



# IOWA ADMINISTRATIVE BULLETIN

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April 5, 2023

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## PREFACE

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

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

The Bulletin may also contain public funds interest rates [12C.6]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and other items required by statute to be published in the Bulletin.

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

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### CITATION of Administrative Rules

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

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

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)
441 IAC 79.1(1)“a”(1)“1”	(Numbered paragraph)

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

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

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

## Schedule for Rule Making 2023

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
22	Friday, April 14, 2023	May 3, 2023
23	Friday, April 28, 2023	May 17, 2023
24	Wednesday, May 10, 2023	May 31, 2023

**PLEASE NOTE:**

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

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

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

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

**ECONOMIC DEVELOPMENT AUTHORITY[261]**

Employer child care tax credit,  
ch 57  
IAB 4/5/23

**Regulatory Analysis**

1963 Bell Ave.  
Des Moines, Iowa

April 26, 2023  
9 to 9:30 a.m.

**NATURAL RESOURCE COMMISSION[571]**

Deer hunting by  
residents—general licenses,  
antlerless-deer-only,  
106.1, 106.6(6)  
IAB 4/5/23 **ARC 6977C**

Via video/conference call  
Contact Chris Ensminger  
Email: [chris.ensminger@dnr.iowa.gov](mailto:chris.ensminger@dnr.iowa.gov)

April 25, 2023  
12 noon to 1 p.m.

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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**Regulatory Analysis**

Notice of Intended Action to be published: Iowa Administrative Code 261—Chapter 57  
“Employer Child Care Tax Credit”

Iowa Code section authorizing rulemaking: 237A.31(3)“b”  
State or federal law(s) implemented by the rulemaking: Iowa Code section 237A.31

*Public Hearing*

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

April 26, 2023  
9 to 9:30 a.m.

1963 Bell Avenue  
Des Moines, Iowa

*Public Comment*

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this regulatory analysis must be received by the Economic Development Authority (IEDA) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell  
1963 Bell Avenue, Suite 200  
Des Moines, Iowa 50316  
Email: [lisa.connell@iowaeda.com](mailto:lisa.connell@iowaeda.com)

*Purpose and Summary*

An employer child care tax credit is authorized pursuant to Iowa Code section 237A.31 as amended by 2023 Iowa Acts, Senate File 181. IEDA is directed to prescribe the form and manner of application for the credit by rulemaking.

*Analysis of Impact*

1. Persons affected by the proposed rulemaking:
  - Classes of persons that will bear the costs of the proposed rulemaking:  
Businesses that apply for the employer child care tax credit will bear the costs of the proposed rules.
  - Classes of persons that will benefit from the proposed rulemaking:  
Businesses that apply for and are approved for the tax credit will benefit from the rules.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
  - Quantitative description of impact:  
Businesses interested in applying for the tax credit will require staff time to complete an application. The cost of this staff time will vary depending on the compensation of such staff. IEDA expects the application to be relatively simple and, therefore, to require minimal time to complete.  
Businesses will incur the cost of the certified public accountant (CPA) attestation proposed to be required to accompany the application. This cost will vary depending on the compensation of the CPA selected by the business, the amount of the potentially qualified costs, and the complexity of the review required. IEDA expects the attestation for the child care tax credit to cost between \$1,000 and \$3,000. This estimate is based on a small sampling of accountant costs indicated by applicants in the context of the historic preservation tax credit administered by IEDA. The historic preservation tax credit also requires a CPA attestation as proposed in these rules.
  - Qualitative description of impact:



Beyond the direct benefit of the tax credit to approved businesses, employees of approved businesses who require child care are likely to benefit from implementation of the tax credit.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

IEDA anticipates utilizing existing staff to develop an application form and process and to review and approve applications.

- Anticipated effect on state revenues:

The rules have no anticipated fiscal impact beyond that of the legislation implemented. Iowa Code section 237A.31 limits the aggregate amount of tax credits that IEDA may approve to \$2 million per fiscal year.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

IEDA will not be able to carry out its administrative duties for the tax credit without prescribing the form and manner of application. The only businesses that bear the costs of the rules are those that will potentially benefit from the tax credit.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Eliminating the proposed requirement of CPA attestation would be less costly for applicants. See additional information under paragraph “6.”

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Eliminating the proposed requirement of CPA attestation would be less costly for applicants. IEDA staff would instead need to verify the amount of qualified child care expenditures incurred in Iowa.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

If no CPA attestation is completed and submitted by applicants, a similar procedure of verifying qualified costs would instead need to be completed by IEDA staff. Applicants could receive a tax credit of up to \$150,000. Because of the potential benefit, it is reasonable to expect applicants to bear the cost of verification. In addition to shifting the cost of verification to applicants, relying on submittal of a CPA attestation is expected to allow IEDA to issue tax credits for eligible expenditures more quickly than if staff were required to verify eligibility of costs.

The CPA attestation procedure is utilized in other tax credits administered by IEDA, including historic preservation tax credits and the workforce housing tax incentive program. See Iowa Code sections 404A.3(5) and 15.354(3)“d.” An audit procedure completed by a CPA is also required for the redevelopment tax credit program (for brownfield and grayfield redevelopment). See Iowa Code section 15.293B(5).

### *Small Business Impact*

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rules do not have a substantial impact on small business. The rules do not establish compliance or reporting requirements relating to the tax credit. The rules do not establish design or operational standards.

*Text of Proposed Rulemaking*

CHAPTER 57  
EMPLOYER CHILD CARE TAX CREDIT

**261—57.1(237A) Definitions.**

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Department*” means the Iowa department of revenue.

“*Federal credit*” means the federal employer-provided child care tax credit provided in Section 45F of the Internal Revenue Code.

“*Qualified child care expenditure*” means the same as defined in Section 45F of the Internal Revenue Code.

“*Qualified child care facility*” means the same as defined in Section 45F of the Internal Revenue Code.

“*Qualified child care resource and referral expenditure*” means the same as defined in Section 45F of the Internal Revenue Code.

“*Tax credit*” means the amount a taxpayer may claim against the taxes imposed in Iowa Code chapter 422, subchapters II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329.

**261—57.2(237A) Authorization of tax credits.**

**57.2(1)** An employer child care tax credit is authorized pursuant to Iowa Code section 237A.31 as amended by 2023 Iowa Acts, Senate File 181.

**57.2(2)** The proportion of a taxpayer’s federal credit attributable to expenditures made in Iowa equals the ratio that the sum of the amount described in paragraph 57.2(2) “a” bears to the sum total of the amount described in paragraph 57.2(2) “b.” The ratio shall be expressed as a percentage rounded to the nearest hundredth percent.

*a.* The qualified child care expenditures paid or incurred with respect to a qualified child care facility in Iowa, plus qualified child care resource and referral expenditures paid or incurred with respect to Iowa employees.

*b.* The qualified child care expenditures and qualified child care resource and referral expenditures.

**261—57.3(237A) Application and issuance process.**

**57.3(1)** The authority will develop a standardized application pertaining to the authorization and distribution of tax credits. The application will request information relating to the taxpayer’s eligibility for the federal credit, the proportion of the federal credit attributable to expenditures made by the taxpayer in Iowa as calculated pursuant to subrule 57.2(2), and any other information required by the authority. The certified public accountant (CPA) examination conducted pursuant to rule 261—57.4(237A) shall be submitted with the application.

**57.3(2)** Taxpayers shall submit an application for the credit within 90 calendar days of the end of the tax year during which qualified child care expenditures and qualified child care resource and referral expenditures are paid or incurred.

**57.3(3)** The authority shall issue tax credit certificates in the order the applications are determined complete and qualified until the maximum aggregate amount of tax credits that may be authorized pursuant to Iowa Code section 237A.31(3) “a” is reached. Applications for tax credits received in excess of the maximum aggregate amount of tax credits available each fiscal year will be denied by the authority.

**57.3(4)** The authority will issue a tax credit certificate to an approved taxpayer in an amount that represents the maximum amount of tax credit the taxpayer may claim. To receive the tax credit, the

taxpayer shall file a claim with the department in accordance with any applicable administrative rules adopted by the department. An approved taxpayer's tax credit may be subject to reduction in such circumstances described by any applicable rules adopted by the department.

**261—57.4(237A) CPA examination.**

**57.4(1)** A taxpayer shall engage a certified public accountant authorized to practice in this state to conduct an examination of the taxpayer's qualified child care expenditures and qualified child care resource and referral expenditures in accordance with the American Institute of Certified Public Accountants' statements on standards for attestation engagements. The attestation applicable to this examination is SSAE No. 10 (as amended by SSAE Nos. 11, 12, 14), AT section 101 and AT section 601.

**57.4(2)** The procedures used by the CPA to conduct the examination should allow the CPA to conclude that, in the CPA's professional judgment, the qualified child care expenditures paid or incurred with respect to a qualified child care facility in Iowa and qualified child care resources and referral expenditures paid or incurred with respect to Iowa employees are eligible for a tax credit pursuant to Iowa Code section 237A.31 and all rules adopted by the authority and by the department pursuant to Iowa Code section 237A.31 in all material respects. The documents reviewed by the CPA shall be provided to the authority upon request. The authority may deny a tax credit application if such documents are requested and are not provided to the authority within 60 days.

These rules are intended to implement Iowa Code section 237A.31 as amended by 2023 Iowa Acts, Senate File 181.

**ARC 6977C****NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action****Proposing rule making related to deer hunting  
and providing an opportunity for public comment**

The Natural Resource Commission (Commission) hereby proposes to amend Chapter 106, “Deer Hunting by Residents,” Iowa Administrative Code.

*Legal Authority for Rule Making*

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

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 481A.38, 481A.39 and 481A.48.

*Purpose and Summary*

Chapter 106 governs deer hunting by residents in the state of Iowa. This chapter regulates deer hunting and sets forth season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of take, and transportation and reporting requirements.

This rule making proposes three amendments to Chapter 106. First, two counties are added and two counties are removed from the list of counties available for general deer licenses.

Second, Lucas County is added to the list of counties eligible to participate in the population management January antlerless-deer-only season.

Third, antlerless-deer-only county quotas are modified to increase harvest in southern Iowa, where the wild herd is above population goals, and also in north central Iowa, where wild herds have recovered to a level that can sustain additional antlerless harvest. Conversely, quotas are modified in far western Iowa to decrease harvest where populations are below goals and hunter effort is waning.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on April 25, 2023. Comments should be directed to:

## NATURAL RESOURCE COMMISSION[571](cont'd)

Jace Elliott  
Iowa Department of Natural Resources  
Boone Wildlife Research Station  
1436 255th Street  
Boone, Iowa 50036  
Email: [jace.elliott@dnr.iowa.gov](mailto:jace.elliott@dnr.iowa.gov)

*Public Hearing*

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Chris Ensminger, wildlife research supervisor, via email at [chris.ensminger@dnr.iowa.gov](mailto:chris.ensminger@dnr.iowa.gov). A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Mr. Ensminger prior to the hearing to facilitate an orderly hearing.

April 25, 2023  
12 noon to 1 p.m.

Video/conference call

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **106.1(1)“a”** as follows:

*a. General deer licenses.* General deer licenses shall be valid for taking deer in one season selected at the time the license is purchased. General deer licenses shall be valid for taking deer of either sex except in Buena Vista, Calhoun, Cherokee, Clay, Crawford, Dickinson, Emmet, Humboldt, Ida, Kossuth, Lyon, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Sac, and Sioux, and Woodbury Counties during the first regular gun season when the general deer license will be valid for taking deer with at least one forked antler. Paid general deer licenses shall be valid statewide except where prohibited in deer population management zones established under 571—Chapter 105. Free general deer licenses shall be valid for taking deer of either sex only on the farm unit of an eligible landowner or tenant in the season or seasons selected at the time the license is obtained.

ITEM 2. Amend paragraph **106.1(6)“a”** as follows:

*a. Population management season.* Licenses for the population management January antlerless-deer-only season may be issued for the following counties: Allamakee, Appanoose, Decatur, Lucas, Monroe, Wayne, and Winneshiek. Population management January antlerless-deer-only licenses shall be issued for a county only when a minimum of 100 antlerless-deer-only licenses, as described in subrule 106.6(6), remain unsold in that county as of the third Monday in December. If 100 or more antlerless-deer-only licenses remain unsold for a given county as of the third Monday in December, those remaining antlerless-deer-only licenses shall be made available for the population management January antlerless-deer-only season in that county until the relevant antlerless-deer-only quota as described in subrule 106.6(6) is met.

## NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 3. Amend subrule 106.6(6) as follows:

**106.6(6) Antlerless-deer-only licenses.** Paid antlerless-deer-only licenses will be available by county as follows:

County	Quota	County	Quota	County	Quota
Adair	1200	Floyd	150	Monona	<del>500</del> <u>250</u>
Adams	1000	Franklin	<del>0</del> <u>100</u>	Monroe	2500
Allamakee	3800	Fremont	0	Montgomery	<del>500</del> <u>300</u>
Appanoose	<del>2700</del> <u>2800</u>	Greene	100	Muscatine	900
Audubon	0	Grundy	0	O'Brien	0
Benton	325	Guthrie	2350	Osceola	0
Black Hawk	0	Hamilton	<del>0</del> <u>100</u>	Page	<del>300</del> <u>150</u>
Boone	<del>400</del> <u>500</u>	Hancock	<del>0</del> <u>100</u>	Palo Alto	0
Bremer	300	Hardin	<del>0</del> <u>100</u>	Plymouth	0
Buchanan	400	Harrison	<del>500</del> <u>250</u>	Pocahontas	0
Buena Vista	0	Henry	1050	Polk	1350
Butler	200	Howard	450	Pottawattamie	<del>500</del> <u>250</u>
Calhoun	0	Humboldt	0	Poweshiek	200
Carroll	0	Ida	0	Ringgold	1600
Cass	<del>300</del> <u>200</u>	Iowa	450	Sac	0
Cedar	775	Jackson	1100	Scott	200
Cerro Gordo	<del>0</del> <u>100</u>	Jasper	400	Shelby	0
Cherokee	0	Jefferson	1500	Sioux	0
Chickasaw	375	Johnson	950	Story	150
Clarke	2400	Jones	1100	Tama	300
Clay	0	Keokuk	500	Taylor	1500
Clayton	4000	Kossuth	0	Union	1400
Clinton	400	Lee	<del>1700</del> <u>1800</u>	Van Buren	<del>2300</del> <u>2400</u>
Crawford	0	Linn	850	Wapello	1600
Dallas	<del>2100</del> <u>1900</u>	Louisa	775	Warren	3000
Davis	<del>1900</del> <u>2000</u>	Lucas	2500	Washington	<del>1000</del> <u>1200</u>
Decatur	<del>2400</del> <u>2500</u>	Lyon	0	Wayne	2700
Delaware	<del>950</del> <u>1100</u>	Madison	3300	Webster	<del>0</del> <u>100</u>
Des Moines	<del>900</del> <u>1000</u>	Mahaska	475	Winnebago	0
Dickinson	0	Marion	2050	Winneshiek	2700
Dubuque	1200	Marshall	150	Woodbury	0
Emmet	0	Mills	<del>150</del> <u>0</u>	Worth	0
Fayette	2500	Mitchell	100	Wright	<del>0</del> <u>100</u>

**ARC 6978C**

**ECONOMIC DEVELOPMENT AUTHORITY[261]**

**Adopted and Filed**

**Rule making related to state small business credit initiative**

The Economic Development Authority hereby adopts new Chapter 112, “State Small Business Credit Initiative (SSBCI),” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 15.106A.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 15.108.

*Purpose and Summary*

On October 11, 2022, the United States Department of the Treasury (Treasury) allocated \$96 million to the State of Iowa from the State Small Business Credit Initiative (SSBCI). The Authority will administer the funds through the following four programs approved by the Treasury:

- A loan participation program for Manufacturing 4.0 investments.
- A small business collateral support program.
- A venture capital innovation fund program.
- A venture capital co-investment fund program.

The new Chapter 112 outlines eligible uses of the funds and distinguishes the 2022 allocation from funds previously allocated to the State through the SSBCI in 2011. The 2011 allocation is addressed in 261—Chapter 117.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 25, 2023, as **ARC 6833C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Authority Board on March 17, 2023.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa beyond the federal funding allocated to the State by the Treasury.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on May 10, 2023.

The following rule-making action is adopted:

Adopt the following **new** 261—Chapter 112:

CHAPTER 112  
STATE SMALL BUSINESS CREDIT INITIATIVE (SSBCI)

**261—112.1(15) Purpose.** The purpose of this chapter is to establish the eligible uses of the funds allocated to the state of Iowa on October 11, 2022, from the State Small Business Credit Initiative established by the United States Department of the Treasury. The funds are administered by the authority.

**261—112.2(15) Definitions.** For purposes of this chapter, unless the context otherwise requires:

“*Allocation*” means the funds allocated to the state of Iowa on October 11, 2022, from the SSBCI by the Treasury. “Allocation” does not include any funds allocated to the state of Iowa from the SSBCI prior to October 11, 2022.

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*SSBCI*” means the State Small Business Credit Initiative established by the Treasury.

“*Treasury*” means the United States Department of the Treasury.

**261—112.3(15) Federal requirements.** The allocation will be administered in accordance with all applicable federal laws, regulations, and guidance, including but not limited to any reporting requirements. The allocation will also be administered in accordance with any agreements between the state and Treasury relating to the SSBCI.

**261—112.4(15) Eligible uses.** Eligible uses of the allocation include the following:

1. A loan participation program for manufacturing 4.0 investments.
2. A small business collateral support program.
3. A venture capital innovation fund program.
4. A venture capital co-investment fund program.
5. Any other purposes approved by the Treasury.

**261—112.5(15) Delegation of certain administrative functions.** The authority may delegate certain administrative functions of the program to service providers who have entered into an agreement with the authority to provide such services. Functions that may be delegated pursuant to this rule include but are not limited to initial application review, tracking and monitoring of the applicant’s progress, tracking and monitoring of contract terms and conditions, and provision of technical assistance to applicants. The authority will retain, and not delegate, any other function not delegated to a service provider pursuant to any agreement entered into between the authority and a service provider.

These rules are intended to implement Iowa Code section 15.108(9)“b.”

[Filed 3/17/23, effective 5/10/23]

[Published 4/5/23]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/23.



**ARC 6959C****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed****Rule making related to managed care**

The Human Services Department hereby rescinds Chapter 73, “Managed Care,” Iowa Administrative Code, and adopts a new Chapter 73 with the same title.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 249A.4.

*Purpose and Summary*

Chapter 73 was reviewed as part of the Department’s five-year review of rules. For ease of review and adoption, the Department is rescinding and replacing the entire chapter. Changes include updates to the definitions to include the terms “managed care plan,” “managed care organizations” and “prepaid ambulatory health plan.” In addition, revisions correct terminology, update federal and state citations and regulations and align federal and contract provisions. Changes also include using the term “dental wellness plan” when the provision applies to prepaid ambulatory health plans. The spelling for the Hawki program is also updated.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 11, 2023, as **ARC 6808C**.

The Department received one comment regarding rule 441—73.2(249A).

**Comment:**

Under subrule 73.2(2), a managed care plan (MCP) is required to attain and maintain accreditation by the National Committee for Quality Assurance (NCQA) or URAC. As a nationally recognized accreditor of health plans, the Accreditation Association for Ambulatory Health Care, Inc. (AAAHC), respectfully requests the Department’s consideration of including AAAHC as an approved accreditation organization within the rule.

AAAHC is a private and independent 501(c)(3) nonprofit accreditation organization formed in 1979 and is a recognized health plan accreditor through several federal and state regulatory agencies. Currently, more than 30 health plans are committed to excellence through AAAHC accreditation.

**Department response:**

Currently, the Department’s contracts with the managed care organizations require NCQA accreditation. At this time, the Department does not feel it is necessary to add another accreditation to the administrative rules when it is not required under the managed care contract. The Department is currently looking to streamline the rules and eliminate requirements that are not required in contract or administrative code. If the Department changes the accreditation requirements for the managed care contract, then the Department will revisit this rule. The Department appreciates the background information on AAAHC.

No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on March 9, 2023.

*Fiscal Impact*

HUMAN SERVICES DEPARTMENT[441](cont'd)

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on June 1, 2023.

The following rule-making action is adopted:

Rescind 441—Chapter 73 and adopt the following **new** chapter in lieu thereof:

CHAPTER 73  
MANAGED CARE

PREAMBLE

This chapter provides that most Iowa medical assistance program benefits will be provided through managed care. Notwithstanding any provisions of 441—Chapters 74 through 91, program benefits shall be provided through managed care as provided in this chapter. The program benefits provided through managed care will be paid for by the managed care plan participating in the program pursuant to this chapter, subject to the conditions, procedures, and payment rates or methodologies established by the managed care plan, consistent with this chapter and with the contract between the department and the managed care plan.

Implementation of managed care pursuant to this chapter is subject to approval by the Secretary of the United States Department of Health and Human Services (Secretary) of any Iowa state plan amendments and any waivers of the requirements of Title XIX of the Social Security Act that are required to allow for federal funding. This chapter shall be construed to comply with all requirements for federal funding under Title XIX of the Social Security Act or under the terms of any applicable waiver granted by the Secretary. To the extent this chapter is inconsistent with any applicable federal funding requirement under Title XIX or the terms of any applicable waiver, the requirements under Title XIX or the terms of the waiver shall prevail.

**441—73.1(249A) Definitions.**

“*Behavioral health services*” means mental health and substance use disorder treatment services.

“*Capitated payment*” means a monthly payment to the MCP on behalf of each enrollee for the provision of health or dental services under the contract. Payment is made regardless of whether the enrollee receives services during the month.

“*Choice counseling*” means the provision of unbiased information on MCPs or provider options and answers to related questions and access to personalized assistance to help members understand the

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

materials provided by the MCPs or the state, to answer questions about each of the options available, and to facilitate enrollment with an MCP.

“*Claim*” means a formal request for payment for benefits received or services rendered.

“*Clean claim*” means a claim that has no defect or impropriety (including any lack of required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment of the claim. “Clean claim” does not include a claim from a provider that is under investigation for fraud or abuse or a claim under review for medical necessity.

“*CMS*” means the Centers for Medicare and Medicaid Services, a division of the U.S. Department of Health and Human Services.

“*Code of Federal Regulations*” or “*CFR*” means the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

“*Community-based case management*” means a collaborative process of planning, facilitation, and advocacy for options and services to meet an enrollee’s needs through communication and available resources to promote high-quality, cost-effective outcomes.

“*Contract*” means a contract between the department and an MCP. These contracts shall meet all applicable requirements of state and federal law, including the requirements of 42 CFR 434 as amended to July 19, 2022.

“*Covered services*” means physical health, behavioral health, dental, and long-term care services set forth in rule 441—73.5(249A).

“*Department*” means the Iowa department of human services.

“*Discharge planning*” means the process, which begins at admission, of determining a continued need for treatment services and of developing a plan to address ongoing needs.

“*Electronic visit verification system*” means, with respect to personal care services or home health care services described in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

“*Emergency medical condition*” means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in the following:

1. Placing the health of the individual (or, for a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;
2. Serious impairment to bodily functions;
3. Serious dysfunction of any bodily organ or part.

“*Emergency services*” means covered inpatient and outpatient services that are as follows:

1. Furnished by a provider that is qualified to furnish these services.
2. Needed to evaluate or stabilize an emergency medical condition.

“*EMTALA*” means the Emergency Medical Treatment and Active Labor Act.

“*Enrollee*” means a hawki, Iowa health and wellness plan, dental wellness plan or Medicaid member who is eligible for MCP enrollment and has been enrolled with an MCP as defined in subrule 73.3(2).

“*Enrollment broker*” means the entity the department uses to enroll persons in an MCP. The enrollment broker must be conflict-free and meet all applicable requirements of state and federal law, including 42 CFR 438.10 as amended to July 19, 2022.

“*Hawki program*” means the healthy and well kids in Iowa program as set forth in 441—Chapter 86, the Iowa program to provide health care coverage for uninsured children of eligible families as authorized by Title XXI of the federal Social Security Act.

“*HIPP*” means the health insurance premium payment program.

“*Home- and community-based services*” or “*HCBS*” means services that are provided as an alternative to long-term care institutional services in a nursing facility or an intermediate care facility for persons with an intellectual disability (ICF/ID) or to delay or prevent placement in a nursing facility or ICF/ID.

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

*“Incident reporting”* means the reporting of critical events or incidents deemed sufficiently serious to warrant near-term review and follow-up by an appropriate authority. Such incidents may include but are not limited to:

1. Abuse and neglect;
2. The unauthorized use of restraint, seclusion or restrictive interventions;
3. Serious injuries that require medical intervention or result in hospitalization, or both;
4. Criminal victimization;
5. Death;
6. Financial exploitation;
7. Medication errors; and
8. Other incidents or events that involve harm or risk of harm to a participant.

*“Insolvency”* means a financial condition that exists when an entity is unable to pay its debts as they become due in the usual course of business or when the liabilities of the entity exceed its assets.

*“Iowa health and wellness plan”* means the medical assistance program set forth in 441—Chapter 74.

*“Level of care”* means an evaluation to determine and establish an individual’s need for the level of care provided in a hospital, a nursing facility, or an ICF/ID within the near future.

*“Long-term care (LTC)”* or *“long-term services and supports (LTSS)”* means the services of a nursing facility (NF), an intermediate care facility for persons with an intellectual disability (ICF/ID), state resource centers or services funded through Section 1915(c) home- and community-based services waivers, Section 1915(i) state plan home- and community-based habilitation program and the PACE program.

*“Managed care organization”* or *“MCO”* means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of “health maintenance organization” in Iowa Code section 514B.1.

*“Managed care plan”* or *“MCP”* refers to managed care organizations (MCOs) and prepaid ambulatory health plans (PAHPs).

*“Mandatory enrollment”* means mandatory participation in a managed care plan as specified in subrule 73.3(2).

*“Medical loss ratio”* or *“MLR”* means the percentage of capitation payments that is used to pay medical or dental expenses.

*“Medically necessary services”* means those covered services that are, under the terms and conditions of the contract, determined through MCP utilization management to be:

1. Appropriate and necessary for the symptoms, diagnosis or treatment of the condition of the member.
2. Provided for the diagnosis or direct care and treatment of the condition of the member to enable the member to make reasonable progress in treatment.
3. Within standards of professional practice and given at the appropriate time and in the appropriate setting.
4. Not primarily for the convenience of the member, the member’s physician or other provider; and
5. The most appropriate level of covered services that can safely be provided.

*“Medical records”* means all medical, dental, behavioral health, and long-term care histories; records, reports and summaries; diagnoses; prognoses; record of treatment and medication ordered and given; X-ray and radiology interpretations; physical therapy charts and notes; lab reports; other individualized medical, behavioral health, and long-term care documentation in written or electronic format; and analyses of such information.

*“Member”* means any person determined by the department to be eligible for the hawki program, the Iowa health and wellness plan, the dental wellness plan, or the Medicaid program.

*“Money Follows the Person (MFP) Rebalancing Demonstration Grant”* means a federal grant that will assist Iowa in transitioning individuals from a nursing facility or ICF/ID into the community and in rebalancing long-term care expenditures.

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

*“Needs-based eligibility”* means an evaluation to determine and establish an individual’s need for habilitation services.

*“Network”* or *“provider network”* means a group of participating health or dental care providers (both individual and group practitioners) linked through contractual arrangements to the MCP to supply a range of health or dental care services.

*“Out-of-network provider”* means any provider that is not directly or indirectly employed by or does not have a provider agreement with the MCP or any of its subcontractors pursuant to the contract between the department and the MCP.

*“PACE”* means the program of all-inclusive care for the elderly.

*“Participating providers”* means the providers of covered physical health, behavioral health, dental, and long-term care services that have contracted with a managed care plan.

*“Passive enrollment process”* means the process by which the department assigns a member to a managed care plan and which, in accordance with 42 CFR 438.54 as amended to July 19, 2022, seeks to preserve existing provider-member relationships and relationships with providers that have traditionally served Medicaid members, if possible. In the absence of existing relationships, the process ensures that members are equally distributed among all available managed care plans.

*“Prepaid ambulatory health plan”* or *“PAHP”* has the meaning set forth in 42 CFR 438.2 as amended to July 19, 2022.

*“Prior authorization”* means the process of obtaining prior approval as to the appropriateness of a service or medication. Prior authorization does not guarantee coverage.

*“Warm transfer”* means a telecommunications mechanism in which the person answering the call facilitates transfer to a third party, announces the caller and issue and remains engaged as necessary to provide assistance.

**441—73.2(249A) Contracts with a managed care plan (MCP).**

**73.2(1)** The department may enter into a contract with an MCP licensed under the provisions of insurance division rules set forth in 191—Chapter 40 for the scope of services as described in rule 441—73.6(249A).

**73.2(2)** The department shall determine that the MCP meets the following requirements:

- a. The MCP shall make available the services it provides to enrollees as established in the contract.
- b. The MCP shall provide satisfaction to the department against the risk of insolvency and ensure that neither Medicaid members nor the state shall be responsible for the MCP’s debts if the MCP becomes insolvent. The MCP shall comply with insurance division provisions set forth in rule 191—40.12(514B) regarding net worth and rule 191—40.14(514B) containing reporting requirements.
- c. The MCP shall attain and maintain accreditation by the National Committee for Quality Assurance (NCQA) or URAC (formerly known as the Utilization Review Accreditation Commission).

**73.2(3)** If not already accredited, the MCP must demonstrate it has initiated the accreditation process as of the contract effective date and must achieve accreditation at the earliest date allowed by NCQA or URAC. Prior to the contract effective date, the MCP must be licensed and in good standing in the state of Iowa as a health maintenance organization in accordance with insurance division rules set forth in 191—Chapter 40.

**73.2(4)** The contract shall meet the following minimum requirements. The contract shall:

- a. Be in writing.
- b. Specify the duration of the contract period.
- c. List the services that must be covered.
- d. Describe service access and provide access information.
- e. List conditions for nonrenewal, termination, suspension, and modification.
- f. Specify the method and rate of reimbursement.
- g. Provide for disclosure of ownership and subcontracted relationships.
- h. Specify that all subcontracts shall be in writing, shall comply with the provisions of the contract between the department and the MCP, and shall include any general requirements of the contract that are appropriate to the service or activity covered by the subcontract.

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

- i.* Specify appeal and grievance rights.
- j.* Specify all operational and service delivery expectations.
- k.* Specify reporting requirements.
- l.* Specify requirements for utilization management and quality improvement.
- m.* Specify requirements for program integrity.
- n.* Specify termination requirements and assessment of penalties.
- o.* Require the MCP and the fee-for-service Medicaid program to utilize a uniform prior authorization process.

The process will include forms, information requirements, and time frames.

**441—73.3(249A) Enrollment.**

**73.3(1) *Enrollment area.*** The coverage area for enrollment shall be statewide.

**73.3(2) *Members subject to enrollment.*** All hawkie program, Iowa health and wellness plan, and dental wellness plan members shall be subject to mandatory enrollment in an MCP. All Medicaid members, with the exception of the following, shall be subject to mandatory enrollment in an MCP:

- a.* Members who are medically needy as described at 441—Chapter 75.
- b.* Individuals eligible only for emergency medical services because the individuals do not meet citizenship or alienage requirements, pursuant to 441—Chapter 75.
- c.* Persons who are currently presumptively eligible as defined in 441—Chapter 75.
- d.* Persons eligible for the program of all-inclusive care for the elderly (PACE) who voluntarily elect PACE coverage as described in Division II of 441—Chapter 88.
- e.* Persons enrolled in the health insurance premium payment program (HIP) pursuant to 441—Chapter 75.
- f.* Persons eligible only for the Medicare savings program as described in 441—Chapters 75 and 76.
- g.* American Indian and Alaska Native populations who are exempt from mandatory enrollment pursuant to 42 CFR 438.50(d)(2) but who may enroll voluntarily.
- h.* Persons who have a Medicaid eligibility period that is retroactive as described in 441—Chapter 76.
- i.* Persons who are inmates of a public institution and ineligible for Medicaid benefits as described in 441—Chapter 75.
- j.* Persons residing in the Iowa Veterans Home as described in rule 801—10.1(35D).
- k.* Effective July 1, 2017, persons who are eligible only for the family planning waiver as described in 441—Chapter 75.

**73.3(3) *Enrollment process.*** The department shall notify members who must be enrolled in an MCP of enrollment and the effective date of enrollment. The department will implement an enrollment process in accordance with federal funding requirements, including 42 CFR 438 as amended to July 19, 2022.

*a. General.* Members may receive MCP choice counseling from the enrollment broker. The enrollment broker will provide information about individual MCP benefit structures, services and network providers, as well as information about other Medicaid programs as requested by the Medicaid member to assist the member in making an informed selection.

*b. Passive assignment.* Effective no earlier than the first day of the month of the member's application to Medicaid, the member shall be assigned to an MCP using the department's passive enrollment process and offered the opportunity to choose from the available MCPs within a time frame specified in the passive assignment letter.

*c. Request to change enrollment.* An enrollee may, within 90 days of initial enrollment, request to change enrollment from one MCP and enroll in another MCP. The request may be made on a form designated by the department, in writing, or by telephone call to the enrollment broker's toll-free member telephone line. Enrollment changes are effective no later than the first day of the second month beginning after the date on which the enrollment broker receives the enrollee's written or verbal request.

*d. Ongoing enrollment.* Enrollees shall remain enrolled with the chosen MCP for a total of 12 months.

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

*e. Enrollment cycle.* Prior to the end of the enrollee's annual enrollment period, the enrollee shall be notified of the option to maintain enrollment with the current MCP or to enroll with a different MCP.

**73.3(4) Benefit reimbursement prior to enrollment.**

*a.* Prior to the effective date of MCP enrollment, except as provided in paragraph 73.3(4) "b," the department shall reimburse providers for covered program benefits pursuant to 441—Chapters 74 to 91, as applicable for eligible members.

*b.* The MCP shall be responsible for covering newly retroactive Medicaid eligibility periods prior to the effective date of enrollment for babies born to Medicaid-enrolled women who are retroactively eligible to the month of birth.

**441—73.4(249A) Disenrollment process.**

**73.4(1) Enrollee-requested disenrollment.** An enrollee may request disenrollment with an MCP as follows:

*a.* During the first 90 days following the date of the enrollee's initial enrollment with the MCP, the enrollee may request disenrollment, for any reason, in writing or by a telephone call to the enrollment broker's toll-free member telephone line.

*b.* After the 90 days following the date of the enrollee's enrollment with the MCP, when an enrollee is requesting disenrollment due to good cause, the enrollee member shall first make a verbal or written filing of the issue through the MCP's grievance system. If the member does not experience resolution, the MCP shall direct the member to the enrollment broker. The enrolled member may request disenrollment in writing or by a telephone call to the enrollment broker's toll-free member telephone line and must request a good-cause change for enrollment. Good-cause changes include the following:

(1) The MCP does not, because of moral or religious objections, cover the service the member seeks.

(2) The member needs related services to be performed at the same time, not all related services are available within the network, and the member's primary care provider or another provider determines that receiving the services separately would subject the member to unnecessary risk.

(3) Other reasons, including but not limited to poor quality of care, lack of access to services covered under the contract, lack of access to providers experienced in dealing with the member's health or dental care needs, or eligibility and choice to participate in a program not available in managed care (for example, PACE).

*c.* The final decision for disenrollment shall be determined by the department.

**73.4(2) Disenrollment by department.** Disenrollment will occur when:

*a.* The contract between the department and the MCP is terminated.

*b.* The enrollee becomes ineligible for Medicaid, the hawki program, the Iowa health and wellness plan, or the dental wellness plan. If the enrollee becomes ineligible and is later reinstated to these programs, enrollment in the MCP will also be reinstated.

*c.* The enrollee transfers to an eligibility group excluded from managed care plan enrollment. "Enrollee" is defined in rule 441—73.1(249A).

*d.* The department has determined that participation in the HIPP program as described in 441—Chapter 75 is more cost-effective than enrollment in managed health care.

*e.* The enrollee dies.

*f.* The enrollee has changed residence to another state.

**73.4(3) Managed care plan-requested disenrollment.** An MCP shall not disenroll an enrollee or encourage an enrollee to disenroll for any reason, including the enrollee's health or dental care needs or change in health or dental care status or because of the enrollee's utilization of medical services, diminished capacity, or uncooperative or disruptive behavior resulting from the enrollee's special needs (except when the enrollee's continued enrollment seriously impairs the MCP's ability to furnish services to either this particular enrollee or other enrollees). In instances where the exception applies, the MCP shall provide evidence to the department that continued enrollment of an enrollee seriously impairs the MCP's ability to furnish services to either this particular enrollee or other enrollees. The MCP shall have methods by which the department is assured that disenrollment is not requested for another reason.

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**73.4(4) Disenrollment effective date.**

a. The effective date of a department-approved disenrollment shall be no later than the first day of the second calendar month beginning after the month in which:

- (1) The enrollee requests disenrollment pursuant to subrule 73.4(1);
- (2) The department notifies the enrollee and MCP of disenrollment pursuant to subrule 73.4(2); or
- (3) The MCP requests disenrollment pursuant to subrule 73.4(3).

b. The enrollee shall remain enrolled in the MCP and the MCP will be responsible for services covered under the contract until the effective date of disenrollment unless the enrollee is in an inpatient setting at the time of disenrollment. If the enrollee is in an inpatient setting at the time of disenrollment, the managed care organization shall be responsible for the inpatient services for 60 days or until the enrollee is discharged.

**441—73.5(249A) MCP covered services.****73.5(1) Required services—MCOs.** A managed care organization shall provide:

a. For enrollees other than Iowa health and wellness plan enrollees and hawki program enrollees, services as set forth in 441—Chapters 78, 81, 82, 83, 84, 85, and 87, with the exception of the following:

- (1) Area education agency services.
- (2) Dental services not provided in an outpatient hospital setting.
- (3) Infant and toddler program services.
- (4) Local education agency services.
- (5) State of Iowa Veterans Home services.
- (6) Money Follows the Person (MFP) Rebalancing Demonstration Grant-funded services.

b. Services as set forth in 441—Chapter 74 for Iowa health and wellness plan enrollees.

c. Services as set forth in 441—Chapter 86 for hawki program enrollees.

