



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

CITATION of Administrative Rules

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

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

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

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

NOTE: In accordance with Iowa Code section 7.17, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

Schedule for Rule Making 2011

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
22	Friday, April 15, 2011	May 4, 2011
23	Friday, April 29, 2011	May 18, 2011
24	Friday, May 13, 2011	June 1, 2011

PLEASE NOTE:

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

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

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

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Petitions for annexation— documentation, 7.2(2)“j,” 8.3(9) IAB 3/23/11 ARC 9438B	Iowa Tourism Room, First Floor Iowa Department of Economic Development 200 E. Grand Ave. Des Moines, Iowa	April 12, 2011 1 to 2 p.m.
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CORRECTIONS DEPARTMENT[201]

Jail facilities; temporary holding facilities, amendments to chs 50, 51 IAB 4/6/11 ARC 9442B	First Floor Conference Room Jessie M. Parker State Office Bldg. 510 E. 12th St. Des Moines, Iowa	April 26, 2011 11 a.m. to 1 p.m.
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EDUCATIONAL EXAMINERS BOARD[282]

Denial of application during a pending professional practices case, 11.39 IAB 4/6/11 ARC 9450B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	April 27, 2011 1 p.m.
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Iowa Room, Public Library 304 N. Franklin St. Manchester, Iowa	April 7, 2011 6:30 p.m.
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Public Library Washington State Bank Meeting Room 115 W. Washington St. Washington, Iowa	April 11, 2011 5 p.m.
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West Conference Room, Suite I Iowa DNR Water Supply Operations 401 S.W. 7th St. Des Moines, Iowa	April 12, 2011 7 p.m.
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Massage therapists—discipline, 134.2(11) IAB 3/23/11 ARC 9432B	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	April 18, 2011 8:30 to 9 a.m.
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Discipline for podiatrists, 224.2(12) IAB 4/6/11 ARC 9449B	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	April 27, 2011 8 to 8:30 a.m.
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Sign language interpreters and transliterators—discipline, 363.2(11) IAB 3/23/11 ARC 9428B	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	April 15, 2011 8 to 8:30 a.m.
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PUBLIC HEALTH DEPARTMENT[641]

Substance abuse and gambling treatment program committee, amendments to ch 155 IAB 3/23/11 ARC 9436B	Room 523 Lucas State Office Bldg. Des Moines, Iowa	April 19, 2011 11 a.m. to 12 noon
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“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

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

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

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ARC 9442B

CORRECTIONS DEPARTMENT[201]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 356.36, the Iowa Department of Corrections hereby gives Notice of Intended Action to amend Chapter 50, “Jail Facilities,” and Chapter 51, “Temporary Holding Facilities,” Iowa Administrative Code.

The purposes of the proposed amendments to Chapter 50 are to provide better protection to jail staff and prisoners by permitting the sheriff discretion to determine if electronic control devices can be carried by staff in the jail; to correct a cross reference and to move text to the correct location in the chapter; and to comply with a newly enacted law requiring verification of veteran status of newly admitted prisoners.

The purposes of the proposed amendments to Chapter 51 are to develop consistency between Chapters 50 and 51; to provide better protection to staff and detainees by permitting the facility administrator discretion to determine if electronic control devices can be carried by staff; to address installation of mirrors in facilities; to ensure that adequate meals are served; to comply with a newly enacted law requiring verification of veteran status of newly admitted detainees; and to require annual staff training on suicide prevention.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 26, 2011. Such written material should be sent to the Department of Corrections, Legal and Policy Division, Jessie M. Parker State Office Building, 510 E. 12th Street, Des Moines, Iowa 50319.

There will be a public hearing on April 26, 2011, from 11 a.m. to 1 p.m. in the First Floor Conference Room at the Iowa Department of Corrections, Jessie M. Parker State Office Building, 510 E. 12th Street, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject matter of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility, should contact the Department of Corrections and advise of specific needs. After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 356.36.

The following amendments are proposed.

