A minimum of 120 hours of direct service with clientele appropriate to the program of study;
2. A minimum of 1 hour per week of individual supervision, throughout the internship, usually performed by the on-site supervisor; and
3. A minimum of 1½ hours per week of group supervision, throughout the internship, usually performed by a program faculty member supervisor.

(12) Psychopathology. Studies that provide an understanding of the description, classification and diagnosis of behavior disorders and dysfunction. Studies in this area include, but are not limited to, the following:

1. Study of cognitive, behavioral, physiological and interpersonal mechanisms for adapting to change and to stressors;
2. Role of genetic, physiological, cognitive, environmental and interpersonal factors and their interactions on development of the form, severity, course and persistence of the various types of disorders and dysfunction;
3. Research methods and findings pertinent to the description, classification, diagnosis, origin, and course of disorders and dysfunction;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

4. Theoretical perspectives relevant to the origin, development, and course and outcome for the forms of behavior disorders and dysfunction; and

5. Methods of intervention or prevention used to minimize and modify maladaptive behaviors, disruptive and distressful cognition, or compromised interpersonal functioning associated with various forms of maladaptation.

b. The degree of an applicant who entered a program of study on or after July 1, 2012, will be considered "content-equivalent" if the degree includes 60 semester hours (or equivalent quarter hours) and successful completion of graduate-level coursework in each of the areas in subparagraphs (1) to (12). If the applicant has taught a graduate-level course in any of the areas in subparagraphs (1) to (12) at a college or university accredited by an agency recognized by the United States Department of Education, that course may be credited toward the coursework requirement.

(1) Professional orientation and ethical practice. Studies that provide an understanding of all of the following aspects of professional functioning:

1. History and philosophy of the counseling profession, including mental health counseling;

2. Professional roles, functions, and relationships of the mental health counselor with other human services providers, including strategies for interagency/interorganization collaboration and communication;

3. Counselors' roles and responsibilities as members of an interdisciplinary emergency management response team during a local, regional, or national crisis, disaster or other trauma-causing event;

4. Self-care strategies appropriate to the counselor role;

5. Counseling supervision models, practices, and processes;

6. Professional organizations (i.e., primarily ACA, its divisions, branches, and affiliates), including membership benefits, activities, services to members, and current emphases;

7. Professional credentialing, including certification, licensure, and accreditation practices and standards, and the effects of public policy on these issues;

8. The role and process of the professional mental health counselor advocating on behalf of the profession;

9. Advocacy processes needed to address institutional and social barriers that impede access, equity, and success for clients; and

10. Ethical standards of ACA and related entities, and applications of ethical and legal considerations in professional counseling.

(2) Social and cultural diversity. Studies that provide an understanding of the cultural context of relationships, issues, and trends in a multicultural and diverse society including all of the following:

1. Multicultural and pluralistic trends, including characteristics and concerns within and among diverse groups nationally and internationally;

2. Attitudes, beliefs, understandings, and acculturative experiences, including specific experiential learning activities designed to foster students' understanding of self and culturally diverse clients;

3. Theories of multicultural counseling, identity development, and social justice;

4. Individual, couple, family, group, and community strategies for working with and advocating for diverse populations, including multicultural competencies;

5. Counselors' roles in developing cultural self-awareness, promoting cultural social justice, advocacy, and conflict resolution and other culturally supported behaviors that promote optimal wellness and growth of the human spirit, mind or body; and

6. Counselors' roles in eliminating biases, prejudices, and processes of intentional and unintentional oppression and discrimination.

(3) Human growth and development. Studies that provide an understanding of the nature and needs of persons at all developmental levels and in multicultural contexts, including all of the following:

1. Theories of individual and family development and transitions across the life span;

2. Theories of learning and personality development including current understandings about neurobiological behavior;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

3. Effects of crises, disasters, and other trauma-causing events on persons of all ages;
 4. Theories and models of individual, cultural, couple, family, and community resilience;
 5. A general framework for understanding exceptional abilities and strategies for differentiated interventions;
 6. Human behavior, including an understanding of developmental crises, disability, psychopathology, and situational and environmental factors that affect both normal and abnormal behavior;
 7. Theories and etiology of addictions and addictive behaviors, including strategies for prevention, intervention, and treatment; and
 8. Strategies for facilitating optimum development over the life span.
- (4) Career development. Studies that provide an understanding of career development and related life factors, including all of the following:
1. Career development theories and decision-making models;
 2. Career, avocational, educational, occupational and labor market information resources and career information systems;
 3. Career development program planning, organization, implementation, administration, and evaluation;
 4. Interrelationships among and between work, family, and other life roles and factors including the role of multicultural issues in career development;
 5. Career and educational planning, placement, follow-up, and evaluation;
 6. Assessment instruments and techniques relevant to career planning and decision making; and
 7. Career counseling processes, techniques, and resources, including those applicable to specific populations.
- (5) Helping relationships. Studies that provide an understanding of counseling processes in a multicultural society, including all of the following:
1. An orientation to wellness and prevention as desired counseling goals;
 2. Counselor characteristics and behaviors that influence helping processes;
 3. An understanding of essential interviewing and counseling skills;
 4. Counseling theories that provide the student with a model(s) to conceptualize client presentation and select appropriate counseling interventions. Students shall be exposed to models of counseling that are consistent with current professional research and practice in the field so that they can begin to develop a personal model of counseling;
 5. A systems perspective that provides an understanding of family and other systems theories and major models of family and related interventions;
 6. A general framework for understanding and practicing consultation; and
 7. Crisis intervention and suicide prevention models, including the use of psychological first-aid strategies.
- (6) Group work. Studies that provide both theoretical and experiential understanding of group purpose, development, dynamics, theories, methods, skills, and other group approaches in a multicultural society, including all of the following:
1. Principles of group dynamics, including group process components, developmental stage theories, group members' roles and behaviors, and therapeutic factors of group work;
 2. Group leadership or facilitation styles and approaches, including characteristics of various types of group leaders and leadership styles;
 3. Theories of group counseling, including commonalities, distinguishing characteristics, and pertinent research and literature;
 4. Group counseling methods, including group counselor orientations and behaviors, appropriate selection criteria and methods, and methods of evaluation of effectiveness; and
 5. Experiences in which students participate as group members in a small group activity, approved by the program, for a minimum of 10 clock hours over the course of one academic term.
- (7) Assessment. Studies that provide an understanding of individual and group approaches to assessment and evaluation in a multicultural society, including the following:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

1. Historical perspectives concerning the nature and meaning of assessment;
 2. Basic concepts of standardized and nonstandardized testing and other assessment techniques including norm-referenced and criterion-referenced assessment, environmental assessment, performance assessment, individual and group test and inventory methods, and behavioral observations;
 3. Statistical concepts, including scales of measurement, measures of central tendency, indices of variability, shapes and types of distributions, and correlations;
 4. Reliability (i.e., theory of measurement error, models of reliability, and the use of reliability information);
 5. Validity (i.e., evidence of validity, types of validity, and the relationship between reliability and validity);
 6. Social and cultural factors related to the assessment and evaluation of individuals, groups, and specific populations;
 7. Ethical strategies for selecting, administering, and interpreting assessment and evaluation instruments and techniques in counseling; and
 8. An understanding of general principles and methods of case conceptualization, assessment, or diagnoses of mental and emotional status.
- (8) Research and program evaluation. Studies that provide an understanding of research methods, statistical analysis, needs assessment, and program evaluation, including all of the following:
1. The importance of research in advancing the counseling profession;
 2. Research methods such as qualitative, quantitative, single-case designs, action research, and outcome-based research;
 3. Statistical methods used in conducting research and program evaluation;
 4. Principles, models, and applications of needs assessment, program evaluation, and use of findings to effect program modifications;
 5. Use of research to inform evidence-based practice; and
 6. Ethical and culturally relevant strategies for interpreting and reporting the results of research and program evaluation studies.
- (9) Diagnosis and treatment planning. Studies that provide an understanding of individual and group approaches to assessment and evaluation in a multicultural society. Studies in this area include, but are not limited to, the following:
1. The principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, such as the current edition of the Diagnostic and Statistical Manual;
 2. The established diagnostic criteria for mental or emotional disorders that describe treatment modalities and placement criteria within the continuum of care;
 3. The impact of co-occurring substance use disorders on medical and psychological disorders;
 4. The relevance and potential biases of commonly used diagnostic tools as related to multicultural populations;
 5. The appropriate use of diagnostic tools, including the current edition of the Diagnostic and Statistical Manual, to describe the symptoms and clinical presentation of clients with mental or emotional impairments;
 6. The ability to conceptualize accurate multi-axial diagnoses of disorders presented by clients and discuss the differential diagnosis with collaborating professionals; and
 7. The ability to differentiate between diagnosis and developmentally appropriate reactions during crises, disasters, and other trauma-causing events.
- (10) Psychopathology. Studies that provide an understanding of emotional and mental disorders experienced by persons of all ages, characteristics of disorders, and common nosologies of emotional and mental disorders utilized within the U.S. health care system for diagnosis and treatment planning. Studies in this area include, but are not limited to, the following:
1. Study of cognitive, behavioral, physiological and interpersonal mechanisms for adapting to change and to stressors;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

2. Role of genetic, physiological, cognitive, environmental and interpersonal factors and their interactions on development of the form, severity, course and persistence of the various types of disorders and dysfunction;

3. Research methods and findings pertinent to the description, classification, diagnosis, origin, and course of disorders and dysfunction;

4. Theoretical perspectives relevant to the origin, development, and course and outcome for the forms of behavior disorders and dysfunction; and

5. Methods of intervention or prevention used to minimize and modify maladaptive behaviors, disruptive and distressful cognition, or compromised interpersonal functioning associated with various forms of maladaptation.

(11) Practicum. A graduate-level clinical supervised counseling practicum in a mental health setting in which students must complete supervised practicum experiences that total a minimum of 100 clock hours over a minimum ten-week academic term. The practicum provides for the development of counseling skills under supervision. The student's practicum includes all of the following:

1. At least 40 hours of direct service with actual clients that contributes to the development of counseling skills;

2. Weekly interaction with an average of 1 hour per week of individual or triadic supervision throughout the practicum by a program faculty member, a student supervisor, or a site supervisor who is working in biweekly consultation with a program faculty member in accordance with the supervision contract;

3. An average of 1½ hours per week of group supervision that is provided on a regular schedule throughout the practicum by a program faculty member or a student supervisor; and

4. Evaluation of the student's counseling performance throughout the practicum including documentation of a formal evaluation after the student completes the practicum.

(12) Internship. A graduate-level clinical supervised counseling internship in a mental health setting that requires students to complete a supervised internship of 600 clock hours that is begun after the student's successful completion of the practicum. The internship is intended to reflect the comprehensive work experience of a professional counselor appropriate to clinical mental health counseling. The internship provides an opportunity for the student to perform, under supervision, a variety of counseling activities that a mental health counselor is expected to perform. The student's internship includes all of the following:

1. At least 240 hours of direct service with clientele, including experience leading groups;

2. Weekly interaction that averages 1 hour per week of individual supervision or triadic supervision throughout the internship, usually performed by the on-site supervisor;

3. An average of 1½ hours per week of group supervision, provided on a regular schedule throughout the internship, usually performed by a program faculty member supervisor;

4. The opportunity for the student to become familiar with a variety of professional activities in addition to direct service (e.g., record keeping, supervision, information and referral, in-service and staff meetings);

5. The opportunity for the student to develop program-appropriate audio/video recordings for use in supervision or to receive live supervision of the student's interactions with clients;

6. The opportunity for the student to gain supervised experience in the use of a variety of professional resources such as assessment instruments, technologies, print and nonprint media, professional literature, and research; and

7. Evaluation of the student's counseling performance throughout the internship including documentation of a formal evaluation by a program faculty member in consultation with the site supervisor after the student completes the internship.

ITEM 6. Amend subrule 31.7(4) as follows:

31.7(4) An applicant who has obtained Certified Clinical Mental Health Counselor status with the National Board for Certified Counselors (NBCC) ~~and submits a transcript sent directly from the school to the board~~ is considered to have met the educational and clinical experience requirements of rules

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

31.6(154D) and rule 645—31.7(154D). The applicant shall ensure that proof of current certified clinical mental health counselor status be sent directly from NBCC to the board.

ITEM 7. Amend subrule 31.10(1) as follows:

31.10(1) The biennial license renewal period for a license to practice marital and family therapy or mental health counseling shall begin on October 1 of an even-numbered year and end on September 30 of the next even-numbered year. ~~The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license.~~ The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive ~~the notice from the board~~ does not relieve the licensee of the responsibility for renewing the license.

ITEM 8. Rescind and reserve rule ~~645—32.4(154D,272C)~~.

ITEM 9. Amend subrule 33.2(12) as follows:

33.2(12) Conviction of a ~~felony~~ crime related to the profession or occupation of the licensee or the conviction of any ~~felony~~ crime that would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

ARC 9426B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dietetics hereby gives Notice of Intended Action to amend Chapter 81, “Licensure of Dietitians,” Chapter 82, “Continuing Education for Dietitians,” and Chapter 83, “Discipline for Dietitians,” Iowa Administrative Code.

These proposed amendments add definitions of “consultation” and “supervision of nonlicensees”; clarify the requirements for submitting documents to verify that licensure requirements are met; establish new requirements for degree evaluation of foreign-trained dietitians; clarify acceptance of supervised practice experience for licensure; provide to license applicants who hold licensure in other states alternate forms of verification of passing the national examination; rescind the requirement for mailing a renewal notice that is outdated given the current online renewal system; add a definition of “webinar” applicable to continuing education; provide clarification for obtaining hours of continuing education; remove the audit language for continuing education programs and activities submitted in accordance with professional development portfolios for American Dietetic Association/Commission on Dietetic Registration (ADA/CDR) certification; and adopt the ADA/CDR Code of Ethics for the Profession of Dietetics and Process for Consideration of Ethics Issues, as revised January 1, 2010.

Any interested person may make written comments on the proposed amendments no later than April 5, 2011, addressed to Sharon Dozier, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail sdozier@idph.state.ia.us.

A public hearing will be held on March 29, 2011, from 11 a.m. to 12 noon in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 152A and 272C.

The following amendments are proposed.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 1. Adopt the following **new** definitions in rule **645—81.1(152A)**:

“*Consultation*” means the practice of providing professional advice to another dietitian or other professional in a particular case and for a limited time, in affiliation with, and at the request of, a dietitian licensed in this state.

“*Supervision of nonlicensees*” means any of the following: delegation of duties, direct oversight, or indirect oversight of employees or other persons not licensed by the board.

ITEM 2. Rescind and reserve rule **645—81.3(152A,272C)**.

ITEM 3. Amend paragraphs **81.4(4)“b”** and **“c”** as follows:

b. Official verification statements have been sent to the board from the didactic and internship or preprofessional practice programs have been sent to the board or from the Commission on Dietetic Registration (CDR) to verify completion of the academic and preprofessional practice requirements; and

c. The applicant satisfactorily completes the registration examination for dietitians administered by the Commission on Dietetic Registration (CDR). The board will accept the passing score set by ~~the Commission on Dietetic Registration~~ CDR. Verification of satisfactory completion may be established by one of the following:

(1) sending ~~The applicant sends to the board~~ a notarized copy of the ~~Commission on Dietetic Registration (CDR) registration card or;~~

(2) CDR sends an official letter ~~sent~~ directly ~~from CDR~~ to the board to verify that the applicant holds registration status; or

(3) CDR posts Web-based verification that the applicant holds registration status.

ITEM 4. Amend subrule 81.4(5) as follows:

81.4(5) A license is not required for dietitians who are in this state for the purpose of consultation, in accordance with rule 645—81.1(152A), when they are licensed in another state, U.S. ~~possession territory~~, or country, or have received at least a baccalaureate degree in human nutrition from a U.S. regionally accredited college or university. ~~Consultation means the practice of dietetics in affiliation with, and at the request of, a dietitian licensed in this state.~~

ITEM 5. Rescind subrule 81.5(2) and adopt the following **new** subrule in lieu thereof:

81.5(2) A foreign-trained dietitian shall:

a. Provide an official letter sent directly from the Commission on Dietetic Registration (CDR) to the board to verify that the applicant has met the minimum academic and didactic program requirements of CDR. Foreign degree evaluation agencies and equivalency evaluation requirements of the Commission on Accreditation for Dietetics Education (CADE) of the American Dietetic Association (ADA) are listed on the CADE Web site at: <http://www.eatright.org/students/getstarted/international/agencies.aspx>; and

b. Provide evidence of meeting all other requirements in these rules.

ITEM 6. Rescind rule 645—81.6(152A) and adopt the following **new** rule in lieu thereof:

645—81.6(152A) Supervised experience. The applicant shall complete a documented supervised practice experience component that meets the requirements established by the Commission on Dietetic Registration (CDR) of the American Dietetic Association (ADA).

ITEM 7. Amend rule 645—81.7(152A) as follows:

645—81.7(152A) Licensure by endorsement. An applicant who has been a licensed dietitian under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

1. Submits to the board a completed application;
2. Pays the licensure fee;
3. Shows evidence of licensure requirements that are similar to those required in Iowa;
4. Provides official copies of the academic transcripts;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

5. Provides a notarized copy of the Commission on Dietetic Registration (CDR) registration card or an alternate form of verification of passing the registration examination, as stated in 81.4(4)“c”; and

6. Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction’s board office if the verification provides:

- Licensee’s name;
- Date of initial licensure;
- Current licensure status; and
- Any disciplinary action taken against the license.

ITEM 8. Amend subrule 81.9(1) as follows:

81.9(1) The biennial license renewal period for a license to practice dietetics shall begin on the sixteenth day of the licensee’s birth month and end on the fifteenth day of the licensee’s birth month two years later. ~~The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license.~~ The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive ~~the~~ notice from the board does not relieve the licensee of the responsibility for renewing the license.

ITEM 9. Adopt the following new definition in rule ~~645—~~**81.2(152A)**:

“*Webinar*” means a Web-based seminar, presentation, lecture, or workshop that is transmitted over the Web.

ITEM 10. Amend subrule 82.2(3) as follows:

82.2(3) Hours of continuing education credit may be obtained ~~by attending and participating in a continuing education activity. These hours must be in accordance with these rules~~ in accordance with the definitions and standards in these rules.

ITEM 11. Amend paragraph **82.3(2)“b”** as follows:

b. The licensee ~~shall participate~~ may engage in other types of activities identified in the individual licensee’s professional development portfolio for Commission on Dietetic Registration (CDR) certification. ~~Programs or activities shall be subject to approval in the event of an audit.~~

ITEM 12. Reletter paragraphs **82.3(2)“c”** and **“d”** as **82.3(2)“e”** and **“f.”**

ITEM 13. Adopt the following new paragraphs **82.3(2)“c”** and **“d”**:

c. The licensee may engage in programs/activities via webinars and independent study, in accordance with the definitions and standards in these rules.

d. The licensee may submit completed training to comply with mandatory reporter training requirements, as specified in 645—subrule 81.9(4). Hours reported for credit shall not exceed the hours required to maintain compliance with required training.

ITEM 14. Renumber subrules **83.2(1)** to **83.2(31)** as **83.2(2)** to **83.2(32)**.

ITEM 15. Adopt the following new subrule 83.2(1):

83.2(1) Failure to comply with the American Dietetic Association/Commission on Dietetic Registration, Code of Ethics for the Profession of Dietetics and Process for Consideration of Ethics Issues, as revised January 1, 2010, hereby adopted by reference. Copies may be obtained from the American Dietetic Association/Commission on Dietetic Registration Web site at <http://www.cdrnet.org>.

ARC 9401B**PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Podiatry hereby gives Notice of Intended Action to amend Chapter 220, “Licensure of Podiatrists,” Iowa Administrative Code.