**73.5(2) Community-based case management service.** The managed care organization is required to provide services that meet requirements specified in the contract and in 441—Chapter 90.

**73.5(3) Health home services.** The managed care organization is required to provide services that meet the requirements specified in 441—Chapter 78 and as specified in the contract.

**73.5(4) Value-added services.** A managed care organization may develop optional services and supports to address the needs of enrollees. These services and supports shall be implemented only after approval by the department.

**73.5(5) Required services—PAHPs.** A PAHP shall provide services to enrollees under the contract with the state agency and on the bases of prepaid capitation payments or other payment arrangements that do not use state plan payment rates. PAHPs shall provide:

a. For enrollees other than Iowa health and wellness plan enrollees and hawki program enrollees, services as set forth in 441—Chapter 73, 74, 78, and 88 with the exception of the following:

- (1) Area education agency services.
- (2) Inpatient hospital or institutional services.
- (3) Advance directive requirements in dental nonclinical services such as transportation.
- (4) Long-term care (skilled nursing facilities, intermediate care facilities, residential care facilities, state resource centers, or intermediate care facilities for persons with an intellectual disability).
- (5) Inpatient psychiatric care provided at the state-administered mental health institutes.
- (6) Services provided at specialized adolescent psychiatric facilities.
- (7) Day treatment and partial hospitalization services for persons aged 20 or under.
- (8) Enhanced services provided to certain eligible recipients.

b. Services as set forth in 441—Chapter 74 for Iowa health and wellness plan enrollees.

c. Services as set forth in 441—Chapter 86 for hawki program enrollees.

**441—73.6(249A) Amount, duration and scope of services.**

**73.6(1)** The MCP shall provide, at a minimum, all benefits and services deemed medically necessary that are covered under the contract with the department. In accordance with federal funding requirements, including 42 CFR 438.210(a)(3) as amended to July 19, 2022, the MCP shall furnish



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

covered services in an amount, duration and scope reasonably expected to achieve the purpose for which the services are furnished. The MCP shall not arbitrarily deny or reduce the amount, duration and scope of a required service solely because of diagnosis, type of illness, or condition of the enrollee. With the exception of court-ordered services, the managed care organization shall require as a condition of payment managed care organization approval of admissions to a nursing facility, an intermediate care facility for persons with an intellectual disability, a psychiatric medical institution for children, and a mental health institute. Managed care organizations shall also require managed care organization approval of out-of-state placements as a condition of payment.

**73.6(2)** The MCP may place appropriate limits on services on the basis of medical necessity criteria for the purpose of utilization management, provided the services can reasonably be expected to achieve their purpose in accordance with the contract. The MCP shall not:

*a.* Avoid costs for services covered in the contract by referring members to publicly supported health or dental care resources.

*b.* Deny reimbursement of covered services based on the presence of a preexisting condition.

**73.6(3)** The MCP shall allow each enrollee to choose a health or dental professional, to the extent possible and appropriate, within the MCP's provider network. The MCP shall ensure compliance with the Americans with Disabilities Act (ADA) in the delivery and approval of all services.

**441—73.7(249A) Emergency services.**

**73.7(1)** Emergency services shall be available 24 hours a day, seven days a week.

**73.7(2)** In accordance with federal funding requirements, including 42 CFR 438.114 as amended to July 19, 2022, the MCP shall:

*a.* Cover emergency services without the need for prior authorization and shall not limit reimbursement to network providers.

*b.* Cover and pay for emergency services regardless of whether the provider that furnishes the services is enrolled with Iowa Medicaid or has a contract with the MCP.

*c.* Pay noncontracted providers for emergency services the amount that would have been paid if the service had been provided under the state's fee-for-service Medicaid program.

*d.* Cover the medical screening examination, as described by EMTALA, provided to a member who presents to an emergency department with an emergency medical condition. This requirement applies to managed care organizations only.

**73.7(3)** The MCP shall not deny payment for:

*a.* Treatment obtained when an enrollee has an emergency medical condition.

*b.* Treatment obtained when a representative of the MCP instructs the enrollee to seek emergency medical services.

**441—73.8(249A) Access to service.**

**73.8(1)** The MCP shall ensure enrollees have access to services as specified in the contract. In general, the MCP shall provide available, accessible, and adequate numbers of institutional facilities, service locations, and service sites and professional, allied, and paramedical personnel for the provision of covered services, including all emergency services, on a 24-hours-a-day, seven-days-a-week basis. At a minimum, access to services shall comply with the standards described in the contract. For areas of the state where provider availability is insufficient to meet these standards, for example, in health or dental professional shortage areas and medically underserved areas, the access standards shall meet the usual and customary standards for the community. Exceptions to the requirements contained in this rule shall be justified and documented to the state on the basis of community standards. All other services not specified in this rule shall meet the usual and customary standards for the community.

**73.8(2)** Choice of providers. An enrollee shall use the MCP's provider network unless the MCP has authorized a referral to a nonparticipating provider for provision of a service or treatment plan or as specified for provision of emergency services set forth in rule 441—73.7(249A). In accordance with federal funding requirements, including 42 CFR 431.51(b)(2) as amended to July 19, 2022, the managed

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care organization shall allow enrollees freedom of choice of providers of any department-enrolled family planning service provider including those providers who are not in the MCP network.

**73.8(3)** Continuity of care. The MCP shall have policies and procedures that provide for the continuity of care of treatment to ensure that a new enrollee's existing services are honored as required in the contract.

**73.8(4)** Adequate service referral support and after-hours call-in coverage. The MCP shall ensure enrollee access to service information and medical coverage 24 hours a day, 7 days a week, 365 days a year.

*a. Member helpline.* The MCP shall maintain a dedicated toll-free member services helpline as established in the contract to handle a variety of member inquiries and to provide warm transfer of enrollees to outside entities, such as provider offices, and to internal MCP departments, such as care coordinators.

*b. Nurse call line.* The managed care organization shall operate a toll-free nurse call line that provides nurse triage telephone services for members to receive medical advice 24 hours a day, seven days a week from trained medical professionals.

**73.8(5)** An enrollee's primary care provider shall be responsible for providing preventative and primary health or dental care to the enrollee; for initiating referrals for specialist care, where appropriate; and for maintaining the continuity of patient care. Primary care providers may be physicians, advanced registered nurse practitioners, or physician assistants, licensed and practicing in accordance with state law.

**441—73.9(249A) Incident reporting.**

**73.9(1)** The managed care organization shall develop and implement a critical incident reporting and management system for participating providers in accordance with the department requirements for reporting incidents for Section 1915(c) HCBS waivers, for the Section 1915(i) habilitation program, and as required for licensure of programs through the department of inspections and appeals.

**73.9(2)** The managed care organization shall develop and implement policies and procedures, subject to department review and approval, to:

- a.* Address and respond to incidents;
- b.* Report incidents to the appropriate entities in accordance with required time frames; and
- c.* Track and analyze incidents.

**441—73.10(249A) Discharge planning.** The managed care organization shall establish policies and procedures, subject to approval by the department, that protect an individual from involuntary discharge that may lead to placement in an inappropriate or more restrictive setting. The managed care organization shall facilitate a seamless transition whenever a member transitions between facilities or residences.

**441—73.11(249A) Level of care assessment and annual reviews.** The managed care organization shall establish policies and procedures to ensure the implementation of level of care and needs-based eligibility assessments and reassessments as required in the contract and consistent with the department's level of care and needs-based eligibility assessment process and the requirements provided in 441—Chapters 75, 78, 81, 82, 83, and 85. Waiver level of care determinations must be consistent with those made for the appropriate institutional level of care under the state plan.

**73.11(1)** Initial level of care assessment. Managed care organizations are responsible for conducting level of care and needs-based eligibility assessments for a current enrollee who requires a level of care or a needs-based eligibility assessment. The managed care organization shall perform the assessment using department-approved assessment tools. The results of the assessment shall be submitted to the Iowa Medicaid medical services unit for determination of level of care or needs-based eligibility.

**73.11(2)** Annual continued stay reviews, continued care reviews and redeterminations. When an enrollee requires a continued stay review, a continued care review or a redetermination, the managed care organization shall use department-approved assessment tools. If the managed care organization becomes aware that the enrollee's functional or medical status has changed in a way that may affect

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the enrollee's level of care or needs-based eligibility, the managed care organization shall submit the assessment findings to the Iowa Medicaid medical services unit for determination of level of care or needs-based eligibility.

**73.11(3)** At any time, if the managed care organization becomes aware that the enrollee's functional or medical status has changed in a way that may affect level of care or needs-based eligibility, the managed care organization shall conduct a level of care or needs-based assessment using the department-approved tools and submit the assessment to the Iowa Medicaid medical services unit for determination of level of care or needs-based eligibility.

**441—73.12(249A) Appeal of MCP actions.** The MCPs shall have written appeal policies and procedures for an enrollee, or an enrollee's authorized representative, to appeal an MCP action. The policies must address contractual requirements and federal funding requirements, including 42 CFR 438, Subpart F, as amended to July 19, 2022.

**73.12(1) MCP appealable actions.** MCP actions that may be appealed include:

- a. Denial or limited authorization of a requested service, including the type or level of service.
- b. Reduction, suspension, or termination of a previously authorized service.
- c. Denial, in whole or in part, of payment of service.
- d. Failure to provide services in a timely manner as described by the department.
- e. Failure to act within the required time frames set forth in federal funding requirements, including 42 CFR 438.408(b) as amended July 19, 2022.

f. For a resident of a rural area who has only one appropriate provider of a needed service, the denial of an enrollee's request to exercise the enrollee's right to obtain services outside of the MCO's network.

g. The denial of an enrollee's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other enrollee financial liabilities.

**73.12(2) Appeal process.** The MCP appeal process shall be approved by the department and shall:

- a. Allow for the appeal request to be submitted in writing or verbally.
- b. Require acknowledgment of the receipt of a request for an appeal within three working days.
- c. Allow for participation by the enrollee and the provider.
- d. Provide for resolution of nonexpedited appeals to be concluded within 30 calendar days of receipt of the request unless an extension is requested.
- e. Provide for resolution of expedited appeals where the standard time period could seriously jeopardize the member's health or ability to maintain or regain maximum function to be within 72 hours of receipt of the notice pursuant to federal funding requirements, including 42 CFR 438.402 as amended to July 19, 2022.

f. Ensure that the review will be made by qualified professionals who were not involved with the original action.

g. Ensure issuance of a notice of decision for each appeal. These notices shall contain the member's appeal rights with the department and shall contain an adequate explanation of the action taken and the reason for the decision.

**441—73.13(249A) Appeal to department.** If the enrollee is not satisfied with the final decision rendered by the MCP through the managed care plan's appeal process, the enrollee may appeal an action in accordance with the appeal process available to all persons receiving Medicaid-funded services as set forth in 441—Chapter 7.

**441—73.14(249A) Continuation of benefits.** The MCP shall be required to continue the member's benefits during the appeal in accordance with federal funding requirements, including 42 CFR 438.420 as amended to July 19, 2022.

**73.14(1)** If the benefits are continued or reinstated while the appeal is pending, the benefits must be continued until one of the following occurs:

- a. The enrollee withdraws the appeal request;

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

b. Ten days pass after the MCP mailed the notice providing the resolution of the appeal against the enrollee, unless the enrollee, within the ten-day time frame, requests a state fair hearing with continuation of benefits until a state fair hearing decision is reached; or

c. The time period or service limits of a previously authorized service are met.

**73.14(2)** If the final resolution of the appeal is adverse to the enrollee, that is, it upholds the MCP's action, the MCP may recover the cost of the services furnished to the enrollee while the appeal is pending, to the extent that services were furnished solely because of the requirements to maintain benefits during the appeal.

**73.14(3)** If the MCP or state fair hearing officer reverses a decision to deny, limit, or delay services that were not furnished while the appeal was pending, the MCP must authorize and provide the disputed services promptly and as expeditiously as the member's health or dental condition requires. If the MCP or the state fair hearing officer reverses a decision to deny authorization of services and the enrollee received the disputed services while the appeal was pending, the MCP must pay for these services.

**441—73.15(249A) Grievances.** The MCP shall have policies and procedures for review of any nonclinical incidents, nonclinical complaints, or nonclinical concerns. Grievances may be communicated verbally or in writing and require that the review be conducted by someone other than the person or persons involved in the grievance. All policies related to the review of grievances shall be approved by the department prior to implementation.

**441—73.16(249A) Written record.** All MCP enrollee appeals and grievances shall be logged and reported to the department. The log shall include the status and resolution of all appeals and grievances.

**441—73.17(249A) Information concerning procedures relating to the review of MCP decisions and actions.** The MCP's written procedures for the review of MCP's decisions and actions shall be provided to each new enrollee, to participating providers in a provider manual, and to nonparticipating providers upon request.

**441—73.18(249A) Records and reports.**

**73.18(1) Records system.** The MCPs shall document and maintain clinical and fiscal records in accordance with federal and state requirements, including 441—Chapter 79 and 42 CFR 456 as amended to July 19, 2022, throughout the course of the contract. The records system shall:

a. Identify transactions with or on behalf of each enrollee by the state identification number assigned to the enrollee by the department.

b. Provide a rationale for, and documentation of, decisions made by the MCP based upon medical necessity.

c. Permit effective professional review for medical audit processes.

d. Facilitate an adequate system for monitoring treatment reimbursed by the managed care organization including follow up of the implementation of discharge plans and referral to other providers.

**73.18(2) Content of individual treatment record.** The MCP shall ensure that participating providers maintain an adequate record-keeping system that includes a complete medical, dental, or service record for each enrolled member including documentation of all services provided to each enrollee in compliance with the contract and provisions of 441—Chapter 79 and pursuant to federal funding requirements, including 42 CFR 456 as amended to July 19, 2022. Beginning January 1, 2021, the managed care organization shall require use of an electronic visit verification system for personal care services.

**73.18(3) Confidentiality of health care, mental health care, and substance abuse information.** The MCP shall protect and maintain the confidentiality of health care, mental health care, dental care and substance abuse information by implementing policies for staff and through contract terms with participating providers. The policies must comply with applicable state and federal laws.

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**441—73.19(249A) Audits.** The department or its designee and the U.S. Department of Health and Human Services (HHS) may evaluate through inspections or other means the quality, appropriateness, and timeliness of services performed by the MCP. The department or HHS may audit and inspect any records of an MCP, or the subcontractor of the MCP, that pertain to services performed and the determination of amounts paid under the contract. These records will be made available at times, at places, and in a manner as authorized representatives of the department, its designee or HHS may request.

**441—73.20(249A) Marketing.** MCP marketing activities and materials shall comply with applicable laws and regulations regarding marketing by the MCP and contract terms. The department shall approve all marketing materials, which must comply with federal funding requirements, including 42 CFR 438.10 and 42 CFR 438.104 as amended to July 19, 2022.

**441—73.21(249A) Enrollee education.**

**73.21(1) Use of services.** The MCP shall provide written information to all enrollees on the use of services the MCP is responsible to arrange, monitor, and reimburse. Information must include the array of services covered; how to access covered services; the providers participating; an explanation of the process for the review of MCP decisions and actions, including the enrollee's right to a fair hearing under 441—Chapter 7 and how to access that fair hearing process; provision of after-hours and emergency care; procedures for notifying enrollees of a change in benefits or office sites; how to request a change in providers; a statement of consumer rights and responsibilities; out-of-area use of service information; availability of toll-free telephone information and crisis assistance; and the appropriate use of the referral system.

**73.21(2) Outreach to members with special needs.** The MCP shall provide enhanced outreach to members with special needs including, but not limited to, persons with a psychiatric disability, an intellectual disability or other cognitive impairments; illiterate persons; non-English-speaking persons; and persons with visual impairments or who are deaf or hard of hearing.

**73.21(3) Patient rights and responsibilities.** The MCP shall have in effect a written statement of patient rights and responsibilities that is available upon request as well as issued to all new enrollees. This statement shall be part of the packet of enrollment information provided to all new enrollees.

**441—73.22(249A) Payment to the MCP.**

**73.22(1) Capitation rate.** In consideration for all services rendered by an MCP under a contract with the department, the MCP will receive a payment each month for each enrolled member. The monthly reimbursement may be reduced by amounts withheld for pay-for-performance components of the contract. The withheld amounts will be distributed based on the terms described in the managed care contract. Additionally, the department will make an allowance for obligations resulting from Section 9010 of the Patient Protection and Affordable Care Act, the health insurance providers fee. This capitation rate, inclusive of the amounts withheld and the health insurance providers fee, represents the total obligation of the department with respect to the costs of medical care and services provided to enrolled members under the contract except as otherwise designated in the contract rate. Pay-for-performance terms will allow for incentive reimbursement if the MCP meets metrics described in the MCP contract.

**73.22(2) Determination of rate.** The actuarially sound capitation rate will be determined according to the terms of federal funding requirements, including 42 CFR 438.6 as amended to July 19, 2022, Actuarial Standards of Practice 49, and other related CMS regulations and generally accepted actuarial principles and practices.

**73.22(3) Third-party liability.** If an enrolled member has health insurance coverage or a responsible party other than the Medicaid program available for payment of medical or dental expenses, it is the right and responsibility of MCP to investigate these third-party resources and attempt to obtain payment.

*a.* The MCP shall have a time limit to attempt to collect from third-party resources. The time limit shall be determined by the department.

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- b. The MCP shall retain all funds collected from third-party resources during the time limit.
- c. A complete record of all third-party collections must be maintained and made available to the department on request.
- d. In the event that the MCP no longer contracts with the department, the department has the right to seek recovery of any third-party collections not collected by the time the contract ends and retain the funds. This includes but is not limited to subrogation cases.
- e. The department has the right to retain all funds collected from third-party resources after the MCP time limit.

**73.22(4) Medical loss ratio.** The MCP shall report the experienced medical loss ratio for each contract rate period. In the event that the medical loss ratio falls below the department-designated target, the department shall recoup excess capitation paid to the MCP.

**441—73.23(249A) Claims payment by the MCP.**

**73.23(1)** The managed care organizations shall pay or deny:

- a. Ninety percent of all clean claims within 30 calendar days of receipt,
- b. Ninety-nine point five percent of all clean claims within 90 calendar days of receipt, and
- c. Ninety-five percent of all claims within 45 calendar days of receipt.

**73.23(2)** The PAHP shall pay or deny:

- a. Ninety percent of all clean claims within 14 calendar days of receipt,
- b. Ninety-nine percent of all clean claims within 90 calendar days of receipt, and
- c. Ninety-five percent of all claims within 21 calendar days of receipt.

**73.23(3)** Managed care limits on payment responsibility for services.

- a. The MCP is not required to reimburse providers for the provision of services that do not meet the criteria of medical necessity.
- b. The MCP has the right to require prior authorization of covered services and to deny reimbursement to providers that do not comply with such requirements.
- c. Payment responsibilities for emergency room services are as provided in rule 441—73.7(249A).

**73.23(4)** Payment to nonparticipating providers. In reimbursing nonparticipating providers, the managed care organization is obligated to pay 80 percent of the payment to participating providers.

**441—73.24(249A) Quality assurance.** The MCP shall have in effect an internal quality assurance and performance improvement system that meets the requirements of any or all applicable state and federal laws.

**441—73.25(249A) Certifications and program integrity.** The MCP shall develop and implement policies, procedures and a mandatory compliance plan to ensure compliance with the contract requirements for certification, program integrity and prohibited affiliations. The MCP shall cooperate and collaborate with the department on all program integrity activities. The MCP shall comply with state and federal laws pertaining to these requirements, including 42 CFR 438.608 and 42 CFR 455 as amended to July 19, 2022.

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

[Filed 3/12/23, effective 6/1/23]

[Published 4/5/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/23.

**ARC 6960C****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed****Rule making related to child-placing agencies**

The Human Services Department hereby amends Chapter 108, "Licensing and Regulation of Child-Placing Agencies," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 237.3.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 237.3.

*Purpose and Summary*

The rules in Chapter 108 were reviewed as part of the Department's five-year rules review. This rule making establishes licensing procedures for all child-placing agencies.

The rules review resulted in the following changes:

- Remove outdated form names.
- Add form numbers for documents that must be submitted by a requested entity when submitting a request for a record check evaluation.
- Clarify that record check evaluations for child-placing agency staff will include a review of an individual's founded dependent adult abuse report in addition to the individual's criminal conviction record or a founded child abuse report.
- Add that the Department will consider the likelihood that a person will commit a crime or founded abuse again when conducting a record check evaluation in accordance with the Iowa Code.
- Provide cross-references to rules regarding notices and appeal rights.
- Modify qualifications for caseworkers.
- Clarify when foster parents shall obtain child abuse mandatory reporter training.
- Add a requirement that child-placing agencies shall provide hygiene items for youth.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 11, 2023, as **ARC 6809C**.

The Department received one comment from a provider that is in charge of licensing staff for the provider's organization. The commenter provided the same comments for Chapters 108 and 156.

**Comment:**

The commenter stated that the commenter recognized that there is a shortage of qualified applicants under the current regulations. The commenter further stated that with the proposed changes relating to caseworker qualifications in Chapters 108 and 156, there will be a stronger likelihood that qualified applicants will apply for rehabilitative treatment and supportive services (RTSS) caseworker positions and the frequency of requesting an exception to policy will decline. However, the commenter was concerned as to how the change in caseworker qualifications will impact the Council of Accreditation (COA) requirements. The commenter noted that the COA requirements do exist; therefore preference will still be given to hire caseworkers who meet the COA requirements.

The commenter wanted to know whether, in order to maintain accreditation requirements, some accommodation is needed to ensure that the accreditation requirements will not be jeopardized when an employee is hired at the lower qualifications listed in this rule making. One suggestion would be to develop additional mentoring and supervision with reports signed off by a supervisor who meets the higher qualification requirements.

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**Department response:**

COA will not withhold any accreditation, but COA will offer it up as an area of opportunity to enhance an agency's practice standards. This change in the Department's rules will offer COA an opportunity to review its standards in light of the employment and hiring challenges Iowa providers and contractors are facing. This rule making will be effective July 1, 2023. The Department appreciates the concern submitted, and the Department will monitor to ensure there are no unintended consequences.

No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on March 9, 2023.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on June 1, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend rule **441—108.1(238)**, definition of "Child," as follows:  
 "Child" ~~shall mean~~ means the same as defined by Iowa Code section 234.1.

ITEM 2. Amend subrule 108.2(2) as follows:

**108.2(2) Application.** An agency or person applying for a license shall complete Form 470-0723, ~~Application for License or Certificate of Approval~~. The application shall be completed and signed by the administrator or the appropriate officer and submitted to the department.

*a.* to *c.* No change.

ITEM 3. Amend subrule 108.2(5) as follows:

**108.2(5) Certificate of license.** The department shall issue or renew Form 470-3623, ~~Certificate of License~~, every three years, without cost, to any child-placing agency which meets the minimum requirements applicable to child-placing agencies as defined by Iowa Code chapter 238 and this chapter. The license shall be posted in a conspicuous place on the licensed premises.

ITEM 4. Amend subrules 108.2(10) and 108.2(11) as follows:

**108.2(10) Method and content of notice.** The notice of denial, revocation, or suspension shall be sent by restricted certified mail ~~and shall include the following:~~ pursuant to 441—Chapter 16.

*a.*—A specific description of the condition requiring the suspension, denial or revocation.

*b.*—The specific laws or rules violated.



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~~e. The effective date of denial, revocation or suspension.~~

**108.2(11) Right to appeal.** Any agency which disagrees with the department's licensing decision may appeal to the department in accordance with 441—Chapter 7. The appeal shall be filed ~~within 30 days of receipt~~ on or before the thirtieth day following the date of notice of the licensing decision.

ITEM 5. Amend subrule 108.4(1) as follows:

**108.4(1) Qualifications for all staff.** A child-placing agency employee or volunteer shall be emotionally stable and have the experience and education to perform the duties assigned. The agency shall not employ any person or give any person direct volunteer responsibility for a child or access to a child when the child is alone if that person has been convicted of a crime involving the mistreatment or exploitation of a child or dependent adult. The agency shall not employ any person or give any person direct volunteer responsibility for a child or access to a child when the child is alone if that person has a record of a criminal conviction or founded child or dependent adult abuse report unless the department has evaluated the crime or abuse and determined that the crime or abuse does not merit prohibition of volunteering or employment. If the child-placing agency is out of state, the agency shall complete that state's child or dependent adult abuse record check and a criminal record check.

a. If a record of criminal conviction or founded child or dependent adult abuse exists, the person shall be offered the opportunity to complete and submit ~~Iowa's Record Check Evaluation form~~ Form 470-2310.

b. In its evaluation, the department shall consider:

(1) to (3) No change.

(4) The degree of rehabilitation; ~~and~~

(5) The likelihood that the person will commit the crime or founded abuse again; and

(6) The number of crimes or founded abuses committed by the person involved.

c. The agency shall maintain the following information with respect to each staff person:

(1) No change.

(2) A written, signed and dated statement furnished by the staff person which discloses any founded reports of child or dependent adult abuse on the person that may exist prior to the staff person's providing any care or services to or on behalf of the facility.

(3) Documentation that a child or dependent adult abuse record check of the staff person has been completed with the Iowa central abuse registry for any founded reports of child or dependent adult abuse prior to the staff person's providing any care or services directly or indirectly to children under the care of the agency. A copy of the department's evaluation of this child or dependent adult abuse record check shall be kept in the staff record.

ITEM 6. Amend paragraph **108.4(4)“c”** as follows:

c. Graduation from an accredited four-year college or university with a bachelor's degree in a human service field related to social work, psychology, or a related behavioral science or in education and the equivalent of ~~two years~~ one year of full-time experience in social work or experience in the delivery of human services in a public or private agency.

ITEM 7. Amend paragraph **108.6(5)“d”** as follows:

d. Record of founded child or dependent adult abuse reports and the department's evaluation of same.

ITEM 8. Rescind paragraph **108.7(1)“e.”**

ITEM 9. Amend paragraph **108.7(12)“b”** as follows:

b. A child shall have a physical examination at least annually. This shall be performed by a licensed physician, ~~physician's~~ physician assistant or licensed nurse practitioner.

ITEM 10. Amend paragraph **108.8(1)“a”** as follows:

a. Availability of applications. The agency may provide Form 470-0689, ~~Foster Family Home License Application~~, to anyone requesting to be licensed.

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

ITEM 11. Amend subparagraph **108.8(1)“c”(13)** as follows:

(13) Record checks. The licensed child-placing agency shall submit record checks for each applicant and for anyone who is 14 years of age or older living in the home of the applicant to determine whether they have any founded child or dependent adult abuse reports or criminal convictions or have been placed on the sex offender registry. The licensed child-placing agency shall use Form 470-0643, ~~Request for Child Abuse Information~~, and Form 595-1396, ~~DHS Criminal History Record Check, Form B~~, for this purpose. ~~Each person subject to record checks shall also be fingerprinted for a national criminal history check.~~ The department's contractor for the recruitment and retention of resource families shall assist applicants in completing required record checks, including fingerprinting. Any criminal or abuse records discovered shall be evaluated according to the procedures in rule 441—113.13(237).

ITEM 12. Amend subrule 108.8(6) as follows:

**108.8(6) Foster family training.** The agency shall ensure that each foster home recommended for foster family license has complied with the training requirements in rule 441—113.8(237).

~~Within six months of Prior to~~ licensure and every three years thereafter, each foster parent shall obtain mandatory reporter training relating to identification and reporting of child abuse.

ITEM 13. Rescind subparagraph **108.9(1)“a”(8)**.

ITEM 14. Amend paragraph **108.9(4)“d”** as follows:

*d. Record checks.* The licensed child-placing agency shall perform record checks for each applicant and for the other persons living in the home of the applicant as follows:

(1) The records of the applicants shall be checked:

1. On the Iowa central abuse registry using ~~the Request for Child Abuse Information form~~ Form 470-0643;

2. By the Iowa division of criminal investigation, using ~~the DHS Criminal History Record Check Form B~~ 595-1396;

3. No change.

4. On the child or dependent adult abuse registry of any state where the applicant has lived during the five years prior to the issuance of the investigative report; and

5. No change.

(2) The records of persons aged 14 or older living in the home of the applicant shall be checked:

1. On the Iowa central abuse registry using ~~the Request for Child Abuse Information form~~ Form 470-0643;

2. By the Iowa division of criminal investigation, using ~~the DHS Criminal History Record Check Form B~~ 595-1396; and

3. No change.

(3) Out-of-state child and dependent adult abuse checks and national criminal history checks may be completed on any adult in the home of the applicant if the certified adoption investigator has reason to do so.

(4) and (5) No change.

ITEM 15. Amend paragraph **108.9(4)“e”** as follows:

*e. Evaluation of record.* If the applicant or anyone living in the home has record of founded child or dependent adult abuse, a criminal conviction, or placement on the sex offender registry, the applicant shall not be approved to adopt unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of approval.

(1) No change.

(2) The person with the criminal conviction or founded child or dependent adult abuse report shall complete and return ~~the Record Check Evaluation form~~ Form 470-2310 within ~~10~~ ten calendar days of the date on the form to be used to assist in the evaluation. Failure of the person to complete and return the form within the specified time frame may result in a written denial of approval for adoption.

(3) If the applicant, or anyone living in the home of the applicant, has been convicted of a simple misdemeanor or a serious misdemeanor that occurred five or more years prior to application, the

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

evaluation and decision may be made by the ~~licensed child-placing agency~~ department's centralized service area. The ~~licensed child-placing agency~~ department's centralized service area shall notify the applicant of the results of the evaluation.

(4) If the applicant, or any person living in the home of the applicant, has a founded child or dependent adult abuse report, has been convicted of an aggravated misdemeanor or felony at any time, or has been convicted of a simple or serious misdemeanor that occurred within five years prior to application, the licensed child-placing agency shall initially conduct the evaluation.

1. If the licensed child-placing agency determines that the abuse or crime does warrant prohibition of approval, the licensed child-placing agency shall notify the applicant of the results of the evaluation in writing. The notice shall contain information on appeal rights pursuant to 441—Chapter 7.

2. If the child-placing agency determines that the applicant should be approved despite the abuse or criminal conviction, the agency shall provide copies of ~~the Record Check Evaluation form~~ Form 470-2310 and the written notice to the applicant to the Administrator, Division of Adult, Children and Family Services, Department of Human Services, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Within 30 days, the administrator shall determine whether the abuse or crime merits prohibition of approval and shall notify the child-placing agency in writing of that decision.

ITEM 16. Amend subparagraph 108.9(4)“g”(4) as follows:

(4) The applicant or any person residing in the home has a record of founded child or dependent adult abuse, unless an evaluation of the founded child or dependent adult abuse has been made by the department which concluded that the founded child or dependent adult abuse does not merit prohibition of approval.

ITEM 17. Amend subparagraph 108.9(4)“h”(1) as follows:

(1) The child and dependent adult abuse and criminal history record checks, except for the national criminal history check, shall be repeated. Any abuses or convictions of crimes since the last record check shall be evaluated using the same process.

ITEM 18. Amend subparagraph 108.9(4)“i”(2) as follows:

(2) When a person aged 14 or older moves into the home, the agency shall perform checks on the Iowa central abuse registry, by the division of criminal investigation, and on the sex offender registry. The record check evaluation process shall be completed if the person has a criminal conviction or founded child or dependent adult abuse report or is on the sex offender registry.

ITEM 19. Amend paragraph 108.9(6)“a” as follows:

a. *International adoptions preplacement investigation.* Preplacement investigations for the purpose of international adoptions shall meet the requirements of the United States ~~Citizen~~ Citizenship and Immigration Service ~~Services~~.

ITEM 20. Amend subrule 108.9(9) as follows:

**108.9(9) Right to appeal.** An adoptive applicant or an adoptive family may appeal an adverse decision made by a licensed agency pursuant to 441—Chapter 7. The appeal shall be filed with the department within 30 days of the notice of decision to the applicant or family by the licensed agency.

ITEM 21. Amend paragraph 108.10(3)“c” as follows:

c. Supervision to assist the child in developing the needed structure to live in this setting and in locating and using other needed services. Supervision shall include guidance, oversight, and behavior monitoring.

(1) to (3) No change.

(4) The agency shall provide ~~a means for children in a scattered site setting to contact agency personnel 24 hours a day, seven days a week~~ personal care items for youth, and these items shall reflect the individual, cultural, racial, and ethnic needs of the youth living in the agency's program.

(5) The agency shall ~~ensure that each child has access to and is receiving necessary medical care~~ provide a means for children in a scattered site setting to contact agency personnel 24 hours per day, seven days per week.

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(6) The agency shall ensure that each child has access to and is receiving necessary medical care.

[Filed 3/12/23, effective 6/1/23]

[Published 4/5/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/23.

**ARC 6961C**

## **HUMAN SERVICES DEPARTMENT[441]**

### **Adopted and Filed**

#### **Rule making related to licensing and regulation of foster family homes**

The Human Services Department hereby amends Chapter 113, "Licensing and Regulation of Foster Family Homes," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 237.3.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 237.3.

#### *Purpose and Summary*

Chapter 113 was reviewed as part of the Department's five-year rules review. Chapter 113 provides the administrative rules for the licensing and regulation of foster family homes.

The rules review resulted in the following changes:

- New definitions for kin and "fictive kin" are added due to an increase in kin and fictive kin becoming licensed foster parents and to align with Iowa Code chapter 237.
- The definition of "child or children" is updated to mean the child or children who are in foster care for the purpose of this chapter only.
- "Foster" is removed from each reference to "foster child" since placement also includes relative/fictive kin placements and it can be confusing if the term "foster care" is used.
- Communicable disease language is added to replace HIV language.
- Whooping cough vaccine requirements are updated to allow religious exemptions.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 25, 2023, as **ARC 6836C**. No public comments were received. No changes from the Notice have been made.

#### *Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on March 9, 2023.

#### *Fiscal Impact*

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

#### *Jobs Impact*

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

#### *Waivers*

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

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on June 1, 2023.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definitions of “Child or children,” “Fictive kin,” “Kinship care,” “Kinship caregiver,” “Relative,” “Variance” and “Waiver” in rule **441—113.2(237)**:

“*Child or children*” means the child or children who are in foster care for the purpose of this chapter only.

“*Fictive kin*” means an adult person who is not a relative of a child but who has an emotionally significant positive relationship with a child or the child’s family.

“*Kinship care*” means the care of a child by a relative or fictive kin providing full-time nurturing and protection.

“*Kinship caregiver*” means a relative or fictive kin providing care for a child.

“*Relative*” means an individual related to the child within the fourth degree of consanguinity or affinity, by marriage, or through adoption. “Relative” includes the parent of a sibling of the child if the sibling’s parent’s parental rights were not previously terminated in relation to the child.

“*Variance*” means meeting a licensing standard through alternative means.

“*Waiver*” means waiving the licensing standard entirely. A waiver may only be granted for non-safety licensing standards for a kinship caregiver.

ITEM 2. Amend rule **441—113.2(237)**, definitions of “Corporal punishment,” “Foster family home” and “Reasonable and prudent parent standard,” as follows:

“*Corporal punishment*” means the intentional physical punishment of ~~a foster child~~ the child(ren).

“*Foster family home*” means a home in which an individual person or persons or a married couple who wishes to provide or is providing, for a period exceeding 24 consecutive hours, board, room, and care for ~~a child~~ the child(ren) in a single family living unit.

“*Reasonable and prudent parent standard*” means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of ~~a child~~ the child(ren) while at the same time encourage the emotional and developmental growth of the ~~child~~ child(ren), that a caregiver shall use when determining whether to allow ~~a child~~ the child(ren) in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural, and social activities. For the purposes of this definition, “caregiver” means a foster parent with whom ~~a child~~ the child(ren) in foster care ~~has~~ have been placed or a designated official for a child care institution (including group homes, residential treatment, shelters, or other congregate care settings) in which ~~a child~~ the child(ren) in foster care ~~has~~ have been placed.

ITEM 3. Amend paragraphs **113.3(1)“a”** to “**d**” as follows:

a. Form 595-1396, ~~DHS Criminal History Record Check~~, for each person living in the home who is 14 years of age or older, as required by rule 441—113.13(237).

b. Form 470-0720, ~~Physician’s Report for Foster and Adoptive Parents~~, to satisfy the requirements of rule 441—113.11(237).

c. Form 470-0693, ~~Foster Care Private Water Supply Survey~~, if applicable.

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

*d.* Form ~~470-4657, Floor Plan~~ 470-5097. The applicant or the recruitment and retention provider shall complete a drawing of the floor plan of the family's home.

ITEM 4. Amend subrules 113.3(4) and 113.3(5) as follows:

**113.3(4) Home study.** The worker for the recruitment and retention contractor shall complete a family home study.

*a. Process.* Information for the home study is gathered primarily through the required preservice training as described in rule 441—117.1(237). Tribal agencies may also be involved in conducting home studies for American Indian and Alaska Native children. 42 U.S.C.A. Section 671(a)(26)(B) provides that any receiving state must treat any tribal home study report as meeting the requirements imposed by the state for the completion of a home study.

(1) The worker shall hold at least ~~two~~ three face-to-face interviews with the applicant with one of the interviews taking place in the applicant's home.

(2) The worker shall hold at least one face-to-face interview with each member of the household in the applicant's home to observe family functioning and to assess the family's capacity to meet the needs of ~~a child~~ the child(ren) in foster care. The worker will determine whether to interview or just observe each household member based on the household member's age and development.

(3) A physical inspection of the home is required. The worker shall use ~~the Foster Family Survey Report~~ Form 470-0695 to complete the physical inspection of the home to verify compliance with the licensing and regulation standards in this chapter.

(4) Reference checks shall be conducted as described at rule 441—113.14(237).

*b. Family assessment topics.* The assessment of the prospective foster family shall evaluate the family's ability to parent ~~a~~ the special needs child child(ren). The assessment shall include the following:

(1) The applicant's motivation for foster care and whether the family has biological, adopted, or foster ~~children~~ child(ren).