ITEM 1. Amend rule **201—50.1(356,356A)**, definition of “Weapons,” as follows:

“Weapons” means any instrument, excluding restraining devices, ~~and~~ chemical control agents ~~and~~ electronic control devices, with a primary intended use of self-defense, protection of another, or to gain or maintain compliance from an individual.

ITEM 2. Amend paragraph **50.4(8)“b”** as follows:

b. Adequate storage space for prisoners’ personal clothing and property shall be provided. Space provided shall be secure, and the prisoner’s name or identification number shall be affixed to the storage space. Property shall be inventoried and accounted for as provided in Iowa Code section 804.19.

ITEM 3. Adopt the following **new** paragraph **50.13(1)“h”**:

h. Jail personnel shall ask each prisoner within 24 hours of the prisoner’s incarceration if the prisoner is a military veteran. If so, jail personnel shall advise the prisoner that the prisoner may be entitled to a visit from a veteran service officer to determine if veteran services are required or available and, within 72 hours, shall provide the prisoner with contact information for the county commission of veteran affairs and provide the prisoner the opportunity to contact the county commission of veteran affairs to schedule a visit from a veteran service officer.

CORRECTIONS DEPARTMENT[201](cont'd)

ITEM 4. Amend subparagraph **50.13(2)“c”(1)** as follows:

(1) All prisoners and property entering or leaving the jail shall be thoroughly searched; searches of persons charged with a simple misdemeanor shall follow provisions of Iowa Code section 804.30. ~~Property taken from prisoners shall be inventoried and accounted for pursuant to Iowa Code section 804.19.~~ The prisoner's name or identification number shall be affixed to the property or storage space. Receipts shall be made for property taken from prisoners at the time of admission and returned to prisoners at the time of release.

ITEM 5. Amend subrule 50.14(2) as follows:

50.14(2) *Clothing, bedding, and hygiene items.* Prisoners held in excess of 24 hours shall be provided sanitary bedding and linens, sufficient to ensure comfort under existing temperature conditions. These items may be withheld by the jail administrator if deemed necessary pursuant to subrule ~~50.21(6)~~ 50.21(5). A standard issue shall include:

a. to d. No change.

ITEM 6. Amend rule **201—51.1(356,356A)**, definition of “Weapon,” as follows:

~~“*Weapon* *Weapons*” means any instrument, excluding restraining devices, chemical control agents and electronic control devices,~~ with a primary intended use of self-defense, ~~or~~ protection of another, ~~or~~ to gain or maintain compliance from an individual. ~~See paragraph 51.11(2)“b.”~~

ITEM 7. Adopt the following **new** subrule 51.4(11):

51.4(11) *Mirrors.* Mirrors within detention areas shall be of tamper-resistant construction and securely fixed in place.

ITEM 8. Adopt the following **new** paragraph **51.11(1)“h”**:

h. Temporary holding facility personnel shall ask each detainee within 24 hours of the detainee's incarceration if the detainee is a military veteran. If so, facility personnel shall advise the detainee that the detainee may be entitled to a visit from a veteran service officer to determine if veteran services are required or available and, within 72 hours, shall provide the detainee with contact information for the county commission of veteran affairs and provide the detainee the opportunity to contact the county commission of veteran affairs to schedule a visit from a veteran service officer.

ITEM 9. Amend paragraph **51.11(2)“a,”** introductory paragraph, as follows:

a. Supervision of detainees. The facility administrator shall develop and implement written policies and procedures for the facility which provide for the control of detainees and for the safety of the public and the facility staff. The policy and procedures shall include:

ITEM 10. Amend paragraph **51.11(2)“b”** as follows:

b. Weapons. Except in an emergency situation, no ~~firearms~~ weapons shall be allowed in an area occupied by detainees.

ITEM 11. Amend subparagraph **51.11(2)“g”(4)** as follows:

(4) The facility administrator shall have written plans for situations that threaten facility security. Such situations include but are not limited to: bomb threats, riots, hunger strikes, disturbances, hostage situations, escape attempts, medical emergencies, natural disasters and staff work stoppage. The plan shall be made ~~available~~ available to all applicable personnel and shall be reviewed by facility staff at least annually and updated as needed.