The proposed amendment removes the requirement for the Board to send a renewal notice to the licensee. This change makes licensure requirements consistent with Code of Iowa changes.

Any interested person may make written comments on the proposed amendment no later than March 29, 2011, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail pwilson@idph.state.ia.us.

A public hearing will be held on March 29, 2011, from 1 to 1:30 p.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 149 and 272C.

The following amendment is proposed.

Amend subrule 220.9(1) as follows:

220.9(1) The biennial license renewal period for a license to practice podiatry shall begin on July 1 of an even-numbered year and end on June 30 of the next even-numbered year. ~~The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license.~~ The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice from the board does not relieve the licensee of the responsibility for renewing the license.

ARC 9405B**PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Podiatry hereby gives Notice of Intended Action to amend Chapter 224, “Discipline for Podiatrists,” Iowa Administrative Code.

This proposed amendment to subrule 224.2(12) changes the word “felony” to “crime” to be consistent with the Iowa Code chapter 147 requirements.

Any interested person may make written comments on the proposed amendment no later than March 29, 2011, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on March 29, 2011, from 1 to 1:30 p.m. in the Fifth Floor Board Conference Room 526, at the above address, at which time persons may present their views either orally

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or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 149 and 272C.

The following amendment is proposed.

Amend subrule 224.2(12) as follows:

224.2(12) Conviction of a ~~felony~~ crime related to the profession or occupation of the licensee or the conviction of any ~~felony~~ crime that would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

ARC 9417B**TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.10, 307.12, 321.449 and 321.450, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 520, "Regulations Applicable to Carriers," Iowa Administrative Code.

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

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.

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. Each year a revised edition of 49 CFR is published, incorporating all of the final regulations adopted during the year.

The amendments to the FMCSR and the HMR that have become final and effective since the 2009 edition of the CFR are listed in the information below. The parts affected are followed by FR citations.

Amendments to the FMCSR and Federal HMRParts 107, 171, 172, 173, and 180 (FR Vol. 74, No. 199, Pages 53182-53189), 10-16-09

This final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) adopts editorial corrections and makes minor regulatory changes to improve provisions in the Hazardous Materials Regulations. The intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments contained in this rule are nonsubstantive changes and do not impose new requirements. Effective Date: October 16, 2009.

Part 172 (FR Vol. 74, No. 200, Pages 53413-53423), 10-19-09

This final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) amends the Hazardous Materials Regulations to clarify requirements governing emergency response information services provided by arrangement with hazardous materials offerors (shippers). In order to preserve the effectiveness of these arrangements for providing accurate and timely emergency response information,

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PHMSA is requiring basic identifying information (offeror name or contract number) to be included on shipping papers. This information will enable the emergency response information provider to identify the offeror for which the emergency response information provider is accepting responsibility for providing emergency response information in the event of a hazardous materials incident and to obtain additional information about the hazardous material as needed. Effective Date: November 18, 2009*, with voluntary compliance authorized starting November 18, 2009. (*The effective date was published erroneously and then corrected on 10-22-09, as noted in the following Federal Register Docket.)

Part 172 (FR Vol. 74, No. 203, Page 54489), 10-22-09

This final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) corrected the erroneous effective date of November 18, 2009, published on Page 53413 of Volume 74, Number 200. The effective date is October 1, 2010. Voluntary compliance remained authorized starting November 18, 2009.

Parts 390, 392, and 396 (FR Vol. 74, No. 248, Pages 68703-68709), 12-29-09

This final rule from the Federal Motor Carrier Safety Administration (FMCSA) amends its December 17, 2008, final rule implementing Section 4118 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The December 17, 2008, final rule makes intermodal equipment providers (IEPs) subject to certain Federal Motor Carrier Safety Regulations (FMCSRs) and establishes shared safety responsibility among IEPs, motor carriers, and drivers. These amendments create a fifth marking option for identifying the IEP responsible for the inspection, repair, and maintenance of items of intermodal equipment (IME) in response to a petition for reconsideration from the Intermodal Association of North America (IANA); clarify regulatory text and correct an inadvertent error in response to a petition for reconsideration from the Ocean Carrier Equipment Management Association (OCEMA); and extend the deadline for IEPs, motor carriers, and drivers operating IME to comply with certain provisions pertaining to driver-vehicle inspections in response to a petition filed by OCEMA. Effective Date: December 29, 2009.

Implementation Date: IEPs must establish systematic inspection, repair, and maintenance programs, record-keeping systems and identify their operations by submitting Form MCS-150C by December 17, 2009, except for the requirements of Sections 396.9(d), 396.11(a)(2), 396.12(a), 396.12(c), and 396.12(d), which they must comply with by June 30, 2010. IEPs must mark their intermodal chassis with their legal name or a single trade name and a USDOT identification number by December 17, 2010.

Part 390 (FR Vol. 75, No. 20, Pages 4996-5002), 02-01-10

This final rule from the Federal Motor Carrier Safety Administration (FMCSA) amends the Federal Motor Carrier Safety Regulations (FMCSRs) to require that motor carriers operating commercial motor vehicles (CMVs), designed or used to transport between 9 and 15 passengers (including the driver), in interstate commerce for direct compensation comply with safety regulations regardless of the distance traveled. Specifically, this rule makes FMCSRs applicable to the operation of such vehicles when they are operated within a 75 air-mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location. Motor carriers, drivers, and the vehicles operated by them will be subject to the same safety requirements imposed upon such vehicles when they are operated beyond a 75-air-mile radius. This action is required by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Effective Date: May 3, 2010, with compliance with this rule required no later than June 1, 2010.

Parts 171, 172, 173, and 178 (FR Vol. 75, No. 21, Pages 5376-5403), 02-02-10

This final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) amends the packaging requirements in the Hazardous Materials Regulations to enhance compliance flexibility, improve clarity, and reduce regulatory burdens. Specifically, the amendments revise several packaging-related definitions; add provisions to allow more flexibility when closure instructions are prepared and transmitted, including conditions under which closure instructions may be transmitted electronically; add a requirement for shippers to retain packaging closure instructions; incorporate new

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language that will allow for a practicable means of stenciling the “UN” (United Nations) symbol on packagings; and clarify a requirement to document the methodology used when determining whether a change in packaging configuration requires retesting as a new design or whether the change in packaging may be considered a variation of a previously tested design. This final rule also incorporates requirements for construction, maintenance, and use of Large Packagings. Effective Date: October 1, 2010. Voluntary compliance is authorized starting March 4, 2010.

Part 172 (FR Vol. 75, No. 45, Pages 10974-10989), 03-09-10

This final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA), in consultation with the Transportation Security Administration (TSA) of the Department of Homeland Security (DHS), modifies the current security plan requirements applicable to the commercial transportation of hazardous materials by air, rail, vessel, and highway. Based on an evaluation of the security threats associated with specific types and quantities of hazardous materials, the final rule narrows the list of materials subject to security plan requirements and reduces associated regulatory costs and paperwork burdens. The final rule also clarifies certain requirements related to security planning, training, and documentation. Effective Date: October 1, 2010. Voluntary compliance with this final rule is authorized as of April 8, 2010.

Part 107 (FR Vol. 75, No. 60, Pages 15613-15620), 03-30-10

This final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) amends the statutorily mandated registration and fee assessment program for persons who transport, or offer for transportation, certain categories and quantities of hazardous materials. PHMSA is increasing the annual fee of \$975 (plus a \$25 administrative fee) to \$2,575 (plus a \$25 administrative fee) for registrants not qualifying as a small business or not-for-profit organization for registration years 2010-2011 and following years. The increase is necessary to fund the national Hazardous Materials Emergency Preparedness (HMEP) grants program at approximately \$28,300,000 in accordance with the Administration’s Fiscal Year 2010 budget and proposed Fiscal Year 2011 budget. Effective Date: April 29, 2010.

Parts 385, 395, and 396 (FR Vol. 75, No. 64, Pages 17208-17252), 04-05-10

This final rule from the Federal Motor Carrier Safety Administration (FMCSA) amends the Federal Motor Carrier Safety Regulations (FMCSRs) to incorporate new performance standards for electronic on-board recorders (EOBRs) installed in commercial motor vehicles (CMVs) manufactured on or after June 4, 2012. On-board hours-of-service (HOS) recording devices meeting FMCSA’s current requirements and installed in CMVs manufactured before June 4, 2012, may continue to be used for the remainder of the service life of those CMVs. Motor carriers that have demonstrated serious noncompliance with the HOS rules will be subject to mandatory installation of EOBRs meeting the new performance standards. If FMCSA determines, based on HOS records reviewed during a compliance review, that a motor carrier has a 10 percent or greater violation rate for any HOS regulation listed in the new Appendix C to Part 385, FMCSA will issue the carrier an EOBR remedial directive. The motor carrier will then be required to install EOBRs in all of its CMVs regardless of their date of manufacture and use the devices for HOS record keeping for a period of two years, unless the carrier (i) already equipped its vehicles with automatic on-board recording devices (AOBRDs) meeting the Agency’s current requirements under 49 CFR 395.15 prior to the finding, and (ii) demonstrates to FMCSA that its drivers understand how to use the devices. The FMCSA also changes the safety fitness standard to take into account a remedial directive when determining fitness. Effective Date: June 4, 2010. Compliance Date: Motor carriers must comply with this final rule by June 4, 2012. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 4, 2010.

Parts 107, 171, 173, and 177 (FR Vol. 75, No. 93, Pages 27205-27216), 05-14-10

This final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) amends the Hazardous Materials Regulations to incorporate provisions contained in certain widely used or

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longstanding special permits that have an established safety record. Special permits allow a company or individual to package or ship a hazardous material in a manner that varies from the regulations as long as an equivalent level of safety is maintained. The revisions in this final rule are intended to provide greater regulatory flexibility regarding special permits and eliminate the need for numerous renewal requests, thus reducing paperwork burdens and facilitating commerce while maintaining an appropriate level of safety. Effective Dates: October 1, 2010. Voluntary Compliance: Voluntary compliance with the provisions of this final rule is authorized June 14, 2010.

Part 391 (FR Vol. 75, No. 98, Pages 28499-28502), 05-21-10

This final rule from the Federal Motor Carrier Safety Administration (FMCSA) regulations implementing Section 215 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) relating to medical certification requirements of CMV drivers and the submission of medical certification documents to the State Driver Licensing Agency (SDLA) links medical qualification information with the Commercial Driver License (CDL). The purpose of this rule is both to make amendments responding to petitions for reconsideration and to make technical corrections to the FMCSA regulations. Effective Date: May 21, 2010. Compliance and implementation date is January 30, 2012.

Part 390 (FR Vol. 75, No. 161, Pages 51419-51420), 08-20-10

This final rule from the Federal Motor Carrier Safety Administration (FMCSA) extends to June 30, 2011, the June 30, 2010, compliance date of its December 29, 2009, final rule concerning the inspection, repair, and maintenance of intermodal equipment (IME), specifically with respect to the requirement for drivers and motor carriers to prepare a driver-vehicle inspection report (DVIR) on an item of IME even if no damage, defects, or deficiencies are discovered by, or reported to, the driver. (Sec. 390.42(b)). This action is being taken to provide the Agency with sufficient time to address an issue raised in a petition for rule making submitted on March 31, 2010, by the Ocean Carrier Equipment Management Association (OCEMA) and the Institute of International Container Lessors (IICL). The requirements for intermodal equipment providers (IEPs) to have in place inspection, repair and maintenance programs, and a process for receiving and taking appropriate action in response to DVIRs on which damage, defects, or deficiencies are reported remain in effect. Compliance Date: June 30, 2011.

Parts 107, 171, 172, 173, 177, and 180 (FR Vol. 75, No. 169, Pages 53593-53598), 09-01-10

This final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) amends the Hazardous Materials Regulations to correct editorial errors and makes minor regulatory changes to improve clarity. The intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments contained in this rule are nonsubstantive changes and do not impose new requirements. Effective Date: October 1, 2010.

Parts 385 and 395 (FR Vol. 75, No. 176, Pages 55488-55491), 09-13-10

This final rule from the Federal Motor Carrier Safety Administration (FMCSA) amends its April 5, 2010, final rule that established new performance standards for electronic on-board recorders (EOBRs) installed in commercial motor vehicles (CMVs). FMCSA amended requirements relating to the temperature range in which EOBRs must be able to operate and the connector type specified for the Universal Serial Bus (USB) interface. Effective Date: September 13, 2010.

Part 393 (FR Vol. 75, No. 182, Pages 57393-57396), 09-21-10

This final rule from the Federal Motor Carrier Safety Administration (FMCSA) makes permanent the existing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that trailers with antilock brake systems (ABS) be equipped with an external malfunction indicator lamp. The existing indicator lamp requirement was originally scheduled to sunset on March 1, 2009, but the National Highway Traffic Safety Administration (NHTSA) published a final rule on August 25, 2009, making permanent the requirement in the Federal Motor Vehicle Safety Standards (FMVSSs) that manufacturers equip trailers with ABS and an external antilock malfunction indicator lamp. This final rule makes the FMCSRs consistent with the August 2009 NHTSA final rule. Effective Date: November 22, 2010.

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Parts 390, 391, and 392 (FR Vol. 75, No. 186, Pages 59118-59136), 09-27-10

This final rule from the Federal Motor Carrier Safety Administration (FMCSA) adds texting while driving to the list of disqualifying offenses under state or local traffic laws or ordinances that prohibit texting by CDL drivers while operating a CMV and imposes sanctions, including civil penalties and disqualification from operating CMV for drivers who fail to comply with this rule. Additionally, motor carriers are prohibited from requiring or allowing their drivers to engage in texting while driving. FMCSA amends its commercial driver's license (CDL) regulations to state or local traffic laws or ordinances that prohibit texting by CDL drivers while operating a CMV, including school bus drivers. Effective Date: October 27, 2010.

Parts 171, 173, and 178 (FR Vol. 75, No. 189, Pages 60333-60340), 09-30-10

On February 2, 2010, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule amending the Hazardous Materials Regulations (HMR) to: revise several packaging-related definitions; add provisions to allow more flexibility when closure instructions are prepared and transmitted, including conditions under which closure instructions may be transmitted electronically; add a requirement for shippers to retain packaging closure instructions; incorporate new language that allows for a practicable means of stenciling the United Nations (UN) symbol on packagings; and clarify a requirement to document the methodology used when determining whether a change in packaging configuration requires retesting as a new design or whether the change in packaging may be considered a variation of a previously tested design. The February 2, 2010, final rule also incorporated requirements for the construction, maintenance, and use of Large Packagings. This final rule responds to one petition for reconsideration and four appeals submitted in response to the February 2, 2010, final rule and also corrects several errors that occurred in that rule making. Because these amendments do not impose new requirements, notice and public comment procedures are unnecessary. Effective Date: October 1, 2010.

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.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)817-6511; Internet E-mail address: steven.bowman@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than March 29, 2011.

A meeting to hear requested oral presentations is scheduled for Wednesday, March 30, 2011, at 10 a.m. at the Iowa Department of Transportation's Motor Vehicle Division offices located at 6310 SE Convenience Boulevard, Ankeny, Iowa.

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

The proposed amendments may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be submitted to the Office of Policy and Legislative Services at the address listed in this Notice by April 11, 2011.

These amendments are intended to implement Iowa Code chapter 321.

Proposed rule-making actions:

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, ~~2009~~ 2010).

TRANSPORTATION DEPARTMENT[761](cont'd)

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, ~~2009~~ 2010).

USURY

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

March 1, 2010 — March 31, 2010	5.75%
April 1, 2010 — April 30, 2010	5.75%
May 1, 2010 — May 31, 2010	5.75%
June 1, 2010 — June 30, 2010	5.75%
July 1, 2010 — July 31, 2010	5.50%
August 1, 2010 — August 31, 2010	5.25%
September 1, 2010 — September 30, 2010	5.00%
October 1, 2010 — October 31, 2010	4.75%
November 1, 2010 — November 30, 2010	4.75%
December 1, 2010 — December 31, 2010	4.50%
January 1, 2011 — January 31, 2011	4.75%
February 1, 2011 — February 28, 2011	5.25%
March 1, 2011 — March 31, 2011	5.50%

ARC 9402B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 81, "Nursing Facilities," and adopts new Chapter 166, "Quality Improvement Initiative Grants," Iowa Administrative Code.

The amendments expand the uses of civil money penalties collected from nursing facilities to include a Quality Improvement Initiative Grant. These grants are intended to fund projects that directly or indirectly enhance quality of care or quality of life for nursing facility residents.

Section 1919 of the Social Security Act and Iowa Code section 249A.19 allow the Department to impose civil money penalties when a health care facility is not in substantial compliance with one or more Medicaid participation requirements. These penalties may range from \$50 to \$10,000 per day or \$1,000 to \$10,000 per instance, depending on the kind of deficiency recorded by the Department of Inspections and Appeals (the agency that certifies nursing facilities for participation in the Iowa Medicaid program). The funds collected are to be applied to the protection of the health or property of the residents of the facilities determined to be out of compliance.

The Centers for Medicare and Medicaid Services has clarified that states may direct collected civil penalty funds to entities other than nursing facilities as long as the funds are used in accordance with the intent of the statute. States may target these resources for initiatives carried out by stakeholders, such as nursing facilities, consumer groups, professional nursing home associations, ombudsmen, and quality improvement organizations.

Under these amendments, nursing facilities and other stakeholder groups may apply for a Quality Improvement Initiative Grant in any calendar year in which the Department sets aside moneys for this purpose. The grants are available only for initiatives that are outside the scope of normal operations for the nursing facility or other applicant. Grants cannot be used as replacement funding for goods or services that the applicant already offers. Grants shall be awarded for short-term quality improvement initiatives (three years or less). An initiative shall be self-sustaining once implemented unless the initiative is a one-time project.

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

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on October 20, 2010, as **ARC 9157B**. The Department held a public hearing to receive comments on the proposed amendments, which was attended by three persons. The Department received comments on the Notice of Intended Action from four persons. Comments concerned what entities should be allowed to apply for grants, what kinds of projects grants should be used for, and what accountability and replication should be required. The complete summary of comments is available on the Department's policy Web site: <http://www.dhs.iowa.gov/policyanalysis/RulesPages/phcomm.htm>.

In response to these comments, the Department has made the following changes to the amendments as published under Notice of Intended Action:

- Changed the definition of "Nursing facility" in 441—166.1(249A) to read as follows "'Nursing facility' means a Medicaid-enrolled facility that is defined in 441—81.1(249A) as 'facility.'"
- Revised the definition of "Quality improvement initiative" in 441—166.1(249A) to reflect that an initiative may promote compliance with state and federal requirements as well as or instead of preventing noncompliance.
- Added new paragraph 166.3(3)"c" to specify that a facility applicant must not have any outstanding or unresolved Class I violations.
- Revised subrule 166.4(2) to provide that grants may also be awarded for initiatives lasting more than three years if the initiatives involve collaborative efforts of state government and various stakeholders.
- Clarified language in the first sentence of subrule 166.4(4) to read as follows: "Except for a one-time initiative, grant awards shall be restricted to initiatives that will be self-sustaining once implemented."

HUMAN SERVICES DEPARTMENT[441](cont'd)

• Added new subrule 166.6(4) to specify that the Department will abide by guidelines of the Centers for Medicare and Medicaid Services (CMS) and will submit each approved grant to CMS for approval as required.

The Council on Human Services adopted these amendments on February 8, 2011.

The Department finds that these amendments confer a benefit on eligible entities by making available a new funding source. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code sections 249A.4 and 249A.19.

These amendments will become effective on April 1, 2011.

The following amendments are adopted.

ITEM 1. Adopt the following **new** subrule 81.50(7):

81.50(7) Authority to settle penalties. The department of inspections and appeals has the authority to settle cases at any time before the evidentiary hearing.