(2) The attitude of the family and the extended family toward accepting ~~a foster child~~ the child(ren).

(3) and (4) No change.

(5) Medical, mental, and emotional conditions that may affect the applicant's ability to parent ~~a child~~ the child(ren); treatment history; current status of treatment; and the evaluation of the treatment. Applicants and all household members must disclose any past or current mental health or substance abuse issues, or both. The department may require further documentation or evaluation, or both, to determine the suitability of the home.

(6) ~~All children~~ Any child(ren) who are household members must be up to date on immunizations jointly recommended by the American Academy of Pediatrics, the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, and the American Academy of Family Physicians, unless the immunization is contrary to the ~~child's~~ child(ren)'s health as documented by a licensed health care professional.

(7) An evaluation of the applicant's willingness to accept ~~a child~~ the child(ren) who ~~has~~ have medical problems (such as ~~HIV~~ a communicable disease), an intellectual disability, or emotional or behavioral problems. The applicant shall complete the department form to indicate choices about caring for ~~children~~ any child(ren) who have or are at risk for ~~HIV infection~~ a communicable disease and other medical problems.

(8) The applicant's ability to provide for ~~a child's~~ the child(ren)'s physical, medical, and emotional needs; ~~and to respect the child's~~ and to respect the child(ren)'s ethnic and religious identity; ~~and to support the child(ren)'s overall well-being.~~

(9) The safety of ~~foster children~~ the child(ren) in relation to any animals that live on the applicant's property.

(10) The adjustment of any ~~children~~ child(ren) in the home, including their attitudes toward foster care and adoption, relationships with others, and school performance.

(11) No change.

(12) The applicant's financial information and ability to provide for ~~a child~~ the child(ren).

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(13) The applicant’s attitude toward the ~~foster child’s~~ birth parents and siblings of the child(ren) placed in foster care.

(14) The applicant’s commitment to and capacity to maintain a ~~foster child’s~~ significant relationships of the child(ren) in foster care and work with the ~~child’s~~ child(ren)’s parents when the permanency goal is reunification.

(15) to (17) No change.

*c. Written report.* The recruitment and retention contractor shall prepare a written report of the family assessment using Form 470-5436, ~~Resource Parent Home Study.~~ The Resource Parent Home Study Form 470-5436 shall include a recommendation for the number, age, sex, characteristics, and special needs of ~~a child or children~~ the child(ren) the family can best parent and any other pertinent information in making the licensing recommendation. The home study shall be maintained in the foster family record.

**113.3(5) Decision.** The department worker shall use the home study to approve or deny a prospective family as an appropriate placement for ~~a child or children~~ the child(ren). The department worker shall notify the family of the licensing decision using Form 470-0709, ~~Notice of Action: Foster Family Home.~~

*a.* Upon approval, the department shall issue the applicant a foster family home license as described at rule 441—112.4(237). The license shall indicate the licensed capacity for the number of ~~foster children~~ child(ren) approved for placement in the foster family home under subrule 113.4(1).

*b.* No change.

ITEM 5. Amend rule 441—113.4(237) as follows:

**441—113.4(237) Provisions pertaining to the license.** On a case-by-case basis, the service area manager or area social work administrator may waive any non-safety licensing standard for a kinship caregiver or grant a variance for any standard for a non-kinship caregiver in this chapter unless:

1. No change.
2. The waiver or variance could have a negative impact on the safety and well-being of ~~a child~~ the child(ren) placed in the foster family home.

**113.4(1) Number of children.** A foster family home may care for up to five children unless a variance is approved as described in this rule. The license capacity shall be based on the number of the foster family’s biological and adoptive children and any relative placements. The license shall be issued for at least one child. ~~A child~~ Any child(ren) who ~~has~~ have reached the age of 18 and ~~remains~~ remain eligible for foster family care shall be included in the license capacity. Any variance to this rule must:

- a.* and *b.* No change.
- c.* Meet one of the following criteria:
  - (1) The foster parents have three or more children in the home and have shown the ability to parent a large number of children. A licensing variance may be approved at initial or renewal licensure to allow the placement of up to three ~~foster children~~ as set forth in the chart below:

No. of Children in the Home (birth/relative/adoptive placements)	Maximum License Capacity:	
	Without variance	With variance
0 children	5	Not applicable
1 child	4	Not applicable
2 children	3	Not applicable
3 children	2	3
4 children	1	3
5 or more children	Not applicable	3

(2) A variance beyond the maximum capacity of the foster home license is needed for the placement of a specific child in foster family care. A child-specific variance shall end when that child leaves the placement or any other change brings the family into licensed capacity. Unless a variance is needed for the placement of a sibling(s) of a ~~foster child~~ the child(ren) already in the home, or to keep siblings

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together, the maximum number of children in the home shall not exceed eight. On a case-by-case basis, if it is determined the foster parents have shown the parenting skills and have the social support system to meet the children's needs for parenting more than eight children, the social work administrator shall approve the foster parents to parent more than eight children. A foster family may have both a licensing and a child-specific variance concurrently.

*d.* No change.

**113.4(2)** and **113.4(3)** No change.

This rule is intended to implement Iowa Code sections 237.3 and 237.5.

ITEM 6. Amend subrules 113.5(1) to 113.5(3) as follows:

**113.5(1)** *General standards.* The foster home shall be safe, clean, well ventilated, properly lighted, properly heated, and free from vermin and rodents to ensure the well-being of the ~~foster children~~ child(ren) residing in the home.

**113.5(2)** *Grounds.*

*a.* There shall be safe outdoor space provided according to the age and developmental needs of the ~~foster child~~ child(ren) for active play. The area available shall be documented in the case record.

*b.* The ~~foster child~~ child(ren) shall be adequately supervised and protected against hazards including, but not limited to, traffic, bodies of water, railroads, waste material, and contaminated water. The foster parent shall provide environmental protections such as door alarms, baby monitors, fences, and foliage barriers as necessary to promote a safe environment.

*c.* The applicant's home must meet the following standards concerning swimming pools, hot tubs and spas:

(1) A child's plastic pool shall be drained daily and shall be inaccessible to ~~children~~ the child(ren) when it is not in use. Swimming pools must have a barrier on all sides at least four feet high.

(2) to (4) No change.

(5) Hot tubs and spas must have safety covers that are locked when not in use.

The foster parent or other adult shall provide reasonable supervision according to the ages and swimming abilities of the ~~foster children~~ child(ren) when they are using the pool.

**113.5(3)** *Bedrooms for ~~foster children~~ child(ren) placed in the home.*

*a.* Bedrooms shall either have been constructed for the purpose of providing sleeping accommodation or remodeled for sleeping to provide proper heat and ventilation. Bedroom additions to a home shall meet building code requirements. All bedrooms used by ~~foster children~~ the child(ren) placed in the home shall have:

(1) and (2) No change.

(3) An unobstructed, operable window that opens from the inside that is large enough to allow for an unrestricted exit by a ~~foster child~~ the child(ren) placed in the home;

(4) A closet, wardrobe, armoire, or dresser for the ~~child's~~ child(ren)'s clothes; and

(5) A standard bed, for infants and toddlers who cannot safely use a standard bed, a crib or crib-like furniture which has a waterproof mattress covering and sufficient bedding to enable a ~~child~~ the child(ren) to rest comfortably and which meets the current standards or recommendations from the U.S. Consumer Product Safety Commission or ASTM International for juvenile products for each child under two years of age if developmentally appropriate. The provider shall follow safe sleep practices as recommended by the American Academy of Pediatrics for infants under the age of one. Safe infant sleep practices shall conform to the following standards:

1. and 2. No change.

3. Infants shall not be allowed to sleep on a bed, sofa, air mattress or other soft surface. No ~~child~~ child(ren) shall be allowed to sleep in any item not designed for sleeping. This is not referring to a child in a car seat in a car.

4. to 6. No change.

*b.* The minimum bedroom area per child shall be 40 square feet. However, the service area manager or designee may approve a ~~smaller room size~~ waiver of this non-safety licensing standard for



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kinship caregivers or a variance when approval is in the best interest of specific children placed or to be placed in the home. Such approvals shall:

- (1) No change.
- (2) Contain the names and birth dates of the ~~children~~ child(ren) for whom issued; and
- (3) No change.
- c. No change.
- d. The ceiling height for bedrooms shall be adequate for the ~~child~~ child(ren).
- e. Except for baby video monitors for ~~children~~ the child(ren) birth to two years of age used in their bedrooms, video or surveillance cameras are not allowed in ~~children's~~ the child(ren)'s bedrooms or bathrooms.
- f. Bedrooms belowground shall:
  - (1) to (3) No change.
  - (4) Have provisions, such as a ladder or steps, to ensure that the ~~foster-child~~ child(ren) can safely reach the window if the finished sill height is more than 44 inches above the floor and that the ~~foster-child~~ child(ren) can safely reach ground level if there is a window well that has a depth of 44 inches or higher;
  - (5) and (6) No change.

ITEM 7. Amend subrules 113.5(6) to 113.5(8) as follows:

**113.5(6) *Physical care standards for foster-children* child(ren).**

a. Grouping children in bedrooms shall take into consideration the age and sex of ~~children~~ the child(ren), including the individual child's need for privacy.

(1) ~~Children~~ Any child(ren) over five years of age shall not share a bedroom with a ~~child~~ child(ren) of the opposite sex.

(2) ~~Foster-children~~ The child(ren) shall not share a bed with any other child. The social work administrator may approve a waiver of this policy for kinship caregivers or a variance for non-kinship caregivers.

b. ~~Children~~ Any child(ren) two years of age or older shall be provided bedroom space other than in the foster parents' bedroom. ~~Foster-children~~ Any child(ren) under the age of two may share a bedroom with the foster parent in an individual crib.

c. There shall be a plan for isolating the healthy ~~children~~ child(ren) from a child who is ill or suspected of having a contagious disease.

d. The foster home shall provide food with good nutritional content and in sufficient quantity to meet the individual needs of the ~~children~~ child(ren).

e. Personal care items must be provided for youth, and these items must reflect the individual, cultural, racial, and ethnic needs of the youth living in the foster home.

e. f. Bedding shall be clean, odor-free, and free of urine and feces.

f. g. Foster parents shall follow universal precautions to reduce exposure to bloodborne pathogens and other infectious materials when providing care to ~~all-children~~ any child(ren) placed in their physical custody.

g. h. Smoking and vaping shall be prohibited in the foster home or any vehicle when the ~~foster child-is~~ child(ren) are present.

**113.5(7) *Lead-based paint.*** If the applicant lives in a home built before ~~1960~~ 1978, the applicant shall submit Form 470-4819, ~~Lead Paint Assessment~~, certifying that the applicant:

a. and b. No change.

**113.5(8) *Artificial lighting.*** Adequate artificial lighting fixtures shall be provided for study in areas where ~~children~~ the child(ren) will be studying.

ITEM 8. Amend subrule 113.5(11) as follows:

**113.5(11) *Ventilation.*** Ventilation shall be provided in all rooms where ~~foster-children~~ the child(ren) eat, sleep, and play either by windows which can be opened or by mechanical venting systems. Windows and doors used for ventilation shall be screened.

ITEM 9. Amend subrule 113.6(3) as follows:

**113.6(3) *Private water supply.***

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

~~a. Each privately operated water supply shall be tested prior~~ Prior to initial licensure and tested before prior to each license renewal, each privately operated water supply shall be tested and evaluated for obvious deficiencies, such as open or loose well tops or platforms and poor drainage around the wells.

b. As part of the evaluation, water samples must be collected and submitted by the licensing worker or health sanitarian to the university hygienic laboratory or other laboratory certified by the hygienic laboratory and analyzed for coliform bacteria. In order for a foster family home to be licensed for the care of children any child(ren) under two years of age, the nitrate (NO<sup>3</sup>) content must be analyzed.

c. and d. No change.

e. When the water sample is not approved, no foster family home license shall be issued until the foster parents provide a written statement that ~~foster children~~ the child(ren) will be provided potable water, including where the water will be obtained and how it will be transported and stored.

(1) The statement shall be provided on Form 470-0699, ~~Provisions for Alternate Water Supply.~~

(2) No change.

ITEM 10. Amend paragraph **113.7(1)“a”** as follows:

a. At least one UL (Underwriter’s Laboratory)-approved smoke detector. On floors that are used for sleeping, the smoke detector shall be in a location where sleeping areas can be alerted. For any deaf or hard-of-hearing children child(ren), the foster parent shall install a smoke detector in the ~~child’s~~ child(ren)’s bedroom that will use an alternative means of waking the child child(ren).

ITEM 11. Amend paragraph **113.7(2)“b”** as follows:

b. Explosives and flammable substances shall be stored securely and be inaccessible to ~~a child~~ the child(ren). Matches and lighters shall be inaccessible to ~~a child~~ the child(ren).

ITEM 12. Amend subrule 113.7(3) as follows:

**113.7(3) Safety plan.** The family shall have an emergency safety plan to be used for fire, tornado, blizzard, flood, other natural or manmade disasters, accidents, medical issues, and other life-threatening situations for ~~children~~ the child(ren) in out-of-home placements. The safety plans shall state the action that the foster parents and ~~children~~ the child(ren) are to take in each situation that may occur and shall be posted in a prominent place in the home.

a. The safety plans for fire and tornadoes shall be reviewed with ~~foster children~~ the child(ren) at the time of placement. Fire and tornado plans shall be practiced with the ~~foster children~~ child(ren) within one week of placement and no less than annually thereafter.

b. to d. No change.

ITEM 13. Amend paragraph **113.7(4)“a”** as follows:

a. All prescription medication shall be administered as prescribed and documented in a medication log that is given to the ~~child’s~~ child(ren)’s department caseworker when the ~~child leaves~~ child(ren) leave the placement.

ITEM 14. Amend paragraph **113.7(4)“c”** as follows:

c. Applicants must prevent the ~~child’s~~ child(ren)’s access, as appropriate for the ~~child’s~~ child(ren)’s age and development, to all medications, poisonous materials, cleaning supplies, other hazardous materials and alcoholic beverages.

ITEM 15. Amend subrules 113.7(5) to 113.7(9) as follows:

**113.7(5) Weapons.** All weapons, firearms, and ammunition shall be inaccessible to ~~a child~~ the child(ren) of any age.

a. The following weapons must be stored in an inoperative condition in a locked area inaccessible to ~~children~~ the child(ren):

(1) to (5) No change.

b. No change.

c. The weapons, firearms, and ammunition storage ~~unit~~ units shall not share the same key or matching security code. If a key is used, the key shall be stored in a place inaccessible to the ~~foster child~~ child(ren).

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

*d.* Any motor vehicles used to transport ~~foster children~~ the child(ren) shall not contain a loaded gun, and any ammunition in the vehicle shall be kept in a separate, locked container.

*e.* Foster parents who have a permit to carry a firearm shall sign Form 470-4657, ~~Firearms Safety Plan~~. Foster parents who have firearms but do not have a permit to carry shall complete the safety plan section of ~~the Firearms Safety Plan form~~ Form 470-4657.

*f.* No change.

**113.7(6) *Transporting foster children child(ren).***

*a.* Foster parents will ensure that if a privately owned vehicle, owned by the applicants, family or friends, is used to transport the ~~child~~ child(ren) in foster care, it must be inspected (if applicable under state law), registered, and insured and meet all applicable state or tribal requirements to be an operable vehicle on the road.

*b.* No change.

*c.* Safety restraints will be used that are appropriate to the ~~child's~~ child(ren)'s age, height, and weight.

*d.* Any motor vehicles used to transport ~~foster children~~ the child(ren) shall be smoke-free when ~~foster children~~ the child(ren) are being transported.

*e.* Weapons must not be transported in any vehicle in which the ~~child is~~ child(ren) are riding unless the weapons are made inoperable and inaccessible.

*f.* No change.

**113.7(7) *Supervision.*** The foster parents shall provide reasonable and prudent supervision of ~~foster children~~ the child(ren) to ensure ~~their~~ the child(ren)'s safety.

*a.* Foster parents shall adequately supervise ~~foster children~~ the child(ren) while the ~~children~~ child(ren) are using any hazardous or dangerous objects or equipment. In order for ~~foster children~~ the child(ren) to participate in age- or developmentally appropriate activities, the foster parent would apply the reasonable and prudent parent standard.

*b.* Foster parents shall use reasonable and prudent supervision of ~~foster children~~ the child(ren) when the ~~foster children~~ child(ren) are using the Internet or other social media.

**113.7(8) *Household pets.*** Household pets and any outdoor animals or pets accessible to ~~foster children~~ the child(ren) shall have a current veterinary health certificate verifying that the animal's routine immunizations, e.g., rabies, are current.

*a.* No change.

*b.* Foster parents who have pets or animals with any history of aggression shall have a written plan that addresses strategies to reduce the risk of aggression by their pets or animals with which the ~~child~~ child(ren) will have contact.

*c.* Foster parents will complete a written plan on how they will introduce a pet to the child(ren).

*e. d.* Animal waste will be contained and disposed of on a routine basis.

**113.7(9) *Liability.*** Foster parents who apply the reasonable and prudent parent standard reasonably and in good faith in regard to a ~~foster child~~ the child(ren) placed in their home shall have immunity from civil or criminal liability which might otherwise be incurred or imposed. This subrule shall not remove or limit any existing liability protection afforded under any other law.

ITEM 16. Amend subrules 113.8(1) and 113.8(2) as follows:

**113.8(1) *Preservice training.*** All foster parent applicants shall complete the following training before licensure and the placement of a ~~child in foster care~~ the child(ren) in their home:

*a. and b.* No change.

*c.* Preservice training, which shall include:

(1) and (2) No change.

(3) Mandatory reporter training on child abuse identification, ~~and~~

(4) The reasonable and prudent parent standard training, ~~and~~

(5) Lessons teaching foster parents how to support a child's overall well-being and emotional needs;

and

*d.* No change.

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

**113.8(2) *In-service training.*** All licensed foster parents shall complete six hours of in-service training annually as required by rule 441—117.7(237).

Each foster parent shall maintain certification in face-to-face CPR and first-aid training.

ITEM 17. Amend rules 441—113.9(237) to 441—113.11(237) as follows:

**441—113.9(237) Involvement of kin.**

**113.9(1) *Support by foster parents.*** Foster parents shall support the involvement of biological or adoptive parents and other relatives of the ~~foster child~~ child(ren) unless this involvement is evaluated and documented by the department to be detrimental to the ~~child's~~ child(ren)'s well-being.

**113.9(2) *Nature of involvement.*** The extent and nature of the involvement of the biological or adoptive parents and other relatives shall be determined by the caseworker in consultation with the foster parents, biological or adoptive parents, and others involved with the ~~child~~ child(ren) and family.

**113.9(3) *Cultural connections.*** Throughout the provision of care, the foster family shall actively ensure that the ~~foster child stays~~ child(ren) stay connected to the ~~child's~~ child(ren)'s kin, culture, and community as required in the ~~child's~~ child(ren)'s case permanency plan.

This rule is intended to implement Iowa Code section 237.3.

**441—113.10(237) Information on the ~~foster child~~ child(ren) placed in the home.**

**113.10(1) *Foster child information*** Information about the child(ren). Foster parents shall maintain a separate folder of information on ~~each foster child~~ the child(ren) placed in the ~~foster family~~ home. This folder shall be provided to the department or the ~~child's~~ child(ren)'s parent or guardian when the ~~child leaves~~ child(ren) leave the placement. The folder shall contain:

a. The names and addresses of all doctors, mental health professionals, and dentists who have treated the ~~foster child~~ child(ren); current medications prescribed, including over-the-counter medications; medication log; and the type of medical, dental, vision, and mental health treatments and hearing examinations received while the ~~foster child is~~ child(ren) are in the foster home.

b. No change.

c. Date the ~~child~~ child(ren) left the placement.

d. Name, address, and telephone number of the person to whom the ~~child is~~ child(ren) are discharged.

**113.10(2) *Confidentiality.*** Foster parents shall maintain confidentiality regarding ~~a child~~ the child(ren) in placement except as required to comply with rules on mandatory reporting of child abuse and with the ~~child's~~ child(ren)'s case permanency plan. Foster parents shall not without parent or guardian and department consent post pictures or information concerning ~~a foster child~~ the child(ren) on any Internet ~~Web site~~ website or on social media.

This rule is intended to implement Iowa Code section 237.7.

**441—113.11(237) Health of foster family.**

**113.11(1) *Health report required.*** The foster parents shall furnish the licensing agency with a health report on the family completed no more than six months before the application for licensure. The report shall include information on all family members, including foster parents, their minor ~~children~~ child(ren) who reside in the home, and adult household members. An updated report shall be provided upon request of the department licensing worker or the recruitment and retention contractor.

**113.11(2) *Contents of report.*** This report shall include a statement from ~~the~~ an impartial health practitioner that there are no physical or mental health problems which would be a hazard to ~~foster children~~ the child(ren) placed in the home and a statement that the foster parents' health would not prevent needed care from being provided to the ~~child~~ child(ren).

**113.11(3) *Whooping cough vaccine.*** All adult household members who are caregivers must have up-to-date whooping cough vaccines unless contrary to the person's health or sincerely held religious belief.

**113.11(4) *Exemption from whooping cough vaccine.*** Nothing in this rule shall be construed to require the whooping cough vaccine for adult household members who are a member of a church or

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

religious organization which is against vaccinations. In such instance, a notarized statement from the household member shall be incorporated into the health record.

~~113.11(4)~~ **113.11(5)** *Capability for caring for the ~~child~~ child(ren)*. If there is evidence that the foster parent is unable to provide necessary care for the ~~child~~ child(ren), the department licensing worker, the recruitment and retention contractor, or the physician may require additional medical and mental health reports, including a substance abuse evaluation.

This rule is intended to implement Iowa Code section 237.7.

ITEM 18. Amend subrules 113.12(3) to 113.12(5) as follows:

**113.12(3)** *Religious considerations*. The foster parent shall respect the ~~foster child's~~ child(ren)'s religious background and affiliation.

**113.12(4)** *Requirements of foster parents*. Foster parents shall be stable, responsible, physically able to care for the type of ~~child~~ child(ren) placed, mature individuals who are not unsuited by reason of substance abuse, lewd or lascivious behavior or other conduct likely to be detrimental to the physical or mental health or morals of the ~~child~~ child(ren). They shall exercise good judgment in caring for ~~children~~ the child(ren) and have a capacity to accept agency supervision.

**113.12(5)** *Personal characteristics*. The foster parents shall:

- a. No change.
- b. Have realistic expectations of ~~foster children~~ the child(ren).
- c. Have time available to parent ~~foster children~~ the child(ren).
- d. to f. No change.
- g. Include ~~foster children~~ the child(ren) in normal family life.
- h. Have the ability to be accepting and loving toward a ~~foster child~~ the child(ren) entering the home.
- i. Be able to support the case permanency plan for the ~~foster child~~ child(ren) and be willing to cooperate with visits, transportation, or other activities that support the ~~child's~~ child(ren)'s connection to and reunification with the ~~child's~~ child(ren)'s family.
- j. Ensure that all family members are aware of having ~~foster children~~ the child(ren) in the home.
- k. Articulate their strengths and concerns and limitations which are essential to the department's matching the ~~foster children~~ child(ren) with foster parents appropriately.

ITEM 19. Amend rule 441—113.13(237), introductory paragraph, as follows:

**441—113.13(237) Record checks**. Record checks are required for each foster parent applicant and for anyone who is 14 years of age or older living in the home of the applicant. The purpose of the record checks is to determine whether any of these persons has any founded child abuse or dependent adult abuse reports or criminal convictions or has been placed on the sex offender registry.

ITEM 20. Amend subparagraphs **113.13(1)“a”(1)** and **(2)** as follows:

- (1) The Iowa central abuse registry, using Form 470-0643, ~~Request for Child and Dependent Adult Abuse Information~~;
- (2) The Iowa division of criminal investigation, using Form 595-1396, ~~DHS Criminal History Record Check, Form B~~;

ITEM 21. Amend subparagraphs **113.13(2)“a”(1)** and **(2)** as follows:

- (1) A felony offense as set forth in Iowa Code section ~~237.8(2)“a”(4)~~ 237.8(2)“a”(3); or
- (2) A crime in another state that would be a felony as set forth in Iowa Code section ~~237.8(2)“a”(4)~~ 237.8(2)“a”(3).

ITEM 22. Renumber subparagraphs **113.13(2)“b”(3)** to **(5)** as **113.13(2)“b”(4)** to **(6)**.

ITEM 23. Adopt the following new subparagraph **113.13(2)“b”(3)**:

- (3) The circumstances under which the crime or founded abuse was committed,

ITEM 24. Amend paragraph **113.13(2)“c”** as follows:

- c. *Evaluation form*. The person with the founded child or dependent adult abuse or criminal conviction report shall complete and return Form 470-2310, ~~Record Check Evaluation~~, within ten

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

calendar days of the date of receipt to be used to assist in the evaluation. Failure of the person to complete and return Form 470-2310 within the specified time frame shall result in denial of licensure.

ITEM 25. Amend subrule 113.13(3) as follows:

**113.13(3) Evaluation decision.** ~~The service area manager~~ Centralized service area staff or designee shall conduct the evaluation and make the decision. The department shall issue Form 470-2310, ~~Record Check Evaluation~~, to inform the subject of the decision and describe the basis of the decision using the criteria specified in paragraph 113.13(2) "b." The department shall mail the form to the person on whom the evaluation was completed:

- a. Within 30 days of receipt of the completed Form 470-2310, ~~Record Check Evaluation~~, or
- b. No change.

ITEM 26. Amend paragraph **113.14(4)"b"** as follows:

b. Personal qualities of the applicant including the general character, ability to get along with others, ability to deal with ~~children's~~ the child(ren)'s problem behavior, ability to give affection and care, discussion of use of drugs and alcohol, and questions regarding personal difficulties that could be detrimental to a ~~foster child~~ the child(ren).

ITEM 27. Amend paragraph **113.14(4)"f"** as follows:

f. Would the reference feel comfortable leaving a ~~child~~ the child(ren) in this home for a period of time?

ITEM 28. Amend subrule 113.15(1) as follows:

**113.15(1)** The department's recruitment and retention contractor shall make unannounced visits during periods of the day when the ~~child~~ child(ren) and foster parents would normally be at home and awake, unless there has been a specific complaint about the family and care of the ~~child~~ child(ren).

ITEM 29. Amend paragraphs **113.15(2)"c"** to **"e"** as follows:

- c. Interaction between the ~~foster child~~ child(ren) and foster family and their ~~children~~ child(ren).
- d. The ~~foster child's~~ child(ren)'s perception of the foster parents, other ~~children~~ child(ren) and adults in the home, behavioral expectations of foster parents, discipline used by foster parents, religious training, school, contact with natural parents, and purpose of placement in foster care.
- e. The foster parents' view of the ~~child~~ child(ren), the ~~child's~~ child(ren)'s problem, placement worker's involvement, plan for the ~~child~~ child(ren), involvement of ~~natural~~ biological parents, and additional services that either the ~~foster child~~ child(ren) or foster parents need.

ITEM 30. Amend subrule 113.15(4), introductory paragraph, as follows:

**113.15(4)** The findings from the unannounced visit shall be summarized on Form 470-5438, ~~Progress Notes~~.

ITEM 31. Amend subrule 113.15(5) as follows:

**113.15(5)** Actions after the unannounced visit.

a. When deficiencies are cited that do not appear likely to cause immediate physical or mental harm to the ~~child~~ child(ren), an additional visit may be scheduled. The department licensing worker and the recruitment and retention contractor shall discuss the deficiencies with the foster parents and make plans for improving the deficiencies.

b. When the reported deficiencies raise questions of concern as to the quality of care provided, the recruitment and retention contractor shall:

(1) Report deficiencies to the department licensing worker and to the placement worker for ~~each foster child~~ any child(ren) currently placed in the home;

(2) No change.

c. When the reported deficiencies appear likely to cause immediate physical or mental harm to the ~~child~~ child(ren), the service area manager or designee shall immediately:

(1) Direct the placement worker to determine if the ~~child~~ child(ren) should be removed, and

(2) No change.

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ITEM 32. Amend rules 441—113.16(237) to 441—113.20(237) as follows:

**441—113.16(237) Planned activities and personal effects.**

**113.16(1) Daily routine.** The daily routine shall promote good health and provide an opportunity for activity suitable for the ~~foster-child~~ child(ren) with time for rest and play.

**113.16(2) Clothing.**

- a. ~~All children~~ Any child(ren) should have their own clothing.
- b. ~~Children~~ Any child(ren) shall have training and help in selection and proper care of clothing.
- c. to e. No change.
- f. There shall be adequate closet and drawer space for ~~children~~ the child(ren) to permit access to their clothing.

**113.16(3) Educational opportunity.** Every ~~foster~~ child shall be given the opportunity to complete high school or vocational training in accordance with the child's case permanency plan. The foster parent shall be an advocate for the ~~foster-child~~ child(ren) by working with the ~~foster-child's~~ child(ren)'s school.

**113.16(4) Religion and culture.** Each child shall be given an opportunity, in consultation with the child's parents, to participate in the child's culture and religion. ~~Children~~ The child(ren) shall not be required to participate in religious training or observances contrary to the wishes of the biological or adoptive family or the religious beliefs of the ~~child~~ child(ren).

**113.16(5) Community participation.** Every child shall be given the opportunity to develop healthy social relationships through participation in neighborhood, school and other community and group activities. The ~~child~~ child(ren) shall have the opportunity to invite friends to the foster home and to visit the home of friends.

**113.16(6) Work assignments.** Work assignments shall be in keeping with the ~~child's~~ child(ren)'s age and development.

- a. Exploitation of the ~~child~~ child(ren) is prohibited. No ~~child~~ child(ren) shall be permitted to do any hazardous tasks or to engage in any work which is in violation of the child labor laws of the state.
- b. ~~Each child~~ The child(ren) shall have the opportunity to learn to assume some responsibility for self and for household duties in accordance with the ~~child's~~ child(ren)'s age, health and ability. However, assigned tasks shall not deprive the ~~child~~ child(ren) of school, sleep, play or study periods.

This rule is intended to implement Iowa Code section 237.3.

**441—113.17(237) Medical examinations and health care of the ~~child~~ child(ren).**

**113.17(1) Medical and dental care.** Foster parents shall keep the ~~child's~~ child(ren)'s department case manager informed of any medical and dental appointments and treatments prescribed for the ~~child~~ child(ren).

a. Foster parents shall contact the ~~child's~~ child(ren)'s parents to engage them in the process of accessing routine medical and dental care for their ~~child~~ child(ren) unless parental rights have been terminated.

b. In case of an emergency or urgent situation requiring medical care and treatment of an acute illness, disease or condition of a ~~child~~ the child(ren), when a delay or inability to access parental or department consent for medical care or treatment would endanger the health or physical well-being of the ~~child~~ child(ren), the foster parents can provide consent for medical care and treatment.

**113.17(2) No change.**

This rule is intended to implement Iowa Code section 237.3.

**441—113.18(237) Training and discipline of ~~foster children~~ child(ren).**

**113.18(1) Foster parents' methods of training and discipline.** The home study evaluation of each foster parent applicant shall include a discussion and a written report of the foster parents' methods of training and discipline. Discipline shall be designed to help the ~~child~~ child(ren) develop self-control, self-esteem, and respect for the rights of others.

**113.18(2) Restrictions on training and discipline.** ~~Child training~~ Training and discipline of the child(ren) shall be handled with kindness and understanding.

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

- a. ~~A child~~ The child(ren) shall not be locked in a room, closet, box, or other device.
- b. No ~~child~~ child(ren) shall be deprived of food as punishment.
- c. No ~~child~~ child(ren) shall be subjected to verbal abuse, threats or derogatory remarks about the ~~child~~ child(ren) or the ~~child's~~ child(ren)'s family.
- d. No change.
- e. Restraints shall not be used as a form of discipline.

(1) Reasonable physical force may be used to restrain ~~a child~~ the child(ren) only in order to prevent injury to the ~~child~~ child(ren), injury to others, the destruction of property, or extremely disruptive behavior.

(2) Upon approval of the department, the foster parent may use restraints only in accordance with the written plan of a licensed mental health professional who is working with the ~~child~~ child(ren) and the foster parents.

**113.18(3) Reports of mistreatment.** Reports of mistreatment coming to the attention of the department licensing worker and caseworker for the ~~foster child~~ child(ren) shall be investigated promptly and referred to the proper authorities when necessary.

This rule is intended to implement Iowa Code sections 234.40 and 237.3.

**441—113.19(237) Emergency care and release of ~~children~~ child(ren).**

**113.19(1) Supervision and arrangements for emergency care.**

a. Foster parents shall provide supervision of ~~foster children and children~~ the child(ren) in preadoptive placement as dictated by the individual child's specific needs.

b. In case of emergency requiring the foster parents' temporary absence from the home, arrangements shall be made with other licensed foster parents or with designated, responsible persons for the care of the ~~children~~ child(ren) during the period of absence. The ~~child's~~ child(ren)'s placement worker shall be notified of all emergency absences of the foster parents.

**113.19(2) Release of ~~foster child~~ child(ren).** The foster parents shall release the ~~foster child~~ child(ren) only to the agency, parent or guardian from whom the ~~child was~~ child(ren) were received for care, or the person specifically designated by the agency, parent or guardian.

This rule is intended to implement Iowa Code section 237.3.

**441—113.20(237) Changes in foster family home.** Foster parents shall notify the department and the recruitment and retention contractor within seven working days of:

1. Any change in the number of persons living in the home (except for ~~foster children~~ the child(ren) placed in the home);
2. No change.
3. Any circumstances in the home that could negatively affect the health, safety or welfare of a ~~child~~ the child(ren) in the family's care.

This rule is intended to implement Iowa Code section 237.3.

[Filed 3/12/23, effective 6/1/23]

[Published 4/5/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/23.

**ARC 6962C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

**Rule making related to group living foster care facilities**

The Human Services Department hereby amends Chapter 114, "Licensing and Regulation of All Group Living Foster Care Facilities for Children," Iowa Administrative Code.



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*Legal Authority for Rule Making*

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

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 237.3.

*Purpose and Summary*

Chapter 114 was reviewed as part of the Department's five-year review of rules. This chapter outlines the basic standards for all group living foster care facilities and contains the basic standards applicable to community residential facilities for children. These amendments update definitions and provide additional clarity. Qualifications are amended to provide further information on related human services fields and experience in social work or experience in the delivery of human services in a public or private agency as additional ways to qualify as a caseworker. Rules are updated to provide information on the record check process.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 25, 2023, as **ARC 6837C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on March 9, 2023.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on June 1, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend rule 441—114.1(237) as follows:

**441—114.1(237) Applicability.** This chapter outlines the basic standards for all group living foster care facilities and contains the basic standards applicable to community residential facilities for children. Additional standards applicable to specific levels of group living are discussed in 441—Chapter 115, "Licensing and Regulation of Comprehensive Residential Facilities for Children," and 441—Chapter

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

116, “Licensing and Regulation of Residential Facilities for Children with an Intellectual Disability or Brain Injury.”

~~This rule is intended to implement Iowa Code chapter 237.~~

ITEM 2. Amend rule **441—114.2(237)**, definitions of “Private juvenile detention home” and “Private juvenile shelter care home,” as follows:

“*Private juvenile detention home*” means a juvenile detention home as defined in Iowa Code section 232.2, which does not meet the requirements of being “county or multicounty” as defined in ~~441—subrule 105.1(2)~~ rule **441—105.1(232)**.

“*Private juvenile shelter care home*” means a juvenile shelter care home as defined in Iowa Code section 232.2, which does not meet the requirements of being “county or multicounty” as defined in ~~441—subrule 105.1(2)~~ rule **441—105.1(232)**.

ITEM 3. Rescind the implementation sentence in rule **441—114.3(237)**.

ITEM 4. Rescind the implementation sentence in rule **441—114.4(237)**.

ITEM 5. Adopt the following **new** paragraph **114.5(6)“g”**:

g. Providing personal care items to children in care. Personal care items must be provided to the children in care and must reflect the individual, cultural, racial and ethnic needs of the youth living in the facility’s programs.

ITEM 6. Rescind the implementation sentence in rule **441—114.5(237)**.

ITEM 7. Rescind the implementation sentence in rule **441—114.6(237)**.

ITEM 8. Amend subparagraph **114.7(3)“b”(8)** as follows:

(8) If the applicant, probationary employee or temporary employee has completed and submitted Form 470-2310, ~~Record Check Evaluation~~, to the agency, a copy shall be kept in the staff record.

ITEM 9. Amend paragraph **114.8(1)“a”** as follows:

a. A caseworker shall have ~~a bachelor of arts or bachelor of science graduated from a four-year college or university with a bachelor’s degree in a human services field related to social work, psychology or a related behavioral science, plus two years of supervised or in education and the equivalent of one year of full-time experience; or a bachelor’s degree in social work with one year of supervised experience; in social work or in the delivery of human services in a public or private agency, or six years of supervised child welfare experience in residential care or a combination of advanced education in the behavioral sciences and experience equal to six years.~~

ITEM 10. Amend paragraph **114.8(1)“e”** as follows:

e. A person who has a record of a criminal conviction or founded child or dependent adult abuse report shall not be employed, unless an evaluation of the crime or founded child or dependent adult abuse has been made by the department which concludes that the crime or founded child or dependent adult abuse does not merit prohibition of employment. If a record of criminal conviction or founded child or dependent adult abuse exists, the person shall be offered the opportunity to complete and submit Form 470-2310, ~~“Record Check Evaluation.”~~ In its evaluation, the department shall consider the nature and seriousness of the crime or founded abuse in relation to the position sought, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, and the number of crimes or founded abuses committed by the person involved.

ITEM 11. Rescind the implementation sentence in rule **441—114.8(237)**.

ITEM 12. Amend subparagraphs **114.9(4)“b”(2)** and **(3)** as follows:

(2) Written policies regarding children’s rights as in ~~114.13(2)~~ rule **441—114.13(237)**.