ITEM 12. Amend paragraph **51.13(6)“c”** as follows:

c. As a part of the admission procedure, a medical history intake form shall be completed for each person admitted to the facility. The intake procedure shall include screening for potential self-injury or suicide. Facility staff with actual knowledge that there is a substantial risk that a detainee intends to commit suicide shall take reasonable measures to abate the risk. The facility shall have a written suicide prevention plan. Essential elements of the plan shall include annual staff training to recognize the potential for suicide, communication between staff and appropriate housing and intervention procedures.

CORRECTIONS DEPARTMENT[201](cont'd)

ITEM 13. Adopt the following **new** subrule 51.19(14):
51.19(14) Menu records. This record shall include letters of documentation issued by a qualified dietitian.

ARC 9450B

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 11, “Complaints, Investigations, Contested Case Hearings,” Iowa Administrative Code.

This amendment gives the Executive Director discretion in the approval of an application when an applicant is under investigation and probable cause has been determined by the Board.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, April 27, 2011, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, April 29, 2011. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

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

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Adopt the following **new** rule 282—11.39(272):

282—11.39(272) Denial of application during a pending professional practices case. The executive director may deny an application for a Class B license if the applicant is currently under investigation and probable cause has been determined by the board.

ARC 9448B

HUMAN SERVICES DEPARTMENT[441]

Amended Notice of Intended Action

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 90, “Targeted Case Management,” Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Proposed amendments to update coverage and payment provisions for Medicaid case management services were published in the Iowa Administrative Bulletin on February 9, 2011, as **ARC 9367B**. This Notice amends that filing by adding new Item 4 and revising renumbered Item 7 to rescind and reserve subrule 90.8(2). The effect of these changes is to:

- Remove the requirement for making emergency access to the case manager available 24 hours per day, and
- Add requirements that the member's crisis plan shall contain after-hours contact information for all persons or resources identified for the member and an alternate contact to be used in the event that an individual provider who is not employed by an agency does not show up to provide services as scheduled.

The requirement to maintain 24-hour access has been a continuing issue for case management agencies due to the expense of the system and the limited number of case managers to cover the hours.

The remaining amendments:

- Clarify when contacts made by E-mail are an allowable case management activity.
- Clarify that targeted case management is not reimbursable when case management activities are provided through an assertive community treatment (ACT) program.
- Correct outdated terminology, remove outdated effective dates and remove language on child welfare decategorization counties that is no longer applicable.

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

Any interested person may make written comments on the proposed amendments on or before April 26, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

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

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

The following amendments are proposed.

ITEM 1. Rescind rule 441—78.33(249A) and adopt the following **new** rule in lieu thereof:

441—78.33(249A) Case management services. Payment will be approved for targeted case management services that are provided pursuant to 441—Chapter 90 to:

1. Members who are 18 years of age or over and have a primary diagnosis of mental retardation, developmental disabilities, or chronic mental illness as defined in rule 441—90.1(249A).
2. Members who are under 18 years of age and are receiving services under the HCBS intellectual disability waiver or children's mental health waiver.

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

ITEM 2. Amend paragraph **79.1(1)“d”** as follows:

d. Fee for service with cost settlement. ~~Effective July 1, 2009, providers~~ Providers of case management services shall be reimbursed on the basis of a payment rate for a 15-minute unit of service based on reasonable and proper costs for service provision. The fee will be determined by the department with advice and consultation from the appropriate professional group and will reflect the amount of resources involved in service provision.

(1) to (3) No change.

ITEM 3. Amend subparagraph **79.1(24)“a”(1)** as follows:

(1) ~~Effective July 1, 2009, a~~ A unit of case management is 15 minutes.