ITEM 2. Rescind and reserve subrule **81.52(4)**.

ITEM 3. Amend rule 441—81.53(249A) as follows:

441—81.53(249A) Civil money penalties—settlement of penalties. Use of penalties collected by the department. ~~The department of inspections and appeals has the authority to settle cases at any time prior to the evidentiary hearing decision.~~ Civil money penalties collected by the department shall be applied to the protection of the health or property of residents of facilities that the department of inspections and appeals finds deficient. Funds may be used for:

1. Payment for the cost of relocating residents to other facilities;
2. Recovery of state costs related to the operation of a facility pending correction of deficiencies or closure;
3. Reimbursement of residents for personal funds or property lost at a facility as a result of actions by the facility or by individuals used by the facility to provide services to residents; and
4. Funding of projects to improve the quality of life or quality of care of nursing facility residents through quality improvement initiative grants awarded pursuant to 441—Chapter 166.

ITEM 4. Adopt the following **new** 441—Chapter 166:

CHAPTER 166
QUALITY IMPROVEMENT INITIATIVE GRANTS

441—166.1(249A) Definitions.

“*Eligible entities*” means nursing facilities, state agencies, nursing facility advocacy groups, and other nursing facility stakeholder groups.

“*Nursing facility*” means a Medicaid-enrolled facility that is defined in 441—81.1(249A) as “facility.”

“*Quality improvement initiative*” or “*initiative*” means an innovative project that prevents noncompliance or promotes compliance with state or federal requirements for nursing facilities and that directly or indirectly benefits nursing facility residents by enhancing their quality of life or quality of care.

441—166.2(249A) Availability of grants. At the beginning of each calendar year, the department shall set aside an annual amount from the civil money penalty fund established pursuant to Iowa Code section 249A.19 to be awarded in the form of grants to eligible entities for approved quality improvement initiatives. At no time shall the grant set-aside cause the civil money penalty fund to drop below \$1 million.

166.2(1) In any calendar year in which sufficient funds are available in the civil money penalty fund to support quality improvement initiative grants, the department shall issue a notice for applications for grants.

HUMAN SERVICES DEPARTMENT[441](cont'd)

166.2(2) There is no entitlement to any funds available for grants awarded pursuant to this chapter. The department may award grants to the extent funds are available and, within its discretion, to the extent that applications are approved.

441—166.3(249A) Requirements for applicants. Eligible entities wishing to apply for quality improvement initiative grants must meet the following requirements:

166.3(1) Eligible entities may submit an application on behalf of a specific facility, on behalf of a group of facilities, or on behalf of a stakeholder group. However, grant funds awarded shall be distributed to one distinct entity that shall be contractually responsible for the funds.

166.3(2) The applicant must demonstrate the capacity to carry out the initiative for which the grant is requested.

166.3(3) At the time of the application, a facility applicant must not have:

- a. Any pending enforcement actions that could result in the closure of the facility;
- b. Any outstanding sanctions by the Iowa Medicaid enterprise or the Centers for Medicare and Medicaid Services; or
- c. Any outstanding or unresolved Class I violations.

166.3(4) An applicant previously awarded a quality improvement initiative grant that failed to achieve that initiative's intended goals or outcomes shall be ineligible to apply for a period of five years following that grant award. However, a grant may be considered if the applicant's inability to complete the initiative was due to circumstances beyond the applicant's control.

166.3(5) An applicant may receive a maximum of two grants within a five-year period.

441—166.4(249A) Requirements for initiatives. Grants are available only for quality improvement initiatives that are outside the scope of normal operations for the nursing facility or other applicant. Grants cannot be used as replacement funding for goods or services that the applicant already offers.

166.4(1) The applicant must be able to identify:

- a. Areas in need of improvement, including staff education or training needs not available through current corporate or facility contract employment; and
- b. Efficient uses of the quality improvement initiative grant to improve the quality of life or quality of care of nursing facility residents.

166.4(2) Grants may be awarded for:

- a. Short-term quality improvement initiatives (three years or less), and
- b. Initiatives with a longer term that involve collaborative efforts of state government and various stakeholders.

166.4(3) The applicant shall not submit a request for or receive a grant for the same type of initiative previously awarded a grant.

166.4(4) Except for a one-time initiative, grant awards shall be restricted to initiatives that will be self-sustaining once implemented. Costs to maintain the initiative may be considered allowable costs on the nursing facility's financial and statistical report, subject to 441—subrule 81.10(1) and rule 441—81.6(249A).

166.4(5) Quality improvement initiative grants are not available for the following:

- a. General operations or administrative salaries.
- b. Capital improvements, construction projects or other activities that would increase square footage or result in an increase in the assessed value of any property.
- c. Facility maintenance activities intended to meet the minimum standards for nursing facilities set forth in 481—Chapter 61.
- d. Goods or services for which the applicant or others are already obligated to pay.
- e. Vendor payments and payroll obligations for a facility's normal operations or for fulfillment of state or federal requirements.
- f. Costs related to travel, bonuses or other direct employee benefits.
- g. Costs that are not specifically outlined in the applicant's grant application or are already included in the facility's cost report.

HUMAN SERVICES DEPARTMENT[441](cont'd)

h. Projects, programs, goods or services that are unrelated to improving the quality of life or quality of care of nursing facility residents.

441—166.5(249A) Applications. Eligible entities shall apply for quality improvement initiative grants using Form 470-4869, Grant Award Application. Applications may be accessed electronically through the Iowa Medicaid enterprise Web site, www.ime.state.ia.us/Providers.

166.5(1) Grant applications must be received by the Iowa Medicaid enterprise between February 1 and April 30 of any calendar year in which grant funds are available. Grant applications submitted before or after this period shall not be considered.

166.5(2) To be considered, each application must include, at a minimum, the following:

a. A description of the initiative's vision or goal. The application must identify how the grant will improve the quality of care or quality of life of nursing facility residents.

b. The objectives or expected outcomes of the initiative.

c. An implementation plan.

d. An education plan. For initiatives intended to provide education or training to stakeholders, the applicant shall submit a plan for the development and execution of the training curriculum.

e. A sustainability plan. The application shall describe how the initiative is a one-time initiative or will be self-sustaining once the grant implementation period has ended.

f. A budget, with competitive quotes. Applicants must include three quotes for the cost of equipment, construction and labor for the quality improvement initiative. The quotes shall be from businesses that comply with federal, state and local laws as required for the health and safety of the residents of the nursing facility.

g. A monitoring plan. The application shall describe how the applicant will monitor and evaluate ongoing progress toward meeting the initiative's stated goals.

h. The qualifications of professionals and other staff involved in the initiative.

441—166.6(249A) Awarding of grants. Grants will be awarded beginning July 1 of each calendar year in which grant funds are available.

166.6(1) A grant award review committee shall be appointed by the state Medicaid director. The committee shall review and evaluate all complete grant applications submitted within the required time frame.

166.6(2) Applications shall be evaluated using the following criteria (indicated on Form 470-4869, Grant Award Application):

a. Vision or goal: 5 points.

b. Description of initiative: 20 points.

c. Effect on quality of care or quality of life of residents: 20 points.

d. Objectives and outcomes: 20 points.

e. Implementation plan: 25 points.

f. Education plan: 5 points.

g. Sustainability: 5 points.

166.6(3) Each grant application must score at least 85 points on the evaluation criteria for the application to be recommended to the department director for an award.

166.6(4) The department shall comply with the Centers for Medicare and Medicaid Services (CMS) guidance on whether specific categories of civil money penalty use require federal approval. The department shall submit the project plan for each grant the department intends to award, along with any required documentation, to CMS to seek approval or denial of the proposed project.

441—166.7(249A) Grant requirements. Grant awards are subject to the following general requirements.

166.7(1) Contract. Grants for approved applications shall be awarded through a contract entered into by the department and the applicant. Grant funds shall be distributed to grantees in quarterly increments.

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166.7(2) *Progress report.* The grantee shall submit quarterly progress reports following the date of the award until completion of the initiative. A grantee that fails to submit a quarterly progress report shall forfeit any future grant award distributions.

166.7(3) *Final report.* The grantee must submit a final report to the bureau of long-term care of the Iowa Medicaid enterprise within 60 days of completion of the initiative.

a. The report shall be submitted on Form 470-4950, Grant Award Final Report.

b. The final report must provide evidence of successful completion of the quality improvement initiative and must address the following:

(1) The purpose of the grant,

(2) The expected outcomes of the initiative,

(3) The actual outcomes of the initiative,

(4) The number of residents who benefited from the initiative,

(5) The status of the action plan for sustainability if the initiative will continue beyond the grant funding.

These rules are intended to implement Iowa Code section 249A.19.

[Filed Emergency After Notice 2/10/11, effective 4/1/11]

[Published 3/9/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/9/11.

ARC 9404B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

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

Under federal Medicaid legislation, a person who transfers assets for less than fair market value in order to meet Medicaid resource limits is penalized by a period of ineligibility for long-term care services that is proportional to the amount of assets transferred. In essence, this provision avoids Medicaid expenditures for services that the person could have purchased independently had the assets been retained or sold at fair market value.

Legislation applying the transfer of assets provision to the purchase of annuities was enacted in Public Law 109-171 and took effect on February 8, 2006. The law provides that the entire amount used to purchase an annuity shall be counted as a transfer of assets for less than fair market value unless certain conditions are met. One of these conditions is that the state is named as a residual beneficiary to the annuity. The original legislation was retroactively amended in December 2006 by Public Law 109-432. The Department’s medical assistance rules do not correctly reflect those changes.

This amendment:

- Specifies that the residual beneficiary designation must apply to the extent of the amount of medical assistance paid for care of either the annuitant or the annuitant’s spouse in a medical institution, not just for the care of the annuitant.
- Provides that this restriction also applies to annuities for which the spouse of a Medicaid applicant or member is the annuitant. (Other conditions for exemption apply only when the Medicaid applicant or member is the annuitant.)

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on December 15, 2010, as **ARC 9277B**. The Department received no comments on the proposed amendment. This amendment is identical to that published under Notice of Intended Action.

This amendment does not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment on February 8, 2011.

This amendment is intended to implement Iowa Code sections 249A.3 and 249A.4.

This amendment shall become effective on May 1, 2011.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [75.23(9)] is being omitted. This amendment is identical to that published under Notice as **ARC 9277B**, IAB 12/15/10.

[Filed 2/10/11, effective 5/1/11]

[Published 3/9/11]

[For replacement pages for IAC, see IAC Supplement 3/9/11.]

ARC 9403B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 80, “Procedure and Method of Payment,” Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The amendments update, streamline, and clarify Medicaid policy for home- and community-based services to achieve uniform application of policy and to reduce the number of policy exceptions requested. These amendments:

- Require service workers and case managers to sign and date service plans for the habilitation program (Item 1).
- Change the name of the mental retardation (MR) waiver to the intellectual disability waiver (Items 2, 20 to 22, 25, 28, and 29).
- Eliminate obsolete references to adult day care service components (Items 3, 10, 18, and 35).
- Limit respite care provided when the usual caregiver is working to care in a 24-hour residential camp and clarify that respite care shall not be used as a substitute for a child's day care (Items 4, 12, 16, 22, 31, and 44).
- Change the word "consumer" to "member" where applicable in the rules amended (Items 4 to 8, 12, 14 to 16, 19 to 22, 24 to 30, 32, 34, 37 to 40, 43, and 44).
- Clarify for consumer-directed attendant care that meal preparation may only occur in the member's home (Items 5, 15, 19, 26, 37, and 39).
- Clarify the use of Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, and Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement (Items 5, 15, 19, 26, 37, and 39). The provider shall complete one Form 470-4389 for each date that CDAC service is provided.
- Clarify the use of interim medical monitoring treatment (IMMT) services (Items 6, 27, and 38). IMMT services are not intended to provide day care for children or adults. The parent or guardian of the member is responsible for the nonmedical usual and customary cost of day care during the time when the member is receiving IMMT services. Medical care necessary for monitoring and treatment is an allowable IMMT cost.
- Exclude payments for purchase, repair, and leasing of motorized vehicles under home and vehicle modification (Items 7, 14, 24, 32, and 40).
- Clarify that, whenever possible, three itemized, competitive bids shall be obtained for each home or vehicle modification project and shall be reviewed by the case manager or service worker before approval of the project. The contract shall include the scope of work to be performed, the time involved, the supplies needed, the cost, diagrams of the project whenever applicable, and an assurance that the provider has liability and workers' compensation coverage and the applicable permit and license (Items 7, 14, 24, 32, and 40).
- Remove the requirement for home and vehicle modification expenses to be encumbered at the dollar amount of \$505 per month (Items 7 and 32).
- Add coverage of a portable locator system as a type of personal emergency response system (PERS) (Items 8, 11, 23, 33, 41, and 45).
- Remove limits on four-person supported community living units and allow a mix of waiver and nonwaiver residents (Items 21 and 30).
- Clarify the definition of "physiological treatment" for supported community living services (Items 21 and 30). Physiological treatment includes medication regimens carried out under the supervision of a health professional.
- Specify that the unit of supported community living services is a calendar day when the member's service plan reflects a need for on-site staff supervision for an average of 8 or more hours per day over a calendar month (Items 21 and 30). Only providers whose service to a member does not meet this threshold may bill using an hourly unit. The current threshold is an average of 14 hours of service per day over a week for the intellectual disability waiver and 19 hours per day for the brain injury waiver.
- Specify the possible units for purchase of prevocational services (Items 29 and 36).
- Remove the requirement for specialized medical equipment expenses to be encumbered at the dollar amount of \$505 per month and further clarify the use of this service (Items 34 and 42).
- Raise the upper limit for prevocational services under the brain injury waiver to the same amount as allowed under the intellectual disability waiver (\$47.01 per day) and add rate limits for half-day and hourly units (Item 45).

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- Add the rate methodology and upper limits for interim medical monitoring and treatment when provided by a supported community living provider (Item 45).
- Clarify who may sign the claim form for targeted medical care when services were delivered but the member dies before the claim is submitted (Item 46).

These amendments apply to individual home- and community-based programs as follows:

- AIDS/HIV waiver: Items 16 to 19 and 46.
- Brain injury waiver: Items 30 to 38, 45, and 46.
- Children's mental health waiver: Items 43 and 44.
- Elderly waiver: Items 10 to 15, 45, and 46.
- Habilitation services: Item 1.
- Ill and handicapped waiver: Items 3 to 9, 45, and 46.
- Intellectual disability waiver (formerly the mental retardation or MR waiver): Items 20 to 29, 45, and 46.
- Physical disability waiver: Items 39 to 42, 45, and 46.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on October 20, 2010, as **ARC 9170B**. The Department received 74 written comments on the Notice of Intended Action. A complete summary of the comments is available on the Department's policy Web site: <http://www.dhs.iowa.gov/policyanalysis/RulesPages/phcomm.htm>.

Three-fourths of the comments addressed the rule limiting the use of day camps as respite care when parents are working. Many commenters praised the enrichment that camp experiences had provided to their children's lives. About half pointed out that in many cases there are no other summer child care alternatives, especially for teenagers. A view frequently expressed was that this change discriminates against parents who must work in that their children would be deprived of the camp experience.

However, the Department is required to abide by federal service definitions approved in the waiver request. Respite care services are defined as services provided to the member that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that period. While the parent is working, the parent is not the one providing the necessary care, so the provision of respite does not provide a break from the parent's usual caregiving responsibilities. Day care services are not reimbursable under the home- and community-based services waivers. Day camp is reimbursable as respite care when the parent is not working. A 24-hour residential camp is reimbursable as respite care when a parent is working since the parent will be receiving a break from caregiving responsibilities during the parent's nonworking hours, which are presumably the majority of the day.

Another area of concern to one-third of the commenters was the proposed limitation of supported community living services to "intermittent" services for children who live in a family setting. Commenters pointed out that many children, particularly those with autism or related disorders, need more frequent practice to learn behavioral skills. In response to these comments, the Department has removed the references to time or frequency limits on services that were published in the Notice of Intended Action in paragraphs 78.41(1)"d" and 78.43(2)"d" (Items 21 and 30). The amended paragraphs now read as follows:

"d. A member aged 17 or under living in the home of the member's family, legal representative, or foster family shall receive services based on development of adaptive, behavior, or health skills. Duration of services shall be based on age-appropriateness and individual attention span."

Proposed changes to paragraph 78.37(15)"c" regarding assisted living programs providing consumer-directed attendant care services have not been adopted because the rule making proposed in **ARC 9138B** to make assisted living an elderly waiver service has been terminated. (See **ARC 9418B** in this issue.)

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

The Council on Human Services adopted these amendments on February 8, 2011.

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

These amendments shall become effective on May 1, 2011.

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The following amendments are adopted.

ITEM 1. Adopt the following **new** subparagraphs **78.27(4)“a”(9)** and **(10)**:

(9) The initial service plan and annual updates to the service plan must be approved by the Iowa Medicaid enterprise in the individualized services information system before services are implemented. Services provided before the approval date are not payable. The written case plan must be completed, signed and dated by the case manager or service worker within 30 calendar days after plan approval.

(10) Any changes to the service plan must be approved by the Iowa Medicaid enterprise in the individualized services information system before the implementation of services. Services provided before the approval date are not payable.

ITEM 2. Strike “HCBS MR waiver” wherever it appears in paragraph **78.33(1)“c”** and insert “HCBS intellectual disability waiver” in lieu thereof.

ITEM 3. Amend subrule 78.34(3) as follows:

78.34(3) Adult day care services. Adult day care services provide an organized program of supportive care in a group environment to persons who need a degree of supervision and assistance on a regular or intermittent basis in a day care center. A unit of service is a half day (1 to 4 hours), a full day (4 to 8 hours), or an extended day (8 to 12 hours). Components of the service ~~are as set forth in rule 441—171.6(234) or the department of elder affairs rule 321—24.7(231)~~ include health-related care, social services, and other related support services.

ITEM 4. Amend subrule 78.34(5) as follows:

78.34(5) Respite care services. Respite care services are services provided to the ~~consumer member~~ that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that ~~time~~ period. The purpose of respite care is to enable the ~~consumer member~~ to remain in the ~~consumer’s member’s~~ current living situation.

a. Services provided outside the ~~consumer’s member’s~~ home shall not be reimbursable if the living unit where respite is provided is reserved for another person on a temporary leave of absence.

b. ~~Staff-to-consumer~~ Member-to-staff ratios shall be appropriate to the individual needs of the ~~consumer member~~ as determined by the ~~consumer’s member’s~~ interdisciplinary team.

c. A unit of service is one hour.

d. Respite care is not to be provided to ~~persons members~~ during the hours in which the usual caregiver is employed except when the ~~consumer member~~ is attending a 24-hour residential camp. Respite care shall not be used as a substitute for a child’s day care. Respite cannot be provided to a ~~consumer member~~ whose usual caregiver is a consumer-directed attendant care provider for the ~~consumer member~~.

e. The interdisciplinary team shall determine if the ~~consumer member~~ will receive basic individual respite, specialized respite, or group respite as defined in rule 441—83.1(249A).

f. and g. No change.

ITEM 5. Amend subrule 78.34(7) as follows:

78.34(7) Consumer-directed attendant care service. Consumer-directed attendant care services are service activities performed by a person to help a ~~consumer member~~ with self-care tasks which the ~~consumer member~~ would typically do independently if the ~~consumer member~~ were otherwise able.

a. The service activities may include helping the ~~consumer member~~ with any of the following nonskilled service activities:

(1) to (4) No change.

(5) Meal preparation, cooking, and assistance with eating and feeding but not the cost of meals themselves. Meal preparation and cooking shall be provided only in the member’s home.

(6) Housekeeping services which are essential to the ~~consumer’s member’s~~ health care at home.

(7) and (8) No change.