(3) Written policies regarding religion, work or vocational experiences, family involvement, ~~grievance procedures~~ and discipline as in ~~441—114.13(237)~~ rules **441—114.15(237)** to ~~114.18(237)~~ **441—114.17(237)** and ~~114.20(237)~~ rule **441—114.20(237)**.

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

- ITEM 13. Rescind the implementation sentence in rule **441—114.9(237)**.
- ITEM 14. Rescind the implementation sentence in rule **441—114.10(237)**.
- ITEM 15. Rescind the implementation sentence in rule **441—114.11(237)**.
- ITEM 16. Rescind the implementation sentence in rule **441—114.12(237)**.
- ITEM 17. Rescind the implementation sentence in rule **441—114.13(237)**.
- ITEM 18. Rescind the implementation sentence in rule **441—114.14(237)**.
- ITEM 19. Rescind the implementation sentence in rule **441—114.15(237)**.
- ITEM 20. Rescind the implementation sentence in rule **441—114.16(237)**.
- ITEM 21. Rescind the implementation sentence in rule **441—114.17(237)**.
- ITEM 22. Rescind the implementation sentence in rule **441—114.18(237)**.
- ITEM 23. Amend rule 441—114.19(237) as follows:

**441—114.19(237) Child abuse.** Written policies shall prohibit mistreatment, neglect, or abuse of children and specify reporting and enforcement procedures for the facility. Alleged violations shall be reported immediately to the director of the facility and ~~appropriate~~ the department of human services ~~personnel~~ centralized abuse hotline. Any employee found to be in violation of Iowa Code chapter 232, ~~division~~ subchapter III, part 2, as substantiated by the department of human services' investigation shall be subject to the agency's policies concerning dismissal.

~~This rule is intended to implement Iowa Code section 237.2.~~

- ITEM 24. Rescind the implementation sentence in rule **441—114.20(237)**.
- ITEM 25. Rescind the implementation sentence in rule **441—114.21(237)**.
- ITEM 26. Rescind the implementation sentence in rule **441—114.22(237)**.
- ITEM 27. Rescind the implementation sentence in rule **441—114.23(237)**.
- ITEM 28. Amend paragraph **114.24(2)“a”** as follows:
  - a. *Scope.* The evaluation shall consider the nature and seriousness of the founded child or dependent adult abuse or criminal conviction report in relation to:
    - (1) and (2) No change.
    - (3) The circumstances under which the abuse or crime was committed,
    - (3) (4) The degree of rehabilitation,
    - (4) (5) The likelihood that the person will commit the abuse or crime again, and
    - (5) (6) The number of abuses or crimes committed by the person.

- ITEM 29. Rescind the implementation sentence in rule **441—114.24(237)**.
- ITEM 30. Rescind the implementation sentence in rule **441—114.25(237)**.
- ITEM 31. Adopt the following **new** implementation sentence in **441—Chapter 114**:  
These rules are intended to implement Iowa Code section 237.3.

[Filed 3/12/23, effective 6/1/23]

[Published 4/5/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/23.

**ARC 6963C****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed****Rule making related to residential care facilities for children**

The Human Services Department hereby amends Chapter 115, “Licensing and Regulation of Comprehensive Residential Facilities for Children,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 237.3.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 237.3.

*Purpose and Summary*

Chapter 115 was reviewed as part of the Department’s five-year review of rules. This chapter outlines the licensing and regulation standards for comprehensive regulations of residential care facilities for children. Changes include updating language regarding additional contact time requirements with caseworkers per provider requests. Language regarding the use of chemical restraints is removed. Expanded documentation requirements regarding the use of the control room are aligned with other chapters.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 25, 2023, as **ARC 6838C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on March 9, 2023.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on June 1, 2023.

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

The following rule-making actions are adopted:

ITEM 1. Amend subparagraph **115.4(2)“a”(3)** as follows:

(3) ~~At least one additional hour per week per~~ Additional contact as needed with each caseworker in other related duties including case intake discussions, staffings of cases, evaluations of the caseworker, teaching, and administrative duties.

ITEM 2. Amend rule **441—115.5(237)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~237C.3~~ 237.3.

ITEM 3. Amend subrule 115.6(2) as follows:

**115.6(2) Secure facilities.** Secure facilities may use physical restraints, a control room, locked cottages, and mechanical restraints, ~~and chemical restraints.~~

ITEM 4. Amend paragraph **115.7(2)“c”** as follows:

c. Require documentation in writing of the types of behaviors leading to control room placement and the conditions that will allow the child to return to the living unit. The child shall be informed of these conditions. Documentation of control room use shall include, but not be limited to, the following:

- (1) Each use of the control room.
- (2) The time the intervention began and ended.
- (3) The reason that required the resident to be put in the control room.
- (4) The name(s) of staff involved in the intervention.

[Filed 3/12/23, effective 6/1/23]

[Published 4/5/23]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/23.

**ARC 6964C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

**Rule making related to foster care**

The Human Services Department hereby amends Chapter 156, “Payments for Foster Care,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 237.3.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 237.3.

*Purpose and Summary*

The rules in Chapter 156 were reviewed as part of the Department’s five-year rules review. As a result, the following changes are made:

- Remove references to difficulty of care payments for therapeutic foster care.
- Update the rate for kinship caregiver payments.
- Update the subrule regarding clothing allowances to address an increase in the allowance and a change in when it can be issued.
- Add runaways and family visits as allowable reserve bed payment types under shelter care.
- Remove the date that coincides with Comm. 502, Instructions for the Combined Cost Report.
- Change rate-setting methodology for shelter care to reflect the rates set in the contract.
- Update language to use the term “department caseworker.”

HUMAN SERVICES DEPARTMENT[441](cont'd)

### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 11, 2023, as **ARC 6810C**.

The Department received one comment from a provider that is in charge of licensing staff for the provider's organization. The commenter provided the same comments for Chapters 108 and 156.

#### **Comment:**

The commenter stated that the commenter recognized that there is a shortage of qualified applicants under the current regulations. The commenter further stated that with the proposed changes relating to caseworker qualifications in Chapters 108 and 156, there will be a stronger likelihood that qualified applicants will apply for rehabilitative treatment and support services (RTSS) caseworker positions and the frequency of requesting an exception to policy will decline. However, the commenter was concerned as to how the change in caseworker qualifications will impact the Council of Accreditation (COA) requirements. The commenter noted that the COA requirements do exist; therefore preference will still be given to hire caseworkers who meet the COA requirements.

The commenter wanted to know whether, in order to maintain accreditation requirements, some accommodation is needed to ensure that the accreditation requirements will not be jeopardized when an employee is hired at the lower qualifications listed in this rule making. One suggestion would be to develop additional mentoring and supervision with reports signed off by a supervisor who meets the higher qualification requirements.

#### **Department response:**

COA will not withhold any accreditation, but COA will offer it up as an area of opportunity to enhance an agency's practice standards. This change in the Department's rules will offer COA an opportunity to review its standards in light of the employment and hiring challenges Iowa providers and contractors are facing. This rule making will be effective July 1, 2023. The Department appreciates the concern submitted, and the Department will monitor to ensure there are no unintended consequences.

No changes from the Notice have been made.

### *Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on March 9, 2023.

### *Fiscal Impact*

This rule making removes references to difficulty of care payments for therapeutic foster care. It also updates rates for kinship caregiver payments to match the rates the Department currently has in its contract. This rule making also updates the methodology for rate setting in shelter care to reflect the rates set in the contract. Since those rates are already in the Department's contract and budget, the Department does not believe any of these amendments to have a fiscal impact beyond the amount that has already been absorbed in the Department's budget prior to any amendments. The Department is also updating the clothing allowance to match what is currently in the budget. The allowance is increased from \$237.50 to \$500 for children through the age of 12 and \$750 for children aged 13 and older. This reflects the rates the Department has set aside in the budget, so the amendment does not add any additional fiscal impact.

### *Jobs Impact*

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

### *Waivers*

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

### *Review by Administrative Rules Review Committee*

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

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

*Effective Date*

This rule making will become effective on June 1, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **156.6(4)“c”** as follows:

c. When the foster family's responsibilities in the case permanency plan include providing transportation related to family or preplacement visits outside the community in which the foster family lives, the department ~~worker~~ caseworker may authorize an additional maintenance payment of \$1 per day. Expenses over the monthly amount may be reimbursed with prior approval by the ~~worker~~ department caseworker. Eligible expenses shall include the actual cost of the most reasonable passenger fare or gas.

ITEM 2. Rescind paragraphs **156.6(4)“d”** and **“e.”**

ITEM 3. Reletter paragraphs **156.6(4)“f”** and **“g”** as **156.6(4)“d”** and **“e.”**

ITEM 4. Amend relettered paragraphs **156.6(4)“d”** and **“e”** as follows:

d. For placements made on or after January 1, 2007, the supervisor may approve an additional maintenance payment above the basic rate in subrule 156.6(1) to meet the child's special needs as identified by the child's score on Form 470-4401, ~~Foster Child Behavioral Assessment~~. The ~~placement worker~~ department caseworker shall complete Form 470-4401 within 30 days of the child's initial entry into foster care.

(1) and (2) No change.

e. All maintenance payments, including difficulty of care payments, shall be documented on Form 470-0716, ~~Foster Family Placement Contract~~.

ITEM 5. Amend subrule 156.6(6) as follows:

**156.6(6) Return of overpayments.** When a foster family has received payments in excess of those allowed under this chapter, the department caseworker shall ask the foster family to return the overpayment. If the foster family is returning the overpayment to the department, the department caseworker will note the monthly amount the foster family agrees to pay in the family's case file. The amount returned shall not be less than \$50 per month.

ITEM 6. Amend paragraph **156.7(2)“a”** as follows:

a. For each eligible child living in a kinship placement, ~~the monthly payment for the child shall be \$300~~ a caregiver will receive up to \$310 (\$10 per day) as a result of a court-ordered placement.

ITEM 7. Amend subrule 156.8(1) as follows:

**156.8(1) Clothing allowance.**

a. When, in the judgment of the ~~worker~~ department caseworker, clothing is needed at the time the child is removed from the child's home and placed in foster care and annually thereafter as needed based on the date the child entered foster care, an allowance may be authorized, not to exceed ~~\$237.50~~ \$500 for the child through the age of 12 and \$750 for the child aged 13 and older, to purchase clothing.

~~a. Once during each calendar year that the child remains in foster care, the department worker may authorize another clothing allowance, not to exceed \$190 for family foster care and \$100 for all other levels when:~~

~~(1) The child needs clothing to replace lost clothing or because of growth or weight change, and~~

~~(2) The child does not have escrow funds to cover the cost.~~

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

b. When clothing is purchased by the foster family, the foster family shall submit receipts to the ~~worker~~ department caseworker within 30 days of purchase for auditing purposes, using Form 470-1952; ~~Foster Care Clothing Allowance~~.

ITEM 8. Amend subrule 156.8(6) as follows:

**156.8(6) School fees.** Payment for required school fees of a child in foster family care or supervised apartment living that exceed \$5 may be authorized by the department ~~worker~~ caseworker in an amount not to exceed \$50 per calendar year if the child does not have sufficient escrow funds to cover the cost. Required school fees shall include:

- a. Fees required for participation in school or extracurricular activities; and
- b. Fees related to enrolling a child in preschool when a mental health professional or an intellectual disabilities professional has recommended school attendance.

ITEM 9. Amend subparagraph **156.10(1)“a”(2)** as follows:

(2) The facility shall notify the ~~worker~~ department caseworker of each visit and its planned length prior to the visit.

ITEM 10. Amend subparagraph **156.10(1)“b”(1)** as follows:

(1) The facility shall contact the ~~worker~~ department caseworker at least 48 hours in advance of a planned hospitalization and within 24 hours after an unplanned hospitalization.

ITEM 11. Amend subparagraph **156.10(1)“c”(1)** as follows:

(1) The facility shall notify the ~~worker~~ department caseworker within 24 hours after the child runs away.

ITEM 12. Amend subparagraph **156.10(2)“c”(1)** as follows:

(1) The foster family shall notify the ~~worker~~ department caseworker within 24 hours after the child runs away.

ITEM 13. Amend subparagraph **156.10(3)“a”(1)** as follows:

(1) The facility shall contact the ~~worker~~ department caseworker at least 48 hours in advance of a planned hospitalization and within 24 hours after an unplanned hospitalization.

ITEM 14. Adopt the following **new** paragraphs **156.10(3)“c”** and **“d”**:

c. *Family visits.* Reserve bed payment shall be made for days a child is absent from the facility for family visits when the absence is in accord with the following:

- (1) The visits shall be consistent with the child’s case permanency plan.
- (2) The facility shall notify the department caseworker of each visit and its planned length prior to the visit.
- (3) The intent of the department and the facility shall be for the child to return to the facility after the visit.
- (4) Staff from the facility shall be available to provide support to the child and family during the visit.
- (5) Payment shall be canceled and payments returned if the facility refuses to accept the child back.
- (6) If the department agrees that the return would not be in the child’s best interest, payment shall be canceled effective the day after the joint decision not to return the child.
- (7) Payment shall be canceled effective the day after a decision is made by the court or parent in a voluntary placement not to return the child.
- (8) Payment shall not exceed seven consecutive days, except upon prior written approval of the service area manager. In no case shall payment exceed 14 consecutive days.
- (9) The provider shall document the use of reserve bed days in the daily log and report the number of reserve bed days claimed in the quarterly report.

d. *Runaways.* Reserve bed payment shall be made for days a child is absent from the facility after the child has run away when the absence is in accord with the following:

- (1) The facility shall notify the department caseworker within 24 hours after the child runs away.



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

- (2) The intent of the department and the facility shall be for the child to return to the facility once the child is found.
- (3) Payment shall be canceled and payments returned if the facility refuses to accept the child back.
- (4) If the department agrees that the return would not be in the child's best interest, payment shall be canceled effective the day after the joint decision not to return the child.
- (5) Payment shall be canceled effective the day after a decision is made by the court or parent in a voluntary placement not to return the child.
- (6) Payment shall not exceed seven consecutive days, except upon prior written approval of the service area manager. In no case shall payment exceed 14 consecutive days.
- (7) The provider shall document the use of reserve bed days in the daily log and report the number of reserve bed days claimed in the quarterly report.

ITEM 15. Amend rule 441—156.11(234) as follows:

**441—156.11(234) Emergency juvenile shelter care payment.** ~~Contracted juvenile shelter care facilities approved or licensed in Iowa shall be paid according to the following rate-setting methodology~~ Contracted juvenile shelter care facilities approved or licensed in Iowa shall be paid in accordance with contracted terms, not to exceed the allowable costs as permitted by Iowa Code section 232.141(8).

~~156.11(1) The combined service and maintenance reimbursement rate paid to a shelter care provider shall be based on the verified Form 470-5421, Combined Cost Report, submitted to the department, but shall not exceed the prevailing rate. The department shall adjust the provider's reimbursement rate to the provider's actual and allowable cost, plus the inflation factor and the \$3.99 allowance originated under the tobacco settlement fund, or to the prevailing rate, whichever is less, effective the first day of the month following the department's receipt from the fiscal consultant of the provider's verified cost for the most recently reviewed fiscal year.~~

~~156.11(2) Net allowable expenditures are limited to those costs that are considered reasonable, necessary, and related to the service provided to the client as set forth in Comm. 502 (7/16), Instructions for the Combined Cost Report.~~

This rule is intended to implement Iowa Code sections 234.6 and 234.39.

ITEM 16. Adopt the following **new** implementation sentence in rule **441—156.14(234,252C)**:

This rule is intended to implement Iowa Code section 234.39.

ITEM 17. Adopt the following **new** implementation sentence in rule **441—156.15(234)**:

This rule is intended to implement Iowa Code section 234.39.

[Filed 3/12/23, effective 6/1/23]

[Published 4/5/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/23.

**ARC 6965C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

**Rule making related to child care services**

The Human Services Department hereby amends Chapter 170, "Child Care Services," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 234.6.

*State or Federal Law Implemented*

HUMAN SERVICES DEPARTMENT[441](cont'd)

This rule making implements, in whole or in part, Iowa Code section 234.6.

*Purpose and Summary*

Chapter 170 was reviewed as part of the Department's five-year rules review. This rule making removes all references to the term "relatives" because this term has no standing in the child care assistance program. The rule making includes language relating to eligibility for child care for foster children to reflect a recent policy change.

The definition of "PROMISE JOBS" is updated to be consistent with the definition in Chapter 40. References are added to the definition of "child with special needs" to clarify where the definitions of "qualified intellectual disability professional" and "mental health professional" can be found. The names of forms are removed to eliminate unnecessary future changes as form names change. This rule making updates a reference to Iowa's Food Assistance Program to the Supplemental Nutrition Assistance Program (SNAP) to be consistent with the name of the federal program.

A provider who disagrees with the calculation of a half-day rate may request a review of that decision. After sending a written request to the service area manager and receiving a response, the provider could then file a disagreement with the Bureau of Child Care Services. This rule making updates the name of the bureau that handles the review of the service area manager's decision. Requirements of notices of adverse action have been moved from Chapter 7 to Chapter 16. Chapter 170 is updated to reflect that change.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 11, 2023, as **ARC 6811C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on March 9, 2023.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on June 1, 2023.

The following rule-making actions are adopted:

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

ITEM 1. Amend **441—Chapter 170**, preamble, as follows:

PREAMBLE

The intent of this chapter is to establish requirements for the payment of child care services. Child care services are for children of low-income parents who are in academic or vocational training;<sup>2</sup> or employed or looking for employment;<sup>2</sup> or ~~for a limited period of time~~, unable to care for children due to physical or mental illness;<sup>2</sup> or needing protective services to prevent or alleviate child abuse or neglect. Services may be provided in a licensed child care center, a registered child development home, ~~the home of a relative~~, the child's own home, or a nonregistered family child care home.

ITEM 2. Rescind the definition of "Relative" in rule **441—170.1(237A)**.

ITEM 3. Amend rule **441—170.1(237A)**, definitions of "Child with protective needs," "Child with special needs," "PROMISE JOBS," "Provider" and "Provider error," as follows:

"*Child with protective needs*" means a child who is ~~not~~ in foster care ~~and~~ or has a case file that identifies child care as a safety or well-being need to prevent or alleviate the effects of child abuse or neglect. Child care is provided as part of a safety plan during a child abuse or child in need of assistance assessment or as part of the service plan established in the family's case plan. The child must have:

1. An open child abuse assessment;
2. An open child in need of assistance assessment;
3. An open child welfare case as a result of a child abuse assessment;
4. A petition on file for a child in need of assistance adjudication; or
5. Adjudication as a child in need of assistance.

"*Child with special needs*" means a child with one or more of the following conditions:

1. The child has been diagnosed by a physician or by a person endorsed for service as a school psychologist by the Iowa department of education to have a developmental disability which substantially limits one or more major life activities, and the child requires professional treatment, assistance in self-care, or the purchase of special adaptive equipment.

2. The child has been determined by a qualified intellectual disability professional as defined in rule 441—83.60(249A) to have a condition which impairs the child's intellectual and social functioning.

3. The child has been diagnosed by a mental health professional as defined in rule 441—24.1(225C) to have a behavioral or emotional disorder characterized by situationally inappropriate behavior which deviates substantially from behavior appropriate to the child's age, or which significantly interferes with the child's intellectual, social, or personal adjustment.

"*PROMISE JOBS*" means the department's work and training program, promoting independence and self-sufficiency through employment job opportunities and basic skills, as described in 441—Chapter 93.

"*Provider*" means a licensed child care center, a registered child development home, ~~a relative who provides care in the relative's own home solely for a related child~~, a caretaker who provides care for a child in the child's home, or a nonregistered child care home.

"*Provider error*" means and may result from:

1. to 4. No change.
5. Failure to maintain a copy of Form 470-4535, ~~Child Care Assistance Billing/Attendance Provider Record~~, signed by the parent and the provider.

ITEM 4. Adopt the following new subparagraph **170.2(1)"b"(5)**:

(5) Child care services for licensed foster parents who need child care for foster children are provided without regard to income.

ITEM 5. Amend subparagraph **170.2(1)"d"(10)** as follows:

(10) The value of the ~~food assistance~~ Supplemental Nutrition Assistance Program (SNAP) allotment under the Food and Nutrition Act of 2008.

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

ITEM 6. Amend subparagraph **170.2(2)“b”(5)** as follows:

(5) The parent is looking for employment. Child care for job search hours shall be limited to only those hours the parent is actually looking for employment, including travel time. Job search shall be limited to a maximum of 90 consecutive calendar days.

1. For applicants, job search shall be approved for a maximum of 90 consecutive calendar days. If the parent has not started employment within 90 days, assistance shall be canceled.

2. For ongoing participants, job search shall be limited to a maximum of 90 consecutive calendar days and will be treated the same as a temporary lapse in need as described at ~~170.2(2)“b”(9) and (10)~~ subparagraphs **170.2(2)“b”(10)** and **(11)**.

ITEM 7. Renumber subparagraphs **170.2(2)“b”(9)** and **(10)** as **170.2(2)“b”(10)** and **(11)**.

ITEM 8. Adopt the following new subparagraph **170.2(2)“b”(9)**:

(9) The parent is a licensed foster parent who needs child care for foster children.

ITEM 9. Amend paragraph **170.2(2)“d”** as follows:

*d. Citizenship.* As a condition of eligibility, the applicant shall attest to the child's citizenship or alien status by signing Form 470-3624 or 470-3624(S), ~~Child Care Assistance Application~~, or Form 470-0462 or 470-0462(S), ~~Health and Financial Support Application~~. Child care assistance payments may be made only for a child who:

(1) and (2) No change.

ITEM 10. Amend subrule 170.2(3), introductory paragraph, as follows:

**170.2(3) Priority for assistance.** Child care services shall be provided only when funds are available. Funds available for child care assistance shall first be used to continue assistance to families currently receiving child care assistance and to families with protective child care needs or licensed foster parents who need child care for foster children. When funds are insufficient, families applying for services must meet the specific requirements in this subrule.

ITEM 11. Adopt the following new subparagraph **170.2(3)“b”(5)**:

(5) Licensed foster parents who need child care for foster children.

ITEM 12. Amend paragraph **170.3(1)“a”** as follows:

*a.* Application for child care assistance may be made at any local office of the department on:

(1) Form 470-3624 or 470-3624(S), ~~Child Care Assistance Application~~, or

(2) ~~Form 470-0462 or 470-0462(S), Health and Financial Support Application~~, or

(3) (2) Form 470-4377 or 470-4377(S), ~~Child Care Assistance Review~~, when returned after the end of the certification period.

ITEM 13. Adopt the following new paragraph **170.3(2)“f”**:

*f.* Licensed foster parents who need child care for foster children.

ITEM 14. Amend subparagraph **170.3(3)“a”(2)** as follows:

(2) Inform the family's provider through the notice of decision or through Form 470-4444, ~~Certificate of Enrollment~~.

ITEM 15. Amend subparagraph **170.3(3)“c”(3)** as follows:

(3) For a family with protective service needs, the effective date of assistance shall be the date the family signs Form 470-0615 or 470-0615(S), ~~Application for All Social Services~~.

ITEM 16. Amend paragraph **170.3(5)“b”** as follows:

*b.* The department shall use information gathered on Form 470-4377 or 470-4377(S), ~~Child Care Assistance Review~~, to redetermine eligibility, except when the family is not required to complete a review form as provided in paragraph 170.3(5)“c.”

(1) and (2) No change.

ITEM 17. Amend paragraph **170.3(5)“c”** as follows:

*c.* Families who have children with protective needs, licensed foster parents who need child care for foster children, and families who are receiving child care assistance because the parent is

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

participating in activities under the PROMISE JOBS program are not required to complete Form 470-4377 or 470-4377(S).

(1) and (2) No change.

ITEM 18. Amend paragraph **170.3(6)“b”** as follows:

*b.* Assistance shall be reinstated without a new application when the case was canceled for failure to provide requested information but all information necessary to determine eligibility, including verification of all changes in circumstances, is provided within 14 calendar days of the effective date of cancellation and eligibility can be reestablished. If the fourteenth calendar day falls on a weekend or state holiday, the family shall have until the next business day to provide the information. The effective date of child care assistance shall be the date that all information required to establish eligibility is provided.

ITEM 19. Amend paragraphs **170.4(3)“a”** and **“b”** as follows:

*a.* *Licensed child care center.* A child care center shall be licensed by the department to meet the requirements set forth in 441—Chapter 109 and shall have a current ~~Certificate of License~~, Form 470-0618.

*b.* *Registered child development home.* A child development home shall meet the requirements for registration set forth in 441—Chapter 110 and shall have a current ~~Certificate of Registration~~, Form 470-3498.

ITEM 20. Amend paragraph **170.4(3)“e”** as follows:

*e.* *In-home care.* The adult ~~caretaker~~ provider selected by the parent to provide care in the child's own home shall be sent Form 470-2890 or 470-2890(S), ~~Payment Application for Nonregistered Providers~~. The provider shall complete and sign Form 470-2890 or 470-2890(S) and return the form to the department before payment may be made. An identifiable application is an application that contains a legible name and address and that has been signed. Signature on the form certifies the provider's understanding of and compliance with the conditions and requirements for nonregistered in-home care providers that include:

(1) to (4) No change.

ITEM 21. Amend paragraph **170.4(3)“h”** as follows:

*h.* *National criminal history record checks for in-home care.* If a person who provides in-home care applies to receive public funds as reimbursement for providing child care for eligible clients, the provider shall complete Form DCI-45, ~~Waiver Agreement~~, and Form FD-258, ~~Federal Fingerprint Card~~.

(1) to (5) No change.

ITEM 22. Amend subrule 170.4(7), introductory paragraph, as follows:

**170.4(7) Payment.** The department shall make payment for child care provided to an eligible family when the family reports their choice of provider to the department and the provider has a completed Form 470-3871 or 470-3871(S), ~~Child Care Assistance Provider Agreement~~, on file with the department. Both the child care provider and the department worker shall sign this form.

ITEM 23. Amend subparagraph **170.4(7)“f”(2)** as follows:

(2) When dissatisfied with the response, the provider may, within 15 calendar days of the response, request a review by the ~~chief of the bureau of financial support~~ child care services chief. The provider shall submit to the bureau chief the original request, the response received, and any additional information desired. The bureau chief shall render a decision in writing within 15 calendar days of receipt of the request.

ITEM 24. Amend subparagraphs **170.4(7)“g”(1)** and **(2)** as follows:

(1) Using Form 470-4534, ~~Child Care Assistance Billing/Attendance~~; or

(2) Using an electronic request for payment submitted through the KinderTrack system. Providers using this method shall print Form 470-4535, ~~Child Care Assistance Billing/Attendance Provider Record~~, to be signed by the provider and the parent. The provider shall keep the signed Form 470-4535 for a period of five years after the billing date.

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ITEM 25. Amend subrule 170.5(1) as follows:

**170.5(1) Provider agreement.** The department may refuse to enter into or may revoke ~~the Child Care Assistance Provider Agreement, Form 470-3871 or 470-3871(S);~~ if any of the following occur:

*a. to d.* No change.

*e.* The provider fails to comply with any of the terms and conditions of ~~the Child Care Assistance Provider Agreement, Form 470-3871 or 470-3871(S).~~

*f. to h.* No change.

ITEM 26. Amend subrule 170.5(5) as follows:

**170.5(5) Provider agreement sanction.** If ~~a Child Care Assistance Provider Agreement, Form 470-3871 or 470-3871(S);~~ is terminated for any of the reasons in subrule 170.5(1), the agreement shall remain terminated for the time periods set forth below:

*a. to d.* No change.

ITEM 27. Amend rule 441—170.6(237A) as follows:

**441—170.6(237A) Appeals.** Notice of adverse ~~actions and the~~ action shall be given in accordance with 441—Chapter 16. The right of to appeal shall be given in accordance with 441—Chapter 7.

ITEM 28. Amend paragraph **170.9(6)“b”** as follows:

*b.* The department of inspections and appeals shall initiate recoupment by notifying the debtor of the overpayment on Form 470-4530, ~~Notice of Child Care Assistance Overpayment.~~

[Filed 3/12/23, effective 6/1/23]

[Published 4/5/23]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/23.

**ARC 6966C**

## **HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

### **Rule making related to five-year review of rules**

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

#### *Legal Authority for Rule Making*

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

#### *State or Federal Law Implemented*

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

#### *Purpose and Summary*

Chapter 176 was reviewed as part of the Department’s five-year rules review. Definitions are updated to align with the Iowa Code and to provide consistency. The word “dependent” is added to “adult abuse” to ensure dependent adult abuse is correctly identified. These amendments clarify the relationships of all parties involved in the assessment process.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 25, 2023, as **ARC 6839C**. No public comments were received. No changes from the Notice have been made.

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*Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on March 9, 2023.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on June 1, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend rule **441—176.1(235B)**, definitions of “Adult abuse,” “Expungement,” “Informed consent,” “Multidisciplinary team,” “Preponderance of evidence” and “Registry,” as follows:

*“Adult Dependent adult abuse” means either:*

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

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where the caretaker knew or reasonably should have known the act or statement would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person.

4. The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult's life or health as a result of the acts or omissions of the dependent adult.

*"Expungement"* means the process of destroying or erasing dependent adult abuse information in compliance with Iowa Code section 235B.9.

*"Informed consent,"* ~~(as used in Iowa Code section 235B.2(5) "e")~~ as used in the description of exploitation in Iowa Code section 235B.2(5), means a dependent adult's agreement to allow something to happen that is based on a full disclosure of known facts and circumstances needed to make the decision intelligently, i.e., knowledge of risks involved or alternatives.

*"Multidisciplinary team"* ~~shall mean~~ means a membership of individuals who possess knowledge and skills related to the diagnosis, assessment, and disposition of dependent adult abuse cases and who are professionals practicing in the disciplines of medicine, public health, social work, law, law enforcement and other disciplines relative to dependent adults. Members of the team shall include, but are not limited to, persons representing the area agencies on aging, county attorneys, health care providers, and others involved in advocating or providing services for dependent adults.

*"Preponderance of evidence"* ~~shall mean~~ means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.

*"Registry"* means the central registry for dependent adult abuse information established in Iowa Code Supplement section 235B.5.

ITEM 2. Adopt the following new definitions of "Assessment information" and "Confidential information" in rule ~~441—176.1(235B)~~:

*"Assessment information"* means material and data maintained by the department in a manual or automated data storage system concerning the report, assessment or evaluation, or disposition of dependent adult abuse.

*"Confidential information"* means any information restricted by Iowa Code chapter 22, 217, 235B, 229, or 125; 45 CFR 160, 162 and 164 as of January 1, 2023; or any other provision in state or federal law that prohibits disclosure of information.

ITEM 3. Rescind the definition of "Confidentiality" in rule ~~441—176.1(235B)~~.

ITEM 4. Amend rule 441—176.2(235B) as follows:

**441—176.2(235B) Denial of critical care.** The failure, by acts or omissions, on the part of the caretaker or dependent adult to provide for minimum food, shelter, clothing, supervision, physical or mental care, and other care necessary for the dependent adult's health and welfare when financially able to do so or when offered financial and other reasonable means to do so shall constitute denial of critical care to that dependent adult.

ITEM 5. Amend rule 441—176.3(235B) as follows:

**441—176.3(235B) Appropriate evaluation.** ~~Immediately upon~~ Upon receipt of a dependent adult abuse report, ~~the worker~~ the department shall conduct an intake sufficient to determine whether the allegation meets criteria and constitutes a report of dependent adult abuse as defined in Iowa Code section 235B.2.

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

- a. ~~The~~ There is a reasonable belief the person is a dependent adult.
- b. ~~Dependent adult abuse exists as defined in Iowa Code section 235B.2~~ is suspected.
- c. The alleged person responsible is:

(1) A caretaker ~~exists~~ exists in reports of physical injury ~~to or~~, assault, unreasonable confinement or cruel punishment of a dependent adult; commission of a sexual offense; exploitation; personal degradation; and deprivation ~~by another person~~ of food, shelter, clothing, supervision, physical ~~and~~ or mental health care and other care necessary to maintain life or health.



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

(2) The dependent adult in reports of deprivation of food, shelter, clothing, supervision, physical or mental health care and other care necessary to maintain life or health due to the adult's own acts or omissions pursuant to Iowa Code section 235B.2(5) "a"(2).

**176.3(2)** Nondependent adult abuse situations. The following are not dependent adult abuse situations:

*a.* A report of domestic abuse under Iowa Code chapter 236, Domestic Abuse, does not in and of itself constitute a report of dependent adult abuse.

*b.* Circumstances in which the dependent adult declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.

*c.* Circumstances in which the dependent adult's caretaker, acting in accordance with the dependent adult's stated or implied consent, declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.

*d.* Withholding and withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician when the withholding and withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult's next-of-kin or guardian pursuant to the applicable procedures under Iowa Code chapter 125, 144A, 222, 229, or 633.

*e.* All persons legally incarcerated in a penal setting, either in a local jail or confined to the custody of the director of the department of corrections, when the allegation pertains to correctional staff as caretakers.

**176.3(3)** Reports of dependent adult abuse which are the result of the acts or omissions of the dependent adult shall be collected and maintained in the files of the dependent adult as assessments assessment information only and shall not be included on the central registry. The central registry shall be notified as to the disposition of the assessment.

**176.3(4)** Confirmed, not registered. Reports of physical abuse, denial of critical care by a caretaker, or personal degradation that would otherwise be founded reports shall be considered confirmed, not registered reports if the abuse is determined to be minor, isolated, and unlikely to reoccur. These reports shall be assessments and shall not be included on the central abuse registry. ~~The assessment shall be maintained in the local office as directed in subrule 176.13(4).~~ Access to confirmed, not registered reports will be authorized pursuant to Iowa Code section 235B.6(3).

ITEM 6. Amend rule 441—176.4(235B) as follows:

**441—176.4(235B) Reporters.** ~~The~~ As a function of the central registry and county office, centralized intake shall accept take reports from mandatory reporters or any other person who believes dependent adult abuse has occurred.

**176.4(1)** Mandatory reporters shall:

*a.* ~~Report~~ report suspected abuse of a dependent adult within 24 hours of becoming aware of an abusive incident.

*b.* ~~Make a written report within 48 hours after an oral report.~~

**176.4(2)** The reporter may use a ~~form prescribed by the department or may use~~ Form 470-2441 or a form developed by the reporter that meets the requirements of Iowa Code section 235B.3.

ITEM 7. Amend rule 441—176.5(235B) as follows:

**441—176.5(235B) Reporting procedure.**

**176.5(1)** Each report made by someone other than a mandatory reporter may be oral or written.

**176.5(2)** The report shall be made by telephone or otherwise to the department of ~~human services.~~ When the person making the report has reason to believe that immediate protection for the dependent adult is advisable, that person ~~shall~~ will be asked to also make an oral report to an appropriate law enforcement agency.

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

**176.5(3)** The department of ~~human services~~ shall: provide electronic access to all reports alleging dependent adult abuse to the appropriate county attorney.

- ~~a. Immediately, upon receipt of a report, make an oral report to the registry;~~
- ~~b. Forward a copy of the report to the registry; and~~
- ~~c. Promptly notify the appropriate county attorney of the receipt of any report.~~

**176.5(4)** The report shall may contain the following information, or as much thereof as the person making the report is able to furnish:

- a. The names and home addresses of the dependent adult, appropriate relatives, caretakers, and other persons believed to be responsible for the care of the dependent adult.
- b. The dependent adult's present whereabouts if not the same as the address given.
- c. The reason the adult is believed to be dependent. Dependency is the first criterion to be considered before beginning an evaluation.
- d. The dependent adult's age.
- e. The nature and extent of the dependent adult abuse, including evidence of previous dependent adult abuse. The existence of alleged dependent adult abuse is the second criterion to be considered before beginning an evaluation.
- f. Information concerning ~~the~~ suspected dependent adult abuse of other dependent adults in the same residence.
- g. Other information which the person making the report believes might be helpful in establishing the cause of the abuse or the identity of the person or persons responsible for the abuse, or helpful in providing assistance to the dependent adult.
- h. The name and address of the person making the report.

**176.5(5)** A report ~~shall be accepted~~ will be received whether or not it contains all of the information requested in subrule 176.5(4), and may be made to the department, county attorney, or law enforcement agency. When the report is made to any agency other than the department of ~~human services~~, that agency shall promptly refer the report to the department.

ITEM 8. Amend rule 441—176.6(235B) as follows:

**441—176.6(235B) Duties of the department upon receipt of report.**

**176.6(1)** When a report is received; and meets the criteria pursuant to Iowa Code section 235B.2(5) "a," the department shall promptly commence an appropriate evaluation or assessment, except that the department of inspections and appeals is responsible for the evaluation and disposition of a case of dependent adult abuse in a health care facility pursuant to Iowa Code chapter 235E, including hospitals as defined in Iowa Code section 135B.1 and facilities as defined in Iowa Code section 135C.1. The department shall forward all reports and other information concerning dependent adult abuse in a health care facility to the department of inspections and appeals on the first working day following the submitting of the report. The department of inspections and appeals shall inform the registry of all actions taken or contemplated concerning the evaluation or disposition of a case of dependent adult abuse in a health care facility. ~~The primary purpose of the evaluation or assessment by the department shall be the protection of the dependent adult named in the report.~~

**176.6(2)** The evaluation or assessment shall include all of the following:

- a. Identification of the nature, extent, and cause of the dependent adult abuse, if any, to the dependent adult named in the report.
- b. The identification of the person or persons responsible for the dependent adult abuse.
- c. A determination of whether other dependent adults in the same residence have been subjected to dependent adult abuse.
- d. A critical examination of the residential environment of the dependent adult named in the report, and the dependent adult's relationship with caretakers and other adults in the same residence.
- e. A critical explanation of all other pertinent matters.

**176.6(3)** The evaluation or assessment, with the consent of the dependent adult or caretaker, when appropriate, may include a visit to the residence of the dependent adult named in the report and an examination of the dependent adult. If permission to enter the residence and to examine the dependent

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adult is refused, the district court, upon a showing of probable cause that a dependent adult has been abused, may authorize a person, authorized by the department, to make an evaluation or assessment, to enter the residence of, and to examine the dependent adult.