ITEM 4. Amend subparagraph **90.5(1)“b”(5)** as follows:

(5) Include an individualized crisis intervention plan that identifies the supports available to the member in an emergency. A crisis intervention plan shall identify:

1. Any health and safety issues applicable to the individual member based on the risk factors identified in the member's comprehensive assessment.

HUMAN SERVICES DEPARTMENT[441](cont'd)

2. An emergency backup support and crisis response system, including emergency backup staff designated by providers, to address problems or issues arising when support services are interrupted or delayed or the member's needs change. The crisis plan must include after-hours contact information for all persons or resources identified for the member.

3. An alternate contact to be used in the event that an individual provider not employed by an agency does not show up to provide services as scheduled.

ITEM 5. Amend subparagraph **90.5(1)“e”(2)** as follows:

(2) The case manager shall have at least one contact per month with the member, the member's legally authorized representative, the member's family, service providers, or other entities or individuals. This contact may be face-to-face or by telephone. The contact may also be by written communication, including letters, E-mail, and fax, when the written communication directly pertains to the needs of the member. E-mail contacts are allowed only when other means of communication are not feasible for the member, representative or family and the necessity for E-mail communication is documented in the member's comprehensive service plan. A copy of any written communication must be maintained in the case file. When E-mail communication is used, there must be clear two-way communication in the member's record showing an exchange of information as well as follow-up activity related to the information.

ITEM 6. Amend subrule 90.5(2) as follows:

90.5(2) Exclusions. Payment shall not be made for activities otherwise within the definition of case management when any of the following conditions exist:

a. The activities are an integral component of another covered Medicaid service, including but not limited to assertive community treatment (ACT).

b. to e. No change.

ITEM 7. Rescind and reserve subrule **90.8(2)**.

ARC 9457B

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r,” and 16.193(1), the Iowa Finance Authority proposes to amend Chapter 32, “Iowa Jobs Program,” Iowa Administrative Code.

The purpose of this amendment is to implement Iowa Code section 16.193(3)“b” and to simplify the reporting process for the Iowa Jobs Program by amending rule 265—32.7(16) to exclude temporary positions from the reporting requirements.

The Authority does not intend to grant waivers under the provisions of this rule, other than as may be allowed under the Authority's general rules concerning waivers.

The Authority will receive written comments on the proposed amendment until 4:30 p.m. on April 26, 2011. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4901 or E-mailed to mark.thompson@iowa.gov.

The Authority anticipates that it may make changes to the proposed amendment based on comments received from the public.

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

This amendment is intended to implement Iowa Code sections 16.5(1)“r” and 16.193(3)“b.”

The following amendment is proposed.

IOWA FINANCE AUTHORITY[265](cont'd)

Amend rule 265—32.7(16) as follows:

265—32.7(16) Calculation of jobs created. For purposes of this chapter, new employment positions created and filled (or to be created and filled) as a result of the project and existing positions that would not have been continued were it not for Iowa jobs funding shall be counted when estimating the number of jobs to be created during the application process and when counting the number of actual jobs created in post-grant reporting. ~~Both permanent and temporary~~ Permanent positions filled by the grantee, a contractor, or a subcontractor (or sub-subcontractor, etc.), including construction work, shall be counted. To be counted, a position must be compensated. Indirect jobs and induced jobs shall not be counted.

ARC 9449B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

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

The proposed amendment clarifies that conviction of a crime includes when the judgment of conviction or sentence was deferred. In addition, the amendment changes the word “felony” to “crime” to be consistent with the proposed amendment in **ARC 9405B**, published in the March 9, 2011, Iowa Administrative Bulletin.

Any interested person may make written comments on the proposed amendment no later than April 27, 2011, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on April 27, 2011, from 8 to 8:30 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

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

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

The following amendment is proposed.

Amend subrule 224.2(12) as follows:

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

USURY

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

USURY(cont'd)

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

ARC 9456B**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 162.16, the Department of Agriculture and Land Stewardship amends Chapter 67, “Animal Welfare,” Iowa Administrative Code.