(9) Assistance needed to go to or return from a place of employment and assistance with job-related tasks while the ~~consumer member~~ is on the job site. The cost of transportation for the

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~~consumer member~~ and assistance with understanding or performing the essential job functions are not included in consumer-directed attendant care services.

(10) and (11) No change.

(12) Assisting or accompanying a ~~consumer member~~ in using transportation essential to the health and welfare of the ~~consumer member~~. The cost of the transportation is not included.

b. The service activities may include helping the ~~consumer member~~ with any of the following skilled services under the supervision of a licensed nurse or licensed therapist working under the direction of a physician. The licensed nurse or therapist shall retain accountability for actions that are delegated. The licensed nurse or therapist shall ensure appropriate assessment, planning, implementation, and evaluation. The licensed nurse or therapist shall make on-site supervisory visits every two weeks with the provider present. The cost of the supervision provided by the licensed nurse or therapist shall be paid from private insurance and other third-party payment sources, Medicare, the regular Medicaid program, or the early periodic screening diagnosis and treatment program ~~before accessing the HCBS waiver~~.

(1) Tube feedings of ~~consumers members~~ unable to eat solid foods.

(2) to (13) No change.

c. A unit of service is 1 hour, or one 8- to 24-hour day ~~provided by an individual or an agency~~. Each service shall be billed in whole units. The consumer-directed attendant care provider shall complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service.

d. The ~~consumer member~~, parent, guardian, or attorney in fact under a durable power of attorney for health care shall be responsible for selecting the person or agency ~~who~~ that will provide the components of the attendant care services ~~to be provided~~.

e. The ~~consumer member~~, parent, guardian, or attorney in fact under a durable power of attorney for health care shall determine the components of the attendant care services to be provided with the person who is providing the services to the ~~consumer member~~.

f. The service activities ~~may~~ shall not include parenting or child care for or on behalf of the ~~consumer member~~ or on behalf of the provider.

g. The ~~consumer member~~, parent, guardian, or attorney in fact under a durable power of attorney for health care and the provider shall complete, ~~and sign, and date~~ and sign, and date Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. A copy of the completed agreement shall be attached to the service plan, ~~which is signed by the service worker prior to the initiation of services, and kept in the consumer's and department's member's records.~~

h. If the ~~consumer member~~ has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the ~~consumer's member's~~ needs are being adequately met. If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.

i. If the ~~consumer member~~ has a guardian or attorney in fact under a durable power of attorney for health care, the guardian or attorney in fact shall sign the claim form in place of the ~~consumer member~~, indicating that the service has been provided as presented on the claim.

j. to m. No change.

ITEM 6. Amend subrule 78.34(8) as follows:

78.34(8) Interim medical monitoring and treatment services. Interim medical monitoring and treatment (IMMT) services are monitoring and treatment of a medical nature ~~requiring specially trained caregivers beyond what is normally available in a day care setting for children or adults whose medical needs make alternative care unavailable, inadequate, or insufficient.~~ requiring specially trained caregivers beyond what is normally available in a day care setting for children or adults whose medical needs make alternative care unavailable, inadequate, or insufficient. IMMT services are not intended to provide day care but to supplement available resources. ~~The services must be needed to allow the consumer's usual caregivers to be employed or, for a limited period of time, for academic or vocational training of a usual caregiver; due to the hospitalization, treatment for physical or mental illness, or death of a usual caregiver; or during a search for employment by a usual caregiver.~~ The services must be needed to allow the consumer's usual caregivers to be employed or, for a limited period of time, for academic or vocational training of a usual caregiver; due to the hospitalization, treatment for physical or mental illness, or death of a usual caregiver; or during a search for employment by a usual caregiver. Services must be ordered by a physician.

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. Need for service. The member must be currently receiving home health agency services under rule 441—78.9(249A) and require medical assessment, medical monitoring, and regular medical intervention or intervention in a medical emergency during those services. The service worker or case manager must identify the need for IMMT services after evaluating the member's living environment, family and natural supports, ability to perform activities of daily living, and health care needs. The services must be needed:

- (1) To allow the member's usual caregivers to be employed,
- (2) During a search for employment by a usual caregiver,
- (3) To allow for academic or vocational training of a usual caregiver,
- (4) Due to the hospitalization of a usual caregiver for treatment for physical or mental illness, or
- (5) Due to the death of a usual caregiver.

~~a.~~ b. Service requirements. Interim medical monitoring and treatment services shall:

- (1) Provide experiences for each consumer's member's social, emotional, intellectual, and physical development;
- (2) Include comprehensive developmental care and any special services for a consumer member with special needs; and
- (3) Include medical assessment, medical monitoring, and medical intervention as needed on a regular or emergency basis. Medical intervention means the ability to assess the situation and contact the appropriate medical professional, not the direct application of medical care.

~~b.~~ c. Interim medical monitoring and treatment services may include supervision while the member is being transported to and from school.

~~e.~~ d. Limitations.

- (1) and (2) No change.
- (3) Interim medical monitoring and treatment services may not duplicate any regular Medicaid or waiver services provided under the state plan. Services under the state plan, including home health agency services under rule 441—78.9(249A), must be exhausted before IMMT services are accessed.
- (4) Interim medical monitoring and treatment services may shall be provided only in the consumer's member's home; in a registered group child care home, in a registered family child care development home; in a licensed child care center, residential care facility, or adult day care facility; or during transportation the time when the member is being transported to and from school.
- (5) The staff-to-consumer member-to-staff ratio shall not be less more than one to six members to one staff person.
- (6) The parent or guardian of the member shall be responsible for the usual and customary nonmedical cost of day care during the time in which the member is receiving IMMT services. Medical care necessary for monitoring and treatment is an allowable IMMT cost. If the cost of care goes above the usual and customary cost of day care services due to the member's medical condition, the costs above the usual and customary cost shall be covered as IMMT services.

~~d.~~ e. A unit of service is one hour.

ITEM 7. Amend subrule 78.34(9) as follows:

78.34(9) Home and vehicle modifications modification. Covered home and vehicle modifications are those physical modifications to the consumer's member's home or vehicle listed below that directly address the consumer's member's medical or remedial need. Covered modifications must be necessary to provide for the health, welfare, or safety of the consumer member and enable the consumer member to function with greater independence in the home or vehicle.

a. Modifications that are necessary or desirable without regard to the consumer's member's medical or remedial need and that would be expected to increase the fair market value of the home or vehicle, such as furnaces, fencing, roof repair, or adding square footage to the residence, are excluded except as specifically included below. Purchasing or leasing of a motorized vehicle is excluded. Repairs Home and vehicle repairs are also excluded.

b. Only the following modifications are covered:

- (1) to (6) No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(7) Voice-activated, sound-activated, light-activated, motion-activated, and electronic devices directly related to the ~~consumer's~~ member's disability.

(8) to (24) No change.

c. and d. No change.

e. Services shall be performed following department approval of a binding contract between the enrolled home and vehicle modification provider and the ~~consumer~~ member. Whenever possible, three itemized, competitive bids shall be obtained for each project and be reviewed by the case manager or service worker before approval of the contract.

f. The contract shall include, at a minimum, the scope of work to be performed, the time involved, supplies needed, the cost, time frame for work completion, and diagrams of the project whenever applicable, and an assurance of that the provider has liability and workers' compensation coverage and the applicable permit and license.

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

(1) Payment of up to \$6,060 per year may be made to certified providers upon satisfactory completion of the service.

(2) The case manager or service worker shall encumber up to \$505 per a portion of the cost of a modification every month within the monthly dollar cap allowed for the ~~consumer~~ member until the amount entire cost of the modification is reached encumbered within the a consecutive 12-month period.

h. Services shall be included in the ~~consumer's~~ member's service plan and shall exceed the Medicaid state plan services.

ITEM 8. Amend subrule 78.34(10) as follows:

78.34(10) Personal emergency response or portable locator system.

a. A personal emergency response system is an electronic device that transmits a signal to a central monitoring station to summon assistance in the event of an emergency ~~when the consumer is alone~~.

~~a.~~ (1) The required components of the system are:

~~(1)~~ 1. An in-home medical communications ~~transmitter and receiver~~ transceiver.

~~(2)~~ 2. A remote, portable activator.

~~(3)~~ 3. A central monitoring station with backup systems staffed by trained attendants at all times.

~~(4)~~ 4. Current data files at the central monitoring station containing response protocols and personal, medical, and emergency information for each ~~consumer~~ member.

~~b.~~ (2) The service shall be identified in the ~~consumer's~~ member's service plan.

~~c.~~ (3) A unit of service is a one-time installation fee or one month of service.

~~d.~~ (4) Maximum units per state fiscal year shall be the initial installation and 12 months of service.

b. A portable locator system is an electronic device that transmits a signal to a monitoring device. The system allows a member to access assistance in the event of an emergency and allows law enforcement or the monitoring system provider to locate a member who is unable to request help or to activate a system independently. The member must be unable to access assistance in an emergency situation due to the member's age or disability.

(1) The required components of the portable locator system are:

1. A portable communications transceiver or transmitter to be worn or carried by the member.

2. Monitoring by the provider at a central location with response protocols and personal, medical, and emergency information for each member as applicable.

(2) The service shall be identified in the member's service plan.

(3) Payable units of service are purchase of equipment, an installation or set-up fee, and monthly fees.

(4) Maximum units per state fiscal year shall be one equipment purchase, one installation or set-up fee, and 12 months of service.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 9. Amend subrule 78.34(11) as follows:

78.34(11) Home-delivered meals. Home-delivered meals ~~means~~ are meals prepared elsewhere and delivered to a ~~waiver recipient~~ member at the ~~recipient's~~ member's residence.

a. Each meal shall ensure the ~~recipient~~ member receives a minimum of one-third of the daily recommended dietary allowance as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. The meal may also be a liquid supplement that meets the minimum one-third standard.

b. When a restaurant provides the home-delivered meal, the ~~recipient~~ member is required to have a nutritional consultation. The nutritional consultation includes contact with the restaurant to explain the dietary needs of the ~~client~~ member and what constitutes the minimum one-third daily dietary allowance.

c. A maximum of ~~14~~ two meals is allowed per ~~week~~ day. A unit of service is a meal.

ITEM 10. Amend subrule 78.37(1) as follows:

78.37(1) Adult day care services. Adult day care services provide an organized program of supportive care in a group environment to persons who need a degree of supervision and assistance on a regular or intermittent basis in a day care center. A unit of service is a half day (1 to 4 hours), a full day (4 to 8 hours), or an extended day (8 to 12 hours). Components of the service ~~are set forth in rule 441—171.6(234) or as indicated in the Iowa department of elder affairs Annual Service and Fiscal Reporting Manual~~ include health-related care, social services, and other related support services.

ITEM 11. Amend subrule 78.37(2) as follows:

78.37(2) Emergency Personal emergency response or portable locator system. ~~The emergency response system allows a person experiencing a medical emergency at home to activate electronic components that transmit a coded signal via digital equipment over telephone lines to a central monitoring station.~~

a. A personal emergency response system is an electronic device that transmits a signal to a central monitoring station to summon assistance in the event of an emergency.

(1) The necessary components of a system are:

~~a.~~ 1. An in-home medical communications transceiver.

~~b.~~ 2. A remote, portable activator.

~~c.~~ 3. A central monitoring station with backup systems staffed by trained attendants ~~24 hours per day, seven days per week at all times.~~

~~d.~~ 4. Current data files at the central monitoring station containing ~~preestablished~~ response protocols and personal, medical, and emergency information for each ~~client~~ member.

(2) The service shall be identified in the member's service plan.

(3) A unit of service is a one-time installation fee or one month of service.

(4) Maximum units per state fiscal year shall be the initial installation and 12 months of service.

b. A portable locator system is an electronic device that transmits a signal to a monitoring device. The system allows a member to access assistance in the event of an emergency and allows law enforcement or the monitoring system provider to locate a member who is unable to request help or to activate a system independently. The member must be unable to access assistance in an emergency situation due to the member's age or disability.

(1) The required components of the portable locator system are:

1. A portable communications transceiver or transmitter to be worn or carried by the member.

2. Monitoring by the provider at a central location with response protocols and personal, medical, and emergency information for each member as applicable.

(2) The service shall be identified in the member's service plan.

(3) Payable units of service are purchase of equipment, an installation or set-up fee, and monthly fees.

(4) Maximum units per state fiscal year shall be one equipment purchase, one installation or set-up fee, and 12 months of service.

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ITEM 12. Amend subrule 78.37(6) as follows:

78.37(6) Respite care services. Respite care services are services provided to the consumer member that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that ~~time~~ period. The purpose of respite care is to enable the consumer member to remain in the consumer's member's current living situation.

a. Services provided outside the consumer's member's home shall not be reimbursable if the living unit where respite is provided is reserved for another person on a temporary leave of absence.

b. ~~Staff-to-consumer~~ Member-to-staff ratios shall be appropriate to the individual needs of the consumer member as determined by the consumer's member's interdisciplinary team.

c. A unit of service is one hour.

d. The interdisciplinary team shall determine if the consumer member will receive basic individual respite, specialized respite or group respite as defined in rule 441—83.21(249A).

e. to g. No change.

h. Respite care is not to be provided to ~~persons members~~ during the hours in which the usual caregiver is employed except when the consumer member is attending a 24-hour residential camp. Respite cannot be provided to a consumer member whose usual caregiver is a consumer-directed attendant care provider for the consumer member.

ITEM 13. Amend subrule 78.37(8) as follows:

78.37(8) Home-delivered meals. Home-delivered meals ~~means~~ are meals prepared elsewhere and delivered to a waiver recipient member at the recipient's member's residence.

a. Each meal shall ensure the recipient member receives a minimum of one-third of the daily recommended dietary allowance as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. The meal may also be a liquid supplement which meets the minimum one-third standard.

b. When a restaurant provides the home-delivered meal, the recipient member is required to have a nutritional consultation. The nutritional consultation includes contact with the restaurant to explain the dietary needs of the client member and ~~explain~~ what constitutes the minimum one-third daily dietary allowance.

c. A maximum of ~~14~~ two meals is allowed per ~~week~~ day. A unit of service is a meal.

ITEM 14. Amend subrule 78.37(9) as follows:

78.37(9) Home and vehicle modification. Covered home and vehicle modifications are ~~those~~ physical modifications to the consumer's member's home or vehicle ~~listed below~~ that directly address the consumer's member's medical or remedial need. Covered modifications must be necessary to provide for the health, welfare, or safety of the consumer member and enable the consumer member to function with greater independence in the home or vehicle.

a. Modifications that are necessary or desirable without regard to the consumer's member's medical or remedial need and that would be expected to increase the fair market value of the home or vehicle, such as furnaces, fencing, ~~roof repair~~, or adding square footage to the residence, are excluded except as specifically included below. Purchasing or leasing of a motorized vehicle is excluded. Repairs Home and vehicle repairs are also excluded.

b. Only the following modifications are covered:

(1) to (6) No change.

(7) Voice-activated, sound-activated, light-activated, motion-activated, and electronic devices directly related to the consumer's member's disability.

(8) to (24) No change.

c. and d. No change.

e. Services shall be performed following department approval of a binding contract between the enrolled home and vehicle modification provider and the consumer member. Whenever possible, three itemized, competitive bids shall be obtained for each project and be reviewed by the case manager or service worker before approval of the contract.

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f. The contract shall include, ~~at a minimum,~~ the scope of work to be performed, the time involved, supplies needed, the cost, time frame for work completion, and diagrams of the project whenever applicable, and an assurance of that the provider has liability and workers' compensation coverage and the applicable permit and license.

g. No change.

h. Services shall be included in the ~~consumer's~~ member's service plan and shall exceed the Medicaid state plan services.

ITEM 15. Amend subrule 78.37(15) as follows:

78.37(15) Consumer-directed attendant care service. Consumer-directed attendant care services are service activities performed by a person to help a ~~consumer~~ member with self-care tasks which the ~~consumer~~ member would typically do independently if the ~~consumer~~ member were otherwise able.

a. The service activities may include helping the ~~consumer~~ member with any of the following nonskilled service activities:

(1) to (4) No change.

(5) Meal preparation, cooking, and assistance with eating and feeding but not the cost of meals themselves. Meal preparation and cooking shall be provided only in the member's home.

(6) Housekeeping services which are essential to the ~~consumer's~~ member's health care at home.

(7) and (8) No change.

(9) Assistance needed to go to or return from a place of employment and assistance with job-related tasks while the ~~consumer~~ member is on the job site. The cost of transportation for the ~~consumer~~ member and assistance with understanding or performing the essential job functions are not included in consumer-directed attendant care services.

(10) and (11) No change.

(12) Assisting or accompanying a ~~consumer~~ member in using transportation essential to the health and welfare of the ~~consumer~~ member. The cost of the transportation is not included.

b. The service activities may include helping the ~~consumer~~ member with any of the following skilled services under the supervision of a licensed nurse or licensed therapist working under the direction of a physician. The licensed nurse or therapist shall retain accountability for actions that are delegated. The licensed nurse or therapist shall ensure appropriate assessment, planning, implementation, and evaluation. The licensed nurse or therapist shall make on-site supervisory visits every two weeks with the provider present. The cost of the supervision provided by the licensed nurse or therapist shall be paid from private insurance and other third-party payment sources, Medicare, the regular Medicaid program, or the early periodic screening diagnosis and treatment program ~~before accessing the HCBS waiver.~~

(1) Tube feedings of ~~consumers~~ members unable to eat solid foods.

(2) to (13) No change.

c. A unit of service provided by an individual or an agency, other than an assisted living program, is 1 hour, or one 8- to 24-hour day. When provided by an assisted living program, a unit of service is one calendar month. If services are provided by an assisted living program for less than one full calendar month, the monthly reimbursement rate shall be prorated based on the number of days service is provided. Except for services provided by an assisted living program, each service shall be billed in whole units. The consumer-directed attendant care provider shall complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service.

d. The ~~consumer~~ member, ~~parent,~~ guardian, or attorney in fact under a durable power of attorney for health care shall be responsible for selecting the person or agency ~~who~~ that will provide the components of the attendant care services ~~to be provided.~~

e. The ~~consumer~~ member, ~~parent,~~ guardian, or attorney in fact under a durable power of attorney for health care shall determine the components of the attendant care services to be provided with the person who is providing the services to the ~~consumer~~ member.

f. The service activities ~~may~~ shall not include parenting or child care ~~for or~~ on behalf of the ~~consumer~~ member or on behalf of the provider.

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g. The ~~consumer member~~, ~~parent~~, guardian, or attorney in fact under a durable power of attorney for health care and the provider shall complete, ~~and sign, and date~~ Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. A copy of the completed agreement shall be attached to the service plan, ~~which is signed by the service worker prior to the initiation of services~~, and kept in the ~~consumer's and department's~~ member's records.

h. If the ~~consumer member~~ has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the ~~consumer's~~ member's needs are being adequately met. If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.

i. If the ~~consumer member~~ has a guardian or attorney in fact under a durable power of attorney for health care, the guardian or attorney in fact shall sign the claim form in place of the ~~consumer member~~, indicating that the service has been provided as presented on the claim.

j. to l. No change.

m. Services may be provided in the absence of a ~~parent or~~ guardian if the ~~parent or~~ guardian has given advanced direction for the service provision.