Upon a showing of probable cause that a dependent adult has been financially exploited, a court may authorize a person, also authorized by the department, to gain access to the financial records of the dependent adult.

~~176.6(4)~~ County attorneys, law enforcement agencies, multidisciplinary teams as defined in Iowa Code section 235B.1, subsection 1, and social services agencies in the state shall cooperate and assist in the evaluation or assessment upon the request of the department. County attorneys and appropriate law enforcement agencies shall also take any other lawful action necessary or advisable for the protection of the dependent adult.

~~176.6(5)~~ **176.6(4)** Completion of evaluation or assessment report. Upon completion of its evaluation or assessment, the department shall complete a report that describes its findings and includes all actions taken or contemplated.

a. The department shall complete its report within 20 ~~working~~ business days of the receipt of the abuse allegations, unless the worker's supervisor grants an extension of time for good cause ~~shown~~. The worker's supervisor may grant an extension for a maximum of 30 ~~working~~ business days. No more than three extensions shall be granted.

b. Upon completion of an assessment or evaluation, the department shall enter its report into the dependent adult reporting and evaluation system (DARES).

c. ~~Upon completion of an assessment when the alleged abuse is the result of the acts or omissions of the dependent adult, the department shall place the report in the case file of the dependent adult and enter the information into DARES.~~

~~176.6(6)~~ **176.6(5)** Report to county attorney. The department shall ~~transmit a copy of the report of~~ provide electronic access to the complete evaluation or assessment to the appropriate county attorney. The county attorney shall notify the local office of the department of any actions or contemplated actions with respect to a suspected case of adult abuse.

~~176.6(7)~~ **176.6(6)** Based on the evaluation, the department shall complete an assessment of services needed by a dependent adult believed to be the victim of abuse, the dependent adult's family, or a caretaker. The department shall explain that the department does not have independent legal authority to compel the acceptance of protective services. Upon voluntary acceptance of the offer of services, the department shall make referrals or may provide necessary protective services to eligible dependent adults, their family members, and caretakers.

~~176.6(8)~~ Court action. When, upon completion of the evaluation or assessment or upon referral from the state department of inspections and appeals, the department determines that the best interests of the dependent adult require court action, the department shall initiate action for the appointment of a guardian or conservator, or for admission or commitment to an appropriate institution or facility, pursuant to the applicable procedures under Iowa Code chapter 125, 222, 229, or 633. ~~The department may pursue other remedies provided by law pursuant to the applicable procedures under Iowa Code sections 235B.17, 235B.18, 235B.19, and 235B.20 or any other legal remedy which provides protection to a dependent adult. The appropriate county attorney shall assist the department in the preparation of the necessary papers to initiate the action, and shall appear and represent the department at all district court proceedings.~~

~~176.6(9)~~ The department shall assist the district court during all stages of court proceedings involving a suspected case of adult abuse.

~~176.6(10)~~ In every case involving adult abuse which is substantiated by the department and which results in a judicial proceeding on behalf of the dependent adult, legal counsel shall be appointed by the court to represent the dependent adult in the proceedings. The court may also appoint a guardian ad litem to represent the dependent adult when necessary to protect the dependent adult's best interests. The same attorney may be appointed to serve both as legal counsel and as guardian ad litem. Before legal counsel or a guardian ad litem is appointed pursuant to Iowa Code section 235B.3, subsection 7, paragraph "c," the court shall require the dependent adult and any person legally responsible for the

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support of the dependent adult to complete under oath a detailed financial statement. If, on the basis of that financial statement, the court deems that the dependent adult or the legally responsible person is able to bear all or a portion of the cost of the legal counsel or guardian ad litem, the court shall so order. In cases where the dependent adult or the legally responsible person is unable to bear the cost of the legal counsel or guardian ad litem, the expense shall be paid by the county.

~~176.6(11)~~ 176.6(7) Notification of licensing authority. Based on information discovered during an evaluation of dependent adult abuse in a program providing care to a dependent adult as authorized pursuant to Iowa Code section 235B.6(2) "c" and for the purpose of assuring safety and mitigating risk to dependent adults, the department shall notify the licensing or accrediting authority for the program, the governing body of the program, and the administrator in charge of the program of any of the following:

- a. A violation of program policy noted in the evaluation.
- b. An instance in which program policy or lack of program policy may have contributed to the dependent adult abuse.
- c. An instance in which general practice in the program appears to differ from the program's policy.

~~The licensing or accrediting authority, the governing body, and the administrator in charge of the program shall take any lawful action which may be necessary or advisable to protect dependent adults receiving care in the program.~~

~~176.6(12)~~ 176.6(8) Assessments Services by other agencies. The department may approve agencies considered capable and appropriate to complete assessments of provide services during the course of an assessment or evaluation to dependent adults who are suspected of being abused or neglected.

a. The department may make a referral to an approved agency to complete an assessment of provide services to a dependent adult who is suspected of being abused or neglected, in conjunction with a department abuse evaluation or assessment on the dependent adult.

b. The department may use information obtained ~~from the assessment completed during services~~ provided by the approved agency in the abuse evaluation or assessment. The department has complete authority in determining the conclusions of the abuse evaluation or assessment.

~~176.6(13)~~ Referrals to other agencies. ~~During an assessment or evaluation of suspected abuse of a dependent adult, the department shall:~~

a. ~~Make a referral to the division of labor services of the department of workforce development if an issue is discovered that concerns wages, workplace safety, or labor and employment matters under the jurisdiction of that agency.~~

b. ~~Make a referral to the civil rights commission if an issue is discovered that involves discrimination under the jurisdiction of that agency.~~

~~176.6(14)~~ 176.6(9) Assessment of dependency and risk. ~~After the first visit to a dependent adult who is alleged to be abused~~ During a dependent adult abuse assessment or evaluation, the department shall complete an assessment of the adult using a form prescribed by the department pursuant to Iowa Code section 235B.16A(2). The department shall assess:

- a. The adult's dependency,
- b. The risk to the adult's health or safety, and
- c. The areas in which the adult is either dependent or independent.

~~176.6(15)~~ 176.6(10) Follow-up for at-risk adults. When it has not been possible or necessary to obtain a court order for services to an at-risk adult, the department shall attempt to empower the at-risk adult to agree to accept services and to participate in preparing a safety plan. If the adult refuses to sign a safety plan for an at-risk adult and to accept recommended services, the department shall provide periodic visits at the conclusion of the assessment or evaluation. Periodic visits will be conducted with the at-risk adult. The department has no authority to share information or obtain information with any other individuals during the course of periodic visits. Periodic visits should not be used as a means to continue gathering assessment or evaluation information.

- a. *Purpose.* The purpose of the visits shall be to:
  - (1) Assess the adult for increased risk or impairment,

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

(2) Monitor the adult's situation to determine the feasibility of intervening with protective services, and

(3) Empower the adult to accept recommended services and to engage in safety planning.

*b. Exemption.* If it has been determined there is a physical threat to the safety of the department employee who is attempting to visit an at-risk adult, the department shall not attempt a periodic visit unless the physical threat to safety has been removed.

*c. Criteria to continue visits.* Periodic visits shall continue if:

(1) The adult's health or safety has deteriorated somewhat but not to the point that a court order is necessary; or

(2) The adult's health or safety has remained the same and there is a possibility the adult may in the future agree to services and to participating in preparing a safety plan.

*d. Criteria to end visits.* Periodic visits shall be terminated when:

(1) The adult agrees to services and services are arranged; or

(2) The adult's health or safety has deteriorated to the point that the department has requested court action pursuant to subrule 176.6(8); or

(3) The adult's health or safety has not changed six months after the initial report of alleged abuse; there appears no possibility the adult will ever agree to services; and the adult is competent has the capacity to make decisions.

ITEM 9. Amend rule 441—176.7(235B) as follows:

**441—176.7(235B) Appropriate evaluation or assessment.**

~~176.7(1) After receipt of the report alleging dependent adult abuse, the field worker shall make an evaluation or assessment to determine whether the information as reported, other known information, and any information gathered as a result of the worker's contact with collateral sources would tend to corroborate the alleged abuse.~~

~~176.7(2) When the information gathered in the evaluation or assessment tends to corroborate, or the worker is uncertain as to whether it repudiates the allegations of the report, the worker shall immediately continue the evaluation or assessment by making a reasonable effort to ensure the safety of the adult. The worker and the worker's supervisor shall determine whether an immediate threat to the physical safety of the adult is believed to exist.~~

~~a. If an immediate threat to the physical safety of the adult is believed to exist, the field worker shall make every reasonable effort to examine the adult, as authorized by 176.6(3), within one hour after receipt of the report and shall take any lawful action necessary or advisable for the protection of the adult.~~

~~b. When physical safety of the adult is not endangered, the worker shall make every reasonable effort to examine the adult within 24 hours after receipt of the report.~~

~~176.7(3) In the event the information gathered in the evaluation or assessment fails to corroborate the allegation of adult abuse, the worker, with approval of the supervisor, may terminate the evaluation or assessment and submit the report required by subrule 176.6(5).~~

176.7(1) After receipt of a report alleging dependent adult abuse which meets criteria as outlined in subrule 176.3(1), a dependent adult abuse evaluation or assessment will be initiated and will be assigned to an adult protection worker. The adult protection worker will make an effort to observe and examine the dependent adult as authorized by subrule 176.6(3) and evaluate the dependent adult's safety.

a. For cases where there is information that the alleged perpetrator has access to the adult subject, reasonable efforts shall be made to observe the adult subject and evaluate the adult subject's safety within 24 hours of commencing the assessment of the report alleging dependent adult abuse.

b. For cases where there is information that the alleged perpetrator clearly has no access to the adult subject, or for cases where services are in place to mitigate any safety concerns, reasonable efforts shall be made to observe the adult subject and evaluate the adult subject's safety within 72 hours of commencing the assessment of the report alleging dependent adult abuse.

c. When reasonable efforts have been made to observe the adult subject within the specified time frames and the worker has established that there is no need to observe and no risk to the adult subject, the observation of the adult subject may be delayed or waived with supervisory approval.

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**176.7(2)** After receipt of the report alleging dependent adult abuse, the adult protection worker shall conduct an evaluation or assessment to determine whether the information as reported, other known information, and any information gathered as a result of the worker's contact with collateral sources or other collateral contacts would tend to corroborate the alleged abuse.

**176.7(3)** In the event the information gathered in the evaluation or assessment fails to corroborate the allegation of dependent adult abuse as defined in Iowa Code section 235B.2(5) "a," the worker, with approval of the supervisor, may terminate the evaluation or assessment and submit the report.

ITEM 10. Rescind rule **441—176.8(235B)**.

ITEM 11. Renumber rules **441—176.9(235B)** to **441—176.13(235B)** as **441—176.8(235B)** to **441—176.12(235B)**.

ITEM 12. Amend renumbered rule 441—176.8(235B) as follows:

**441—176.8(235B) Registry records.** Central registry records shall be kept in the name of the dependent adult and cross-referenced in the name of the ~~caretaker~~ alleged person responsible (if applicable).

ITEM 13. Amend renumbered rule 441—176.9(235B) as follows:

**441—176.9(235B) Adult Dependent adult abuse information disseminated.**

**176.9(1) Requests for information.** Written requests for dependent adult abuse information by the subject of a report as defined in subrule 176.10(3), paragraph "a," may be submitted to the county office of the department on the department-prescribed form entitled ~~Request for Child and Dependent Adult Abuse Information Form 470-0643 or 470-2444.~~

Oral requests for dependent adult abuse information may be made to the county office or the central registry when the person making the request believes that the information is needed immediately and the person is authorized to access the information, pursuant to the requirements of Iowa Code section ~~235B.7, subsection 2~~ 235B.7(2). If a request is made orally by telephone, a written request shall be filed within 72 hours of the oral request on the department-prescribed form entitled ~~Request for Child and Dependent Adult Abuse Information Form 470-0643.~~ When an oral request to the county office to obtain dependent adult abuse information is granted by the central registry, the county shall document the approval to the central registry on the department-prescribed form entitled ~~Request for Child and Dependent Adult Abuse Information Form 470-0643.~~

All other requests for information shall be made to the central registry by mail or fax pursuant to the requirements of Iowa Code section 235B.7.

**176.9(2) Verification of identity.** The county office shall verify the identity of the person making the request on the department-prescribed form entitled ~~Request for Child and Dependent Adult Abuse Information Form 470-0643.~~ Upon verification of the identity of the person making the request, the county office shall transmit the request to the central registry. The central registry shall verify the identity of persons making requests for information directly to the central registry by telephone, mail, or fax, or in person, on the department-prescribed form entitled ~~Request for Child and Dependent Adult Abuse Information Form 470-0643.~~

**176.9(3) Approval of requests.** The department shall grant access to dependent adult abuse information as authorized by Iowa Code section 235B.6. Upon approval of any request for dependent adult abuse information authorized by this rule, the department may withhold the name of the person who made the report of dependent adult abuse ~~when the department finds that the disclosure of the person's identity would be detrimental to the person's interest~~ pursuant to Iowa Code section 22.7(18).

**176.9(4) Requests concerning applicants for employment and employees of health care programs.** A health care program making a request for dependent adult abuse information for the purpose of determining employability, as authorized by Iowa Code section ~~235B.6, subsection 2, paragraph "e," subparagraphs (6) and (7), 235B.6(2) "e" (6) and (7) and section 135C.33, subsection 6~~ 135C.33(6), shall request the information directly from the central registry or obtain the information from the ~~Internet electronic information system maintained by the health facilities division of the department of inspections and appeals~~ single contact repository (SING).

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

Requests made directly to the central registry shall be made on the department-prescribed form entitled ~~Request for Child and Dependent Adult Abuse Information~~ Form 470-0643.

Health care programs requesting dependent adult abuse background checks on employee applicants and employees by use of the ~~Internet electronic information system SING~~ shall complete the department-prescribed form entitled ~~Access to Confidential Abuse Information and Non-Redissemination Agreement~~. The form Form 470-3767. Form 470-3767 shall be signed by the administrator of the health care program and be sent to the central registry before receipt of the information from the department. The administrator shall agree not to redisseminate dependent adult abuse information obtained through the ~~Internet electronic information system SING~~, except as authorized in Iowa Code sections 235B.6 and 235B.8.

~~176.9(5) Dissemination of undetermined reports. Rescinded IAB 8/6/03, effective 7/10/03.~~

~~176.9(6) Access to unfounded dependent adult abuse information. Access to unfounded dependent adult abuse information is authorized only to:~~

~~a. Persons identified as subjects of a report, including the dependent adult named in a report as a victim, a guardian of a dependent adult named in a report as a victim, a person named in a report as having abused a dependent adult, or an attorney representing any of the above;~~

~~b. An employee or agency of the department of human services responsible for the evaluation or assessment of a dependent adult abuse report;~~

~~c. Registry or department personnel, when necessary to the performance of their official duties, or a person or agency under contract with the department to carry out official duties and functions of the registry;~~

~~d. The mandatory reporter who reported dependent adult abuse in an individual case;~~

~~e. The long term care resident advocate, if the victim resides in a long term care facility or the alleged perpetrator is an employee of a long term care facility; and~~

~~f. A multidisciplinary team, if the department approves the composition of the team and determines that access to the team is necessary to assist in the evaluation, diagnosis, assessment, and disposition of a dependent adult abuse case.~~

~~176.9(7)~~ 176.9(5) *Requests concerning employees of department facilities.* When a request is made by the hiring authority of a department operated facility which provides direct client care and the request is made for the purpose of determining continued employability of a person employed, with or without compensation, by the facility, the information shall be requested directly from the central registry. The information requested shall be disseminated to the personnel office of the department. The personnel office shall redisseminate the information to the hiring authority for the person involved only upon a finding that the information has a direct bearing on employability of the person involved.

When the personnel office determines that the information has no direct bearing on employability, the hiring authority shall be notified that no job-related dependent adult abuse information is available. If the central registry and local office files contain no information, the hiring authority shall be so informed.

~~176.9(8)~~ 176.9(6) *Dependent adult abuse information disseminated and redisseminated.* Notwithstanding ~~subrule 176.10(1)~~ requests pursuant to Iowa Code section 235B.7, written requests and oral requests are not required for dependent adult abuse information that is disseminated to an employee of the department of human services, a district court, or the attorney representing the department as authorized by Iowa Code section 235B.6, or the office of the attorney general.

~~176.9(9)~~ 176.9(7) *Required notification.* The department ~~shall~~ will make a reasonable attempt to notify ~~orally the subject of a report of the results of the evaluation or assessment~~ dependent adult abuse subjects as described in Iowa Code section 235B.6(2) "a" of the outcome of the dependent adult abuse assessment or evaluation. The department shall subsequently ~~transmit~~ send a written notice to the ~~subject report subjects~~ which will include information regarding the results, the confidentiality provisions of Iowa Code sections 235B.6 and 235B.12, and the procedures for correction or expungement and appeal of dependent adult abuse information as provided in Iowa Code section 235B.10.

~~176.9(10)~~ 176.9(8) *Mandatory reporter notification.* The department shall attempt to notify orally the mandatory reporter who made the report in a dependent adult abuse case of the results of the

HUMAN SERVICES DEPARTMENT[441](cont'd)

evaluation or assessment and of the confidentiality provisions of Iowa Code sections 235B.6 and 235B.12. The department shall subsequently transmit a written adult protective notification on a form prescribed by the department to each mandatory reporter who made the report. The form shall include information regarding the results of the evaluation or assessment and confidentiality provisions. A copy of the written notice shall be transmitted to the registry and shall be maintained by the registry as provided in Iowa Code section 235B.8.

~~176.9(11)~~ **176.9(9)** *Subjects informed of abuse history.* The department may inform a subject of a dependent adult abuse report of a person's abuse history if the department determines at any time that disclosure is necessary for the protection of the dependent adult. A subject may be informed that a person is listed on the child or dependent adult abuse registry as having a founded abuse report or is listed on the sex offender registry.

ITEM 14. Amend renumbered rule 441—176.11(235B) as follows:

**441—176.11(235B) Examination of information.** ~~Examination of information contained in the central registry can be made at the site of the central registry between the hours of 8 a.m. and 12 p.m. or 1 p.m. and 4 p.m., Monday through Friday, except state authorized holidays.~~

The Pursuant to Iowa Code section 235B.10, any person, or that person's attorney, requesting to examine the information in the registry which refers to that person, shall be allowed to inspect the information after providing appropriate identification. Examination of information contained in the central registry can be made at the site of the central registry between the hours of 8 a.m. and 12 noon or 1 p.m. and 4 p.m., Monday through Friday, except state authorized holidays.

ITEM 15. Amend renumbered rule 441—176.12(235B) as follows:

**441—176.12(235B) Dependent adult abuse information registry.** The department shall create a central abuse registry for dependent adult abuse information. The registry shall collect, maintain, and disseminate dependent adult abuse information as follows:

**176.12(1) Founded reports.** A report of dependent adult abuse determined to be founded shall be retained and sealed by the registry in accordance with Iowa Code section 235B.9.

**176.12(2) Unfounded reports.** A report of dependent adult abuse determined to be unfounded shall be expunged five years from the date it is determined to be unfounded, in accordance with Iowa Code section ~~235B.9, subsection 2, as amended by 2009 Iowa Acts, Senate File 484~~ 235B.9(2).

**176.12(3) Rejected intakes.** Reports that are found not to meet the criteria to be accepted for evaluation or assessment of abuse shall be kept in the ~~local office~~ dependent adult reporting and evaluation system (DARES) for three years from the date the report of abuse was determined to be rejected.

**176.12(4) Assessments.** Reports classified as assessments shall not be included in the central registry but shall be maintained in the ~~local office~~ DARES. The central registry shall be notified of the disposition of the assessment report.

*a. Self-denial of critical care.* Reports involving abuse as a result of the acts or omissions of the dependent adult will be assessments. These reports shall be retained in the ~~dependent adult's case file in the local office~~ DARES for five years and then destroyed.

*b. Confirmed, not registered.* Reports of dependent adult abuse where physical abuse or, assault, unreasonable confinement, unreasonable punishment, denial of critical care, or personal degradation committed by a caretaker is confirmed but is determined to be minor, isolated, and unlikely to reoccur shall be assessments. These reports shall be maintained in the ~~local office~~ DARES for five years and then destroyed unless a subsequent report of dependent adult abuse on the same caretaker is founded. If a subsequent report on the same caretaker is founded within the five-year period, the confirmed, not registered report shall be maintained in the ~~local office~~ DARES for ten years from the date of the subsequent report and then sealed.



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ITEM 16. Renumber rule **441—176.15(235B)** as **441—176.13(235B)**.

ITEM 17. Amend renumbered rule 441—176.13(235B) as follows:

**441—176.13(235B) Multidisciplinary teams.**

**176.13(1) Purpose of multidisciplinary teams.** The service area shall establish multidisciplinary teams for the purpose of assisting the department in assessment, diagnosis, and disposition of reported dependent adult abuse cases. The disposition of a case may include the provision for treatment recommendations and services.

**176.13(2) Execution of team agreement.** When the team is established, the service area manager or designee and all team members shall execute an agreement on a form prescribed by the department. The multidisciplinary team agreement shall specify:

*a.* That the team shall be consulted solely for the purpose of assisting the department in the assessment, diagnosis and treatment of dependent adult abuse cases.

*b.* That any team member may cause a dependent adult abuse case to be reviewed if approved by the department through use of the process of requesting dependent adult abuse information specified in rule 441—176.10(235B) 441—176.9(235B).

*c.* That no team members shall disseminate dependent adult abuse information obtained solely through the multidisciplinary team. This shall not preclude dissemination of information as authorized by Iowa Code section 235B.6 when an individual team member has received information as a result of another authorized access provision of the Iowa Code.

*d.* That the department may consider the recommendation of the team in a specific dependent adult abuse case but shall not, in any way, be bound by the recommendations.

*e.* That any written report or document produced by the team pertaining to an individual case shall be made a part of the file for the case and shall be subject to all confidentiality provisions of Iowa Code sections 235B.6 and 235B.8 and of 441—Chapter 176.

*f.* That any written records maintained by the team which identify an individual dependent adult abuse case shall be destroyed when the agreement lapses.

*g.* That consultation team members shall serve without compensation.

*h.* That any party to the contract may withdraw with or without cause upon the giving of 30 days' notice.

*i.* The date on which the agreement will expire.

**176.13(3) Filing of agreement.** Whenever a team is created, a copy of the executed contract shall be filed with the central registry in addition to any other requirement placed upon execution of agreements by the department.

ITEM 18. Rescind rule **441—176.16(235B)**.

ITEM 19. Renumber rule **441—176.17(235B)** as **441—176.14(235B)**.

ITEM 20. Amend renumbered rule 441—176.14(235B) as follows:

**441—176.14(235B) Request for correction or expungement.** The department of human services is responsible for correction or expungement of reports prepared by department staff. The department of inspections and appeals is responsible for correction or expungement of reports prepared by that department's staff and that determination shall be binding on the registry.

**176.14(1)** ~~Within six months of the date of the notice of evaluation results, a person may file with the registry a written statement to the effect that the dependent adult abuse information referring to the person is partially or entirely erroneous. The person may also request a correction of that information or of the findings of the report. The~~ When a request for correction or expungement pursuant to Iowa Code section 235B.10 is received, the central registry will record all requests and immediately promptly forward the requests to the division of health facilities, department of inspections and appeals, when the reports were prepared by the department of inspections and appeals. The registry will notify the person requesting a correction that the report has been sent to the department of inspections and appeals.

HUMAN SERVICES DEPARTMENT[441](cont'd)

**176.14(2)** Unless the designated department corrects the information or findings as requested, the designated department shall provide the person with an opportunity for a hearing as provided by 441—Chapter 7 to correct the information or the findings. The department may defer the hearing until the conclusion of a pending district court case relating to the information or findings.

[Filed 3/12/23, effective 6/1/23]

[Published 4/5/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/23.

**ARC 6973C**

## **INSPECTIONS AND APPEALS DEPARTMENT[481]**

**Adopted and Filed**

### **Rule making related to psychiatric medical institutions for children (PMIC)**

The Inspections and Appeals Department hereby amends Chapter 41, “Psychiatric Medical Institutions for Children (PMIC),” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 10A.104 and 135H.10.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 10A.104, 17A.7(2) and 135H.10.

#### *Purpose and Summary*

The Department completed a comprehensive review of Chapter 41 in accordance with the requirement in Iowa Code section 17A.7(2). This rule making eliminates redundancy within Chapter 41 by referencing Iowa Code chapter 135H and pertinent federal law, and updates the process for renewal applications and the purchase, transfer, assignment, or lease of a PMIC to conform to current practices.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 11, 2023, as **ARC 6813C**. No public comments were received. One change from the Notice has been made to add a final paragraph to rule 481—41.2(135H), numbered paragraph “6,” that was unintentionally omitted from the Notice.

#### *Adoption of Rule Making*

This rule making was reviewed and approved by the State Board of Health at its March 8, 2023, meeting. This rule making was adopted by the Department on March 15, 2023.

#### *Fiscal Impact*

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

#### *Jobs Impact*

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

#### *Waivers*

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

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on May 10, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend rule 481—41.1(135H) as follows:

**481—41.1(135H) Definitions.** The definitions set forth in Iowa Code section 135H.1 are incorporated herein. As used in this chapter:

“Nurse practitioner” means a registered professional nurse who is currently licensed to practice in the state, who meets state requirements and is currently licensed to practice nursing under the nursing board[655] rules in the Iowa Administrative Code.

~~“Physician” means a person licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy under Iowa Code chapter 148, 150 or 150A.~~

“Physician assistant” means a person licensed to practice under Iowa Code chapter 148C.

~~“Psychiatric services” means services provided under the direction of a physician which address mental, emotional, medical or behavioral problems.~~

~~“Resident” means a person who is less than 21 years of age and has been admitted by a physician to a psychiatric medical institution for children.~~

ITEM 2. Amend rule 481—41.2(135H) as follows:

**481—41.2(135H) Application for license.** In order to obtain an initial license for a PMIC, the applicant must comply with Iowa Code chapter 135H and the rules in this chapter. Each applicant must submit the following documents to the department:

1. and 2. No change.
3. A floor plan of each floor of the facility on 8½" by 11" paper showing:
  - Room areas in proportion;
  - Room dimensions;
  - Numbers for all rooms including bathrooms;
  - A designation of use for each room; and
  - Window and door locations;
4. No change.
5. The PMIC license fee set forth in Iowa Code section 135H.5; and
6. Evidence of:

~~Accreditation by the joint commission on accreditation of health care organizations (JCAHO) in accordance with Iowa Code section 135H.6(1)“b”;~~

~~Department of public health certificate of need;~~

~~Department Approval of the department of human services determination of approval in accordance with Iowa Code section 135H.6(1)“e”; and~~

~~Compliance with the requirements of Iowa Code section 135H.6(1)“f.”~~

~~Three years under the direction of an agency which has operated a facility:~~

- ~~Licensed under Iowa Code section 237.3(2)“a,” or~~

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

~~● Providing services exclusively to children or adolescents and the facility meets or exceeds the requirements for licensure under Iowa Code section 237.3(2)“a.”~~

This rule is intended to implement Iowa Code sections 135H.4, and 135H.5, and 135H.6.

ITEM 3. Amend rule 481—41.3(135H) as follows:

**481—41.3(135H) Renewal application or change of ownership.** In order to renew a license or change ownership of the psychiatric medical institution for children, the applicant must submit to the department:

1. A completed application form 30 days before the renewal date or before the date of the ownership change; and
2. The PMIC license fee; and
3. ~~A copy of any revisions to the department of human services application for a comprehensive care residential facility license.~~

**41.3(1) Denial, suspension or revocation of a license.** The department may deny, suspend or revoke a PMIC license for any of the following reasons: reasons set forth in Iowa Code section 135H.8.

- ~~a. The applicant or licensee failed to comply with the rules in this chapter;~~
- ~~b. A resident is a victim of cruelty or neglect because of the acts or omissions of the licensee;~~
- ~~c. The licensee permitted, aided or abetted in the commission of an illegal act in the institution; or~~
- ~~d. The applicant or licensee attempted to obtain or retain a license by fraudulent means, misrepresentation, or by submitting false information.~~

The department will issue notice of denial, suspension or revocation by certified mail or by personal service.

**41.3(2)** No change.

This rule is intended to implement Iowa Code sections 135H.8 and 135H.9.

ITEM 4. Amend rule 481—41.4(135H), introductory paragraph, as follows:

**481—41.4(135H) Licenses for distinct parts.** ~~Separate licenses may be issued for clearly identifiable parts of a health care facility as defined in Iowa Code section 135C.1 or a hospital as defined in Iowa Code section 135B.1. A distinct part must contain contiguous rooms in a separate wing or building or be on a separate floor of the facility. Distinct parts shall provide care and services of separate categories. Separate licenses may be issued for distinct parts of a health care facility which are clearly identifiable, containing contiguous rooms in a separate wing or building or on a separate floor of the facility, and which provide care and services of separate categories.~~ The following requirements shall be met for licensing a distinct part:

ITEM 5. Amend rule 481—41.6(135H) as follows:

**481—41.6(135H) Notice to the department.**

**41.6(1)** The department shall be notified at the times stated when the following events are expected to occur:

- a. Thirty days before addition, alteration or new construction is begun in the PMIC or on the premises;
- b. Thirty days in advance of closure of the PMIC; or change in the category of license sought; and
- c. Within two weeks of any change of administrator; and
- ~~d. Within 30 days when a change in the category of license is sought.~~

**41.6(2)** Prior to the purchase, transfer, assignment or lease of a PMIC, the licensee shall:

- a. Inform the department in writing of the pending sale, transfer, assignment or lease of the facility; and
- b. Inform the department in writing of the name and address of the prospective purchaser, transferee, assignee or lessee at least 30 days before the sale, transfer, assignment or lease is complete; and
- ~~c. Submit written authorization to the department permitting the department to release information of whatever kind from department files concerning the licensee's PMIC to the named prospective purchaser, transferee, assignee or lessee.~~

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

ITEM 6. Amend rule 481—41.9(135H) as follows:

**481—41.9(135H) Certification of need for services.** All recipients of services shall have written certification which ensures the following:

1. Ambulatory care resources available in the community do not meet the treatment needs of the recipient;
2. Proper treatment of the recipient's psychiatric condition requires services on an inpatient basis under the direction of a physician; and
3. The services can reasonably be expected to improve the recipient's condition or prevent further regression so services will no longer be needed.

Certification of need shall be completed ~~by the team described in subrules 41.13(2) and 41.13(3).~~ Certification must be made at the time of admission by an independent team for Medicaid recipients. For emergency admissions, the certification must be made by the team described in 41.13(135H) within 14 days after admission. ~~If an individual applies for Medicaid while in a PMIC, certification of need must be made by the team described in 41.13(135H) before a Medicaid agency authorizes payment in accordance with 42 CFR Sections 441.152 and 441.153.~~

ITEM 7. Amend paragraph **41.16(2)“b”** as follows:

- b. Names and identities of all complainants; and

[Filed 3/15/23, effective 5/10/23]

[Published 4/5/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/23.

**ARC 6975C**

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

**Adopted and Filed**

**Rule making related to hospice license standards**

The Inspections and Appeals Department hereby amends Chapter 53, “Hospice License Standards,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 135J.7.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 17A.7(2) and 135J.7 and 2022 Iowa Acts, House File 803.

*Purpose and Summary*

The Department completed a comprehensive review of Chapter 53 in accordance with the requirement in Iowa Code section 17A.7(2), and these amendments update the chapter to align with current practices, terminology, and federal requirements. These amendments also add “physician assistant” to the attending physician qualifications in accordance with 2022 Iowa Acts, House File 803.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 8, 2023, as **ARC 6878C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

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

This rule making was reviewed and approved by the State Board of Health at its March 8, 2023, meeting. This rule making was adopted by the Department on March 15, 2023.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on May 10, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend rule **481—53.1(135J)**, definitions of “Bereavement service” and “Home care provider,” as follows:

“Bereavement service” is support offered during the bereavement period to the family and friends of someone who has died emotional, psychosocial, and spiritual support and services provided before and after the death of the patient to assist with issues related to grief, loss, and adjustment.

“Home care provider” means a care agency that contracts with the hospice to provide services in the home of the hospice patient. The providers may include, but are not limited to, home health hospice aides, homemakers, nurses, occupational therapists or physical therapists.

ITEM 2. Amend subrule 53.2(3) as follows:

**53.2(3)** Each hospice seeking licensure is surveyed before the initial license is issued and biennially before a license is renewed at least every 36 months thereafter.

ITEM 3. Amend subrule 53.2(5) as follows:

**53.2(5)** Hospices certified as Medicare providers by the department or accredited by the Joint Commission on the Accreditation of Health Organizations an organization approved by the Centers for Medicare and Medicaid Services for federal certification will be licensed without inspection.

ITEM 4. Rescind paragraph **53.4(1)“e.”**

ITEM 5. Reletter paragraphs **53.4(1)“f”** to **“j”** as **53.4(1)“e”** to **“i.”**

ITEM 6. Amend relettered paragraphs **53.4(1)“e”** and **“f”** as follows:

e. Provide for medical direction by a licensed physician, including naming a qualified physician to be available in the medical director’s absence;

f. Provide appropriate, qualified personnel in sufficient quantity to ensure availability of hospice services listed below;. Physician and nursing services and the provision of appropriate drugs shall be available 24 hours a day, seven days a week;

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

ITEM 7. Amend subrules 53.5(1) and 53.5(2) as follows:

**53.5(1)** ~~At least quarterly, the~~ The medical director, patient coordinator and social worker used by the hospice program shall review a minimum of a 10 percent sample of combined active and inactive clinical records of care delivered to hospice patients ~~and families~~ on a periodic and ongoing basis. A written summary shall be prepared for each individual assessment, ~~commenting on the amount and kind of care delivered and including statements addressing any unmet needs.~~

**53.5(2)** ~~At least quarterly, all~~ All summaries of individual assessments shall be reviewed by the people responsible for coordinating quality assurance on a periodic and ongoing basis. A written report will be prepared addressing any identified problems with care, treatment services, availability of services and methods of care delivery.

ITEM 8. Amend rule 481—53.6(135J) as follows:

**481—53.6(135J) Attending physician services.** The patient or family shall designate an attending physician or physician assistant who is responsible for managing necessary medical care. The attending physician shall:

1. Have an active Iowa license ~~to practice medicine~~ pursuant to Iowa Code chapter 148, ~~150 or 150A~~ or 148C;

2. to 6. No change.

This rule is intended to implement Iowa Code section 135J.3(4).

ITEM 9. Amend rule 481—53.7(135J) as follows:

**481—53.7(135J) Medical director.** Each hospice shall have a medical director who is a physician licensed to practice medicine pursuant to Iowa Code chapter 148, ~~150 or 150A~~. The medical director shall:

1. to 6. No change.

7. Participate in resolving conflicts regarding care to be provided; and

~~8. Name a qualified physician to be available in the medical director's absence; and~~

~~9. 8.~~ Participate in the development and review of patient ~~and family~~ care policies, procedures and protocols.

This rule is intended to implement Iowa Code section 135J.3(1).

ITEM 10. Amend rule 481—53.8(135J) as follows:

**481—53.8(135J) Interdisciplinary team (IDT).** The IDT shall establish a plan of care for each patient ~~and family~~ based on assessments performed by team members.

**53.8(1)** The interdisciplinary team shall include, ~~but is not limited to,~~ the:

a. Patient, to the extent the patient is able and willing to participate;

b. Hospice patient's family, to the extent the family is able and willing to participate;

~~c. Attending physician~~ A doctor of medicine or osteopathy who is an employee of or under contract with the hospice;

~~d. Medical director~~;

~~e. d.~~ Patient care coordinator;

~~f. e.~~ Staff Registered nurse;

~~g. f.~~ Social worker; and may include

~~h. Coordinator of volunteer service; and may include~~

~~i. g.~~ A spiritual pastoral or other counselor and others deemed appropriate by the hospice.

**53.8(2)** ~~Prior to or on the day~~ Within 48 hours of admission, the attending physician or registered nurse and at least one IDT team member shall develop an initial plan based on a preliminary assessment of the patient ~~and family~~ needs.

**53.8(3)** ~~Within seven~~ five calendar days of admission, the interdisciplinary team shall assess the needs of the patient and family. A care plan shall be based on these findings.

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

**53.8(4)** Within ~~seven~~ five calendar days of admission, the interdisciplinary team shall meet to develop a comprehensive written plan of care. The plan of care shall:

*a. to f.* No change.

**53.8(5)** The IDT shall monitor and revise the plan of care on a regular basis. The team shall meet ~~weekly~~ at least every 15 days and exchange information regarding the needs of the patient and family. Changes in the care plan shall be made when the needs of the patient or family change or when interventions do not result in the expected or intended response.

This rule is intended to implement Iowa Code section 135J.3(5).

ITEM 11. Amend subrule 53.9(2) as follows:

**53.9(2)** The nursing service staff shall:

*a. to e.* No change.

*f.* Develop and implement nursing service objectives, policies and procedures; and

~~*g.* Develop job descriptions for all nursing personnel;~~

~~*h.* Establish staff schedules to meet patient and family needs and ensure 24-hour service;~~

~~*i.* Develop and implement orientation and training programs;~~

~~*j.* Develop and implement performance evaluation for the nursing staff;~~

~~*k.*~~ *g.* Assign duties to nurses and hospice aides consistent with their education and experience; and

~~*l.* Facilitate periodic meetings of the professional nursing staff to evaluate the nursing care provided by hospice personnel.~~

ITEM 12. Amend rule 481—53.11(135J) as follows:

**481—53.11(135J) Coordinator of patient care.**

**53.11(1)** A registered nurse, social worker or health care administrator shall be designated to coordinate implementation of the plan of care for each patient.