The amendment updates provisions related to the Department’s ability to regulate federal animal facilities.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable and would result in needless delays.

Pursuant to Iowa Code section 17A.5(2)“b”(2), the Department further finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective March 18, 2011, as the amendment confers a benefit upon the public.

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

This amendment is intended to implement Iowa Code sections 162.10A, 162.10B, and 162.10C.

This amendment became effective March 18, 2011.

The following amendment is adopted.

Amend rule 21—67.8(162) as follows:

21—67.8(162) Applicability to federally licensed facilities commercial establishments with federal permits. ~~Other than~~ In addition to obtaining the certificate of registration permit from the secretary department, any dealer or commercial breeder, and any person who operates a commercial kennel or public auction establishment under a current and valid federal license permit shall not be subject to further regulation provide care ensuring adequate feed, water, and housing facilities and appropriate sanitary control, grooming practices and veterinary care. The department has the authority to inspect the premises and the required records.

This rule is intended to implement Iowa Code subsection 162.11(2) sections 162.10A, 162.10B and 162.10C.

[Filed Emergency 3/18/11, effective 3/18/11]

[Published 4/6/11]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/6/11.

ARC 9440B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency After Notice**

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

These amendments add assertive community treatment to the array of services under the Iowa Medicaid program. Assertive community treatment helps persons who have serious mental illness remain in the community by providing all behavioral health services necessary to ensure that outcome. To provide the services, representatives of various medical disciplines, such as nursing, case management, community support, medication monitoring, and crisis response, participate as a team under the supervision of a psychiatrist. All behavioral health services except for drugs and hospitalization are provided and coordinated by the team, resulting in comprehensive care provided seven days a week and 24 hours a day.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Assertive community treatment is already available to Medicaid members enrolled in the Iowa Plan for Behavioral Health. These amendments will allow members who are not eligible for enrollment in the Iowa Plan to access assertive community treatment.

These amendments also make technical changes to replace the name "Surveillance and Utilization Review Services Unit" with "Program Integrity Unit." This change reflects the current organizational structure of the Iowa Medicaid Enterprise.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on December 15, 2010, as **ARC 9276B**. The Department received three written comments on the Notice of Intended Action. Commenters wanted to make these standards congruent with those of the Dartmouth Assertive Community Treatment Scale, a nationally recognized model. These amendments were written to mirror the requirements for assertive community treatment services in effect under the Iowa Plan for Behavioral Health, so many of the changes suggested by commenters were not adopted.

Changes not adopted include allowing an advanced registered nurse practitioner to lead the team, requiring a vocational specialist on the team, and setting staff ratios for team members. Suggestions to allow experience to substitute for the required degree were rejected because the standards would become arbitrary. The Department can authorize a specific team member through an exception to policy rather than dilute the standard for all providers. One commenter pointed out that a program could not meet the model ratios for psychiatrists at the proposed reimbursement rate.

The Department has made the following changes to these amendments:

- Revised subrule 77.38(7) to read as follows: "**77.38(7) Peer specialists.** A peer specialist on the team shall be a person with serious and persistent mental illness who has met all requirements of a nationally standardized peer support training program, including at least 30 hours of training and satisfactory completion of an examination."
- Renumbered proposed rule 441—78.42(249A) as 441—78.45(249A).
- Added a qualifier to the last sentence in the introductory paragraph of rule 441—78.45(249A), which now reads as follows: "Most services are delivered in the member's home or another community setting."
- Added the words "or community" to subparagraph 78.45(1)"b"(1), which now reads "(1) The member does not have the resources or skills necessary to maintain an adequate level of functioning in the home or community environment without assistance or support;"
- Added a new paragraph 78.45(1)"f" and relettered the noticed paragraph "f" as paragraph "g." The new paragraph reads as follows: "*f.* At the time of admission, the member has a comprehensive assessment that includes psychiatric history, medical history, work and educational history, substance use, problems with activities of daily living, social interests, and family relationships."
- Revised paragraph 78.45(2)"b" to add a substance abuse specialist to the list of team members who may provide direct counseling and to add the following sentence: "Individual counseling is provided by other team members under the supervision of a psychiatrist or licensed mental health practitioner."