ITEM 16. Amend subrule 78.38(5) as follows:

78.38(5) Respite care services. Respite care services are services provided to the ~~consumer member~~ that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that ~~time~~ period. The purpose of respite care is to enable the ~~consumer member~~ to remain in the ~~consumer's~~ member's current living situation.

a. Services provided outside the ~~consumer's~~ member's home shall not be reimbursable if the living unit where respite is provided is ~~otherwise~~ reserved for another person on a temporary leave of absence.

b. ~~Staff-to-consumer~~ Member-to-staff ratios shall be appropriate to the individual needs of the ~~consumer member~~ as determined by the ~~consumer's~~ member's interdisciplinary team.

c. A unit of service is one hour.

d. The interdisciplinary team shall determine if the ~~consumer member~~ will receive basic individual respite, specialized respite or group respite as defined in rule 441—83.41(249A).

e. to g. No change.

h. Respite care is not to be provided to ~~persons members~~ during the hours in which the usual caregiver is employed except when the ~~consumer member~~ is attending a 24-hour residential camp. Respite care shall not be used as a substitute for a child's day care. Respite cannot be provided to a ~~consumer member~~ whose usual caregiver is a consumer-directed attendant care provider for the ~~consumer member~~.

ITEM 17. Amend subrule 78.38(6) as follows:

78.38(6) Home-delivered meals. Home-delivered meals ~~means~~ are meals prepared elsewhere and delivered to a ~~waiver recipient member~~ at the ~~recipient's~~ member's residence.

a. Each meal shall ensure the ~~recipient member~~ receives a minimum of one-third of the daily recommended dietary allowance as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. The meal may also be a liquid supplement which meets the minimum one-third standard.

b. When a restaurant provides the home-delivered meal, the member is required to have a nutritional consultation. The nutritional consultation includes contact with the restaurant to explain the dietary needs of the member and what constitutes the minimum one-third daily dietary allowance.

c. A maximum of ~~14~~ two meals is allowed per ~~week~~ day. A unit of service is a meal.

ITEM 18. Amend subrule 78.38(7) as follows:

78.38(7) Adult day care services. Adult day care services provide an organized program of supportive care in a group environment to persons who need a degree of supervision and assistance on a regular or intermittent basis in a day care center. A unit of service is a half day (1 to 4 hours), a full day (4 to 8 hours), or an extended day (8 to 12 hours). Components of the service ~~are as set forth in rule~~

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~~441—171.6(234) or the department of elder affairs rule 321—24.7(231)~~ include health-related care, social services, and other related support services.

ITEM 19. Amend subrule 78.38(8) as follows:

78.38(8) Consumer-directed attendant care service. Consumer-directed attendant care services are service activities performed by a person to help a consumer member with self-care tasks which the consumer member would typically do independently if the consumer member were otherwise able.

a. The service activities may include helping the consumer member with any of the following nonskilled service activities:

(1) to (4) No change.

(5) Meal preparation, cooking, and assistance with eating and feeding but not the cost of meals themselves. Meal preparation and cooking shall be provided only in the member's home.

(6) Housekeeping services which are essential to the consumer's member's health care at home.

(7) and (8) No change.

(9) Assistance needed to go to or return from a place of employment and assistance with job-related tasks while the consumer member is on the job site. The cost of transportation for the consumer member and assistance with understanding or performing the essential job functions are not included in consumer-directed attendant care services.

(10) and (11) No change.

(12) Assisting or accompanying a consumer member in using transportation essential to the health and welfare of the consumer member. The cost of the transportation is not included.

b. The service activities may include helping the consumer member with any of the following skilled services under the supervision of a licensed nurse or licensed therapist working under the direction of a physician. The licensed nurse or therapist shall retain accountability for actions that are delegated. The licensed nurse or therapist shall ensure appropriate assessment, planning, implementation, and evaluation. The licensed nurse or therapist shall make on-site supervisory visits every two weeks with the provider present. The cost of the supervision provided by the licensed nurse or therapist shall be paid from private insurance and other third-party payment sources, Medicare, the regular Medicaid program, or the early periodic screening diagnosis and treatment program ~~before accessing the HCBS waiver.~~

(1) Tube feedings of consumers members unable to eat solid foods.

(2) to (13) No change.

c. A unit of service is 1 hour, or one 8- to 24-hour day ~~provided by an individual or an agency.~~ Each service shall be billed in whole units. The consumer-directed attendant care provider shall complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service.

d. The consumer member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall be responsible for selecting the person or agency ~~who~~ that will provide the components of the attendant care services ~~to be provided.~~

e. The consumer member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall determine the components of the attendant care services to be provided with the person who is providing the services to the consumer member.

f. The service activities ~~may~~ shall not include parenting or child care for or on behalf of the consumer member or on behalf of the provider.

g. The consumer member, parent, guardian, or attorney in fact under a durable power of attorney for health care and the provider shall complete, ~~and sign,~~ and date Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. A copy of the completed agreement shall be attached to the service plan, ~~which is signed by the service worker prior to the initiation of services,~~ and kept in the consumer's and department's member's records.

h. If the consumer member has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the consumer's member's needs are being adequately met. If the guardian or attorney in fact is

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the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.

i. If the ~~consumer~~ member has a guardian or attorney in fact under a durable power of attorney for health care, the guardian or attorney in fact shall sign the claim form in place of the ~~consumer~~ member, indicating that the service has been provided as presented on the claim.

j. to m. No change.

ITEM 20. Amend rule 441—78.41(249A), introductory paragraphs, as follows:

441—78.41(249A) HCBS MR intellectual disability waiver services. Payment will be approved for the following services to ~~consumers~~ members eligible for the HCBS MR intellectual disability waiver services as established in 441—Chapter 83 and as identified in the ~~consumer's~~ member's service plan. All services include the applicable and necessary instruction, supervision, assistance and support as required by the ~~consumer~~ member in achieving the ~~consumer's~~ member's life goals. The services, amount and supports provided under the HCBS MR intellectual disability waiver shall be delivered in the least restrictive environment and in conformity with the ~~consumer's~~ member's service plan. Reimbursement shall not be available under the waiver for any services that the ~~consumer~~ member can obtain through the Medicaid state plan. All services shall be billed in whole units.

ITEM 21. Amend subrule 78.41(1) as follows:

78.41(1) Supported community living services. Supported community living services are provided by the provider within the ~~consumer's~~ member's home and community, according to the individualized ~~consumer~~ member need as identified in the service plan pursuant to rule 441—83.67(249A).

a. Available components of the service are personal and home skills training services, individual advocacy services, community skills training services, personal environment support services, transportation, and treatment services.

(1) Personal and home skills training services are ~~those~~ activities which assist a ~~consumer~~ member to develop or maintain skills for self-care, self-directedness, and care of the immediate environment.

(2) “Individual advocacy services” ~~means is~~ the act or process of representing the ~~individual's~~ member's rights and interests in order to realize the rights to which the ~~individual~~ member is entitled and to remove barriers to meeting the ~~individual's~~ member's needs.

(3) “Community skills training services” ~~means are~~ activities which assist a ~~person~~ member to develop or maintain skills allowing better participation in the community. Services shall focus on the following areas as they ~~are applicable~~ apply to ~~individuals~~ the member being served:

1. Personal management skills training services are activities which assist a ~~person~~ member to maintain or develop skills necessary to sustain ~~oneself~~ the member in the physical environment and are essential to the management of ~~one's~~ the member's personal business and property. This includes self-advocacy skills. Examples of personal management skills are the ability to maintain a household budget; plan and prepare nutritional meals; ~~ability to~~ use community resources such as public transportation; and libraries, ~~etc.~~; and ~~ability to~~ select foods at the grocery store.

2. Socialization skills training services are ~~those~~ activities which assist a ~~consumer~~ member to develop or maintain skills which include self-awareness and self-control, social responsiveness, community participation, social amenities, and interpersonal skills.

3. Communication skills training services are activities which assist a ~~person~~ member to develop or maintain skills including expressive and receptive skills in verbal and nonverbal language and the functional application of acquired reading and writing skills.

(4) “Personal and environmental support services” ~~means are~~ activities and expenditures provided to or on behalf of a ~~person~~ member in the areas of personal needs in order to allow the ~~person~~ member to function in the least restrictive environment.

(5) “Transportation services” ~~means are~~ activities and expenditures designed to assist the ~~person~~ member to travel from one place to another to obtain services or carry out life's activities. The service excludes transportation to and from work.

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(6) “Treatment services” ~~means~~ are activities designed to assist the ~~person~~ member to maintain or improve physiological, emotional and behavioral functioning and to prevent conditions that would present barriers to a ~~person’s~~ the member’s functioning. Treatment services include physical or physiological treatment and psychotherapeutic treatment.

1. Physiological treatment ~~means activities including~~ includes medication regimens designed to prevent, halt, control, relieve, or reverse symptoms or conditions ~~which~~ that interfere with the normal functioning of the human body. ~~The activities~~ Physiological treatment shall be provided by or under the direct supervision of a certified or licensed health care professional ~~certified or licensed to provide the treatment activity specified.~~

2. Psychotherapeutic treatment means activities provided to assist a ~~person~~ member in the identification or modification of beliefs, emotions, attitudes, or behaviors in order to maintain or improve the ~~person’s~~ member’s functioning in response to the physical, emotional, and social environment.

b. The supported community living services are intended to provide for the daily living needs of the ~~consumer~~ member and shall be available as needed during any 24-hour period. Activities do not include those associated with vocational services, academics, day care, medical services, Medicaid case management or other case management. Services are individualized supportive services provided in a variety of community-based, integrated settings.

(1) Supported community living services shall be available at a daily rate to ~~consumers~~ members living outside the home of their family, legal representative, or foster family and for whom a provider has primary responsibility for supervision or structure during the month. This service will provide supervision or structure in identified ~~time~~ periods when another resource is not available.

(2) Supported community living services shall be available at an hourly rate to ~~consumers~~ members for whom a daily rate is not established.

c. Services may be provided to a child or an adult. A maximum of ~~three consumers receiving community-supported alternative living arrangements or HCBS MR services~~ four persons may reside in a living unit, ~~except providers meeting requirements set forth in 441—paragraph 77.37(14)“e.”~~

(1) ~~Consumers~~ A member may live within the home of ~~their~~ the member’s family or legal representative or ~~within other types of~~ in another typical community living arrangements arrangement.

(2) ~~Consumers of services~~ A member living with ~~families~~ the member’s family or legal ~~representatives are~~ representative is not subject to the maximum of ~~three consumers~~ four residents in a living unit.

(3) ~~Consumers~~ A member may not live in a licensed medical or health care facilities facility or in ~~settings~~ a setting that is required to be licensed as a medical or health care facilities facility.

(4) ~~d. Consumers~~ A member aged 17 or under living ~~within~~ in the home of ~~their~~ the member’s family, legal representative, or foster ~~families~~ family shall receive services based on development of adaptive, behavior, or health skills. Duration of services shall be based on age-appropriateness and individual attention span.

~~d. Rescinded IAB 2/5/03, effective 2/1/03.~~

e. No change.

f. Provider budgets shall reflect all staff-to-~~consumer~~ member ratios and shall reflect costs associated with ~~consumers’~~ members’ specific support needs for travel and transportation, consulting, instruction, and environmental modifications and repairs, as determined necessary by the interdisciplinary team for each ~~consumer~~ member. The specific support needs must be identified in the Medicaid case manager’s service plan, the total costs shall not exceed \$1570 per ~~consumer~~ member per year, and the provider must maintain records to support the expenditures. A unit of service is:

(1) One full calendar day when a ~~consumer~~ member residing in the living unit receives on-site staff supervision for 14 eight or more hours per day as an average over a ~~7-day week~~ calendar month and the ~~consumer’s individual comprehensive plan or case~~ member’s service plan identifies and reflects the need for this amount of supervision.

(2) One hour when subparagraph 78.41(1)“f”(1) does not apply.

g. The maximum number of units available per ~~consumer~~ member is as follows:

(1) and (2) No change.

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h. The service shall be identified in the ~~consumer's individual comprehensive~~ member's service plan.

i. ~~Services~~ Supported community living services shall not be simultaneously reimbursed with other residential services, ~~HCBS MR or with respite, Medicaid or HCBS MR nursing, or Medicaid or HCBS MR home health aide services~~ provided through Medicaid or the HCBS intellectual disability waiver.

ITEM 22. Amend subrule 78.41(2) as follows:

78.41(2) Respite care services. Respite care services are services provided to the ~~consumer member~~ that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that time period. The purpose of respite care is to enable the ~~consumer member~~ to remain in the ~~consumer's member's~~ current living situation.

a. Services provided outside the ~~consumer's member's~~ home shall not be reimbursable if the living unit where the respite is provided is reserved for another person on a temporary leave of absence.

b. ~~Staff-to-consumer~~ Member-to-staff ratios shall be appropriate to the individual needs of the ~~consumer member~~ as determined by the ~~consumer's member's~~ interdisciplinary team.

c. A unit of service is one hour.

d. Payment for respite services shall not exceed \$7,050 per the ~~consumer's member's~~ waiver year.

e. The service shall be identified in the ~~consumer's member's~~ individual comprehensive plan.

f. Respite services shall not be simultaneously reimbursed with other residential or respite services, ~~HCBS MR waiver or with supported community living services, Medicaid or HCBS MR nursing, or Medicaid or HCBS MR home health aide services~~ provided through Medicaid or the HCBS intellectual disability waiver.

g. Respite care is not to be provided to ~~persons~~ members during the hours in which the usual caregiver is employed except when the ~~consumer member~~ is attending a 24-hour residential camp. Respite care shall not be used as a substitute for a child's day care. Respite cannot be provided to a ~~consumer member~~ whose usual caregiver is a consumer-directed attendant care provider for the ~~consumer member~~.

h. The interdisciplinary team shall determine if the ~~consumer member~~ will receive basic individual respite, specialized respite or group respite as defined in rule 441—83.60(249A).

i. and *j.* No change.

ITEM 23. Amend subrule 78.41(3) as follows:

78.41(3) Personal emergency response or portable locator system.

a. The personal emergency response system is an electronic ~~component~~ device that transmits a coded signal ~~via digital equipment~~ to a central monitoring station. ~~The electronic device allows a person to access~~ summon assistance in the event of an emergency ~~when alone~~.

~~a.~~ (1) The necessary components of the system are:

(1) 1. An in-home medical communications transceiver.

(2) 2. A remote, portable activator.

(3) 3. A central monitoring station with backup systems staffed by trained attendants 24 hours per day, seven days per week at all times.

(4) 4. Current data files at the central monitoring station containing response protocols and personal, medical and emergency information for each ~~consumer member~~.

b. (2) The service shall be identified in the ~~consumer's individual comprehensive~~ member's service plan.

~~e.~~ (3) A unit of service is a one-time installation fee or one month of service.

~~d.~~ (4) Maximum units per state fiscal year ~~are~~ shall be the initial installation and 12 months of service.

b. A portable locator system is an electronic device that transmits a signal to a monitoring device. The system allows a member to access assistance in the event of an emergency and allows law enforcement or the monitoring system provider to locate a member who is unable to request help or

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to activate a system independently. The member must be unable to access assistance in an emergency situation due to the member's age or disability.

(1) The required components of the portable locator system are:

1. A portable communications transceiver or transmitter to be worn or carried by the member.

2. Monitoring by the provider at a central location with response protocols and personal, medical, and emergency information for each member as applicable.

(2) The service shall be identified in the member's service plan.

(3) Payable units of service are purchase of equipment, an installation or set-up fee, and monthly fees.

(4) Maximum units per state fiscal year shall be one equipment purchase, one installation or set-up fee, and 12 months of service.

ITEM 24. Amend subrule 78.41(4) as follows:

78.41(4) Home and vehicle ~~modifications~~ modification. Covered home and vehicle modifications are ~~those~~ physical modifications to the ~~consumer's~~ member's home or vehicle ~~listed below~~ that directly address the ~~consumer's~~ member's medical or remedial need. Covered modifications must be necessary to provide for the health, welfare, or safety of the ~~consumer~~ member and enable the ~~consumer~~ member to function with greater independence in the home or vehicle.

a. Modifications that are necessary or desirable without regard to the ~~consumer's~~ member's medical or remedial need and that would be expected to increase the fair market value of the home or vehicle, such as furnaces, fencing, ~~roof repair~~, or adding square footage to the residence, are excluded except as specifically included below. Purchasing or leasing of a motorized vehicle is excluded. ~~Repairs~~ Home and vehicle repairs are also excluded.

b. Only the following modifications are covered:

(1) to (6) No change.

(7) Voice-activated, sound-activated, light-activated, motion-activated, and electronic devices directly related to the ~~consumer's~~ member's disability.

(8) to (24) No change.

c. and *d.* No change.

e. Services shall be performed following department approval of a binding contract between the enrolled home and vehicle modification provider and the ~~consumer~~ member. Whenever possible, three itemized, competitive bids shall be obtained for each project and be reviewed by the case manager or service worker before approval of the contract.

f. The contract shall include, at a minimum, the scope of work to be performed, the time involved, supplies needed, the cost, time frame for work completion, and diagrams of the project whenever applicable, and an assurance of that the provider has liability and workers' compensation coverage and the applicable permit and license.

g. No change.

h. Services shall be included in the ~~consumer's~~ member's service plan and shall exceed the Medicaid state plan services.

ITEM 25. Amend subrule 78.41(6) as follows:

78.41(6) Home health aide services. Home health aide services are personal or direct care services provided to the ~~consumer~~ member which are not payable under Medicaid as set forth in rule 441—78.9(249A). Services shall include unskilled medical services and shall exceed those services provided under HCBS ~~MR~~ intellectual disability waiver supported community living. Instruction, supervision, support or assistance in personal hygiene, bathing, and daily living shall be provided under supported community living.

a. Services shall be included in the ~~consumer's individual comprehensive~~ member's service plan.

b. and *c.* No change.

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ITEM 26. Amend subrule 78.41(8) as follows:

78.41(8) Consumer-directed attendant care service. Consumer-directed attendant care services are service activities performed by a person to help a consumer member with self-care tasks which the consumer member would typically do independently if the consumer member were otherwise able.

a. The service activities may include helping the consumer member with any of the following nonskilled service activities:

(1) to (4) No change.

(5) Meal preparation, cooking, and assistance with eating and feeding but not the cost of meals themselves. Meal preparation and cooking shall be provided only in the member's home.

(6) Housekeeping services which are essential to the consumer's member's health care at home.

(7) and (8) No change.

(9) Assistance needed to go to or return from a place of employment and assistance with job-related tasks while the consumer member is on the job site. The cost of transportation for the consumer member and assistance with understanding or performing the essential job functions are not included in consumer-directed attendant care services.

(10) and (11) No change.

(12) Assisting or accompanying a consumer member in using transportation essential to the health and welfare of the consumer member. The cost of the transportation is not included.

b. The service activities may include helping the consumer member with any of the following skilled services under the supervision of a licensed nurse or licensed therapist working under the direction of a physician. The licensed nurse or therapist shall retain accountability for actions that are delegated. The licensed nurse or therapist shall ensure appropriate assessment, planning, implementation, and evaluation. The licensed nurse or therapist shall make on-site supervisory visits every two weeks with the provider present. The cost of the supervision provided by the licensed nurse or therapist shall be paid from private insurance and other third-party payment sources, Medicare, the regular Medicaid program, or the early periodic screening diagnosis and treatment program ~~before accessing the HCBS waiver.~~

(1) Tube feedings of consumers members unable to eat solid foods.

(2) to (13) No change.

c. A unit of service is 1 hour, or one 8- to 24-hour day ~~provided by an individual or an agency.~~ Each service shall be billed in whole units. The consumer-directed attendant care provider shall complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service.

d. The consumer member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall be responsible for selecting the person or agency ~~who~~ that will provide the components of the attendant care services ~~to be provided.~~

e. The consumer member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall determine the components of the attendant care services to be provided with the person who is providing the services to the consumer member.

f. The service activities ~~may~~ shall not include parenting or child care for or on behalf of the consumer member or on behalf of the provider.

g. The consumer member, parent, guardian, or attorney in fact under a durable power of attorney for health care and the provider shall complete, and sign, and date Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. A copy of the completed agreement shall be attached to the service plan, ~~which is signed by the service worker or case manager prior to the initiation of services,~~ and kept in the consumer's and department's member's records.

h. If the consumer member has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the consumer's member's needs are being adequately met. If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.