**53.11(2)** The coordinator of patient care shall at least:

~~1. *a.* Coordinate all aspects of patient care to ensure continuity, including care by all service disciplines in all care settings;~~

~~2. *b.* Facilitate exchange of information among all personnel who provide services to ensure complementary efforts and support for objectives outlined in the plan of care;~~

~~3. *c.* Facilitate communication between caregivers, patient and family;~~

~~4. *d.* Maintain a roster of patients;~~

~~5. *e.* Maintain a schedule for IDT review of care plans; and~~

~~6. *f.* Chair IDT conferences;~~

*g.* Develop job descriptions for all nursing personnel;

*h.* Establish staff schedules to meet patient needs and ensure 24-hour service;

*i.* Develop and implement orientation and training programs;

*j.* Develop and implement performance evaluation for the nursing staff; and

*k.* Facilitate periodic meetings of the professional nursing staff to evaluate the nursing care provided by hospice personnel.

This rule is intended to implement Iowa Code section 135J.3(2).

ITEM 13. Amend rule 481—53.12(135J) as follows:

**481—53.12(135J) Social services.** ~~Social services shall be planned and provided or supervised by a person who has at least a bachelor's degree in social work from a school approved by the council on social work education. Medical social services must be provided by a qualified social worker, under the direction of a physician. Social work services must be based on the patient's psychosocial assessment and the patient's and family's needs and acceptance of these services.~~

**53.12(1)** Education and experience. A qualified social worker is a person who:

*a.* Has a master of social work (MSW) degree from a school of social work accredited by the Council on Social Work Education; or



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

b. Has a baccalaureate degree in social work from an institution accredited by the Council on Social Work Education; or

c. Has a baccalaureate degree in psychology, sociology, or other field related to social work and is supervised by an MSW as described in paragraph 53.12(1)“a”; and

d. Has one year of social work experience in a health care setting; or

e. Has a baccalaureate degree from a school of social work accredited by the Council on Social Work Education, was employed by the hospice before December 2, 2008, and is not required to be supervised by an MSW.

**53.12(2)** The social worker shall at least:

1. a. Consider the emotions and social support system of the patient ~~and family~~;
2. ~~Assess the ability of the family and the patient to function socially and to deal with their emotions;~~
3. b. Identify patient ~~and family~~ social service needs;
4. c. Participate on the IDT to develop and amend the plan of care;
5. d. Provide services in accordance with the plans of care developed by the IDT;
6. e. Document services provided and observations made regarding patient and family response and status; and
7. f. Cooperate and communicate with other providers and the family to enhance the continuity of care.

This rule is intended to implement Iowa Code section 135J.3(2).

ITEM 14. Amend rule 481—53.14(135J) as follows:

**481—53.14(135J) Volunteer services.** Each hospice shall provide volunteer services to meet patient and family needs. A coordinator of volunteer services shall be designated to implement written policies and procedures. Volunteers must be used in defined roles and under the supervision of a designated hospice employee. The hospice must maintain, document and provide volunteer orientation and training that is consistent with hospice industry standards.

~~**53.14(1)** Each volunteer shall have at least 14 hours of education provided by the hospice before being assigned to a patient and family. The following topics shall be included in the educational program:~~

- ~~a. Hospice concept and philosophy;~~
- ~~b. Symptom control;~~
- ~~c. Infection control;~~
- ~~d. Home care skills;~~
- ~~e. Safety measures and transfer techniques;~~
- ~~f. Stress management;~~
- ~~g. Communication needs;~~
- ~~h. Psychosocial needs;~~
- ~~i. Spiritual needs;~~
- ~~j. Death, dying and grief; and~~
- ~~k. Funerals and alternative rituals.~~

~~**53.14(2)** The hospice shall offer at least two hours of in-service training each quarter.~~

This rule is intended to implement Iowa Code section 135J.3(2).

ITEM 15. Amend rule 481—53.16(135J), introductory paragraph, as follows:

**481—53.16(135J) Optional services.** Optional services are services provided by the hospice which are not required. Examples are ~~home health~~ hospice aide, therapy and respite. The following apply to the provision of all optional services provided by a hospice:

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

ITEM 16. Amend rule 481—53.20(135J), introductory paragraph, as follows:

**481—53.20(135J) Records.** In accordance with accepted principles of medical record practice, each hospice shall maintain a centralized complete record on every individual receiving services. This record shall be preserved for at least ~~three~~ six years following termination of services.

[Filed 3/15/23, effective 5/10/23]

[Published 4/5/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/23.

**ARC 6974C**

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

**Adopted and Filed**

**Rule making related to physician assistants**

The Inspections and Appeals Department hereby amends Chapter 57, “Residential Care Facilities,” Chapter 65, “Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI),” and Chapter 71, “Subacute Mental Health Care Facilities,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 10A.104.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2022 Iowa Acts, House File 803.

*Purpose and Summary*

These amendments update rules in accordance with changes included in 2022 Iowa Acts, House File 803. This legislation required agencies that adopt rules pursuant to Iowa Code chapter 17A providing a power, privilege, right, or duty to a physician licensed under Chapter 148 to also provide the same power, privilege, right, or duty to a physician assistant licensed under Chapter 148C, to be consistent with the scope of practice of the physician assistant as specified therein.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 25, 2023, as **ARC 6834C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was reviewed and approved by the State Board of Health at its March 8, 2023, meeting. This rule making was adopted by the Department on March 15, 2023.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on May 10, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **57.6(2)“a”** as follows:

a. *Definition.* For purposes of this rule, the following term shall have the meaning indicated.

“*Qualified intellectual disability professional*” means a psychologist, physician, physician assistant, registered nurse, educator, social worker, physical or occupational therapist, speech therapist or audiologist who meets the educational requirements for the profession, as required in the state of Iowa, and has one year's experience working with persons with an intellectual disability.

ITEM 2. Amend rule **481—65.1(135C)**, definition of “Qualified mental health professional (QMHP),” as follows:

“*Qualified mental health professional (QMHP)*” means a person who:

1. Holds at least a master's degree in a mental health field, including but not limited to: psychology, counseling and guidance, nursing and social work; or is a doctor of medicine (M.D.) or a doctor of osteopathic medicine and surgery (D.O.) or a physician assistant; and
2. Holds a current Iowa license when required by the Iowa licensure law; and
3. Has at least two years of postdegree experience, supervised by a mental health professional, in assessing mental problems and needs of individuals and in providing appropriate mental health services for those individuals. See rule 481—65.4(135C) for ~~variance~~ waiver procedures.

ITEM 3. Amend subparagraph **71.8(3)“a”(3)** as follows:

(3) Requires consultation with the attending physician, ~~or~~ designee of the physician, physician assistant, or advanced registered nurse practitioner who determines, in writing, on a form designated by the department, that an injury is a “major injury” based upon the circumstances of the accident, the previous functional ability of the resident, and the resident's prognosis;

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/23.

**ARC 6972C**

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

**Adopted and Filed**

**Rule making related to intermediate care facilities for the intellectually disabled**

The Inspections and Appeals Department hereby amends Chapter 64, “Intermediate Care Facilities for the Intellectually Disabled,” Iowa Administrative Code.

*Legal Authority for Rule Making*

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

This rule making is adopted under the authority provided in Iowa Code sections 10A.104 and 135C.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 10A.104, 17A.7(2) and 135C.2.

*Purpose and Summary*

The Department completed a comprehensive review of Chapter 64 in accordance with the requirement in Iowa Code section 17A.7(2). This rule making updates citations and references to pertinent federal law; aligns requirements for the purchase, transfer, assignment, or lease of a facility with current practices; and rescinds the adoption of federal standards that are duplicative of previously adopted federal law.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 11, 2023, as **ARC 6812C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was reviewed and approved by the State Board of Health at its March 8, 2023, meeting. This rule making was adopted by the Department on March 15, 2023.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on May 10, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 64.5(1) as follows:

**64.5(1)** Within 48 hours, by letter, any reduction or loss of direct care professional or dietary staff lasting more than seven days which places the staffing ratio of the intermediate care facility for the intellectually disabled below that required ~~for licensing by 42 CFR 483.430(d)(3)~~. No additional residents shall be admitted until the minimum staffing requirements are achieved; (III)

ITEM 2. Amend subrules 64.5(7) and 64.5(8) as follows:

**64.5(7)** Prior to the purchase, transfer, assignment, or lease of an intermediate care facility for the intellectually disabled, the licensee shall:

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

*a.* Inform the department of the pending sale, transfer, assignment, or lease of the facility; and (III)

*b.* Inform the department of the name and address of the prospective purchaser, transferee, assignee, or lessee at least 30 days before the sale, transfer, assignment, or lease is completed; (III)

~~*c.* Submit a written authorization to the department permitting the department to release all information of whatever kind from the department's files concerning the licensee's intermediate care facility for the intellectually disabled to the named prospective purchaser, transferee, assignee, or lessee. (III)~~

~~**64.5(8)** Pursuant to the authorization submitted to the department by the licensee prior to the purchase, transfer, assignment, or lease of an intermediate care facility for the intellectually disabled, the department shall, upon request, send or give copies of all recent licensure surveys and of any other pertinent information relating to the facility's licensure status to the prospective purchaser, transferee, assignee, or lessee; costs for such copies shall be paid by the prospective purchaser.~~

ITEM 3. Amend paragraph **64.17(7)“c”** as follows:

*c.* For Title XIX residents, the department of ~~social services~~ health and human services shall continue funding for the temporary absence as provided under paragraphs “*a*” and “*b*” and in accordance with department of ~~social services~~ health and human services guidelines.

ITEM 4. Amend paragraph **64.18(2)“b”** as follows:

*b.* The resident, or the resident's legal guardian, shall be entitled to examine all information and shall have the right to secure full copies of the record at reasonable cost upon request, ~~unless the physician or qualified mental health professional determines the disclosure of the record or certain information contained in the record is contraindicated in which case the information will be deleted before the record is made available to the resident. This determination and the reasons for it must be documented in the resident's record by the physician or qualified mental health professional in collaboration with the resident's interdisciplinary team.~~ (II)

ITEM 5. Amend rule 481—64.34(135C) as follows:

**481—64.34(135C) Employee criminal record checks, child abuse checks and dependent adult abuse checks and employment of individuals who have committed a crime or have a founded abuse.** The facility shall comply with the requirements found in Iowa Code section 135C.33 ~~as amended by 2013 Iowa Acts, Senate File 347, and rule 481—50.9(135C)~~ related to completion of criminal record checks, child abuse checks, and dependent adult abuse checks and to employment of individuals who have committed a crime or have a founded abuse. (I, II, III)

ITEM 6. Amend subparagraph **64.36(5)“a”(3)** as follows:

(3) A statement, in not less than 12-point type, that reads as follows: (II)

You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing, in writing or verbally, with the Iowa department of inspections and appeals (hereinafter referred to as “department”) within 7 days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after the department's receipt of your request and you will not be transferred before a final decision is rendered. Extension of the 14-day requirement may be permitted in emergency circumstances upon request to the department's designee. If you lose the hearing, you will not be transferred before the expiration of either (1) 30 days following your receipt of the original notice of the discharge or transfer, or (2) no sooner than 5 days following final decision of such hearing, including the exhaustion of all appeals, whichever occurs later. To request a hearing or receive further information, call the department at (515)281-4115, or write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. (II)

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

ITEM 7. Amend subparagraph **64.36(6)“a”(3)** as follows:

(3) A statement, in not less than 12-point type, that reads as follows: (II)

You have a right to appeal the facility’s decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing, in writing or verbally, with the Iowa department of inspections and appeals (hereinafter referred to as “department”) within 7 days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after the department’s receipt of your request. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, call the department at (515)281-4115, or write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. ~~(H)~~

ITEM 8. Amend rule 481—64.60(135C) as follows:

**481—64.60(135C) Federal regulations adopted—conditions of participation.** Regulations in 42 CFR Part 483, Subpart D I, Sections 410 to 480 ~~effective October 3, 1988,~~ are adopted by reference and incorporated as part of these rules. A copy of these regulations is available on request from the Health Facilities Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319.

~~Classification of~~ The classifications for violations are I, II, and III, determined by the division using the provisions in 481—Chapter 56, “Fining and Citations,” to enforce a fine to cite a facility.

NOTE: The federal interpretive guidelines are printed immediately following 481—Chapter 64.  
This rule is intended to implement Iowa Code section 135C.2(3).

ITEM 9. Rescind and reserve rule **481—64.61(135C)**.

ITEM 10. Amend **481—Chapter 64**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~10A.202, 10A.402, 10A.702, 135C.2(3), 135C.2(6), 135C.6(1), 135C.14, 135C.14(8), 135C.25, 135C.25(3), 135C.32, 135C.36, 227.4, 235B.1(6), and 235B.3(1)~~ 235E.2.

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**ARC 6976C**

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

**Adopted and Filed**

**Rule making related to alcoholic beverage licensing**

The Inspections and Appeals Department hereby amends Chapter 100, “General Provisions for Social and Charitable Gambling,” Chapter 103, “Bingo,” and Chapter 105, “Registered Amusement Devices,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 10A.104(10) and 99B.2.

*State or Federal Law Implemented*

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

This rule making implements, in whole or in part, 2022 Iowa Acts, Senate File 2374.

*Purpose and Summary*

These amendments to Chapters 100, 103, and 105 are responsive to 2022 Iowa Acts, Senate File 2374. The legislation revised alcoholic beverage licensing, including references to alcoholic beverage license categories in Iowa Code chapter 99B. Thus, rules implementing Iowa Code chapter 99B require conforming updates. The amendments also eliminate unrelated redundancy, remove an outdated website reference, remove an outdated licensing example, update a citation to legislation to instead reference the codified Iowa Code section, and update a citation that led to a repealed Iowa Code section.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 8, 2023, as **ARC 6879C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on March 15, 2023.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on May 10, 2023.

The following rule-making actions are adopted:

ITEM 1. Rescind the definition of “Responsible party” in rule **481—100.1(99B)**.

ITEM 2. Amend paragraph **100.4(3)“c”** as follows:

c. A license will not be issued if there is a current revocation of either a gambling or a ~~liquor~~ retail alcohol license for the location named on the license application.

ITEM 3. Amend subrule 100.4(5) as follows:

**100.4(5)** *Violations of gambling law or Iowa alcoholic beverage control Act.* Violation of gambling law or the Iowa alcoholic beverage control Act (Iowa Code chapter 123) affects whether a gambling license is issued.

a. No change.

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

*b.* No ~~liquor~~ retail alcohol license shall have been suspended within the last 12 months because of a conviction of or guilty plea to a criminal violation of the Iowa alcoholic beverage control Act (~~Iowa Code chapter 123~~).

*c.* No ~~liquor~~ retail alcohol license shall have been revoked because of a conviction of or guilty plea to a criminal violation of the Iowa alcoholic beverage control Act.

*d.* No change.

ITEM 4. Amend rule 481—100.6(99B) as follows:

**481—100.6(99B) Payment systems.** Licensees allowing participants to make payment by debit card, as authorized by Iowa Code section 99B.5, shall ensure that payment systems comply with all applicable federal and state laws regarding payment card processing and the protection of personal information. Licensees conducting amusement concessions at a fair and allowing participants to make payment by credit card, as authorized by ~~2018 Iowa Acts, House File 2417, section 1~~ Iowa Code section 99B.5(2), shall ensure that payment systems comply with all applicable federal and state laws regarding payment card processing and the protection of personal information.

ITEM 5. Amend subrule 103.2(4) as follows:

**103.2(4) Examples.** The following are examples of circumstances affecting whether a license is granted.

~~*a.* Qualified organization X applies for and is issued a two-year license to conduct bingo occasions at 313 Cherry Street, Des Moines, Iowa. The license is effective from August 1, 2017, to July 31, 2019. On October 1, 2017, qualified organization Y applies for a 14-day limited license to conduct bingo at the same location. The license is approved and issued because a limited license can be issued for the same location used for a two-year bingo license.~~

~~*b. a.* Qualified organization ABC applies for and is issued a two-year qualified organization license to conduct bingo at 1002 West 2nd Avenue in Jones Town, Iowa. The license is effective from October 1, 2017, to September 30, 2019. On November 15, 2017, qualified organization EFG applies for a two-year qualified organization license for the same location. A license may be issued to organization EFG for the same location during the same period to conduct any games of chance, games of skill or raffles. Organization EFG shall not conduct bingo at the location.~~

~~*e. b.* Hometown Community School applies for and is issued a two-year qualified organization license to conduct games of skill, games of chance and raffles at the grade school building. The license is effective from September 1, 2017, to August 31, 2019. During the time that the Hometown Community School license is in effect, the school-sponsored pep club applies for a 14-day limited license to conduct games of skill at the grade school building. The school-sponsored pep club may be issued a limited license for the same location during the same time. Under this example, the school-sponsored pep club would not be required to obtain a separate license, because school-affiliated organizations may operate separate events under a school's two-year license.~~

ITEM 6. Amend rule 481—103.9(99B) as follows:

**481—103.9(99B) Location.** Bingo occasions may be conducted on premises either owned or leased by the qualified organization.

1. to 5. No change.

~~6. Alcoholic beverages may be served in a bingo location if that location possesses a beer permit or liquor license.~~

~~7. 6.~~ The lessor of the building shall not participate in conducting bingo.

~~8. 7.~~ During a bingo occasion, the lessor shall not sell any beverage, food or any other merchandise in the room in which bingo is played.

~~9. 8.~~ Only one licensed qualified organization may conduct bingo occasions within the same structure or building.



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

ITEM 7. Amend rule 481—105.2(99B), introductory paragraph, as follows:

**481—105.2(99B) Registered amusement device restrictions.** Each registered amusement device shall only be located on premises for which a ~~Class “A,” Class “B,” Class “C,” special Class “C,” or Class “D,”~~ liquor control license or a Class “B” or a Class “C” beer permit ~~Class “E,” or Class “F” retail alcohol license~~ has been issued pursuant to Iowa Code chapter 123.

ITEM 8. Amend subrules 105.2(2) and 105.2(3) as follows:

**105.2(2)** The department shall not initially register an electrical or mechanical amusement device that is required to be registered to an owner for a location for which only a Class “B” or a Class ~~“C” beer permit~~ “E” retail alcohol license has been issued pursuant to Iowa Code chapter 123 on or after April 28, 2004.

**105.2(3)** An owner or distributor at a location for which only a Class “B” or a Class ~~“C” beer permit~~ “E” retail alcohol license has been issued pursuant to Iowa Code chapter 123 shall not relocate an amusement device registered as provided in this chapter to a location other than the location of the device on April 28, 2004, and shall not transfer, assign, sell, or lease an amusement device as provided in this chapter to another person for which only a Class “B” or a Class ~~“C” beer permit~~ “E” retail alcohol license has been issued pursuant to Iowa Code chapter 123 after April 28, 2004.

EXAMPLE 1: An electrical or mechanical amusement device is registered with the department and is located at a convenience store that has a Class ~~“C” beer permit~~ “E” retail alcohol license.

1. If the amusement device needs to be repaired, the owner may repair it without losing the registration position or buying a new registration tag. A repair constitutes any changes to a device as long as the type of game and the number of devices in a location is not changed.

2. If the amusement device needs to be replaced because it is defective, it must be replaced with the same game in order to keep the registration position.

3. The amusement device cannot be moved from one location to another under a Class “B” or a Class ~~“C” beer permit~~ “E” retail alcohol license, even if the number of registered devices at a location does not change.

4. If a location with a Class “B” or a Class ~~“C” beer permit~~ “E” retail alcohol license had only one amusement device registered on April 28, 2004, the maximum number of devices allowed at that location shall be one.

ITEM 9. Amend subrule 105.2(5) as follows:

**105.2(5)** Each registered amusement device at a location for which only a Class “B” or a Class ~~“C” beer permit~~ “E” retail alcohol license has been issued pursuant to Iowa Code chapter 123 shall include on the amusement device a security mechanism which prevents a person from operating the amusement device by not allowing the acceptance of money until the machine is activated by the owner or owner’s designee. A sign shall be posted stating that a person must be 21 years of age or older to operate the registered amusement device.

EXAMPLE 2: A patron in a convenience store tries to put money in an amusement device, but the amusement device will not take the money. The patron approaches the person working behind the counter, who then asks the patron for an ID. If the patron is 21 years of age or older, the amusement device is activated, thereby allowing the patron to play the amusement device. The security mechanism shall be immediately reactivated once the patron has finished playing the amusement device.

ITEM 10. Amend subrule 105.2(9) as follows:

**105.2(9)** A person owning or leasing a registered amusement device shall not advertise or promote the availability of the amusement device to the public as anything other than an electrical ~~and~~ or mechanical amusement device. Situations that constitute advertising and promoting include, but are not limited to, posted signs, newspaper/magazine advertisements, radio and television advertisements, word of mouth and Internet posting.

ITEM 11. Amend paragraph **105.2(10)“b”** as follows:

b. A person may be added to the waiting list by ~~using the web-based amusement device registration system located at [dia.iowa.gov/gmms/](http://dia.iowa.gov/gmms/)~~ sending an email to [gmms@dia.iowa.gov](mailto:gmms@dia.iowa.gov).

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

ITEM 12. Amend subrule 105.2(11) as follows:

**105.2(11)** An initial amusement device registration shall only be allowed at a location that has a ~~Class “A,” Class “B,”~~ Class “C,” special Class “C,” or Class “D<sub>2</sub>” liquor control or Class “F” retail alcohol license issued pursuant to Iowa Code chapter 123.

EXAMPLE 3: An amusement device is located in a bar that has the appropriate ~~liquor~~ retail alcohol license. On April 28, 2004, this location had only one amusement device. An additional amusement device may be added to this location.

1. If the amusement device needs to be repaired, it may be repaired without the loss of the device’s registration position.

2. If the amusement device is defective and needs to be replaced, it can be replaced with the same game under the original registration without the incurring of additional charges.

3. If the amusement device is replaced with a new amusement device that has a different game, before the device is moved to the premises, the process for initial registration shall be followed pursuant to this chapter and Iowa Code chapter 99B. The replacement of the amusement device creates an amusement device registration availability, and the position will be offered to the next person on the waiting list pursuant to this rule.

ITEM 13. Amend subrule 105.2(13) as follows:

**105.2(13)** An amusement device that is registered with the department and located in a warehouse may be placed in a location that has a ~~Class “A,” Class “B,”~~ Class “C,” special Class “C,” or Class “D<sub>2</sub>” liquor or Class “F” retail alcohol license issued pursuant to Iowa Code chapter 123. Such a device may also be used as a replacement device.

ITEM 14. Amend subrule 105.6(4) as follows:

**105.6(4)** No more than four registered amusement devices shall be permitted or offered for use at any single premises.

a. A registered amusement device may be located on premises for which a ~~class “A,” class “B,”~~ class Class “C,” special class Class “C,” or class Class “D<sub>2</sub>” liquor control or Class “F” retail alcohol license has been issued pursuant to Iowa Code chapter 123.

b. A registered amusement device may be located on the premises for which a ~~class Class “B” or class “C” beer permit~~ Class “E” retail alcohol license has been issued pursuant to Iowa Code chapter 123, but new registrations shall not be issued to devices to be located at premises with ~~class a Class “B” or class “C” beer permits~~ Class “E” retail alcohol license.

(1) A registered amusement device at a location for which only a ~~class Class “B” or class “C” beer permit~~ Class “E” retail alcohol license has been issued pursuant to Iowa Code chapter 123 may only be relocated to a location for which a ~~class “A,” class “B,”~~ class Class “C,” special class Class “C,” or class Class “D<sub>2</sub>” liquor or Class “F” retail alcohol license has been issued and shall not be transferred, assigned, sold or leased to another person for which only a ~~class Class “B” or class “C” beer permit~~ Class “E” retail alcohol license has been issued pursuant to Iowa Code chapter 123.

(2) If ownership of the location changes, the ~~class Class “B” or class “C” beer permit~~ Class “E” retail alcohol license does not lapse and the registered amusement device is not removed from the location, the device may remain at the location.

ITEM 15. Amend rule 481—105.7(99B) as follows:

**481—105.7(99B) Violations.** Failure to comply with the limitations imposed on the use and possession of registered amusement devices in Iowa Code chapter 99B may result in the following:

1. No change.
2. Suspension or revocation of a ~~wine or beer permit or of a liquor~~ retail alcohol license may result under the provisions of Iowa Code chapter 123.
3. to 7. No change.

ITEM 16. Amend subrule 105.9(1) as follows:

**105.9(1)** The department may revoke, suspend, or deny a registration issued pursuant to Iowa Code section ~~99B.10A~~ 99B.56 for cause following 30 days’ written notice delivered by certified

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

mail, return receipt requested, or by personal service and an opportunity for hearing pursuant to 481—105.8(10A,99B).

ITEM 17. Amend paragraph **105.11(2)“a”** as follows:

a. The location of the device when placed in operation is not a premises with a Class “A,” Class “B,” Class “C,” special Class “C,” or Class “D,” ~~liquor control~~ or Class “F” retail alcohol license.

ITEM 18. Amend rule 481—105.12(10A,99B) as follows:

**481—105.12(10A,99B) Suspension or revocation of a registration.** If a registrant or the person responsible for the amusement device violates the law, including Iowa Code chapter 99B, 481—Chapter 104, this chapter, or any other laws or administrative rules, the registrant’s registration may be suspended or revoked.

Examples of violations of law or rules include: awarding cash prizes, redeeming tokens or tickets for more than \$50 of merchandise in a transaction, allowing a person younger than 21 years of age to use a registered amusement device, moving an amusement device without updating its registration to the new location, allowing an amusement device in a location without the appropriate ~~liquor control~~ retail alcohol license, and failing to file an annual verification of device location.

[Filed 3/15/23, effective 5/10/23]

[Published 4/5/23]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/23.

**ARC 6968C**

**PAROLE BOARD[205]**

**Adopted and Filed**

**Rule making related to five-year review of rules**

The Parole Board hereby amends Chapter 1, “Organization and General Administration,” Chapter 2, “Agency Procedure for Rule Making,” Chapter 3, “Petitions for Rule Making,” Chapter 4, “Declaratory Orders,” Chapter 5, “Fair Information Practices,” Chapter 6, “Public Communications and Records,” Chapter 7, “Victim Notification,” Chapter 8, “Parole and Work Release Considerations,” Chapter 9, “Certificates of Employability,” Chapter 11, “Parole Revocation,” Chapter 13, “Parole Discharge,” Chapter 14, “Executive Clemency,” Chapter 15, “Appeal of Decisions,” and Chapter 16, “Waiver and Variance Rules,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 906.3.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 22, 904, 904A, 906, 908, 914 and 915 and 2022 Iowa Acts, Senate File 2322.

*Purpose and Summary*

A comprehensive review of Chapters 1 through 16 was performed in accordance with the requirements in Iowa Code section 17A.7(2). These amendments update rules in accordance with current practice and legislative changes, eliminate redundancy, and make rules more user-friendly.

*Public Comment and Changes to Rule Making*

PAROLE BOARD[205](cont'd)

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 11, 2023, as **ARC 6824C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Board on March 9, 2023.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on May 10, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 1.1(1) as follows:

**1.1(1)** The board of parole is established by Iowa Code chapter 904A and consists of five members, including a chairperson and vice chairperson.

ITEM 2. Renumber subrules **1.1(2)** to **1.1(6)** as **1.1(4)** to **1.1(8)**.

ITEM 3. Adopt the following **new** subrule 1.1(2):

**1.1(2)** The board of parole shall have a pool of three alternate members to substitute for board members who are disqualified or become unavailable for any other reason for hearings.

ITEM 4. Adopt the following **new** subrule 1.1(3):

**1.1(3)** An alternate member is deemed a member of the board of parole only for the hearing panel for which the alternate member serves.

ITEM 5. Amend renumbered subrule 1.1(6) as follows:

**1.1(6)** The positions of board chairperson is and board vice chairperson are appointed by the governor from among the board members and serves serve in those roles at the pleasure of the governor.

ITEM 6. Amend rule 205—1.3(904A) as follows:

**205—1.3(904A) Business location and hours.** The board's business office address is Jessie Parker Building, 510 East Twelfth ~~Street~~ Street, Des Moines, Iowa 50319; telephone (515)725-5757. Business hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

ITEM 7. Amend subrule 1.4(1) as follows:

**1.4(1) Meetings.** The board may conduct the following meetings:

## PAROLE BOARD[205](cont'd)

*a.* and *b.* No change.

*c. Board session.* The board shall be in session each month at any location designated by the chairperson. A board session may include:

(1) and (2) No change.

(3) Parole rescission ~~hearings~~;

(4) and (5) No change.

ITEM 8. Amend subrule 1.4(2) as follows:

**1.4(2) Quorum.** ~~Quorum.~~

*a.* and *b.* No change.

ITEM 9. Amend subrule 1.4(3) as follows:

**1.4(3) Majority vote.** ~~Majority vote.~~ All questions shall be decided by a majority vote of the members except as provided herein.

*a.* In all cases when an alternate member assumes the role of a regular board member, the number of board members for purposes of majority votes remains at five.

*b.* During a board session, at least one member of the panel shall not be an alternate member.

ITEM 10. Amend subrule 1.4(4) as follows:

**1.4(4) Parliamentary authority.** ~~Parliamentary authority.~~ Robert's Rules of Order, current edition, shall govern the conduct of all business meetings of the board except as provided herein.

ITEM 11. Amend subrule 1.4(5) as follows:

**1.4(5) Minutes.** ~~Minutes.~~ The board shall keep copies of the minutes of board meetings on file at the business office. The list of individuals considered by the board for action shall constitute the minutes of a board session.

ITEM 12. Amend subrule 1.4(6) as follows:

**1.4(6) Public notice and agenda.** ~~Public notice and agenda.~~ The board shall establish the date, time, and location of all meetings. The board shall give public notice of all meetings pursuant to Iowa Code chapter 21. The board shall mail copies of, or provide by electronic means, notices of public meetings and tentative agenda to news media that have so requested. When it is determined that an emergency meeting is required, the board shall notify the news media as soon as the need for an emergency meeting has been decided. The nature of the emergency shall be stated in the minutes.

ITEM 13. Amend subrule 1.4(7) as follows:

**1.4(7) Public access to meetings.** ~~Public access to meetings.~~ Members of the public have access to board meetings as provided in Iowa Code chapter 21. Persons wishing to appear before the board shall submit their requests to the business office not less than three days prior to the business meeting. Members of the public wishing to attend board meetings conducted in department of corrections penal institutions should consult, in advance, department of corrections administrative rules relating to visitation and public access.

ITEM 14. Amend subrule 1.4(8) as follows:

**1.4(8) Electronic meetings.** ~~Electronic meetings.~~ The board may conduct a meeting by electronic means as provided in Iowa Code section 21.8.

ITEM 15. Amend **205—Chapter 2**, introductory paragraph, as follows:

The board of parole hereby adopts ~~the agency procedure for rule making segment of the Uniform Rules on Agency Procedure which are,~~ with the following amendments, the uniform rules on agency procedure relating to agency procedure for rule making, published at <https://www.legis.iowa.gov/docs/Rules/Current?UniformRules.pdf>

PAROLE BOARD[205](cont'd)

[www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf](http://www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf) on the ~~General Assembly's Web site with the following amendments:~~ general assembly's website.

ITEM 16. Amend **205—Chapter 3**, introductory paragraph, as follows:

The board of parole hereby adopts ~~the petitions for rule making segment of the Uniform Rules on Agency Procedure which are,~~ with the following amendments, the uniform rules on agency procedure relating to petitions for rule making, published at <https://www.legis.iowa.gov/docs/Rules/Current?UniformRules.pdf> [www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf](http://www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf) on the ~~General Assembly's Web site with the following amendments:~~ general assembly's website.

ITEM 17. Amend **205—Chapter 4**, introductory paragraph, as follows:

The board of parole hereby adopts ~~the declaratory orders segment of the Uniform Rules on Agency Procedure which are,~~ with the following amendments, the uniform rules on agency procedure relating to declaratory orders, published at <https://www.legis.iowa.gov/docs/Rules/Current?UniformRules.pdf> [www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf](http://www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf) on the ~~General Assembly's Web site with the following amendments:~~ general assembly's website.

ITEM 18. Amend **205—Chapter 5**, introductory paragraph, as follows:

The board of parole hereby adopts, with the following exceptions and amendments, ~~the Uniform Rules on Agency Procedure~~ uniform rules on agency procedure relating to fair information practices ~~which are,~~ published at <https://www.legis.iowa.gov/docs/Rules/Current?UniformRules.pdf> [www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf](http://www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf) on the ~~General Assembly's Web site~~ general assembly's website.

ITEM 19. Amend rule **205—5.1(17A,22)**, definitions of “Confidential records” and “Open records,” as follows:

“*Confidential records*” means records, as defined under Iowa Code sections 22.7, 22.8, 904.601, 904.602 and 904.603, which ~~are~~ may not be disclosed to members of the public except by court order or other provision of law. This includes records which the board is prohibited by law from making available for inspection by members of the public and those exempt records which the board has determined not to disclose to members of the public.

“*Open records*” means those records which are ~~not authorized or required to be kept confidential under~~ defined by Iowa Code sections ~~sections~~ 22.7, 22.8, 904.601, or 904.602 or any other provision of the law.

ITEM 20. Amend subrule 5.3(3) as follows:

**5.3(3) Request for access.** Requests for access to records may be made in writing, in person, by telephone, or by electronic means if the request is for open record information. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

PAROLE BOARD[205](cont'd)

ITEM 21. Amend subrule 5.3(7) as follows:

**5.3(7) Fees.**

~~c. *Supervisory Hourly fee.*~~ *Hourly fee.* ~~An~~ A reasonable hourly fee may be charged for actual agency expenses in ~~supervising the examination and copying of~~ providing requested records when the supervision time required is in excess of ~~five~~ 30 minutes. That hourly fee shall not be in excess of the hourly wage of an agency employee who ordinarily would be appropriate and suitable to perform this ~~supervisory~~ function. Reasonable costs may also be assessed for copying and providing records through means other than electronic mail.

ITEM 22. Amend rule 205—5.6(17A,22), catchwords, as follows:

**205—5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.**

ITEM 23. Amend subrule 5.7(1) as follows:

**5.7(1) *Consent to disclose by a subject individual.*** ~~Consent to disclose by a subject individual.~~ To the extent allowed by law, the subject may consent in writing to agency disclosure of confidential records ~~as provided in rule 205—5.4(17A,22).~~

ITEM 24. Amend subrule 5.7(2) as follows:

**5.7(2) *Complaints to public officials.*** ~~Complaints to public officials.~~ A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

ITEM 25. Amend subrule 5.7(3) as follows:

**5.7(3) *Obtaining information from a third party.*** ~~Obtaining information from a third party.~~ The board is required to obtain information to assist in making decisions regarding classification, programming, security and administrative management. Requests to third parties for this information may involve the release of confidential information about individuals. Except as provided by law, the board may make these requests only when the individual has authorized the release.

ITEM 26. Amend subrule 5.10(2) as follows:

**5.10(2)** To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following Below are instances when disclosure, if lawful, will generally occur without notice to the subject:

a. to d. No change.

e. To the legislative services agency under Iowa Code ~~Supplement~~ section 2A.3.

f. and g. No change.

h. In the course of ordinary deliberations during an open meeting.

ITEM 27. Amend paragraph **5.12(2)“d”** as follows:

~~d. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under; (Iowa Code section 17A.3(1)(d); 173A.3(1)“d”)~~

ITEM 28. Amend subrule 5.13(1) as follows:

**5.13(1) *Personally identifiable information.*** This rule describes the nature and extent of personally identifiable information which is collected, maintained and retrieved by the agency by personal identifier in record systems as defined in this rule. For each record system, this rule:

a. and b. No change.

PAROLE BOARD[205](cont'd)

ITEM 29. Amend subrule 5.13(2) as follows:

**5.13(2) Litigation files.** ~~Litigation files.~~ These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons ~~wishing~~ requesting copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

ITEM 30. Amend subrule 5.13(3) as follows:

**5.13(3) Personnel files.** ~~Personnel files.~~ The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, and tax withholding information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

ITEM 31. Amend rule 205—5.14(17A,22), introductory paragraph, as follows:

**205—5.14(17A,22) Other groups of records available for public inspection—policies and procedures (excluding security), meeting minutes.** This rule describes groups of records maintained by the board other than record systems as previously defined. These records are routinely available to the public. However, the board's file of these records may contain confidential information, as discussed in rule 205—5.12(17A,22) 205—5.10(17A,22). The following records are ~~stored both as hard copy and in automated data processing systems unless otherwise noted~~ available.

ITEM 32. Amend subrule 5.14(6) as follows:

**5.14(6) Published materials.** The board uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law. ~~These records are hard copy only.~~

ITEM 33. Amend subrule 6.2(2) as follows:

**6.2(2) Disclosure to inmate.** The board shall place a written communication concerning an inmate, parolee, or work releasee in the case file. ~~The board shall inform an inmate, parolee, or work releasee when a communication adverse to the inmate, parolee, or work releasee will be considered in making a parole or work release decision and shall disclose to the inmate, parolee, or work releasee the substance of any opinion regarding the inmate's, parolee's or work releasee's status unless withholding the information is requested by the person providing the statement or oral communication and the board determines that the release of the information would endanger the public safety.~~

ITEM 34. Amend subrule 6.3(1) as follows:

**6.3(1) General.** The public may examine and copy ~~board~~ public records belonging to the board pursuant to Iowa Code chapter 22 at the board's business office. An individual wishing to examine or copy a record in person must schedule an appointment with the board's business office a minimum of three working days prior to the date on which the individual will review the information in question. When making the appointment, the requesting party shall specifically indicate the information desired. Complete inmate files will not be released except by court order. When photocopies of documents or copies of audiotapes or videotapes are provided, the board may require the requester to pay the cost of the copies plus a reasonable charge for copying pursuant to 205—subrule 5.3(7). These charges are to be determined by the lawful custodian. The board may refer anyone requesting information which has been generated by a source outside the board to the agency or individual which generated the information.



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ITEM 35. Amend subrule 6.4(1) as follows:

**6.4(1) Public information.** ~~Public information.~~ The following information regarding individuals receiving services from the department of corrections or a district department is public information and may be disclosed by the board to anyone who requests the information, except that information shall be limited to the offense for which an individual was last convicted:

*a. to j.* No change.