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

The Council on Human Services adopted these amendments on March 9, 2011.

The Department finds that these amendments, by making the service available, confer a benefit on Medicaid members not enrolled in the Iowa Plan who need assertive community treatment. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

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

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

These amendments became effective on April 1, 2011.

The following amendments are adopted.

ITEM 1. Adopt the following **new** rule 441—77.38(249A):

441—77.38(249A) Assertive community treatment. Services in the assertive community treatment (ACT) program shall be rendered by a multidisciplinary team composed of practitioners from the

HUMAN SERVICES DEPARTMENT[441](cont'd)

disciplines described in this rule. The team shall be under the clinical supervision of a psychiatrist. The program shall designate an individual team member who shall be responsible for administration of the program, including authority to sign documents and receive payment on behalf of the program.

77.38(1) *Minimum composition.* At a minimum, the team shall consist of a nurse, a mental health service provider, and a substance abuse treatment professional.

77.38(2) *Psychiatrists.* A psychiatrist on the team shall be a physician (MD or DO) who:

- a. Is licensed under 653—Chapter 9,
- b. Is certified as a psychiatrist by the American Board of Medical Specialties' Board of Psychiatry and Neurology or by the American Osteopathic Board of Neurology and Psychiatry, and
- c. Has experience treating serious and persistent mental illness.

77.38(3) *Registered nurses.* A nurse on the team shall:

- a. Be licensed as a registered nurse under 655—Chapter 3, and
- b. Have experience treating persons with serious and persistent mental illness.

77.38(4) *Mental health service providers.* A mental health service provider on the team shall be:

- a. A mental health counselor or marital and family therapist who:
 - (1) Is licensed under 645—Chapter 31, and
 - (2) Has experience treating persons with serious and persistent mental illness; or
- b. A social worker who:
 - (1) Is licensed as a master or independent social worker under 645—Chapter 280, and
 - (2) Has experience treating persons with serious and persistent mental illness.

77.38(5) *Psychologists.* A psychologist on the team shall:

- a. Be licensed under 645—Chapter 240, and
- b. Have experience treating persons with serious and persistent mental illness.

77.38(6) *Substance abuse treatment professionals.* A substance abuse treatment professional on the team shall:

- a. Be an appropriately credentialed counselor pursuant to 641—paragraph 155.21(8) “i,” and
- b. Have at least three years of experience treating substance abuse.

77.38(7) *Peer specialists.* A peer specialist on the team shall be a person with serious and persistent mental illness who has met all requirements of a nationally standardized peer support training program, including at least 30 hours of training and satisfactory completion of an examination.

77.38(8) *Community support specialists.* A community support specialist on the team shall be a person who:

- a. Has a bachelor's degree (BA or BS) in a human services field (sociology, social work, counseling, psychology, or human services), and
- b. Has experience supporting persons with serious and persistent mental illness.

77.38(9) *Case managers.* A case manager on the team shall be a person who:

- a. Has a bachelor's degree (BA or BS) in a human services field (sociology, social work, counseling, psychology, or human services),
- b. Has experience managing care for persons with serious and persistent mental illness, and
- c. Meets the qualifications of “qualified case managers and supervisors” in rule 441—24.1(225C).

77.38(10) *Advanced registered nurse practitioners.* An advanced registered nurse practitioner on the team shall:

- a. Be licensed under 655—Chapter 7,
- b. Have a mental health certification, and
- c. Have experience treating serious and persistent mental illness.

77.38(11) *Physician assistants.* A physician assistant on the team shall:

- a. Be licensed under 645—Chapter 326,
- b. Have experience treating persons with serious and persistent mental illness, and
- c. Practice under the supervision of a psychiatrist.