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i. If the ~~consumer~~ member has a guardian or attorney in fact under a durable power of attorney for health care, the guardian or attorney in fact shall sign the claim form in place of the ~~consumer~~ member, indicating that the service has been provided as presented on the claim.

j. to m. No change.

ITEM 27. Amend subrule 78.41(9) as follows:

78.41(9) *Interim medical monitoring and treatment services.* Interim medical monitoring and treatment (IMMT) services are monitoring and treatment of a medical nature requiring specially trained caregivers beyond what is normally available in a day care setting for children or adults whose medical needs make alternative care unavailable, inadequate, or insufficient. IMMT services are not intended to provide day care but to supplement available resources. The services must be needed to allow the consumer's usual caregivers to be employed or, for a limited period of time, for academic or vocational training of a usual caregiver; due to the hospitalization, treatment for physical or mental illness, or death of a usual caregiver; or during a search for employment by a usual caregiver. Services must be ordered by a physician.

a. Need for service. The member must be currently receiving home health agency services under rule 441—78.9(249A) and require medical assessment, medical monitoring, and regular medical intervention or intervention in a medical emergency during those services. The service worker or case manager must identify the need for IMMT services after evaluating the member's living environment, family and natural supports, ability to perform activities of daily living, and health care needs. The services must be needed:

- (1) To allow the member's usual caregivers to be employed,
- (2) During a search for employment by a usual caregiver,
- (3) To allow for academic or vocational training of a usual caregiver,
- (4) Due to the hospitalization of a usual caregiver for treatment for physical or mental illness, or
- (5) Due to the death of a usual caregiver.

~~*a. b.*~~ *b.* Service requirements. Interim medical monitoring and treatment services shall:

- (1) Provide experiences for each ~~consumer's~~ member's social, emotional, intellectual, and physical development;
- (2) Include comprehensive developmental care and any special services for a ~~consumer~~ member with special needs; and
- (3) Include medical assessment, medical monitoring, and medical intervention as needed on a regular or emergency basis. Medical intervention means the ability to assess the situation and contact the appropriate medical professional, not the direct application of medical care.

~~*b. c.*~~ *c.* Interim medical monitoring and treatment services may include supervision while the member is being transported to and from school.

~~*e. d.*~~ *d.* Limitations.

(1) and (2) No change.

(3) Interim medical monitoring and treatment services may not duplicate any regular Medicaid or waiver services provided under the state plan. Services under the state plan, including home health agency services under rule 441—78.9(249A), must be exhausted before IMMT services are accessed.

(4) Interim medical monitoring and treatment services ~~may~~ shall be provided only in the ~~consumer's member's home;~~ in a registered ~~group child care home, in a registered family child care development home;~~ in a licensed child care center, residential care facility, or adult day care facility; or during ~~transportation~~ the time when the member is being transported to and from school.

(5) ~~The staff-to-consumer~~ member-to-staff ratio shall not be ~~less~~ more than ~~one~~ six members to one staff person.

(6) The parent or guardian of the member shall be responsible for the usual and customary nonmedical cost of day care during the time in which the member is receiving IMMT services. Medical care necessary for monitoring and treatment is an allowable IMMT cost. If the cost of care goes above the usual and customary cost of day care services due to the member's medical condition, the costs above the usual and customary cost shall be covered as IMMT services.

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~~d. e.~~ A unit of service is one hour.

ITEM 28. Amend subrule 78.41(11) as follows:

78.41(11) *Transportation.* Transportation services may be provided for ~~consumers~~ members to conduct business errands and essential shopping, to receive medical services when not reimbursed through medical transportation, to travel to and from work or day programs, and to reduce social isolation. A unit of service is either per mile, per trip, or the unit established by an area agency on aging. Transportation may not be reimbursed simultaneously with HCBS ~~MR~~ intellectual disability waiver supported community living service.

ITEM 29. Amend subrule 78.41(13) as follows:

78.41(13) *Prevocational services.* Prevocational services are services that are aimed at preparing a ~~consumer eligible for the HCBS MR waiver~~ member for paid or unpaid employment, but that are not job-task oriented. These services include teaching the ~~consumer~~ member concepts necessary as for job readiness skills, such as following directions, attending to tasks, task completion, problem solving, and safety and mobility training.

a. No change.

b. Prevocational services do not include:

(1) Services defined in Section 4(a)(4) of the 1975 amendments to the Education of the Handicapped Act (20 U.S.C. 1404(16) and (17)) that are otherwise available to the ~~consumer~~ member through a state or local education agency.

(2) Vocational rehabilitation services that are otherwise available to the ~~consumer~~ member through a program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

c. A unit of service is a full day (4 to 8 hours), a half day (1 to 4 hours), or an hour.

ITEM 30. Amend subrule 78.43(2) as follows:

78.43(2) *Supported community living services.* Supported community living services are provided by the provider within the ~~consumer's~~ member's home and community, according to the individualized ~~consumer~~ member need as identified in the ~~individual comprehensive plan (ICP) or department case service plan. Intermittent service shall be provided as defined in rule 441—83.81(249A).~~

a. The basic components of the service may include, but are not limited to, personal and home skills training services, individual advocacy services, community skills training services, personal environment support services, transportation, and treatment services.

(1) Personal and home skills training services are ~~those~~ activities which assist a ~~consumer~~ member to develop or maintain skills for self-care, self-directedness, and care of the immediate environment.

(2) Individual advocacy is the act or process of representing the ~~individual's~~ member's rights and interests in order to realize the rights to which the ~~individual~~ member is entitled and to remove barriers to meeting the ~~individual's~~ member's needs.

(3) Community skills training services are ~~those~~ activities which assist a ~~person~~ member to develop or maintain skills allowing better participation in the community. Services shall focus on the following areas as they ~~are applicable~~ apply to ~~individuals~~ the member being served:

1. Personal management skills training services are activities which assist a ~~person~~ member to maintain or develop skills necessary to sustain ~~oneself~~ the member in the physical environment and are essential to the management of ~~one's~~ the member's personal business and property. This includes self-advocacy skills. Examples of personal management skills are the ability to maintain a household budget, plan and prepare nutritional meals, use community resources such as public transportation and libraries, and select foods at the grocery store.

2. Socialization skills training services are ~~those~~ activities which assist a ~~consumer~~ member to develop or maintain skills which include self-awareness and self-control, social responsiveness, community participation, social amenities, and interpersonal skills.

3. Communication skills training services are activities which assist a ~~person~~ member to develop or maintain skills including expressive and receptive skills in verbal and nonverbal language and the functional application of acquired reading and writing skills.

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(4) Personal and environmental support services are those activities and expenditures provided to or on behalf of a person member in the areas of personal needs in order to allow the person member to function in the least restrictive environment.

(5) Transportation services are ~~those~~ activities and expenditures designed to assist the consumer member to travel from one place to another to obtain services or carry out life's activities. The service excludes transportation to and from work or day programs.

(6) Treatment services are ~~those~~ activities designed to assist the person member to maintain or improve physiological, emotional and behavioral functioning and to prevent conditions that would present barriers to a ~~person's~~ the member's functioning. Treatment services include physical or physiological treatment and psychotherapeutic treatment.

1. Physiological treatment ~~means activities including~~ includes medication regimens designed to prevent, halt, control, relieve, or reverse symptoms or conditions which interfere with the normal functioning of the human body. ~~The activities~~ Physiological treatment shall be provided by or under the direct supervision of a certified or licensed health care professional ~~certified or licensed to provide the treatment activity specified.~~

2. Psychotherapeutic treatment means activities provided to assist a person member in the identification or modification of beliefs, emotions, attitudes, or behaviors in order to maintain or improve the person's member's functioning in response to the physical, emotional, and social environment.

b. The supported community living services are intended to provide for the daily living needs of the consumer member and shall be available as needed during any 24-hour period. Activities do not include those associated with vocational services, academics, day care, medical services, Medicaid case management or other case management. Services are individualized supportive services provided in a variety of community-based, integrated settings.

(1) Supported community living services shall be available at a daily rate to consumers members living outside the home of their family, legal representative, or foster family and for whom a provider has primary responsibility for supervision or structure during the month. This service shall provide supervision or structure in identified ~~time~~ periods when another resource is not available.

(2) Supported community living services shall be available at an hourly rate to consumers members for whom a daily rate is not established.

~~(3) Intermittent service shall be provided as defined in rule 441—83.81(249A).~~

c. Services may be provided to a child or an adult. Children must first access all other services for which they are eligible and which are appropriate to meet their needs before accessing the HCBS brain injury waiver services. A maximum of ~~three consumers~~ four persons may reside in a living unit, ~~except when the provider meets the requirements set forth in 441—paragraph 77.39(13)“e.”~~

(1) ~~Consumers~~ A member may live in the home of ~~their~~ the member's family or legal representative or in ~~other types of another~~ typical community living ~~arrangements~~ arrangement.

(2) ~~Consumers of services~~ A member living with ~~families~~ the member's family or legal ~~representatives are~~ representative is not subject to the maximum of ~~three consumers~~ four residents in a living unit.

(3) ~~Consumers~~ A member may not live in a licensed medical or health care ~~facilities~~ facility or in ~~settings~~ a setting that is required to be licensed as a medical or health care ~~facilities~~ facility.

(4) d. ~~Consumers~~ A member aged 17 or under living in the home of ~~their~~ the member's family, legal representative, or foster ~~families~~ family shall receive services based on development of adaptive, behavior, or health skills. Duration of services shall be based on age-appropriateness and individual attention span.

~~d. Rescinded IAB 2/5/03, effective 2/1/03.~~

e. Provider budgets shall reflect all staff-to-consumer member ratios and shall reflect costs associated with consumers' members' specific support needs for travel and transportation, consulting, instruction, and environmental modifications and repairs, as determined necessary by the interdisciplinary team for each consumer member. The specific support needs must be identified in the Medicaid case manager's service plan, the total costs shall not exceed \$1570 per consumer member per year, and the provider must maintain records to support the expenditures. A unit of service is:

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(1) One full calendar day when a ~~consumer member~~ residing in the living unit receives on-site staff supervision for ~~19~~ eight or more hours ~~during a 24-hour calendar per day~~ as an average over a calendar month and the ~~consumer's individual comprehensive member's service plan~~ identifies and reflects the need for this amount of supervision.

(2) One hour when subparagraph 78.43(2)“e”(1) does not apply.

f. The maximum ~~numbers~~ number of units available per ~~consumer~~ member is as follows:

(1) and (2) No change.

g. The service shall be identified in the ~~consumer's individual comprehensive member's service plan~~.

h. Services Supported community living services shall not be simultaneously reimbursed with other residential services, ~~HCBS brain injury waiver~~ or with respite, transportation, or personal assistance services, Medicaid nursing, or Medicaid home health aide services provided through Medicaid or the HCBS brain injury waiver.

ITEM 31. Amend subrule 78.43(3) as follows:

78.43(3) Respite care services. Respite care services are services provided to the ~~consumer member~~ that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that time period. The purpose of respite care is to enable the ~~consumer member~~ to remain in the ~~consumer's member's~~ current living situation.

a. Services provided outside the ~~consumer's member's~~ home shall not be reimbursable if the living unit where respite is provided is reserved for another person on a temporary leave of absence.

b. ~~Staff-to-consumer~~ Member-to-staff ratios shall be appropriate to the individual needs of the ~~consumer member~~ as determined by the ~~consumer's member's~~ interdisciplinary team.

c. A unit of service is one hour.

d. Respite care is not to be provided to ~~persons~~ members during the hours in which the usual caregiver is employed except when the ~~consumer member~~ is attending a 24-hour residential camp. Respite care shall not be used as a substitute for a child's day care. Respite care cannot be provided to a ~~consumer member~~ whose usual caregiver is a consumer-directed attendant care provider for the ~~consumer member~~.

e. No change.

f. The interdisciplinary team shall determine if the ~~consumer member~~ will receive basic individual respite, specialized respite or group respite as defined in rule 441—83.81(249A).

g. and *h.* No change.

ITEM 32. Amend subrule 78.43(5) as follows:

78.43(5) Home and vehicle ~~modifications~~ modification. Covered home and vehicle modifications are ~~those~~ physical modifications to the ~~consumer's member's~~ home or vehicle ~~listed below~~ that directly address the ~~consumer's member's~~ medical or remedial need. Covered modifications must be necessary to provide for the health, welfare, or safety of the ~~consumer member~~ and enable the ~~consumer member~~ to function with greater independence in the home or vehicle.

a. Modifications that are necessary or desirable without regard to the ~~consumer's member's~~ medical or remedial need and that would be expected to increase the fair market value of the home or vehicle, such as furnaces, fencing, ~~roof repair~~, or adding square footage to the residence, are excluded except as specifically included below. Purchasing or leasing of a motorized vehicle is excluded. Repairs Home and vehicle repairs are also excluded.

b. Only the following modifications are covered:

(1) to (6) No change.

(7) Voice-activated, sound-activated, light-activated, motion-activated, and electronic devices directly related to the ~~consumer's member's~~ disability.

(8) to (24) No change.

c. and *d.* No change.

e. Services shall be performed following department approval of a binding contract between the enrolled home and vehicle modification provider and the ~~consumer member~~. Whenever possible, three

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itemized, competitive bids shall be obtained for each project and be reviewed by the case manager or service worker before approval of the contract.

~~f.~~ The contract shall include, at a minimum, the scope of work to be performed, the time involved, supplies needed, the cost, time frame for work completion, and diagrams of the project whenever applicable, and an assurance of that the provider has liability and workers' compensation coverage and the applicable permit and license.

g. Service payment shall be made to the enrolled home and vehicle modification provider. If applicable, payment will be forwarded to the subcontracting agency by the enrolled home and vehicle modification provider following completion of the approved modifications. Payment of up to \$6,060 per year may be made to certified providers upon satisfactory completion of the service. The case manager or service worker shall ~~may~~ encumber up to \$505 per a portion of the cost of a modification every month within the monthly dollar cap allowed for the ~~consumer member~~ until the ~~amount~~ entire cost of the modification is ~~reached~~ encumbered within ~~the~~ a consecutive 12-month period.

h. Services shall be included in the ~~consumer's~~ member's service plan and shall exceed the Medicaid state plan services.

ITEM 33. Amend subrule 78.43(6) as follows:

78.43(6) *Personal emergency response or portable locator system.* ~~The personal emergency response system allows a consumer experiencing a medical emergency at home to activate electronic components that transmit a coded signal via digital equipment over telephone lines to a central monitoring station.~~

a. A personal emergency response system is an electronic device that transmits a signal to a central monitoring station to summon assistance in the event of an emergency.

(1) The necessary components of a system are:

~~a.~~ 1. An in-home medical communications transceiver.

~~b.~~ 2. A remote, portable activator.

~~c.~~ 3. A central monitoring station with backup systems staffed by trained attendants ~~24 hours per day, seven days per week~~ at all times.

~~d.~~ 4. Current data files at the central monitoring station containing response protocols and personal, medical and emergency information for each ~~consumer member~~.

~~e.~~ (2) The service shall be identified in the ~~consumer's individual and comprehensive member's~~ service plan.

~~f.~~ (3) A unit is a one-time installation fee or one month of service.

~~g.~~ (4) Maximum units per state fiscal year ~~are~~ shall be the initial installation and 12 months of service.

b. A portable locator system is an electronic device that transmits a signal to a monitoring device. The system allows a member to access assistance in the event of an emergency and allows law enforcement or the monitoring system provider to locate a member who is unable to request help or to activate a system independently. The member must be unable to access assistance in an emergency situation due to the member's age or disability.

(1) The required components of the portable locator system are:

1. A portable communications transceiver or transmitter to be worn or carried by the member.

2. Monitoring by the provider at a central location with response protocols and personal, medical, and emergency information for each member as applicable.

(2) The service shall be identified in the member's service plan.

(3) Payable units of service are purchase of equipment, an installation or set-up fee, and monthly fees.

(4) Maximum units per state fiscal year shall be one equipment purchase, one installation or set-up fee, and 12 months of service.

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ITEM 34. Amend subrule 78.43(8) as follows:

78.43(8) *Specialized medical equipment.*

a. Specialized medical equipment shall include medically necessary items which are for personal use by ~~consumers~~ members with a brain injury and which:

- (1) provide Provide for health and safety of the ~~consumer~~ member,
- (2) are Are not ordinarily covered by Medicaid, and
- (3) are Are not funded by educational or vocational rehabilitation programs, and
- (4) are Are not provided by voluntary means. ~~This includes, but is not limited to: electronic aids and organizers, medicine dispensing devices, communication devices, bath aids, and noncovered environmental control units. This includes repair and maintenance of items purchased through the waiver in addition to the initial purchase cost.~~

b. Coverage includes, but is not limited to:

- (1) Electronic aids and organizers.
- (2) Medicine dispensing devices.
- (3) Communication devices.
- (4) Bath aids.
- (5) Noncovered environmental control units.
- (6) Repair and maintenance of items purchased through the waiver.

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

~~b. d.~~ The need for specialized medical equipment shall be:

- (1) ~~documented~~ Documented by a health care professional as necessary for the ~~consumer's~~ member's health and safety, and
- (2) ~~identified~~ Identified in the ~~consumer's individual comprehensive~~ member's service plan.

ITEM 35. Amend subrule 78.43(9) as follows:

78.43(9) *Adult day care services.* Adult day care services provide an organized program of supportive care in a group environment to persons who need a degree of supervision and assistance on a regular or intermittent basis in a day care center. A unit of service is a full day (4 to 8 hours) or a half day (1 to 4 hours) or an extended day (8 to 12 hours). Components of the service ~~are set forth in rule 441—171.6(234)~~ include health-related care, social services, and other related support services.

ITEM 36. Amend subrule 78.43(11) as follows:

78.43(11) *Prevocational services.* Prevocational services are services which are aimed at preparing a ~~consumer eligible for the HCBS brain injury waiver~~ member for paid or unpaid employment, but which are not job-task oriented. These services include teaching the ~~consumer~~ member concepts necessary as for job readiness skills, such as following directions, attending to tasks, task completion, problem solving, and safety and mobility training.

a. Prevocational services are intended to have a more generalized result as opposed to vocational training for a specific job or supported employment. Services include activities which are not primarily directed at teaching specific job skills but at more generalized habilitative goals and are reflected in a habilitative plan which focuses on general habilitative rather than specific employment objectives.

b. Prevocational services do not include:

- (1) ~~services~~ Services defined in Section 4(a)(4) of the 1975 amendments to the Education of the Handicapped Act (20 U.S.C. 1404(16) and (17)) which are otherwise available to the ~~individual~~ member through a state or local education agency, or
- (2) ~~vocational~~ Vocational rehabilitation services which are otherwise available to the ~~individual~~ member through a program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

c. A unit of service is a full day (4 to 8 hours), a half day (1 to 4 hours), or an hour.

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ITEM 37. Amend subrule 78.43(13) as follows:

78.43(13) Consumer-directed attendant care service. Consumer-directed attendant care services are service activities performed by a person to help a consumer member with self-care tasks which the consumer member would typically do independently if the consumer member were otherwise able.

a. The service activities may include helping the consumer member with any of the following nonskilled service activities:

- (1) to (4) No change.
- (5) Meal preparation, cooking, and assistance with eating and feeding but not the cost of meals themselves. Meal preparation and cooking shall be provided only in the member's home.
- (6) Housekeeping services which are essential to the consumer's member's health care at home.
- (7) and (8) No change.
- (9) Assistance needed to go to or return from a place of employment and assistance with job-related tasks while the consumer member is on the job site. The cost of transportation for the consumer member and assistance with understanding of or performing the essential job functions are not included in consumer-directed attendant care services.

(10) and (11) No change.