*k.* Type of services received, except medical, psychiatric, psychological, and substance abuse, ~~gambling and sex offender~~ treatment information.

*l.* No change.

*m.* ~~Inmate risk assessment score.~~

ITEM 36. Amend subrule 6.4(2) as follows:

**6.4(2) Confidential information regarding inmates and parolees.** ~~Confidential information regarding inmates and parolees.~~ The following information regarding individuals receiving services from the department of corrections or a district department is confidential information and shall not be disclosed to the public:

*a. and b.* No change.

*c.* Medical, psychiatric, psychological, and substance abuse treatment, ~~gambling and sex offender~~ ~~treatment~~ information.

*d. to q.* No change.

ITEM 37. Amend subrule 6.4(3) as follows:

**6.4(3) Exceptions.** The board may disclose confidential information described in subrule 6.4(2) as follows:

*a. to d.* No change.

ITEM 38. Rescind and reserve rule **205—6.5(904A)**.

ITEM 39. Amend subrule 7.6(1) as follows:

**7.6(1)** A registered victim of a violent crime may appear in person or electronically, personally or by counsel at a parole interview to express an opinion concerning the release of the inmate.

ITEM 40. Amend subrule 7.6(2) as follows:

**7.6(2)** If a registered victim of a violent crime intends to appear at a parole interview, the victim ~~should~~ shall communicate such intent to the board's business office or victim liaison 24 hours prior to the start of the parole interview.

ITEM 41. Amend subrule 7.6(3) as follows:

**7.6(3)** If intending to appear at a parole interview, a registered victim of a violent crime, or victim's counsel, shall choose to appear at the board's business office, or ~~other ICN location as previously arranged,~~ electronically at the time set forth in the notice of parole interview. During the parole interview, the board shall permit the victim or victim's counsel to express an opinion concerning the release of the inmate.

ITEM 42. Amend subrule 7.6(4) as follows:

**7.6(4)** Victims shall be properly attired and shall conduct themselves in a manner consistent with decorum appropriate for a public meeting of a governmental body. They shall be respectful of other victims, spectators, media personnel, board staff, and board members present. They shall also be mindful of noise and behavior that might impact other individuals observing or participating electronically, or working individuals in the board's business office building or ~~other ICN location~~ where they victims may be while participating in the parole interview.

ITEM 43. Amend subrule 7.6(5) as follows:

**7.6(5)** Any activity deemed inappropriate by the panel under the guidelines in the rules may result in a request by the panel for the offending party or parties to leave. Warnings for inadvertent or minor misconduct may or may not be given the first time it occurs, and any subsequent offending activity will

PAROLE BOARD[205](cont'd)

result in a request to leave. Refusal to leave upon request may result in removal by law enforcement of the offending party or parties.

ITEM 44. Amend rule 205—7.7(915) as follows:

**205—7.7(915,22) Disclosure of victim information.** Information regarding a registered victim, as well as the existence of a registered victim in a particular case, is confidential and shall not be disclosed to the public. A victim's registration, and the substance of any opinion submitted by the victim regarding the inmate's release, may shall not be disclosed to the inmate ~~at the discretion of the board.~~

ITEM 45. Amend rule 205—8.2(906) as follows:

**205—8.2(904,906) Parole and work release eligibility.**

**8.2(1) Mandatory sentences.** The board shall not grant parole to an inmate serving a mandatory minimum sentence. The board shall not grant work release to an inmate serving a mandatory minimum sentence unless the inmate is within six months of completing the mandatory minimum portion of the sentence. A parole or work release granted contrary to this rule shall be rescinded. Mandatory sentences are as follows:

*a.* A life sentence imposed for conviction of a ~~Class~~ class "A" felony pursuant to Iowa Code section 902.1, except for a life sentence that expressly includes parole eligibility;

*b. to h.* No change.

**8.2(2) ~~Parole and work release while on patient status.~~ Release to residential facility first.** ~~Generally, the board will not grant parole or work release to an inmate on patient status. A person on parole or work release who is serving a sentence under Iowa Code section 902.12 shall begin parole or work release in a residential facility operated by a judicial district department of correctional services.~~

**8.2(3) Parole to detainer.** The board may grant parole to an inmate against whom a detainer has been placed by another state jurisdiction. ~~Generally, the board will not parole an inmate to a detainer that is solely for prosecution. A person paroled who has a detainer lodged against the person under the provisions of Iowa Code chapter 821 may be paroled directly to the receiving state rather than to a residential facility operated by a judicial district department of correctional services.~~

**8.2(4) Parole to other states.** The board may grant parole to another state pursuant to the provisions of the interstate ~~parole and probation~~ compact for adult offender supervision set forth in Iowa Code chapter ~~907A~~ 907B.

ITEM 46. Renumber rules **205—8.5(904A)** to **205—8.17(906)** as **205—8.3(904A)** to **205—8.15(906)**.

ITEM 47. Amend renumbered rule 205—8.4(906) as follows:

**205—8.4(906) Parole and work release considerations.**

**8.4(1) Case reviews.** ~~Case reviews.~~ The board may review the records of an inmate committed to the custody of the department of corrections and consider the inmate's prospects for parole or work release at any time. The board shall notify an inmate only if the inmate is granted parole or work release, except as provided in ~~8.16(3)~~ subrule 8.14(3).

**8.4(2) Interviews.** ~~Interviews.~~ The board may, in its discretion, interview an inmate committed to the custody of the department of corrections at any time.

**8.4(3) Frequency of inmate review.** The board shall review the status of each inmate who is eligible for parole annually as directed by the Iowa Code and shall provide the inmate with notice of its parole or work release decision. ~~After an inmate has been granted work release, the board shall review the inmate's status at least annually from the date of the decision to grant work release. The board shall not place an inmate on work release for longer than 6 months in any 12-month period unless approval is given by a majority of the full board.~~

**8.4(4) Annual review not required.** ~~Inmates serving a sentence that does not include parole eligibility who are not currently eligible for parole because of Iowa Code section 906.5(1) "a" are excepted from the annual review requirement of 8.6(3) subrule 8.4(3).~~

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~~8.4(5) Inmates serving a mandatory minimum sentence are excepted from the annual review requirements of 8.6(3) until such time as the mandatory minimum has expired.~~

~~8.4(6)~~ 8.4(5) Department initiated review. ~~Department initiated review.~~ The department of corrections may recommend an inmate for parole or work release consideration at any time.

ITEM 48. Amend renumbered subrule 8.8(1) as follows:

**8.8(1) Release considerations.** The board may consider the following factors and others deemed relevant to the parole and work release decisions:

*a. to o.* No change.

ITEM 49. Amend renumbered subrule 8.8(2) as follows:

**8.8(2) Psychological and psychiatric evaluations.** ~~Psychological and psychiatric evaluations.~~ The board may request a complete psychiatric or psychological evaluation of an inmate whenever, in the opinion of the board, it would be beneficial to the board's decision. The board shall routinely request an evaluation of an inmate convicted of a crime involving sexual abuse or personal violence, or of an inmate who has committed assaults or violent acts while incarcerated.

ITEM 50. Amend renumbered subrule 8.9(3) as follows:

**8.9(3)** The inmate's reports from institutions under the supervision of the department of corrections, including reception reports, progress reports, medical reports, and social information or reports, should, to the extent possible, be structured so as to separate opinion from factual information. The factual information shall be made available for review by the inmate; opinion information shall be confidential. Psychiatric or psychological test results or diagnoses ~~shall~~ may be deemed confidential.

ITEM 51. Amend renumbered rule 205—8.10(906) as follows:

**205—8.10(906) Interview procedure.** The board may, in its discretion, ~~or board panel may, in its discretion,~~ interview the inmate and consider the inmate's records with respect to history, current situation, parole and work release prospects, and other pertinent matters. If the inmate is interviewed, the board or board panel shall give the inmate ample opportunity to express views and present materials.

ITEM 52. Amend renumbered subrule 8.12(2) as follows:

**8.12(2) Conduct of inmate.**

*a. to e.* No change.

*f.* An inmate who forfeits the right to an interview for reasons under ~~8.14(2)“e”~~ paragraph 8.14(2)“e” or for any other reason shall not be interviewed again until the inmate's next annual review, or until such earlier time as determined by the board, except that the inmate may make a request for an earlier interview. The request must be made in writing to the board through the board liaison officer, the counselor or other institutional staff member, or the ombudsman, together with assurance by the inmate that no repeat of the offending conduct or other offending conduct will occur. A reinterview is subject to the discretion of the panel or board.

ITEM 53. Amend renumbered subrule 8.12(3) as follows:

**8.12(3) Conduct of spectators.**

*a.* Spectators may not participate in the parole proceedings. The number of spectators will be limited by the ~~number of seats provided~~ capacity available. ~~Only~~ If attending in person, only board staff or institutional staff will be allowed to stand during the interviews or between interviews, except during breaks of the panel or board or as necessary to enter and leave during times designated by the panel or board. An exception will be made for television camera operators.

*b.* ~~Spectators~~ If attending in person, spectators may not enter or leave the room during interviews or between interviews, except that the board or panel will designate times when persons may enter and leave. This ~~will~~ shall be done at reasonable intervals, and may be between interviews even though the board or panel does not take a break.

*c.* ~~Entering~~ If attending in person, entering and leaving the interview room before and after the interview sessions and during breaks in the interview sessions shall be subject to the restrictions imposed by board staff.

PAROLE BOARD[205](cont'd)

*d.* Spectators shall make no utterances which are intended to be or can be heard by the inmate or the panel. This includes any conversation among spectators.

*e.* Spectators shall be properly attired and shall conduct themselves in a manner consistent with decorum appropriate for a public meeting of a governmental body. They shall be respectful of other spectators, victims, media personnel, board staff, and board members present. They shall also be mindful of noise and behavior that might impact other individuals ~~working~~ in the board's business office building ~~or other ICN location where they may be while observing the parole interview.~~

*f.* Any activity deemed inappropriate by the panel under the guidelines in the rules may result in a request by the panel for the offending party or parties to leave. Warnings for inadvertent or minor misconduct may or may not be given the first time it occurs, and any subsequent offending activity will result in a request to leave. Refusal to leave upon request may result in removal ~~by law enforcement of the offending party or parties.~~

~~All spectator places~~ Admission for in-person attendance shall be on a first-come, first-served basis in accordance with the rules of the board.

*g.* A spectator attending in person who leaves during a time designated for entering or leaving or during a short break by the panel may retain a ~~place~~ seat if the person returns at the next time designated for that purpose. A person does not retain a ~~place~~ seat at the hearing over breaks taken for lunch or dinner or overnight.

ITEM 54. Amend renumbered subparagraph **8.12(4)“a”(4)** as follows:

(4) Notwithstanding the provisions of any of these procedural or technical rules, the panel or board may permit the use of other equipment provided the application for variance is made in advance. Ruling upon the variance application shall be in the discretion of the ~~panel or board~~ chair or chair's designee.

ITEM 55. Amend renumbered subparagraph **8.12(4)“a”(5)** as follows:

(5) The ~~panel or board~~ chair or the chair's designee may limit or terminate photographic or electronic media coverage by any or all media participants at any time during the proceedings in the event the ~~panel or board~~ chair or the chair's designee finds that rules in this chapter or additional rules imposed by the board or panel have been violated.

ITEM 56. Amend renumbered subparagraph **8.12(4)“c”(2)** as follows:

(2) Television cameras and other recording equipment. Television cameras are to be electronic and, together with any related equipment ~~to be located in the interview room,~~ must be unobtrusive in both size and appearance, without distracting sound or light. Television cameras, and other recording devices, are to be designed or modified so that participants in the parole interview being covered are unable to determine when recording is occurring.

ITEM 57. Amend renumbered paragraph **8.12(4)“g”** as follows:

*g. Movement during proceedings.* Television cameras and audio equipment may be installed in or removed from the interview room only when the panel or board is not in session. In addition, the equipment shall at all times be operated from a fixed position. Media personnel shall not move about the interview room while proceedings are in session, nor shall they engage in any movement which attracts undue attention. ~~Still photographers~~ Photographers shall not assume body positions inappropriate for spectators.

ITEM 58. Amend renumbered paragraph **8.12(4)“h”** as follows:

*h. Decorum.*

(1) All media personnel shall be properly attired and shall conduct themselves in a manner consistent with decorum appropriate for a public meeting of a governmental body. They shall be respectful of other media personnel, victims, spectators, board staff, and board members present. They shall also be mindful of noise and behavior that might impact other individuals ~~working~~ in the board's business office building ~~or other ICN location where they may be while observing the parole interview.~~

(2) Any activity deemed inappropriate by the panel under the guidelines in the rules may result in a request by the panel for the offending party or parties to leave. Warnings for inadvertent or minor misconduct may or may not be given the first time it occurs, and any subsequent offending activity will

PAROLE BOARD[205](cont'd)

result in a request to leave. Refusal to leave upon request may result in removal by law enforcement of the offending party or parties.

ITEM 59. Amend renumbered rule 205—8.13(906) as follows:

**205—8.13(904,906) Parole and authorized following work release decisions.**

**8.13(1)** and **8.13(2)** No change.

~~**8.13(3)** and **8.13(4)** Rescinded IAB 10/31/12, effective 12/5/12.~~

~~**8.13(5)**~~ **8.13(3)** The board may determine if an inmate shall be required to provide a physical specimen to be submitted for DNA profiling as a condition of parole or work release. The board shall consider the deterrent effect of DNA profiling, the likelihood of repeated violations by the offender, and the seriousness of the offense. When funds have been allocated from the general fund of the state, or funds have been provided by other public or private sources, the board shall order DNA profiling, if appropriate.

ITEM 60. Amend renumbered subrule 8.15(4) as follows:

**8.15(4)** The grant of parole contingent upon successful completion of work release shall comply with subrules 8.15(1) through 8.15(4) ~~8.13(1)~~ and 8.13(2).

ITEM 61. Amend **205—Chapter 8**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 904, 904A, and 906.

ITEM 62. Amend rule **205—9.1(906)**, definition of “Eligible offender,” as follows:

“*Eligible offender*” means a person who has been convicted of one or more ~~than one~~ eligible ~~crime~~ ~~or eligible offense~~ crimes and has been sentenced to the custody of the director of the Iowa department of corrections. Persons required to register under Iowa Code chapter 692A are ineligible for the certificate of employability program.

ITEM 63. Amend subrule 9.3(1) as follows:

**9.3(1)** The department of corrections shall issue a certificate of employability, at the time of release, to an eligible offender who:

- a. Receives a parole, work release, or early discharge from the board ~~of parole~~; and
- b. Successfully completes one of the following:
  - (1) Department of corrections registered apprenticeship program; or
  - (2) National Career Readiness Certificate and the life skills program.

ITEM 64. Amend rule 205—11.2(908) as follows:

**205—11.2(908) Work release day reporting revocation.** When a work release day reporting inmate is subject to revocation of day reporting status, the work release day reporting inmate shall be entitled to all procedural protections afforded parolees pursuant to Iowa Code ~~sections 908.3 to 908.7~~ chapter 908 and rules 205—11.3(908) to 205—11.11(908).

ITEM 65. Amend rule 205—11.4(908) as follows:

**205—11.4(908) Revocation of parole.** The board ~~of parole~~ or its administrative parole judge, for good cause shown, may revoke any parole previously granted. Good cause for revocation of parole shall include the violation of a condition or conditions of the parole agreement or parole plan. Parole revocation procedures, including the parole revocation hearing, are governed by Iowa Code chapter 17A.

ITEM 66. Amend rule 205—11.7(908) as follows:

**205—11.7(908) Parole revocation hearing.** Following submission of a parole officer’s request for a parole revocation hearing, the parole officer shall schedule the parole revocation hearing and shall cause a notice of parole revocation hearing to be completed. The parole revocation hearing shall be held in any county in the same judicial district as that in which the alleged parole violator had the initial appearance,

## PAROLE BOARD[205](cont'd)

or in the county from which the warrant for the arrest of the alleged parole violator was issued, unless proper venue is waived by the parolee.

**11.7(1) Parole revocation hearing notice.** The parole officer or board's designated officer shall cause to be prepared a written notice to the parolee, and parolee's attorney, if applicable, of the date, time, and place of the parole revocation hearing, which shall:

*a. to c.* No change.

**11.7(2)** No change.

**11.7(3) Parole revocation hearing recorded.** Parole revocation hearings shall be ~~mechanically~~ electronically recorded. The recording or transcription thereof shall be filed and maintained by the board of parole for at least five years from the date of the parole revocation hearing.

**11.7(4) to 11.7(6)** No change.

**11.7(7) Subpoenas—general.** Subpoenas may be issued by the board of ~~parole~~ to require the attendance of witnesses or the production of documents at parole revocation hearings.

*a.* No change.

*b. To whom made.* Requests may be made directly to the administrative parole judge, the board's designated officer, or the parole officer, as appropriate. The parole officer shall provide the necessary information to the board of ~~parole~~ in order to process the request.

*c. and d.* No change.

*e. Costs.* The board of ~~parole~~ shall not be required to pay subpoena service fees, witness fees, or witness transportation expenses.

**11.7(8)** No change.

**11.7(9) Areas of responsibility.** The following areas of responsibility will apply for a parole revocation hearing.

*a.* The parole officer shall be responsible for the following:

- (1) Coordinating and scheduling location, security, and control of the parole revocation hearing;
- (2) Preparing notice of hearing forms and causing the notices to be served;
- (3) Notifying the parolee's attorney of record of the hearing date, time, and place;
- (4) Notifying all necessary state witnesses of the hearing date, time, and place;
- (5) Processing any required subpoenas on behalf of the state;
- (6) Ensuring that all relevant state documents, forms, and materials are available at the hearing;
- (7) Attending the hearing;
- (8) Arranging security for posthearing transfer of the parolee in the event incarceration is ordered.

*b.* The administrative parole judge shall be responsible for ~~the following:~~ maintaining records on all hearings.

~~(1) Maintaining records on all hearings;~~

~~(2) Reserved.~~

**11.7(10) and 11.7(11)** No change.

**11.7(12) Parole revocation hearing—conduct of the media.** The provisions governing the conduct of the media at parole interviews as set out in ~~205—subrule 8.14(4)~~ 205—subrule 8.12(4) shall also apply to parole revocation hearings, except that decisions committed to the discretion of the board or board panel in that rule shall be made by the presiding administrative parole judge.

**11.7(13) Motions and requests.** Any motion or request shall be submitted to the administrative parole judge or the board's designated officer, with copies to all parties, prior to the hearing. The parolee or parolee's attorney may submit any motion or request directly to the administrative parole judge, or designee, or through the parole officer. The board of ~~parole~~ does not utilize EDMS for submissions or notifications.

ITEM 67. Amend rule 205—11.8(908) as follows:

**205—11.8(908) Appeal or review.** The order of the administrative parole judge shall become the final decision of the board of ~~parole~~ unless, within ten days of the date of the decision, the parole violator appeals the decision or a panel of the board reviews the decision on its own motion.

## PAROLE BOARD[205](cont'd)

**11.8(1) General.** On appeal or review of the judge's decision, the chairperson or board panel's designee has all the power which the administrative parole judge would have in initially making the revocation hearing decision. The record on appeal or review shall be the record made at the parole revocation hearing conducted by the administrative parole judge. Appeals must be received at the parole business office or postmarked by the applicable date or they will not be considered. An order continuing disposition or an order finding probable cause to believe an interstate compact parolee violated parole conditions is not a final order and therefore is not appealable. The board shall give notice of its decision to the parolee.

**11.8(2) Grounds.** All grounds shall be included in the same appeal, and all necessary documents and information shall be attached to the appeal. The general grounds for an appeal include that the board action is:

- a. to e. No change.
- f. Unsupported by evidence or based on incorrect or incomplete information which, if correct or complete, might have resulted in a different action; or
- g. Unreasonable, arbitrary, or capricious, or characterized by an abuse of discretion or a clearly unwarranted exercise of decision.

**11.8(3)** No change.

ITEM 68. Amend subrule 11.11(1) as follows:

**11.11(1)** When the parole officer makes a request to the board of parole for a revocation hearing, the parole officer shall inform the parolee of the parolee's rights.

ITEM 69. Amend subrule 11.11(2) as follows:

**11.11(2)** The parole officer shall also inform the parolee of the opportunity to waive the parolee's right to personal appearance and consent to ~~the a parole revocation hearing's being~~ hearing that is conducted over the telephone.

ITEM 70. Amend subrule 11.12(2) as follows:

**11.12(2)** The parole officer shall forward to the board of parole a violation report together with a file-stamped copy of the judgment entry and sentencing order for the offense committed during the parole. An administrative parole judge shall review the violation report and the judgment entry and sentencing order and, if satisfied that the conditions of Iowa Code section 908.10 or 908.10A and of this rule have been met, shall issue an order revoking the parole. The judge shall also determine the date of commission of the felony or aggravated misdemeanor offense and the date of subsequent incarceration in a state institution. Time loss shall be the time between these two dates, except that the parolee shall receive credit for any time the parolee was incarcerated in a county jail between these two dates.

ITEM 71. Renumber **205—Chapter 13** as **205—Chapter 12**.

ITEM 72. Amend renumbered rule 205—12.2(906) as follows:

**205—12.2(906) Persons not eligible.** A parolee convicted of a violation of Iowa Code section 709.3, 709.4, or 709.8 committed on or with a child or a person serving a sentence under Iowa Code section 902.12 shall not be discharged from parole until the person's term of the parolee's sentence expires parole equals the period of imprisonment specified in the person's sentence, less all time served in confinement.

ITEM 73. Renumber **205—Chapter 14** as **205—Chapter 13**.

ITEM 74. Amend renumbered rule 205—13.1(902) as follows:

**205—13.1(902) Interviews of inmates serving life terms without the possibility of parole.** The board shall not grant a parole or work release to a Class class "A" felon serving a life term without the possibility of parole unless the governor commutes the sentence to a term of years. Administrative rules relating to the parole and work release consideration of an inmate sentenced to an indeterminate term shall not apply to an inmate sentenced to a life term without the possibility of parole.

PAROLE BOARD[205](cont'd)

ITEM 75. Amend renumbered rule 205—13.2(902) as follows:

**205—13.2(902) Review of inmates serving life terms.** The board may, at its discretion, review the record of a Class class “A” felon serving a life term.

ITEM 76. Amend renumbered paragraph **13.3(1)“b”** as follows:

b. An application for a pardon or commutation of sentence shall be on the form provided by the board. The form may be obtained by contacting the board’s business office or the office of the governor.

ITEM 77. Amend renumbered paragraph **13.3(3)“b”** as follows:

b. A person applying for restoration of citizenship shall submit the Executive Clemency Application form to the governor. This form may be obtained from the governor’s office or from the board. ~~The governor shall obtain a recommendation regarding restoration of citizenship from the board.~~

ITEM 78. Amend renumbered rule 205—13.4(914,902) as follows:

**205—13.4(914,902) Board investigation.** The board may investigate an application ~~or district department recommendation~~ with respect to history, current situation, parole prospects and other pertinent matters. The board may consider the application or recommendation, transcripts of judicial proceedings and all documents submitted with the application, and other documents as the board determines is appropriate, and may interview, directly or through its agent, public officials, victims, and witnesses and other individuals as the board determines is appropriate.

ITEM 79. Amend renumbered subrule 13.5(1) as follows:

**13.5(1) Decision.**

a. The board shall recommend that the governor grant commutation of sentence to a Class class “A” felon serving a life term when the board unanimously agrees that the inmate should be considered for release on parole. If the board does not unanimously agree, the board shall recommend that the governor not grant commutation of sentence.

b. The board shall recommend that the governor grant executive clemency to a person other than a Class class “A” felon serving a life term when at least three members of the board agree that the person has demonstrated that the person will become or continue to be a law-abiding citizen. If three members of the board do not agree, the board shall recommend that the governor not grant executive clemency.

c. The board may utilize the resources of the department of public safety for assistance with any part of the board’s investigation.

ITEM 80. Amend renumbered subrule 13.5(4) as follows:

**13.5(4) Executive clemency reconsiderations.**

a. The board may reconsider at any time a board recommendation to grant executive clemency that the governor has denied and returned to the board a positive or negative recommendation prior to the governor’s decision when previously unknown and material information comes to light, material actions or events relevant to the application occur, the governor directs the board to further investigate the application, or good cause is otherwise shown. The procedures for reviewing an executive clemency application shall apply to the reconsideration of a ~~denied~~ recommendation.

b. The board may refile the recommendation with the governor or withdraw the recommendation amend its recommendation as deemed appropriate.

ITEM 81. Amend renumbered rule 205—13.6(902) as follows:

**205—13.6(902,915) Commutation procedure for Class class “A” felons.**

**13.6(1) Initial review.** The board ~~of parole,~~ or its designee, will initially review an application for commutation to determine whether the inmate is eligible to apply for commutation pursuant to Iowa Code section 902.2. If the inmate is not eligible to apply for commutation ~~pursuant to Iowa Code section 902.2,~~ the board shall return the application to the ~~governor and notify the governor of the reasons~~ applicant.

**13.6(2) Parole board commutation investigation process.**



PAROLE BOARD[205](cont'd)

*a.* If the applicant is eligible to apply for commutation pursuant to Iowa Code section 902.2, the board shall conduct an investigation pursuant to ~~that section and~~ subrule 14.6(2) 13.6(2).

*b.* The board may consider any documents the board deems appropriate including, but not limited to, the application and attached documents, transcripts of judicial proceedings, corrections information, and written recommendations, statements, and interviews of the offender, public officials, victims, and witnesses.

*c.* The board shall interview the applicant, ~~pursuant to Iowa Code section 902.2~~, prior to submitting its recommendation to the governor. The board may interview any other person the board deems appropriate including, but not limited to, public officials, victims, and witnesses. ~~The board may conduct any interview, including the interview of the applicant, through electronic means.~~

*d.* The board shall attempt to provide notice of the commutation interview to any individual who would qualify as a victim under Iowa's victim notification law. Notice shall be by regular mail to the last-known address or by electronic mail. The notice shall provide a specified amount of time for the victim to provide a statement to the board regarding the application for commutation.

~~*e.* The board may utilize the resources of the department of public safety for assistance with any part of its investigation.~~

*f. e.* The board may hold a public hearing to receive comments from the general public on an application for commutation. The determination to hold a public hearing to receive public comments is solely at the discretion of the board.

**13.6(3) Recommendation and report.**

*a.* ~~The board shall vote on a recommendation regarding the application.~~ Any decision to recommend commutation for a class "A" felon shall be by unanimous vote. The board may continue the matter until such time as the board may determine by majority vote.

*b. to d.* No change.

**13.6(4)** No change.

ITEM 82. Amend renumbered **205—Chapter 13**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 902.2, 902.4, and 904A.4(7) and ~~chapter~~ chapters 914 and 915.

ITEM 83. Renumber **205—Chapter 15** as **205—Chapter 14**.

ITEM 84. Amend renumbered rule 205—14.1(17A) as follows:

**205—14.1(17A) General.** An inmate, parolee, or work releasee may appeal any action of the board staff or board that affects that person except a decision to schedule a hearing or a work release transfer hearing decision, any commutation-related action, an appeal decision, the decision to conduct an appearance by electronic means, or the revocation of parole which shall be appealed according to the procedure indicated in rule 205—11.8(908).

ITEM 85. Amend renumbered rule 205—14.2(17A) as follows:

**205—14.2(17A) Grounds.** The general grounds for an appeal ~~include that the board action is~~ are:

1. to 5. No change.

6. Unsupported by evidence or based on incorrect or incomplete information which, if correct or complete, might have resulted in a different action; or

7. No change.

ITEM 86. Renumber **205—Chapter 16** as **205—Chapter 15**.

ITEM 87. Amend renumbered **205—Chapter 15**, title, as follows:

WAIVER AND VARIANCE RULES WAIVERS

ITEM 88. Amend renumbered rule 205—15.1(17A) as follows:

**205—15.1(17A) Definition.** For purposes of this chapter, "a waiver ~~or variance~~" means action by the board which suspends in whole or in part the requirements or provisions of a rule as applied to an

PAROLE BOARD[205](cont'd)

identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 89. Amend renumbered rule 205—15.4(17A) as follows:

**205—15.4(17A) Criteria for waiver or variance.** In response to a petition completed pursuant to rule ~~16.6(17A) 205—15.6(17A)~~, the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. to 4. No change.

ITEM 90. Amend renumbered rule 205—15.6(17A) as follows:

**205—15.6(17A) Content of petition.** A petition for waiver shall include the following information where applicable and known to the requester:

1. to 3. No change.

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule ~~205—16.4(17A) 205—15.4(17A)~~. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.

5. to 10. No change.

[Filed 3/13/23, effective 5/10/23]

[Published 4/5/23]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/23.

**ARC 6967C**

**PUBLIC HEALTH DEPARTMENT[641]**

**Adopted and Filed**

**Rule making related to swimming pools and spas**

The Public Health Department hereby amends Chapter 15, “Swimming Pools and Spas,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code chapter 135I.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 135I.

*Purpose and Summary*

These amendments are intended to provide more clarity to existing provisions or reduce duplication of provisions.

These amendments do the following:

- Items 1 and 7, specifically in subparagraphs 15.4(1)“e”(2) and 15.51(1)“h”(2), remove the requirement for gas-fired swimming pool heaters to bear the seal of the American Gas Association (AGA). Beginning July 1, 2000, the markings on the valve bodies no longer have the AGA symbol cast into the product. In its place, the new industry certification of CSA US (Canadian Standards Association: United States) has been placed on the product. In recent years, AGA changed its name to IAS (International Approval Services). Since that time, CSA has purchased CGA (Canadian Gas Association), including AGA listing rights and the responsibility for monitoring manufacturing activities for certified products. There are requirements for listed and labeled equipment in other building codes,

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

such as the plumbing code, mechanical code, and electrical code, so a separate requirement for listing and labeling of this equipment in the pool rules could result in conflicting requirements and multiple authorities having jurisdiction.

- Items 2, 4 and 9, specifically in subparagraphs 15.5(5)“d”(2), 15.5(21)“f”(1), and 15.52(5)“d”(2), remove the requirement that the data plate of gas-fired pool water heaters bear the AGA mark. This reference is outdated because the AGA mark is no longer in use and the CSA US standard is now used.

- Item 3, specifically in subparagraphs 15.5(13)“k”(1) and 15.5(13)“k”(2), changes terminology from lumens/ft<sup>2</sup> to footcandles (fc). This change will clarify the rule since footcandles is a more commonly used term than lumens/ft<sup>2</sup> to express the lighting level.

- Item 3, specifically in paragraph 15.5(13)“l,” removes a federal reference (CFR Title 16, Part 1207) which is not enforced by the United States Consumer Product Safety Commission (CPSC). Department staff have been in contact with CPSC to determine if the agency intends to enforce the standard, and it appears that it has not been enforced, and as such, the Department staff members feel that it should not be a basis for a deficiency under Iowa rule.

- Item 5, specifically by rescinding subrule 15.10(4), removes the requirement for training course providers to provide a list of names and addresses of individuals who have completed the training course. Historically, the program provided this information to pool and spa facilities to verify certification of staff. However, the training sponsors (typically the Pool & Hot Tub Alliance) are able to provide verification of certification by using the certificate number, by using a QR code, or by verifying the individual’s name. As such, it is duplicative for training providers to provide this information to the Department.

- Item 6, specifically by rescinding subrule 15.12(5), removes the requirement that training providers pay a fee of \$20 for each person who successfully completes the training course. Historically, the Department maintained a list of individuals who successfully passed the certification course. However, since that information is available from the Pool & Hot Tub Alliance and other training providers, this is duplicative work.

- Item 8, specifically in numbered paragraph 15.51(4)“f”(2)“3,” changes the requirement for facilities to maintain purchase records for at least five years to the requirement that records be maintained for the life of the cover or grate. There are different service lives (e.g., 3-year, 5-year, 7-year, 10-year, 20-year) assigned by the manufacturer, so the compliance paperwork must be kept for the life of the cover rather than simply 5 years.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 25, 2023, as **ARC 6840C**. The Department received one comment in support of Item 3. No changes from the Notice have been made.

#### *Adoption of Rule Making*

This rule making was adopted by the State Board of Health on March 8, 2023.

#### *Fiscal Impact*

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

#### *Jobs Impact*

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

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department’s waiver provisions contained in 641—Chapter 178.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on May 10, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **15.4(1)“e”** as follows:

*e. Swimming pool water heaters.*

- (1) Electric water heaters shall bear the seal of UL.
- (2) Gas-fired water heaters ~~shall bear the seal of the AGA and~~ shall be equipped with a pressure relief valve.
- (3) Fuel-burning water heaters shall be vented to the outside in accordance with the Iowa state plumbing code.
- (4) Each indoor swimming pool equipment room with fuel-burning water heating equipment shall have one or more openings to the outside of the room for the provision of combustion air.

ITEM 2. Amend subparagraph **15.5(5)“d”(2)** as follows:

(2) Gas-fired pool water heaters shall comply with the requirements of ANSI/AGA Z21.56-2001, ANSI/AGA Z21.56a-2004, and ANSI/AGA Z21.26b-2004. ~~The data plate of the heater shall bear the AGA mark.~~

ITEM 3. Amend paragraphs **15.5(13)“k”** and **“l”** as follows:

*k. Lighting.* Artificial lighting shall be provided at indoor swimming pools and at outdoor swimming pools which are to be used after sunset in accordance with the following:

- (1) Underwater lighting of at least 8 lamp lumens/ft<sup>2</sup> or 0.5 watts/ft<sup>2</sup> of water surface area, located to provide illumination of the entire swimming pool bottom, and area lighting of at least 10 ~~lumens/ft<sup>2</sup>~~ footcandles (fc) or 0.6 watts/ft<sup>2</sup> of deck area.
- (2) If underwater lights are not provided, overhead lighting of at least 30 ~~lumens/ft<sup>2</sup>~~ footcandles (fc) or 2.0 watts/ft<sup>2</sup> of swimming pool water surface area shall be provided.

*l. Swimming pool slides.* ~~Swimming pool slides shall meet the requirements of the January 1, 2004, product standard of the United States Consumer Product Safety Commission (CFR Title 16, Part 1207).~~ Swimming pool slides shall be installed in accordance with the manufacturer's recommendations.

ITEM 4. Amend subparagraph **15.5(21)“f”(1)** as follows:

(1) Gas-fired storage-type hot water heaters shall comply with the requirements of ANSI/AGA Z21.10.1-2001, or with the requirements of ANSI/AGA Z21.10.3-2001. ~~The heater shall bear the mark of the AGA.~~

ITEM 5. Rescind subrule **15.10(4)**.

ITEM 6. Rescind subrule **15.12(5)**.

ITEM 7. Amend subparagraph **15.51(1)“h”(2)** as follows:

(2) Gas-fired water heaters ~~shall bear the seal of the AGA and~~ shall be equipped with a pressure relief valve.

ITEM 8. Amend subparagraph **15.51(4)“f”(2)** as follows:

(2) Each fully submerged outlet shall have a cover/grate that has been tested for compliance with the requirements of the ASME standard by a testing agency approved by the department or that is certified for compliance by an engineer licensed in Iowa.

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1. The cover/grate for an outlet system with a single fully submerged outlet shall have a flow rating of at least 100 percent of the maximum system flow rate. The combined flow rating for the cover/grates for an outlet system with more than one fully submerged outlet shall be at least 200 percent of the maximum system flow rate.

The maximum system flow rate is the design flow rate for the pump(s) directly connected to the outlet(s) in an outlet system. In the absence of better information, the maximum system flow rate is the capacity of the pump(s) at 50 feet TDH, based on the manufacturer’s published pump curves.

2. Fully submerged outlet cover/grates shall not be removable without the use of tools.

3. Purchase records and product information that demonstrate compliance shall be maintained by the facility for ~~at least five years from the time the life of the cover/grate is purchased.~~ If a field fabricated cover/grate is certified for compliance to the ASME standard by an engineer licensed in Iowa, a copy of the certification letter shall be kept at the facility for ~~at least five years from the certification date~~ the life of the cover/grate.

ITEM 9. Amend subparagraph **15.52(5)“d”(2)** as follows:

(2) Gas-fired spa water heaters shall comply with the requirements of ANSI/AGA Z21.56-2001, ANSI/AGA Z21.56a-2004, and ANSI/AGA Z21.26b-2004. ~~The data plate of the heater shall bear the AGA mark.~~

[Filed 3/13/23, effective 5/10/23]

[Published 4/5/23]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/23.

**ARC 6971C**

**TRANSPORTATION DEPARTMENT[761]**

**Adopted and Filed**

**Rule making related to tourist-oriented directional signing**

The Transportation Department hereby amends Chapter 119, “Tourist-Oriented Directional Signing,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 307.12 and 321.252.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 321.252.

*Purpose and Summary*

Chapter 119 limits participation for tourist-oriented directional signing to businesses that provide motorist services such as gas, food, and lodging, and to other businesses or sites that may be deemed “of significant interest to the traveling public.” This key phrase has been the subject of substantial discussion for many years between applicants, Department staff, and the Tourist Signing Committee. The decision as to whether a particular site is of significant interest to the traveling public has been made by majority vote of the Committee, after a presentation (photographs, descriptions, etc.) is given by Department staff at a regular monthly meeting. Although the Committee is diverse and adequately represents the various agencies and organizations related to tourism in Iowa, the qualifying standard of being “of significant interest to the traveling public” allows for a fair amount of subjectivity, despite attempts by the Committee to remain consistent and draw reasonable lines. Opinions might well be limited only by the number of people asked, and obviously rely greatly on intangible factors.

This rule making aims to include more businesses into the program by adopting a less subjective singular set of standards for all applicants. This change will benefit more rural businesses that are not

## TRANSPORTATION DEPARTMENT[761](cont'd)

positioned along a highway and still serve the original program objective of providing service and tourist information to the traveling public.