(12) Assisting or accompanying a consumer member in using transportation essential to the health and welfare of the consumer member. The cost of the transportation is not included.

b. The service activities may include helping the consumer member with any of the following skilled services under the supervision of a licensed nurse or licensed therapist working under the direction of a physician. The licensed nurse or therapist shall retain accountability for actions that are delegated. The licensed nurse or therapist shall ensure appropriate assessment, planning, implementation, and evaluation. The licensed nurse or therapist shall make on-site supervisory visits every two weeks with the provider present. The cost of the supervision provided by the licensed nurse or therapist shall be paid from private insurance and other third-party payment sources, Medicare, the regular Medicaid program, or the early periodic screening diagnosis and treatment program ~~before accessing the HCBS waiver.~~

(1) Tube feedings of consumers members unable to eat solid foods.

(2) to (13) No change.

c. A unit of service is 1 hour, or one 8- to 24-hour day ~~provided by an individual or an agency.~~ Each service shall be billed in whole units. The consumer-directed attendant care provider shall complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service.

d. The consumer member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall be responsible for selecting the person or agency ~~who~~ that will provide the components of the attendant care services ~~to be provided.~~

e. The consumer member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall determine the components of the attendant care services to be provided with the person who is providing the services to the consumer member.

f. The service activities ~~may~~ shall not include parenting or child care for or on behalf of the consumer member or on behalf of the provider.

g. The consumer member, parent, guardian, or attorney in fact under a durable power of attorney for health care and the provider shall complete, ~~and sign,~~ and date Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. A copy of the completed agreement shall be attached to the service plan, ~~which is signed by the service worker or case manager prior to the initiation of services,~~ and kept in the consumer's and department's member's records.

h. If the consumer member has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the consumer's member's needs are being adequately met. If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.

HUMAN SERVICES DEPARTMENT[441](cont'd)

i. If the ~~consumer~~ member has a guardian or attorney in fact under a durable power of attorney for health care, the guardian or attorney in fact shall sign the claim form in place of the ~~consumer~~ member, indicating that the service has been provided as presented on the claim.

j. to m. No change.

ITEM 38. Amend subrule 78.43(14) as follows:

78.43(14) *Interim medical monitoring and treatment services.* Interim medical monitoring and treatment (IMMT) services are monitoring and treatment of a medical nature ~~requiring specially trained caregivers beyond what is normally available in a day care setting~~ for children or adults whose medical needs make alternative care unavailable, inadequate, or insufficient. IMMT services are not intended to provide day care but to supplement available resources. The services must be needed to allow the consumer's usual caregivers to be employed or, for a limited period of time, for academic or vocational training of a usual caregiver; due to the hospitalization, treatment for physical or mental illness, or death of a usual caregiver; or during a search for employment by a usual caregiver. Services must be ordered by a physician.

a. Need for service. The member must be currently receiving home health agency services under rule 441—78.9(249A) and require medical assessment, medical monitoring, and regular medical intervention or intervention in a medical emergency during those services. The service worker or case manager must identify the need for IMMT services after evaluating the member's living environment, family and natural supports, ability to perform activities of daily living, and health care needs. The services must be needed:

- (1) To allow the member's usual caregivers to be employed,
- (2) During a search for employment by a usual caregiver,
- (3) To allow for academic or vocational training of a usual caregiver,
- (4) Due to the hospitalization of a usual caregiver for treatment for physical or mental illness, or
- (5) Due to the death of a usual caregiver.

~~*a. b.*~~ *b.* Service requirements. Interim medical monitoring and treatment services shall:

- (1) Provide experiences for each ~~consumer's~~ member's social, emotional, intellectual, and physical development;
- (2) Include comprehensive developmental care and any special services for a ~~consumer~~ member with special needs; and
- (3) Include medical assessment, medical monitoring, and medical intervention as needed on a regular or emergency basis. Medical intervention means the ability to assess the situation and contact the appropriate medical professional, not the direct application of medical care.

~~*b. c.*~~ *c.* Interim medical monitoring and treatment services may include supervision while the member is being transported to and from school.

~~*e. d.*~~ *d.* Limitations.

- (1) and (2) No change.
- (3) Interim medical monitoring and treatment services may not duplicate any regular Medicaid or waiver services provided under the state plan. Services under the state plan, including home health agency services under rule 441—78.9(249A), must be exhausted before IMMT services are accessed.
- (4) Interim medical monitoring and treatment services ~~may~~ shall be provided only in the ~~consumer's member's home;~~ in a registered group child care home, in a registered family child care development home; in a licensed child care center, residential care facility, or adult day care facility; ~~or during transportation~~ the time when the member is being transported to and from school.
- (5) ~~The staff-to-consumer~~ member-to-staff ratio shall not be ~~less~~ more than ~~one to six~~ members to one staff person.
- (6) The parent or guardian of the member shall be responsible for the usual and customary nonmedical cost of day care during the time in which the member is receiving IMMT services. Medical care necessary for monitoring and treatment is an allowable IMMT cost. If the cost of care goes above the usual and customary cost of day care services due to the member's medical condition, the costs above the usual and customary cost shall be covered as IMMT services.

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~d. e.~~ A unit of service is one hour.

ITEM 39. Amend subrule 78.46(1) as follows:

78.46(1) Consumer-directed attendant care service. Consumer-directed attendant care services are service activities listed below performed by a person to help a ~~consumer member~~ with self-care tasks which the ~~consumer member~~ would typically do independently if the ~~consumer member~~ were otherwise able. The services must be cost-effective and necessary to prevent institutionalization.

a. Providers must demonstrate proficiency in delivery of the services in the ~~consumer's member's~~ plan of care. Proficiency must be demonstrated through documentation of prior training or experience or a certificate of formal training.

(1) All training or experience will be detailed on Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement, which must be reviewed and approved by the service worker for appropriateness of training or experience prior to the provision of services. Form 470-3372 becomes an attachment to and part of the case plan.

(2) ~~Consumers~~ The member shall give direction and training for activities which are not medical in nature to maintain independence. Licensed registered nurses and therapists must provide on-the-job training and supervision to the provider for skilled activities listed below and described on Form 470-3372. The training and experience must be sufficient to protect the health, welfare and safety of the ~~consumer member~~.

~~a. b.~~ Nonskilled service activities covered are:

(1) to (4) No change.

(5) Meal preparation, cooking, and assistance with eating and feeding assistance but not the cost of meals themselves. Meal preparation and cooking shall be provided only in the member's home.

(6) Housekeeping services which are essential to the ~~consumer's member's~~ health care at home.

(7) and (8) No change.

(9) Assistance needed to go to or return from a place of employment and assistance with job-related tasks while the ~~consumer member~~ is on the job site. The cost of transportation for the ~~consumer member~~ and assistance with understanding or performing the essential job functions are not included in consumer-directed attendant care services.

(10) and (11) No change.

(12) Assisting ~~and or~~ accompanying a ~~consumer member~~ in using transportation essential to the health and welfare of the ~~consumer, but not the member~~. The cost of the transportation is not included.

b. c. Skilled service activities covered are the following performed under the supervision of a licensed nurse or licensed therapist working under the direction of a licensed physician. The licensed nurse or therapist shall retain accountability for actions that are delegated. The licensed nurse or therapist shall ensure appropriate assessment, planning, implementation, and evaluation. The licensed nurse or therapist shall make on-site supervisory visits every two weeks with the provider present. The cost of the supervision provided by the licensed nurse or therapist shall not be included in the reimbursement for consumer-directed attendant care services.

(1) Tube feedings of ~~consumers members~~ unable to eat solid foods.

(2) to (13) No change.

e. d. A unit of service is 1 hour ~~for up to 7 hours per day~~ or one 8- to 24-hour day ~~provided by an individual or an agency~~. Each service shall be billed in whole units. The consumer-directed attendant care provider shall complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service.

~~d. e.~~ The ~~consumer member, parent,~~ guardian, or attorney in fact under a durable power of attorney for health care shall:

(1) ~~be responsible for selecting~~ Select the person or agency ~~who that~~ will provide the components of the attendant care services ~~to be provided~~.

e. (2) ~~The consumer, parent, guardian, or attorney in fact under a durable power of attorney for health care shall determine~~ Determine the components of the attendant care services to be provided with the person who is providing the services to the ~~consumer member~~.

HUMAN SERVICES DEPARTMENT[441](cont'd)

f. The service activities ~~may~~ shall not include parenting or child care on behalf of the ~~consumer member~~ or on behalf of the provider.

g. The ~~consumer member~~, ~~parent~~, guardian, or attorney in fact under a durable power of attorney for health care and the provider shall complete, ~~and sign, and date~~ Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. A copy of the completed agreement shall be attached to the service plan, ~~which is signed by the service worker prior to the initiation of services,~~ and kept in the ~~consumer's and department's~~ member's records.

h. If the ~~consumer member~~ has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the ~~consumer's~~ member's needs are being adequately met. If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.

i. If the ~~consumer member~~ has a guardian or attorney in fact under a durable power of attorney for health care, the guardian or attorney in fact shall sign the claim form in place of the ~~consumer member~~, indicating that the service has been provided as presented on the claim.

j. to l. No change.

m. Services may be provided in the absence of a ~~parent or~~ guardian if the ~~parent or~~ guardian has given advanced direction for the service provision.

ITEM 40. Amend subrule 78.46(2) as follows:

78.46(2) Home and vehicle ~~modifications~~ modification. Covered home and vehicle modifications are ~~those~~ physical modifications to the ~~consumer's~~ member's home or vehicle ~~listed below~~ that directly address the ~~consumer's~~ member's medical or remedial need. Covered modifications must be necessary to provide for the health, welfare, or safety of the ~~consumer member~~ and enable the ~~consumer member~~ to function with greater independence in the home or vehicle.

a. Modifications that are necessary or desirable without regard to the ~~consumer's~~ member's medical or remedial need and that would be expected to increase the fair market value of the home or vehicle, such as furnaces, fencing, ~~roof repair,~~ or adding square footage to the residence, are excluded except as specifically included below. Purchasing or leasing of a motorized vehicle is excluded. ~~Repairs~~ Home and vehicle repairs are also excluded.

b. Only the following modifications are covered:

(1) to (6) No change.

(7) Voice-activated, sound-activated, light-activated, motion-activated, and electronic devices directly related to the ~~consumer's~~ member's disability.

(8) to (24) No change.

c. and d. No change.

e. Services shall be performed following department approval of a binding contract between the enrolled home and vehicle modification provider and the ~~consumer member~~. Whenever possible, three itemized, competitive bids shall be obtained for each project and be reviewed by the case manager or service worker before approval of the contract.

f. The contract shall include, ~~at a minimum,~~ the scope of work to be performed, the time involved, supplies needed, the cost, time frame for work completion, and diagrams of the project whenever applicable, and an assurance of that the provider has liability and workers' compensation coverage and the applicable permit and license.

g. Service payment shall be made to the enrolled home and vehicle modification provider. If applicable, payment will be forwarded to the subcontracting agency by the enrolled home and vehicle modification provider following completion of the approved modifications. Payment of up to \$6,060 per year may be made to certified providers upon satisfactory completion of the service. The case manager or service worker shall encumber up to \$505 per a portion of the cost of a modification every month within the monthly dollar cap allowed for the consumer member until the amount entire cost of the modification is reached encumbered within the a consecutive 12-month period.

HUMAN SERVICES DEPARTMENT[441](cont'd)

h. Services shall be included in the ~~consumer's~~ member's service plan and shall exceed the Medicaid state plan services.

ITEM 41. Amend subrule 78.46(3) as follows:

78.46(3) *Personal emergency response or portable locator system.* ~~The personal emergency response system allows a consumer experiencing a medical emergency at home to activate electronic components that transmit a coded signal via digital equipment over telephone lines to a central monitoring station. The service shall be identified in the consumer's service plan. A unit is a one-time installation fee or one month of service. Maximum units per state fiscal year are the initial installation and 12 months of service.~~

a. A personal emergency response system is an electronic device that transmits a signal to a central monitoring station to summon assistance in the event of an emergency.

(1) The necessary components of a system are:

~~a.~~ 1. An in-home medical communications transceiver.

~~b.~~ 2. A remote, portable activator.

~~c.~~ 3. A central monitoring station with backup systems staffed by trained attendants 24 hours per day, seven days a week at all times.

~~d.~~ 4. Current data files at the central monitoring station containing response protocols and personal, medical, and emergency information for each ~~consumer~~ member.

(2) The service shall be identified in the member's service plan.

(3) A unit of service is a one-time installation fee or one month of service.

(4) Maximum units per state fiscal year shall be the initial installation and 12 months of service.

b. A portable locator system is an electronic device that transmits a signal to a monitoring device. The system allows a member to access assistance in the event of an emergency and allows law enforcement or the monitoring system provider to locate a member who is unable to request help or to activate a system independently. The member must be unable to access assistance in an emergency situation due to the member's age or disability.

(1) The required components of the portable locator system are:

1. A portable communications transceiver or transmitter to be worn or carried by the member.

2. Monitoring by the provider at a central location with response protocols and personal, medical, and emergency information for each member as applicable.

(2) The service shall be identified in the member's service plan.

(3) Payable units of service are purchase of equipment, an installation or set-up fee, and monthly fees.

(4) Maximum units per state fiscal year shall be one equipment purchase, one installation or set-up fee, and 12 months of service.

ITEM 42. Amend subrule 78.46(4) as follows:

78.46(4) *Specialized medical equipment.*

a. Specialized medical equipment shall include medically necessary items which are for personal use by ~~consumers~~ members with a physical disability and which:

(1) provide Provide for the health and safety of the ~~consumer~~ member, that

(2) are Are not ordinarily covered by Medicaid,

(3) are Are not funded by educational or vocational rehabilitation programs, and

(4) are Are not provided by voluntary means. ~~This includes, but is not limited to: electronic aids and organizers, medicine dispensing devices, communication devices, bath aids and noncovered environmental control units. This includes repair and maintenance of items purchased through the waiver in addition to the initial costs.~~

b. Coverage includes, but is not limited to:

(1) Electronic aids and organizers.

(2) Medicine dispensing devices.

(3) Communication devices.

(4) Bath aids.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(5) Noncovered environmental control units.

(6) Repair and maintenance of items purchased through the waiver.

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

~~b. d.~~ The need for specialized medical equipment shall be:

(1) ~~documented~~ Documented by a health care professional as necessary for the ~~consumer's~~ member's health and safety, and ~~shall be~~

(2) ~~identified~~ Identified in the ~~consumer's~~ member's service plan.

ITEM 43. Amend subrule 78.52(2) as follows:

78.52(2) *Environmental modifications and adaptive devices.*

a. Environmental modifications and adaptive devices include medically necessary items installed or used within the ~~consumer's~~ member's home that are used by the member to address specific, documented health, mental health, or safety concerns. The following items are excluded under this service:

(1) Items ordinarily covered by Medicaid.

(2) Items funded by educational or vocational rehabilitation programs.

(3) Items provided by voluntary means.

(4) Repair and maintenance of items purchased through the waiver.

(5) Fencing.

b. A unit of service is one modification or device.

c. For each unit of service provided, the case manager shall maintain in the ~~consumer's~~ member's case file a signed statement from a mental health professional on the ~~consumer's~~ member's interdisciplinary team that the service has a direct relationship to the ~~consumer's~~ member's diagnosis of serious emotional disturbance.

ITEM 44. Amend subrule 78.52(5) as follows:

78.52(5) *Respite care services.* Respite care services are services provided to the ~~consumer~~ member that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that period. The "usual caregiver" means a person or persons who reside with the ~~consumer~~ member and are available on a 24-hour-per-day basis to assume responsibility for the care of the ~~consumer~~ member.

a. Respite care shall not be provided to ~~consumers~~ members during the hours in which the usual caregiver is employed, except when the ~~consumer~~ member is attending a 24-hour residential camp. Respite care shall not be used as a substitute for a child's day care.

b. No change.

c. ~~Staff-to-consumer~~ Member-to-staff ratios shall be appropriate to the individual needs of the ~~consumer~~ member as determined by the ~~consumer's~~ member's interdisciplinary team. The team shall determine the type of respite care to be provided according to these definitions:

(1) Basic individual respite is provided on a ratio of one staff to one ~~consumer~~ member. The ~~consumer~~ member does not have specialized medical needs that require the direct services of a registered nurse or licensed practical nurse.

(2) Specialized respite is provided on a ratio of one or more nursing staff to one ~~consumer~~ member. The ~~consumer~~ member has specialized medical needs that require the direct services of a registered nurse or licensed practical nurse.

(3) Group respite is provided on a ratio of one staff to two or more ~~consumers~~ members receiving respite. These ~~consumers~~ members do not have specialized medical needs that require the direct services of a registered nurse or licensed practical nurse.

HUMAN SERVICES DEPARTMENT[441](cont'd)

d. Respite services provided for a period exceeding 24 consecutive hours to three or more ~~consumers~~ members who require nursing care because of a mental or physical condition must be provided by a health care facility licensed under Iowa Code chapter 135C.

e. Respite services provided outside the ~~consumer's~~ member's home shall not be reimbursable if the living unit where respite care is provided is reserved for another person on a temporary leave of absence.

f. A unit of service is one hour.

ITEM 45. Amend subrule **79.1(2)**, provider category "HCBS waiver service providers," numbered paragraphs "2," "23" and "24," as follows:

Provider category	Basis of reimbursement	Upper limit
2. Emergency response system:	<u>Fee schedule</u>	Initial one-time fee \$48.29. Ongoing monthly fee \$37.56.
<u>Personal response system</u>	<u>Fee schedule</u>	<u>Initial one-time fee: \$48.29.</u> <u>Ongoing monthly fee: \$37.56.</u>
<u>Portable locator system</u>	<u>Fee schedule</u>	<u>One equipment purchase: \$300.</u> <u>Initial one-time fee: \$48.29.</u> <u>Ongoing monthly fee: \$37.56.</u>
23. Prevocational services	Fee schedule	For the brain injury waiver: \$36.50 <u>\$47.01 per day, \$23.51 per half day, or \$12.88 per hour.</u> For the intellectual disabilities <u>disability</u> waiver: County contract rate or, in absence of a contract rate, <u>\$47.01 per day, \$23.51 per half day, or \$12.88 per hour.</u>
24. Interim medical monitoring and treatment:		
Home health agency (provided by home health aide)	Cost-based rate for home health aide services provided by a home health agency	Lesser of maximum Medicare rate in effect 11/30/09 or maximum Medicaid rate in effect 11/30/09 less 5%, converted to an hourly rate.
Home health agency (provided by nurse)	Cost-based rate for nursing services provided by a home health agency	Lesser of maximum Medicare rate in effect 11/30/09 or maximum Medicaid rate in effect 11/30/09 less 5%, converted to an hourly rate.
Child development home or center	Fee schedule	\$12.79 per hour.
<u>Supported community living provider</u>	<u>Retrospectively limited prospective rate</u>	<u>\$34.11 per hour, not to exceed the maximum ICF/MR rate per day.</u>

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 46. Amend paragraph **80.2(2)“f”** as follows:

f. Providers of home- and community-based waiver services, including home health agencies, ~~providing home- and community-based waiver services~~ shall submit claims on Form 470-2486, Claim for Targeted Medical Care. In the event of the death of the member, the case manager or service worker shall sign and date the claim form if the services were delivered.

[Filed 2/10/11, effective 5/1/11]

[Published 3/9/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/9/11.

ARC 9400B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 10A.801(7), the Department of Inspections and Appeals hereby adopts new Chapter 11, “Procedure for Contested Cases Involving Permits to Carry Weapons and Acquire Firearms,” Iowa Administrative Code.