The following paragraphs further explain each amendment:

- A definition of “destination” is created so that this term can be used throughout the chapter instead of the phrase “activity or site.” This term matches the term used in the “Manual on Uniform Traffic Control Devices” (MUTCD), Chapter 2K, published by the U.S. Department of Transportation.
- The definition of “tourist-oriented directional signing” is amended so the term refers to a system of guide signs that display the identification of and directional information for an eligible destination.
- Subrule 119.3(1) is expanded to include the minimum operational requirements for all businesses.
  - Existing requirements relating to the location of a destination are retained and grouped together.
  - A condition is added to require that a major portion of income or visitors come from road users not residing in the area of the destination. This language is contained in the MUTCD and serves as the minimum baseline for being a “tourist-oriented” program under federal requirements.
  - Two existing requirements relating to compliance with other laws and regulations are grouped together.
  - The four categories describing how applicants can qualify are eliminated.
  - The title of the appropriate office for contacting purposes is corrected.
  - Proper nouns are replaced by general terms to reflect the Committee’s composition.

The Tourist Signing Committee approved the amendments within Chapter 119.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 8, 2023, as **ARC 6885C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on March 15, 2023.

*Fiscal Impact*

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

*Jobs Impact*

After analysis and review of this rule making, there may be a slight positive impact on jobs because the easing of entry requirements will increase the number of businesses able to qualify for the sign program. The signs are installed in advance of intersections where the businesses can be accessed and generally boost customer traffic to the business. These changes may lead to a demand for more employees.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

## TRANSPORTATION DEPARTMENT[761](cont'd)

This rule making will become effective on May 10, 2023.

The following rule-making actions are adopted:

ITEM 1. Adopt the following new definition of “Destination” in rule ~~761—119.1(321)~~:

*“Destination,”* for the purpose of this chapter, means a business, service, activity, or site that meets the program requirements established in rule ~~761—119.3(321)~~.

ITEM 2. Amend rule ~~761—119.1(321)~~, definition of “Tourist-oriented directional signing,” as follows:

~~“Tourist-oriented directional signing” is official signing that is located within the right-of-way of a primary highway and that identifies and gives directions to activities or sites of significant interest to the traveling public. However, official signing for campgrounds and ski area facilities is not included in this definition. This signing is provided for elsewhere~~ means a system of guide signs with one or more sign panels that display the identification of and directional information for an eligible destination.

ITEM 3. Amend paragraph ~~119.2(2)“a”~~ as follows:

*a.* Tourist-oriented directional signing shall be installed only when sufficient space is available. The determination of whether sufficient space is available is the responsibility of the department in accordance with the MUTCD and department policies. If the number of applications exceeds the capacity to accommodate all of the requests, a lottery drawing shall be held to determine which applications will be accepted. However, ~~activities and sites which~~ destinations that are already participating in the tourist-oriented directional signing program shall not be subject to the lottery drawing, provided that each applicant’s participation remains in compliance with this chapter, including the timely payment of fees.

ITEM 4. Amend paragraph ~~119.2(2)“b”~~ as follows:

*b.* Tourist-oriented directional signing shall be installed in advance of the intersection where the motorist leaves the primary highway system to travel to the ~~activity or site~~ destination. However, tourist-oriented directional signs may be placed on a ~~higher-classified~~ higher-classified highway to direct motorists onto a ~~lower-classified~~ lower-classified highway, or on a ~~greater-traveled~~ greater-traveled highway to direct motorists onto a ~~lesser-traveled~~ lesser-traveled highway.

ITEM 5. Amend subrule ~~119.2(3)~~ as follows:

~~119.2(3)~~ *Message.* The message on a tourist-oriented directional sign is limited to a descriptive name, a directional arrow, the travel distance to the ~~activity or site~~ destination, and in some cases for motorist services, an additional short word or acronym indicating an essential fuel type such as diesel, E-85, or EV (electric vehicle charging station). ~~However, if an agricultural business activity offers tours, the message for the activity shall include the word “tours.”~~

ITEM 6. Amend rule ~~761—119.3(321)~~ as follows:

~~761—119.3(321)~~ **General eligibility** Eligibility requirements for an activity or site a destination. This rule describes the general requirements which ~~an individual activity or site a destination~~ must meet to qualify for tourist-oriented directional signing.

~~119.3(1)~~ *Hours Operational requirements.* ~~The activity or site shall be open to the general public during regular and reasonable hours and not by appointment, reservation or membership only.~~

*a.* ~~Seasonal activities shall be in operation a minimum of four consecutive weeks~~ The destination shall be open to the general public for a minimum of 20 hours per week.

*b.* ~~The current months, days and hours of operation shall be conspicuously posted on the premises~~ The destination shall be open to the general public at least four days per week.

*c.* Hours of operation that are available to the public only by appointment, reservation, or membership shall not count toward meeting the minimum requirements set forth in this subrule.

*d.* Manufacturing plants, trucking terminals, distribution centers, warehouses, production facilities, and other industrial activities for which the general public has access but for which employees and contractors are the primary users shall not qualify as destinations. However, if the facility has

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developed public tours and is prepared to receive unscheduled visitors, the tourist signing committee may consider this information during the application review and make an exception to the general rule as set forth above.

e. Unless the destination is open 24 hours per day, the hours of operation shall be conspicuously posted on the destination premises.

f. Entrance to the destination shall not be restricted based on age.

g. The destination shall be properly licensed by all governing authorities relative to the nature of the activity engaged in by the destination.

h. Seasonal destinations shall be in operation for a minimum of four consecutive weeks.

~~119.3(2) *Building or area Location requirements.* The activity shall be conducted in an appropriate area or in a building appropriately designed or well-suited for the purpose.~~

~~a. The activity shall not be conducted in a building principally used as a residence unless there is a convenient, separate, and well-marked entrance. The destination shall be located within ten miles of the intersection on the primary highway where the tourist-oriented directional signs will be placed.~~

~~b. The building or area must be maintained in a manner consistent with standards generally accepted for that type of business or activity. The destination shall be located outside the city limits of any incorporated municipality with a population of 5,000 or more (population as established by the U.S. Census Bureau).~~

~~c. The destination shall not be visible from the highway in a way that allows for motorists to react safely by slowing and making a turn.~~

~~d. The building and site for the destination shall be appropriately designed and suited for the purpose. Buildings used principally as a residence shall not be used, unless there is a convenient, separate, and well-marked entrance to access the activity identified on the sign.~~

~~e. Buildings and grounds must be maintained in a manner consistent with standards generally accepted for that type of business or activity.~~

~~119.3(3) *Location of activity or site Customer base.* The activity or site shall be located: A destination shall derive a major portion of income or visitors from road users not residing in the area of the destination.~~

~~a. Within ten miles of the intersection on the primary highway where the tourist-oriented directional sign will be placed.~~

~~b. Outside the urban area, as established by the U.S. Census Bureau, of an incorporated municipality with a population of 5000 or more.~~

~~119.3(4) *Signing restrictions Compliance with other laws and regulations.* An activity or site does not qualify for a tourist-oriented directional sign if:~~

~~a. The activity or site or an on-premises sign advertising the activity or site is readily recognizable from the primary highway far enough ahead of the entrance to allow the motorist time to safely make the turn into the entrance destination shall comply with all applicable laws concerning public accommodations without regard to age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion or disability.~~

~~b. An advertising device which serves the activity or site is erected or maintained in violation of The destination shall comply with Iowa Code chapter 306B; Iowa Code chapter 306C, division II; or Iowa Code chapter 318; and all other statutes or administrative rules regulating outdoor advertising.~~

~~119.3(5) *Nondiscrimination.* The activity or site shall comply with all applicable laws concerning public accommodations without regard to age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion or disability.~~

ITEM 7. Rescind and reserve rule 761—119.4(321).

ITEM 8. Amend rule 761—119.5(321) as follows:

**761—119.5(321) Application and approval procedure.**



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**119.5(1)** Applications for tourist-oriented directional signing shall be submitted to: Advertising Management Section, ~~Office of Traffic and Safety Bureau~~, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

**119.5(2)** No change.

**119.5(3)** The tourist signing committee consists of representatives from the economic development authority, the department of transportation, the department of agriculture and land stewardship, the department of natural resources, the department of cultural affairs, ~~the Travel Federation of Iowa~~ Iowa's tourism industry, and the ~~Outdoor Advertising Association of~~ outdoor advertising association for Iowa. The committee's responsibility is to approve or deny applications.

ITEM 9. Amend rule 761—119.6(321) as follows:

**761—119.6(321) Installation, maintenance, replacement and removal.**

**119.6(1)** No change.

**119.6(2)** *Installation and maintenance of trailblazing signs.* If the ~~activity or site~~ destination is not located adjacent to the secondary road or city street intersecting the primary route, trailblazing signs are required. Trailblazing signs shall conform to requirements in the MUTCD.

*a. to c.* No change.

**119.6(3)** No change.

**119.6(4)** *Seasonal ~~activity or site~~ destination.* A tourist-oriented directional sign for a seasonal ~~activity or site~~ destination must either be masked or have a “closed” panel installed over the sign's directional information when the ~~activity or site~~ destination is closed or when the hours of operation decrease below the minimum requirements during the off-season period. Either the department or the ~~activity or site~~ destination with the department's permission shall perform the work. If the department performs the work, the approved applicant must pay the actual cost to install and remove the “closed” panel or to mask the sign.

**119.6(5)** *Required replacement.*

*a.* The department shall determine when a tourist-oriented directional sign is no longer serviceable and needs to be replaced. If such a determination is made, the ~~activity or site~~ destination must pay for the cost of a new sign and its installation prior to installation.

*b.* The department is not responsible for theft of or damage to any tourist-oriented directional signs ~~or damage to them caused by vandalism, vehicle accidents, or natural causes~~ sign. If a sign requires repair or replacement due to theft or damage, the ~~activity or site~~ destination must pay the cost of ~~a new sign and its installation~~ the repair or replacement and installation. At the ~~activity's or site's~~ destination's request, this cost may be spread over a 12-month period.

**119.6(6)** *Not-for-profit organizations.* A not-for-profit ~~organization operating an activity or site~~ in accordance with the requirements of this chapter destination is exempted from all fees and costs associated with the installation and maintenance of a single set of signs at a location determined by the department to be the most reasonable approach to the destination. If additional locations are requested by the not-for-profit organization, all fees and costs described in this chapter shall apply to the additional locations.

**119.6(7)** *Removal.* The department shall remove a tourist-oriented directional sign if the ~~activity or site~~ destination no longer qualifies for tourist-oriented directional signing. As official signs, all tourist-oriented directional signs are the property of the department and shall not be given to applicants upon the signs' removal.

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[Published 4/5/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/23.

**ARC 6970C****TRANSPORTATION DEPARTMENT[761]****Adopted and Filed****Rule making related to commercial driver's license requirements  
and adoption of federal regulations**

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

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 307.12, 321.176B, 321.188, 321.449 and 321.450.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 307.27, 321.176B, 321.188, 321.449 and 321.450.

*Purpose and Summary*

This rule making aligns Chapters 520, 529 and 607 with federal regulation changes that occurred during the 2022 federal fiscal year. This rule making also amends Chapter 607 to increase the length of the validity period for a restricted commercial driver's license (CDL) for certain agricultural purposes as allowed under newly adopted federal standards.

**Restricted CDL expansion.** The amendments to Chapter 607 align the rules with recent changes to 49 Code of Federal Regulations (CFR) 383.3(f)(3)(ii) in accordance with existing legal authority in Iowa Code section 321.176B. Specifically, Section 23019 of the federal Infrastructure Investment and Jobs Act (IIJA) directs the Federal Motor Carrier Safety Administration (FMCSA) to amend CFR 383.3(f)(3)(ii) to provide that a restricted CDL issued to an employee in a farm-related service industry be valid for up to 210 days (previously 180 days). The FMCSA made the necessary changes to that CFR section on September 29, 2022, by publishing an immediately effective final rule (FR. Vol. 87, No. 188, pages 59030-59037). These amendments will benefit existing individuals who utilize the restricted CDL and will ensure that Iowa remains compliant with the applicable federal CDL regulations.

**Annual update.** The remaining amendments are part of the regular annual update in which the Department adopts the most recent updates to the federal regulations. Iowa Code section 321.188 requires the Department to adopt rules to administer CDLs in compliance with certain portions of 49 CFR Part 383. Iowa Code section 321.449 requires the Department to adopt rules consistent with the Federal Motor Carrier Safety Regulations (FMCSR) promulgated under United States Code, Title 49, and found in 49 CFR Parts 385 and 390 to 399. Iowa Code section 321.450 requires the Department to adopt rules consistent with the Federal Hazardous Materials Regulations (HMR) promulgated under United States Code, Title 49, and found in 49 CFR Parts 107, 171 to 173, 177, 178 and 180.

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

The amendments to Chapter 520 adopt the CFR dated October 1, 2022, for 49 CFR Parts 107, 171, 172, 173, 177, 178, 180, 385 and 390 to 399. The amendment to Chapter 529 adopts the current CFR dated October 1, 2022, for 49 CFR Parts 365 to 368 and 370 to 379. The amendment to Chapter 607 adopts the CFR dated October 1, 2022, for certain portions of 49 CFR Part 383.

## TRANSPORTATION DEPARTMENT[761](cont'd)

Proposed federal regulations are published in the FR to allow a period for public comment, and after adoption, the final regulations are published in the FR. To ensure the consistency required by statute, the Department adopts the specified parts of 49 CFR as adopted by the United States Department of Transportation.

The following paragraphs provide a specific description of the amendments to the FMCSR and the HMR that have become final and effective since the 2022 edition of the CFR that affect Chapters 520, 529 and 607:

Amendments to the FMCSR and HMR

Parts 383, 390 and 392 (FR Vol. 86, No. 192, pages 55718-55743, 10-7-2021)

This final rule amends the FMCSR to establish requirements for State Driver's Licensing Agencies (SDLAs) to use information obtained through the Drug and Alcohol Clearinghouse (DACH), an FMCSA-administered database containing driver-specific controlled substance (drug) and alcohol records. SDLAs must not issue, renew, upgrade, or transfer a CDL or commercial learner's permit (CLP) to any individual prohibited under FMCSA regulations from performing safety-sensitive functions, including driving a commercial motor vehicle (CMV), because of one or more drug and alcohol program violations. Further, SDLAs must remove the CLP or CDL privilege from the driver's license of an individual subject to the CMV driving prohibition, which would result in a downgrade of the license until the driver complies with return-to-duty (RTD) requirements. This final rule also requires states receiving Motor Carrier Safety Assistance Program (MCSAP) grant funds to adopt a compatible CMV driving prohibition applicable to CLP and CDL holders who violate the FMCSA's drug and alcohol program requirements, and it also makes clarifying and conforming changes to current regulations. Compliance with the final rule is required by November 18, 2024. Effective date: November 8, 2021.

Parts 365, 368, 383, 385, 390, 391, 393, 395, 396 and 398 (FR Vol. 86, No. 196, pages 57060-57077, 10-14-21)

This final rule makes technical corrections throughout the FMCSR to correct inadvertent errors and omissions, remove or update obsolete references, improve the clarity and consistency of certain regulatory provisions, and make nondiscretionary ministerial changes that align regulatory requirements with the underlying statutory authority. The FMCSA adds two new provisions for transparency relating to agency management and to the FMCSA's rules of organization, procedures, or practice, and makes corresponding changes to definitions, addresses, and employee titles throughout the FMCSR. Effective date: October 14, 2021.

Part 383 (FR Vol. 86, No. 207, pages 59871-59872, 10-29-21)

This final rule corrects two regulatory references in the FMCSR that were amended by the October 7, 2021, DACH final rule. The amendment was necessary because of a subsequent unrelated rule-making action affecting the same section of the FMCSR. Effective date: November 8, 2021.

Parts 393 and 396 (FR Vol. 86, No. 214, pages 62105-62112, 11-9-21)

This final rule amends the FMCSR to add rear impact guards to the list of items that must be examined as part of the required annual inspection for each CMV, amends the labeling requirements for rear impact guards, and excludes road construction controlled horizontal discharge trailers from the rear impact guard requirements, consistent with changes made by the National Highway Traffic Safety Administration to the corresponding Federal Motor Vehicle Safety Standards. Effective date: December 9, 2021.

Part 385 (FR Vol. 86, No. 244, pages 72851-72854, 12-23-21)

This final rule amends the FMCSR to incorporate the updated Commercial Vehicle Safety Alliance handbook containing inspection procedures and Out-of-Service Criteria (OOSC) for inspections of shipments of transuranic waste and highway route-controlled quantities of radioactive material. The OOSC provide enforcement personnel nationwide, including the FMCSA's state partners, with uniform enforcement tolerances for inspections. Through this rule, the FMCSA incorporates by reference the April 1, 2021, edition of the handbook. Effective date: February 22, 2022.

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Part 391 (FR Vol. 87, No. 14, pages 3390-3419, 1-21-22)

This final rule amends the FMCSR to allow individuals who do not satisfy, with the worse eye, either the existing distant visual acuity standard with corrective lenses or the field of vision standard, or both, to be physically qualified to operate a CMV in interstate commerce under specified conditions. Currently, such individuals are prohibited from driving CMVs in interstate commerce unless they obtain an exemption from the FMCSA. The new alternative vision standard replaces the current vision exemption program as the basis for determining the physical qualification of these individuals. Effective date: March 22, 2022.

Part 383 (FR Vol. 87, No. 23, pages 6045-6046, 2-3-22)

This guidance amended the FMCSA's official regulatory interpretation of 49 CFR Part 383 to allow third-party testers to administer the commercial driver's license knowledge tests for all classes and endorsements. Under the guidance, SDLAs may accept the results of knowledge tests administered by third-party testers in accordance with existing knowledge test standards and requirements set forth in 49 CFR Part 383, subparts G and H. Effective date: February 3, 2022.

Part 391 (FR Vol. 87, No. 28, page 7756, 2-10-22)

This final rule corrects a typographical error in the FMCSR that were amended by the January 21, 2022, final rule amending vision standards for interstate CMV operation in Part 391. This rule corrects a previously incorrect date for grandfathered drivers who participated in a vision waiver study program to come into compliance with the provisions in the final rule. Effective date: March 22, 2022.

Part 393 (FR Vol. 87, No. 44, pages 12596-12604, 3-7-22)

This final rule amends the FMCSR to increase the area on the interior of CMV windshields where certain vehicle safety technology devices may be mounted. In addition, the FMCSA adds items to the definition of vehicle safety technology. This final rule responds to a rule-making petition from Daimler Trucks North America. Effective date: May 6, 2022.

Parts 385, 390 and 391 (FR Vol. 87, No. 46, pages 13192-13209, 3-9-22)

This final rule amended the FMCSR to eliminate the requirement that drivers operating CMVs in interstate commerce prepare and submit a list of their convictions for traffic violations to their employers annually. This requirement is largely duplicative of a separate rule that requires each motor carrier to make an annual inquiry to obtain the motor vehicle record for each driver it employs from every state in which the driver holds or has held a CMV operator's license or permit in the past year. To ensure motor carriers are aware of traffic convictions for a driver who is licensed by a foreign authority rather than by a state, the agency amends the rule to provide that motor carriers must make an annual inquiry to each driver's licensing authority where a driver holds or has held a CMV operator's license or permit. Effective date: May 9, 2022.

Part 380 (FR Vol. 87, No. 53, pages 15344-15345, 3-18-22)

This final rule makes a technical correction to a previously published FMCSA final rule. The correction removes obsolete regulatory text from its June 30, 2021, entry-level driver training final rule. The changes are not substantive and simply ensure that a subpart eliminated by the final rule will be accurately removed and reserved in the FMCSR for future use. This correction is effective March 18, 2022, but is applicable beginning February 7, 2022.

Parts 107 and 171 (FR Vol. 87, No. 54, pages 15839-15873, 3-21-22)

This final rule updates the HMR with the statutorily prescribed 2022 adjustments to civil penalty amounts that may be imposed for violations of certain U.S. Department of Transportation regulations. In addition, this rule notes the new U.S. Department of Transportation civil penalties authority provided in the IIJA. Effective date: March 21, 2022.

Parts 371 and 375 (FR Vol. 87, No. 80, pages 24431-24454, 4-26-22)

This final rule amends the Transportation of Household Goods regulations to incorporate recommendations from the Household Goods Consumer Protection Working Group (Working Group) contained in the Recommendations to the U.S. Department of Transportation to Improve Household Goods Consumer Education, Simplify and Reduce Paperwork, and Condense FMCSA Publication ESA 03005 (Recommendations Report). The amendments reflect those aspects of the Recommendations Report which require a rule making to implement and are within the FMCSA's authority and include

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minor changes to the Transportation of Household Goods regulations and the Brokers of Property regulations which are intended to increase clarity and consistency. The updates will result in an aggregate reduction in costs for household goods motor carriers and provide clarity for individual shippers. Effective date: June 27, 2022.

Parts 171, 172, 173, 178 and 180 (FR Vol. 87, No. 142, pages 44944-45001, 7-26-22)

This final rule amends the HMR to maintain alignment with international regulations and standards by adopting various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements and to allow for better alignment with Transport Canada's Transportation of Dangerous Goods Regulations. Effective date: August 25, 2022.

Part 173 (FR Vol. 87, No. 157, pages 50271-50273, 8-16-22)

This final rule corrected the July 26, 2022, final rule that amended the HMR. The amendments are technical and were needed to correct an inadvertent removal of two paragraphs in the previously published final rule. Effective date: August 25, 2022.

Part 367 (FR Vol. 87, No. 169, pages 53680-53695, 9-1-22)

This final rule amends the FMCSR concerning the annual registration fees that states collect from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies for the Unified Carrier Registration (UCR) Plan and Agreement for the 2023 registration year and subsequent registration years. The fees for the 2023 registration year would be reduced below the fees for 2022. The reduction in annual registration fees would be between \$18 and \$17,688 per entity, depending on the applicable fee bracket that is based on the number of vehicles owned or operated by the affected entity. Effective date: September 1, 2022.

Part 367 (FR Vol. 87, No. 173, page 54902, 9-8-22)

This final rule makes a typographical, nonsubstantive correction to the final rule that was published on September 1, 2022, concerning annual registration fees for the UCR Plan and Agreement. Effective date: September 8, 2022.

Parts 383, 385, 391, 395, 396 and 397 (FR Vol. 87, No. 188, pages 59030-59037, 9-29-22)

This final rule amends the FMCSR by adopting nondiscretionary changes that align with directives under federal law, including increasing the maximum validity period of an agricultural restricted CDL issued under 49 CFR 383.3 from 180 days to 210 days as required by the IIJA. The final rule also makes technical corrections to correct inadvertent errors and omissions, to remove or update obsolete references, and to improve the clarity and consistency of certain regulatory provisions and makes changes relating to agency management and to the FMCSA's rules of organization, procedures, and practice. Effective date: September 29, 2022.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 11, 2023, as **ARC 6822C**. No public comments were received. No changes from the Notice have been made.

#### *Adoption of Rule Making*

This rule making was adopted by the Department on March 14, 2023.

#### *Fiscal Impact*

The fiscal impact cannot be determined. The federal regulations adopted by this rule making were subject to fiscal impact review by either the FMCSA or the U.S. Pipeline and Hazardous Materials Safety Administration when the regulations were enacted and were determined not to be cost-prohibitive. Each FR final rule cited contains a fiscal analysis.

#### *Jobs Impact*

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

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*Waivers*

Various portions of the federal regulations and Iowa statutes allow some exceptions when the exceptions will not adversely impact the safe transportation of commodities on the nation's highways. Granting additional exceptions for drivers and the motor carrier industry in Iowa would adversely impact the safety of the traveling public in Iowa.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on May 10, 2023.

The following rule-making actions are adopted:

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, ~~2021~~ 2022).

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, ~~2021~~ 2022).

ITEM 3. Amend rule 761—529.1(327B) as follows:

**761—529.1(327B) Motor carrier regulations.** The Iowa department of transportation adopts the Code of Federal Regulations, 49 CFR Parts 365-368 and 370-379, dated October 1, ~~2021~~ 2022, for regulating interstate for-hire carriers.

Copies of this publication are available from the state law library or at [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov).

ITEM 4. Amend paragraph **607.10(1)“d”** as follows:

*d.* The following portions of 49 CFR Part 383 (October 1, ~~2021~~ 2022):

- (1) Section 383.51, Disqualification of drivers.
- (2) Subpart E—Testing and Licensing Procedures.
- (3) Subpart G—Required Knowledge and Skills.
- (4) Subpart H—Tests.

ITEM 5. Amend paragraph **607.49(6)“f”** as follows:

*f.* On or after January 1, ~~2017~~ 2023, a licensee may have up to three individual periods of validity for a restricted commercial driver's license, provided the cumulative period of validity for all individual periods does not exceed ~~180~~ 210 days in any calendar year. An individual period of validity may be ~~60, 90, or 180~~ 70, 105, or 210 consecutive days, at the election of the licensee. A licensee may add ~~30~~ 35 days to an individual period of validity by applying for an extension, subject to the ~~180-day~~ 210-day cumulative maximum period of validity. A request for extension must be made no later than the date of expiration of the individual period of validity for which an extension is requested; a request for extension made after that date shall be treated as a request for a new individual period of validity. An extension shall be calculated from the date of expiration of the individual period of validity for which an extension

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is requested. Any period of validity authorized previously by another state's license shall be considered a part of the ~~180-day~~ 210-day cumulative maximum period of validity.

[Filed 3/14/23, effective 5/10/23]

[Published 4/5/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/23.

**ARC 6969C**

## **TRANSPORTATION DEPARTMENT[761]**

### **Adopted and Filed**

#### **Rule making related to driver's license issuance**

The Transportation Department hereby amends Chapter 605, "License Issuance," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 307.12, 321.182, 321.189, 321.193, 321.196 and 321.198.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 321.13, 321.177, 321.182, 321.186, 321.186A, 321.189, 321.193, 321.196 and 321.198, and the REAL ID Modernization Act (H.R. 133, Division U, Title X).

#### *Purpose and Summary*

This rule making aligns with existing legal authority and Department practice, eliminates outdated or irrelevant requirements or options, and accommodates modern, electronic procedures and terminology. These amendments:

- State that a person who may be physically or mentally incapable of operating a motor vehicle safely must submit either a medical or vision report (rather than only a medical report) and may also be required to pass the applicable license examinations required under Chapter 604 or Chapter 607 before the Department is permitted to issue a license.
- Clarify that when an applicant's medical report indicates the applicant suffered a loss of consciousness, the person may be licensed without having to undergo a six-month episode-free waiting period if the report indicates the loss of consciousness was a single nonrecurring episode and that the person is not being treated for the loss of consciousness or a contributing health condition. Also, a definition of "single nonrecurring episode" of loss of consciousness is added to mean an incident that is not caused by a health condition if there is no history of prior episodes or no history of a health condition that may cause such an episode. For example, the exception to the six-month episode-free waiting period would not apply to a person who is being treated for diabetes and experienced a low blood sugar event that caused the loss of consciousness, but the exception would apply to a person whose loss of consciousness resulted from an incident of fainting from high temperatures or choking on a piece of food while driving.
  - Add pertinent references to certain Iowa Code sections within two implementation sentences.
  - Incorporate the applicable cross-references to Chapter 601 within the rule concerning the contents of a license. Additionally, the changes clarify that the contents of the license shall include the licensee's height in feet and inches, rather than inches alone.
  - Align the rule with the Department's existing statutory authority concerning the conditions under which the Department may issue a "recall" restriction to require certain existing licensees to provide additional information or complete additional examination to retain the license. The

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amendments also clarify that the restriction could entail completion of a follow-up medical report, additional examination, or other additional information. These changes ease the burden on licensees whose restriction requires only submission of additional information rather than in-person reexamination by no longer requiring the licensee to appear in person.

- Restructure the paragraphs relating to the procedures for loss of consciousness or voluntary control and incorporate cross-references in lieu of unnecessary verbiage. These updates do not represent any change to the existing requirements or procedures outlined in the current paragraphs.

- Allow individuals who are 21 years old and hold a commercial driver's license to qualify for the electronic license replacement option.

- Update the contact information and form number for submitting address changes to the Department and remove the reference to the "driver's license kiosk," as kiosks are no longer utilized by the Department.

- Modify the rule relating to a military license extension under Iowa Code section 321.198 to align with current Department practice to allow a qualified military member to apply for the electronic record of the person's driver's license extension in person or by submitting a form to the Department and outline the documentation that must be provided to demonstrate eligibility. Furthermore, the amendments add language to state that license renewal following separation from military service requires fee payment or examination, if applicable, and add cross-references to the rules that establish knowledge and driving skills examination waivers for military service members.

- Explain the conditions under which the Department can renew a noncommercial license prior to expiration date, including that a REAL ID cannot be renewed more than 180 days prior to the expiration date if the renewal would result in noncompliance with federal requirements governing the eight-year maximum period of validity for a REAL ID.

- Eliminate a subrule that is outdated and does not align with current Department practice for renewing licenses past the expiration date.

- Remove the reference to the restriction "R—Maximum speed of 35 mph" related to criteria for electronic renewal eligibility because the restriction is no longer issued by the Department.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 11, 2023, as **ARC 6821C**. No public comments were received. No changes from the Notice have been made.

#### *Adoption of Rule Making*

This rule making was adopted by the Department on March 14, 2023.

#### *Fiscal Impact*

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

#### *Jobs Impact*

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

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

#### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's



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meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on May 10, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend rule 761—605.4(252J,321) as follows:

**761—605.4(252J,321) Persons not to be licensed.**

**605.4(1)** No change.

**605.4(2)** The department shall not knowingly license any person who is unable to operate a motor vehicle safely because of physical or mental disability until that person ~~has submitted~~ submits a medical report or vision report stating that the person is physically and mentally capable of operating a vehicle safely and passes the applicable examinations if required under 761—Chapter 604 or 607.

**605.4(3)** No change.

**605.4(4)** The department shall not knowingly license any person who suffers from syncope of any cause, any type of periodic or episodic loss of consciousness, or any paroxysmal disturbances of consciousness, including but not limited to epilepsy, until that person has not had an episode of loss of consciousness or loss of voluntary control for six months, and then only upon receipt of a medical report favorable toward licensing.

*a. to c.* No change.

*d.* If a medical report indicates the person experienced a single nonrecurring episode, the cause has been identified, ~~and~~ the qualified medical professional is not treating the person for the episode or a contributing health condition, and the qualified medical professional believes it the episode is unlikely to recur, the department may license without the six-month episode-free period with a favorable recommendation from a qualified medical professional. As used in this paragraph, a “single nonrecurring episode” means an incident that is not caused by a health condition and there is no history of prior episodes or a health condition that may cause such an episode.

**605.4(5) to 605.4(8)** No change.

This rule is intended to implement Iowa Code sections 252J.8, 252J.9, 321.13, 321.177, 321.186, 321.193, 321.210, and 321.212.

ITEM 2. Amend subrule 605.5(2) as follows:

**605.5(2)** *Current residential address.* The licensee’s current residential address shall be listed as established according to the requirements of 761—subrule 601.1(6) and 761—subrule 601.5(3).

ITEM 3. Amend subrule 605.5(3) as follows:

**605.5(3)** *Physical description.* The physical description of the licensee on the face of the driver’s license shall include the following as established according to the requirements of 761—subrule 601.1(5):

*a.* No change.

*b.* The licensee’s height in feet and inches.

ITEM 4. Amend rule **761—605.7(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.1(8) ~~as amended by 2021 Iowa Acts, House File 389, 321.180, and 321.189.~~

ITEM 5. Amend subrule 605.8(6) as follows:

**605.8(6)** *Additional information.*

*a.* ~~Reexamination or report~~ Recall of current licensees. ~~The~~ Based on information disclosed by the applicant to the department, or the department’s knowledge of a licensee’s physical or mental condition, the department may issue a restriction requiring a person to reappear complete additional examination or submit additional information at a specified time for examination to retain a valid license. The department

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may require a medical report to be submitted. The department shall send Form ~~430029~~ 430511 as a reminder to ~~appear~~ submit the requested information or appear for examination.

*b. Loss of consciousness or voluntary control.*

(1) If a person is licensed pursuant to ~~subrule 605.4(4)~~, paragraphs 605.4(4)“a,” “b,” or “c,” the department shall issue the first driver’s license with a restriction stating: “Medical report to be furnished at the end of six months.”

(2) No change.

~~(3) If the latest medical report indicates the person experienced only a single nonrecurring episode, the cause has been identified, and the qualified medical professional is not treating or has not treated the person for the episode and believes it is unlikely to recur, the department may waive the medical report requirement upon receipt of a favorable recommendation from a qualified medical professional.~~

~~(4)~~ (3) The department may remove the medical report requirement and issue a full-term driver’s license if recommended by a qualified medical professional and if the latest medical information on file with the department indicates that either of the following are true:

1. The person has not had an episode of loss of consciousness or voluntary control and has not been prescribed medications to control such episodes during the 24-month period immediately preceding application for a license.

2. The person has not had an episode of loss of consciousness or voluntary control during the ten-year period immediately preceding application for a license.

~~(5) The department may remove the medical report requirement and issue a full-term driver’s license if recommended by a qualified medical professional and if the latest medical information on file with the department indicates the person has not had an episode of loss of consciousness or voluntary control during the 10-year period immediately preceding application for a license.~~

*c. and d.* No change.

ITEM 6. Amend rule ~~761—605.8(321)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code chapter 321A and sections 321.177, 321.178, 321.180, 321.180A, 321.180B, 321.186, 321.188, 321.189, 321.193, 321.194, 321.215, 321J.4, and 321J.20.

ITEM 7. Amend paragraph ~~605.11(3)“a,”~~ introductory paragraph, as follows:

*a.* Except for the requirements in subparagraphs 605.25(7)“a”(1) and 605.25(7)“a”(2), the licensee must meet the eligibility requirements listed in paragraph 605.25(7)“a” or paragraph 605.25(8)“a” to replace the license electronically and must also meet the following criteria:

ITEM 8. Amend subrule 605.12(1) as follows:

**605.12(1)** A licensee shall notify the department of a change in the licensee’s mailing address within 30 days of the change. Notice shall be given by:

*a.* Submitting the address change in writing to the Driver and Identification Services Bureau Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204, using Form 430012 or a written and signed statement listing the licensee’s full name, date of birth, driver’s license number and new mailing address; or

*b.* Completing the address change on the department’s website at [www.iowadot.gov](http://www.iowadot.gov) or at a driver’s license kiosk; or

*c.* No change.

ITEM 9. Amend rule ~~761—605.16(321)~~ as follows:

**761—605.16(321) Military extension.**

**605.16(1)** ~~Form 430028~~ Application. A person who qualifies for a military extension of a valid license ~~should request~~ under Iowa Code section 321.198 and who wishes to have a record of the person’s military service extension recorded in the department’s computerized issuance system shall apply to the department in person by presentation of the person’s unexpired Armed Forces of the United States Geneva Conventions identification card, also known as a common access card (CAC), or by submitting Form 430028 from the department and carry it with the license for verification to peace officers. Form 430028 explains 430081 to the department at the address in paragraph 605.12(1)“a.” The form shall

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be signed by the person's commanding officer to verify the military service and be accompanied by a copy of the person's CAC or current active duty orders. Upon approval, the department shall update the department's electronic records with the person's military exception status and issue the person a letter explaining the provisions of Iowa Code section 321.198 regarding military extensions.

~~605.16(2)~~ *Request for retention of record.* A person with a military extension may request that the department retain the record of license issuance for the duration of the extension or reenter the record if it has been removed from department records. The request may be made by letter or by using Form 430081. The letter or Form 430081 shall be signed by the person's commanding officer to verify the military service and shall be submitted to the department at the address in paragraph 605.12(1)"a."

~~605.16(3)~~ **605.16(2)** *Renewal of license after military extension.* When an applicant renews a license after a military extension, the department may require the applicant to provide documentation of both the military service and the date of separation from military service. In accordance with Iowa Code section 321.198(1)"b," the applicant shall pay all applicable fees to renew the license. The applicant may also be waived from the applicable knowledge or driving skills examination in accordance with the provisions of 761—paragraphs 604.21(2)"c" and 604.31(2)"e" and 761—subrules 607.27(5) and 607.28(6).

~~605.16(4)~~ **605.16(3)** *Reinstatement after sanction.* A person with a military extension whose license has been canceled, suspended or revoked shall comply with the requirements of rule 761—615.40(321) to reinstate the license.

This rule is intended to implement Iowa Code section 321.198.

ITEM 10. Amend rule 761—605.25(321) as follows:

**761—605.25(321) License renewal.**

**605.25(1)** No change.

**605.25(2)** A valid noncommercial license may be renewed within 180 days before the expiration date. ~~If this is impractical, the~~ The department for good cause may renew a noncommercial license earlier, except the department shall not renew a REAL ID driver's license issued under rule 761—601.7(321) earlier than 180 days before the expiration date if such a renewal would result in noncompliance under 6 CFR Section 37.5(a).

~~605.25(3)~~ A valid license may be renewed within 60 days after the expiration date, unless otherwise specified.

**605.25(4)** No change.

**605.25(5)** A licensee who has not previously been issued a license that may be accepted for federal identification purposes under 6 CFR Part 37 (a REAL ID license) and wishes to obtain a REAL ID license upon renewal must comply with the requirements of rule 761—601.5(321) to obtain a REAL ID license upon renewal.

**605.25(6)** No change.

**605.25(7)** The department may determine means or methods for electronic renewal of a noncommercial driver's license.

*a.* An applicant who meets the following criteria may apply for electronic renewal:

(1) to (9) No change.

(10) The applicant is not subject to any of the following restrictions:

G—No driving when headlights required

J—Restrictions on the back of card

T—Medical report required at renewal

8—Special instruction permit

Q—No interstate or freeway driving

~~R—Maximum speed of 35 mph~~

*b. to d.* No change.

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**605.25(8)** No change.

This rule is intended to implement Iowa Code sections 321.186<sub>2</sub>; 321.188 as amended by 2021 Iowa Acts, House File 280, section 1; and 321.196 as amended by 2021 Iowa Acts, House File 280, section 2; the REAL ID Act of 2005 (49 U.S.C. Section 30301 note); and 6 CFR Part 37.

[Filed 3/14/23, effective 5/10/23]

[Published 4/5/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/23.