The new chapter implements provisions contained in 2010 Iowa Acts, Senate File 2379, section 14, requiring the Department to establish a procedural process through which Iowans who have been denied a permit to acquire firearms or carry weapons or whose permit has been suspended or revoked may appeal the decision of the sheriff or Commissioner of Public Safety to an administrative law judge.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 29, 2010, as **ARC 9298B**. Additionally, the new chapter was Adopted and Filed Emergency and published in the December 29, 2010, Iowa Administrative Bulletin as **ARC 9299B**. The new chapter became effective January 1, 2011.

A public hearing on the new chapter was held January 19, 2011, at which time comments were received. One change has been made to the rules published under Notice of Intended Action. At the suggestion of Senator Merlin Bartz, subrule 11.2(1), pertaining to an individual's filing a notice of appeal, has been changed to remove the mandatory requirement regarding the content of the written request for an appeal; the change will give greater leniency to the appellant.

These rules are intended to implement Iowa Code section 724.21A.

These rules will become effective April 13, 2011, at which time the Adopted and Filed Emergency rules are hereby rescinded.

The following amendment is adopted.

Adopt the following new 481—Chapter 11:

CHAPTER 11

PROCEDURE FOR CONTESTED CASES INVOLVING PERMITS TO CARRY WEAPONS AND ACQUIRE FIREARMS

481—11.1(17A,724) Definitions.

“*Agency*” means the commissioner of public safety or the sheriff of the county in which the aggrieved party resides.

“*Applicant*” means a person who has applied for a permit to carry weapons or acquire firearms.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5).

“*Division*” means the division of administrative hearings of the Iowa department of inspections and appeals.

“*Party*” means each person or agency named or admitted as a party.

“*Permittee*” means a person who has received a permit to carry weapons or acquire firearms.

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

481—11.2(724) Appeals. An applicant or permittee may appeal a decision by an agency to deny an application for a permit to carry weapons or acquire firearms or to suspend or revoke a permit to carry weapons or acquire firearms.

11.2(1) *Written appeal.* The appeal shall be in writing and should state the reasons for rebutting the denial, suspension, or revocation.

11.2(2) *Filing of appeal.* Within 30 days of the applicant's or permittee's receipt of the agency's decision, the applicant or permittee shall file the appeal, a copy of the agency's written decision, and a fee of \$10 with the Iowa Department of Inspections and Appeals, Division of Administrative Hearings, 502 East 9th Street, Des Moines, Iowa 50319.

11.2(3) *Service on the agency.* The applicant or permittee shall serve a copy of the appeal on the agency at the time the appeal is filed with the division.

11.2(4) *Denial of appeal.* The division may deny any appeal that does not meet each of the requirements in subrules 11.2(1) to 11.2(3).

481—11.3(17A,724) Notice of hearing. The division shall prepare and serve the notice of hearing.

11.3(1) The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the agency decision on appeal;
- d. Identification of the parties;
- e. Reference to the procedural rules governing the contested case proceeding;
- f. Identification of the administrative law judge, including the judge's address and telephone number; and
- g. Notification that failure to appear and participate in the contested case proceeding may result in the entry of a default judgment.

11.3(2) Service of the notice of hearing shall be accomplished by first-class mail.

481—11.4(17A,724) Agency record.

11.4(1) Upon receipt of a copy of the notice of hearing, the agency shall file with the division:

- a. A copy of all documents used by the agency in reaching the decision; and
- b. A form identifying the name, address, and telephone number of the agency's contact person or attorney representative.

11.4(2) The agency shall provide to the applicant or permittee a copy of all documents used by the agency in reaching the decision.

481—11.5(17A) Contested case hearing. The hearing shall be conducted pursuant to the standards established in Iowa Code chapter 17A for contested case hearings. The hearing shall be held by telephone conference call, unless a party to the proceeding requests an in-person hearing from the administrative law judge no later than five days before the hearing. All in-person hearings shall be held at the division's headquarters in Des Moines, Iowa. If the administrative law judge grants an in-person hearing, the administrative law judge may allow one party to appear by telephone.

481—11.6(17A) Service and filing of documents.

11.6(1) *When service is required.* Every document filed in a contested case proceeding shall be served on each party of record. Service shall be made by delivering or mailing a copy to the party's last-known address.

11.6(2) *Filing.* All documents in the contested case proceeding shall be filed with the administrative law judge. A document is deemed filed at the time it is received by the division. A document is deemed to be served when mailed by first-class mail, so long as there is proof of mailing.

11.6(3) *Proof of mailing.* Proof of mailing includes a legible United States Postal Service postmark on the envelope and a certificate of service, a notarized affidavit, or certification in substantially the following form:

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

I certify under penalty of perjury and pursuant to the laws of the state of Iowa, that on (date of mailing or hand-delivery), I mailed or hand-delivered copies (describe document(s)) addressed to (opposing party) by depositing the same in a United States post office mailbox with correct postage properly affixed, or I hand-delivered copies.

(Date)

(Signature)

11.6(4) Filing by electronic means. The administrative law judge may permit service or filing of particular documents by facsimile, electronic mail, or similar electronic means. When permitted, service by facsimile, electronic mail, or similar electronic means is complete upon transmission.

481—11.7(17A) Witness lists and exhibits. No later than five days before the hearing, a party shall serve on all parties and the administrative law judge a witness list and a copy of any exhibit(s) the party intends to introduce into evidence during the contested case proceeding. If a party fails to serve on all parties and the administrative law judge a witness list or any exhibit five days before the hearing, the party may be precluded from calling the witness at hearing or introducing the exhibit(s) into the record at hearing.

481—11.8(17A) Evidence. The administrative law judge shall rule on the admissibility of evidence and may take official notice of facts in accordance with applicable requirements of law. Evidence in the proceeding shall be confined to the issues for which the parties received notice prior to the hearing.

481—11.9(17A) Withdrawals and dismissals. A request for withdrawal or dismissal of the appeal may be made with the division prior to the hearing. Either request must be in writing or secured on the record.

11.9(1) Withdrawals. An applicant or permittee who requested a contested case proceeding may request a withdrawal of the appeal. Upon receipt of a request for withdrawal of the appeal, the administrative law judge shall issue an order dismissing the appeal and closing the case.

11.9(2) Dismissals. An agency may request a dismissal of the appeal by agreeing to grant the entire relief sought by the applicant or permittee. The administrative law judge shall review a request for dismissal to determine whether it grants all relief requested in the appeal. If the request grants all relief requested in the appeal, the administrative law judge shall issue an order dismissing the appeal, ordering the agency to grant the relief requested, and closing the case.

481—11.10(17A) Default. If a party fails to appear after proper service of notice, the administrative law judge may enter a default order against the party or may proceed with the hearing and make a decision in the absence of the party.

481—11.11(10A) Costs. Costs of the contested case hearing shall be paid by the agency.

481—11.12(724) Probable cause. Probable cause to deny an initial or renewal application for a permit to carry weapons or acquire firearms or to suspend or revoke a permit to carry weapons or acquire firearms means a reasonable ground exists for supposing that the basis for the denial, suspension or revocation is well-founded.

481—11.13(724) Clear and convincing evidence. Clear and convincing evidence means there is no serious or substantial doubt about the correctness of the conclusion drawn from the evidence.

These rules are intended to implement Iowa Code section 724.21A.

[Filed 2/7/11, effective 4/13/11]

[Published 3/9/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/9/11.

ARC 9406B**PHARMACY BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272C.2, the Board of Pharmacy hereby amends Chapter 2, “Pharmacist Licenses,” Iowa Administrative Code.

The amendment provides for an exemption from pharmacist continuing education requirements during any period in which a pharmacist is participating in a pharmacy residency program and requires that a pharmacist wishing such exemption petition the Board as soon as possible following commencement of the residency program and prior to completion of the program.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the November 3, 2010, Iowa Administrative Bulletin as **ARC 9192B**. The Board received no written comments regarding the proposed amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the January 11, 2011, meeting of the Board of Pharmacy.

This amendment will become effective on April 13, 2011.

This amendment is intended to implement Iowa Code section 272C.2.

The following amendment is adopted.

Amend paragraph **2.12(1)“b”** as follows:

b. Exemption for health-related graduate studies. A pharmacist who is continuing formal education in health-related graduate programs, including participation in a pharmacy residency program, may be exempted from meeting the continuing education requirements during the period of such enrollment or participation. An applicant for this exemption shall petition the board, as soon as possible following enrollment in the qualifying graduate program or commencement of the pharmacy residency program and prior to completion of the qualifying program, on forms provided by the board office. At the discretion of the board, exemption during part-time or short-term enrollment in a health-related graduate program may be prorated for the actual period of such enrollment.

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[Published 3/9/11]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/9/11.

ARC 9407B**PHARMACY BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 3, “Pharmacy Technicians,” Iowa Administrative Code.

The amendments clarify that a certified pharmacy technician must maintain both the Iowa registration and the national technician certification in good standing in order to practice as a certified pharmacy technician in Iowa.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the November 3, 2010, Iowa Administrative Bulletin as **ARC 9193B**. The Board received no written comments regarding the proposed amendments. The adopted amendments are identical to those published under Notice.

The amendments were approved during the January 11, 2011, meeting of the Board of Pharmacy.

These amendments will become effective on April 13, 2011.

These amendments are intended to implement Iowa Code section 155A.6A.

PHARMACY BOARD[657](cont'd)

The following amendments are adopted.

ITEM 1. Amend rule 657—3.3(155A), introductory paragraph, as follows:

657—3.3(155A) Registration required. Any person employed in Iowa as a pharmacy technician, except a pharmacist-intern whose pharmacist-intern registration is in good standing with the board, shall obtain and maintain during such employment a current registration as a certified pharmacy technician, pharmacy technician trainee, or uncertified pharmacy technician pursuant to these rules. An individual accepting employment as a pharmacy technician in Iowa who fails to register as a certified pharmacy technician, technician trainee, or uncertified technician as provided by these rules may be subject to disciplinary sanctions. A certified pharmacy technician accepting employment as a certified pharmacy technician in Iowa who fails to register as a certified pharmacy technician or who fails to maintain national certification may be subject to disciplinary sanctions.

ITEM 2. Amend rule 657—3.5(155A), introductory paragraph, as follows:

657—3.5(155A) Certification of pharmacy technicians. Except as provided in rule 657—3.6(155A) or subrule 3.5(3), effective July 1, 2010, all pharmacy technicians shall be required to be nationally certified as provided by this rule. National certification does not replace the need for licensed pharmacist control over the performance of delegated functions, nor does national certification exempt the pharmacy technician from registration pursuant to these rules. A certified pharmacy technician shall maintain the technician's national certification, in addition to the technician's Iowa registration, during any period of employment in an Iowa pharmacy as a certified pharmacy technician.

ITEM 3. Amend rule 657—3.12(155A) as follows:

657—3.12(155A) Registration certificates. The certificate of technician registration issued by the board to a certified pharmacy technician, pharmacy technician trainee, or uncertified pharmacy technician is the property of and shall be maintained by the registered technician. The certificate or a copy of the certificate shall be maintained in each pharmacy where the pharmacy technician works. Each pharmacy utilizing pharmacy technicians shall be responsible for verifying that all pharmacy technicians working in the pharmacy are registered, ~~and~~ that technician registrations remain current and active, and that a certified pharmacy technician's national certification remains current and active.

[Filed 2/15/11, effective 4/13/11]

[Published 3/9/11]

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ARC 9408B

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 7, "Hospital Pharmacy Practice," Iowa Administrative Code.

The amendments clarify the record requirements for identifying a pharmacist who is involved in the visual verification of a drug product or device that has been remotely verified and approved for dispensing when a hospital pharmacy is closed. The amendments further clarify that only a certified pharmacy technician may assist non-pharmacy personnel to locate a needed prescription drug when the pharmacy is closed and when the pharmacist in charge has so authorized the certified pharmacy technician.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

PHARMACY BOARD[657](cont'd)

Notice of Intended Action was published in the November 3, 2010, Iowa Administrative Bulletin as **ARC 9183B**. The Board received no written comments regarding the proposed amendments. The adopted amendments are identical to those published under Notice.

The amendments were approved during the January 11, 2011, meeting of the Board of Pharmacy.

These amendments will become effective on April 13, 2011.

These amendments are intended to implement Iowa Code section 155A.13.

The following amendments are adopted.

ITEM 1. Amend paragraph **7.6(2)“b”** as follows:

b. If the pharmacist in charge has authorized the presence in the pharmacy of a pharmacy technician or a pharmacy support person to perform designated functions when the pharmacy is closed, only a certified pharmacy technician may assist another authorized, licensed health care professional to locate a drug or device pursuant to an emergent need. The pharmacy technician or the pharmacy support person may not dispense or deliver the drug, chemical, or device to the licensed health care professional. The licensed health care professional shall comply with established policies and procedures for obtaining drugs, devices, and chemicals when the pharmacy is closed. The licensed health care professional shall not ask or expect the pharmacy technician or the pharmacy support person to verify that the appropriate drug, chemical, or device has been obtained from the pharmacy.

ITEM 2. Amend subrule 7.7(7) as follows:

7.7(7) Pharmacist identified. The record of each patient-specific drug or device order processed pursuant to this rule shall identify, by name or other unique identifier, each pharmacist involved in the preview and verification of the order. The record of each patient-specific drug or device visually verified pursuant to this rule shall identify, by name or other unique identifier, each pharmacist involved in the visual verification of the product.

[Filed 2/15/11, effective 4/13/11]

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ARC 9409B

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 8, “Universal Practice Standards,” Iowa Administrative Code.

The amendment requires that a log of the initials or unique identification codes identifying by name each pharmacy support person, in addition to pharmacists, pharmacist-interns, and pharmacy technicians, shall be maintained by the pharmacy and be available for inspection or copying for a minimum two years.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the November 3, 2010, Iowa Administrative Bulletin as **ARC 9194B**. The Board received no written comments regarding the proposed amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the January 11, 2011, meeting of the Board of Pharmacy.

This amendment will become effective on April 13, 2011.

This amendment is intended to implement Iowa Code sections 155A.6B and 155A.13.

The following amendment is adopted.

Amend rule 657—8.4(155A) as follows:

657—8.4(155A) Pharmacist identification and staff logs.

8.4(1) No change.

PHARMACY BOARD[657](cont'd)

8.4(2) Identification codes. A permanent log of the initials or identification codes identifying by name each dispensing pharmacist, pharmacist-intern, ~~and~~ pharmacy technician, and pharmacy support person shall be maintained for a minimum of two years and shall be available for inspection and copying by the board or its representative. The initials or identification code shall be unique to the individual to ensure that each pharmacist, pharmacist-intern, ~~and~~ pharmacy technician, and pharmacy support person can be identified.

8.4(3) and 8.4(4) No change.

[Filed 2/15/11, effective 4/13/11]

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ARC 9410B

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy hereby amends Chapter 10, "Controlled Substances," Iowa Administrative Code.

The amendment clarifies the requirement for reducing an oral prescription to a written format, providing that the written format may be a computer-generated print of the information required for the prescription and is not limited to a handwritten format.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the November 3, 2010, Iowa Administrative Bulletin as **ARC 9196B**. The Board received no written comments regarding the proposed amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the January 11, 2011, meeting of the Board of Pharmacy.

This amendment will become effective on April 13, 2011.

This amendment is intended to implement Iowa Code sections 124.308 and 155A.27.

The following amendment is adopted.

Amend paragraph **10.22(2)"c"** as follows:

c. The pharmacist shall prepare a temporary written record of the emergency prescription. The temporary written record shall consist of a hard copy of the electronic transmission or a written record of the oral transmission authorizing the emergency dispensing. A written record is not required to consist of a handwritten record and may be a printed facsimile or a print of a computer-generated record of the prescription if the printed record includes all of the required elements for the prescription. If the emergency prescription is transmitted by the practitioner's agent, the record shall include the name and title of the individual who transmitted the prescription.

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[Published 3/9/11]

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ARC 9411B

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 13, "Sterile Compounding Practices," Iowa Administrative Code.

PHARMACY BOARD[657](cont'd)

The amendment provides for an exception for the placement of a compounding aseptic isolator (CAI) within an ISO Class 8 anteroom or ante area when the CAI meets ISO Class 5 atmospheric environment conditions.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the November 3, 2010, Iowa Administrative Bulletin as **ARC 9187B**. The Board received no written comments regarding the proposed amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the January 11, 2011, meeting of the Board of Pharmacy.

This amendment will become effective on April 13, 2011.

This amendment is intended to implement Iowa Code sections 126.10, 155A.2, 155A.13, and 155A.28.

The following amendment is adopted.

Amend subrule 13.27(4) as follows:

13.27(4) Anteroom requirements. ~~An~~ Except for a CAI that meets the conditions specified in subrule 13.27(3) exempting the CAI from placement in an ISO Class 7 cleanroom, an anteroom or ante area shall be located adjacent to the buffer area and maintained at ISO Class 8 air quality. This area is to be used for unpacking and disinfecting supplies for storage and for hand sanitizing and gowning. If the sterile preparation area is to be used only for the compounding of low- and medium-risk preparations, the ante area shall be clearly demarcated for the compounding of low- and medium-risk preparations. If the sterile preparation area is to be used for the compounding of high-risk preparations, the ante area shall be physically separated from the buffer area.

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[Published 3/9/11]

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ARC 9412B

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Pharmacy hereby amends Chapter 35, "Contested Cases," and Chapter 36, "Discipline," Iowa Administrative Code.

The amendments correct the name of the Board by deleting the term "Examiners" and correct the title of the executive director, formerly the executive secretary/director. The amendments also eliminate an invalid Iowa Code reference in Item 20. Amendments in Items 4, 11, 18, and 23 clarify the process for delivery of various documents and communications relating to contested cases and disciplinary actions.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the November 3, 2010, Iowa Administrative Bulletin as **ARC 9191B**. The Board received no written comments regarding the proposed amendments. The adopted amendments are identical to those published under Notice.

The amendments were approved during the January 11, 2011, meeting of the Board of Pharmacy.

These amendments will become effective on April 13, 2011.

PHARMACY BOARD[657](cont'd)

These amendments are intended to implement Iowa Code sections 17A.10 to 17A.23, 124.304, 124B.12, 126.17, 147.76, 155A.6, 155A.12, 155A.13, 155A.13A, 155A.15 to 155A.18, 155A.26, 205.11, 272C.3 to 272C.6, 272C.9, and 272C.10.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 35, 36] is being omitted. These amendments are identical to those published under Notice as **ARC 9191B**, IAB 11/3/10.

[Filed 2/15/11, effective 4/13/11]

[Published 3/9/11]

[For replacement pages for IAC, see IAC Supplement 3/9/11.]

ARC 9424B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Hearing Aid Dispensers hereby amends Chapter 121, "Licensure of Hearing Aid Dispensers," and Chapter 122, "Continuing Education for Hearing Aid Dispensers"; adopts new Chapter 123, "Practice of Hearing Aid Dispensing"; and amends Chapter 124, "Discipline for Hearing Aid Dispensers," Iowa Administrative Code.

These amendments clarify the requirements for submission of supervision reports by temporary permit holders; rescind the requirement for mailing a renewal notice that is outdated given the current on-line renewal system; provide a new practice chapter that adds new requirements relating to sales procedures and record keeping and includes definitions and clarity in practice requirements that are consistent with Iowa law and federal regulations; and revise the continuing education requirements by updating the definition of "independent study," adding a new requirement for ethics coursework, increasing the hours allowed for independent study and on-line coursework, and providing credit for mandatory reporter training.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 29, 2010, as **ARC 9317B**. A public hearing was held on January 18, 2011, from 10 to 11 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building. No public comments were received. These amendments are identical to those published under Notice.

These amendments will become effective April 13, 2011.

These amendments are intended to implement Iowa Code chapters 21, 147, 154A and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amend 121.3, 121.4, 121.9, 122.1 to 122.3, 124.2; adopt Ch 123] is being omitted. These amendments are identical to those published under Notice as **ARC 9317B**, IAB 12/29/10.

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