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Adopt the following **new** subrule 78.28(7):

78.28(7) All assertive community treatment (ACT) services require prior approval. EXCEPTION: If ACT services are initiated before Medicaid eligibility is established, prior approval is required for ACT services beginning with the second month following notice of Medicaid eligibility.

a. Approval shall be granted if ACT services are determined to be medically necessary. Approval shall be limited to no more than 180 days.

b. A new prior approval must be obtained to continue ACT services after the expiration of a previous approval.

ITEM 3. Adopt the following **new** rule 441—78.45(249A):

441—78.45(249A) Assertive community treatment. Assertive community treatment (ACT) services are comprehensive, integrated, and intensive outpatient services provided by a multidisciplinary team under the supervision of a psychiatrist. ACT services are directed toward the rehabilitation of behavioral, social, or emotional deficits or the amelioration of symptoms of a mental disorder. Most services are delivered in the member's home or another community setting.

78.45(1) Applicability. ACT services may be provided only to a member who meets all of the following criteria:

a. The member is at least 17 years old.

b. The member has a severe and persistent mental illness or complex mental health symptomatology. A severe and persistent mental illness is a psychiatric disorder that causes symptoms and impairments in basic mental and behavioral processes that produce distress and major functional disability in adult role functioning (such as social, personal, family, educational or vocational roles). Specifically, the member has a degree of impairment arising from a psychiatric disorder such that:

(1) The member does not have the resources or skills necessary to maintain an adequate level of functioning in the home or community environment without assistance or support;

(2) The member's judgment, impulse control, or cognitive perceptual abilities are compromised; and

(3) The member exhibits significant impairment in social, interpersonal, or familial functioning.

c. The member has a validated principal DSM-IV-TR Axis I diagnosis consistent with a severe and persistent mental illness. Members with a primary diagnosis of substance disorder, developmental disability, or organic disorder are not eligible for ACT services.

d. The member needs a consistent team of professionals and multiple mental health and support services to maintain the member in the community and reduce hospitalizations, as evidenced by:

(1) A pattern of repeated treatment failures with at least two hospitalizations within the previous 24 months, or

(2) A need for multiple or combined mental health and basic living supports to prevent the need for a more intrusive level of care.

e. The member presents a reasonable likelihood that ACT services will lead to specific, observable improvements in the member's functioning and assist the member in achieving or maintaining community tenure. Specifically, the member:

(1) Is medically stable;

(2) Does not require a level of care that includes more intensive medical monitoring;

(3) Presents a low risk to self, others, or property, with treatment and support; and

(4) Lives independently in the community or demonstrates a capacity to live independently and move from a dependent residential setting to independent living.

f. At the time of admission, the member has a comprehensive assessment that includes psychiatric history, medical history, work and educational history, substance use, problems with activities of daily living, social interests, and family relationships.

g. The member has a written treatment plan containing a work evaluation and the necessary psychiatric rehabilitation treatment and support services. The plan shall identify:

(1) Treatment objectives and outcomes,

(2) The expected frequency and duration of each service,

HUMAN SERVICES DEPARTMENT[441](cont'd)

- (3) The location where the services will be provided,
- (4) A crisis plan, and
- (5) The schedule for updates of the treatment plan.

78.45(2) Services. The ACT team shall participate in all mental health services provided to the member and shall provide 24-hour service for the psychiatric needs of the member. Available ACT services are:

a. Evaluation and medication management.

(1) The evaluation portion of ACT services consists of a comprehensive mental health evaluation and assessment of the member by a psychiatrist, advanced registered nurse practitioner, or physician assistant.

(2) Medication management consists of the prescription and management of medication by a psychiatrist, advanced registered nurse practitioner, or physician assistant to respond to the member's complaints and symptoms. A psychiatric registered nurse assists in this management by contact with the member regarding medications and their effect on the member's complaints and symptoms.

b. Integrated therapy and counseling for mental health and substance abuse. This service consists of direct counseling for treatment of mental health and substance abuse symptoms by a psychiatrist, licensed mental health professional, advanced registered nurse practitioner, physician assistant, or substance abuse specialist. Individual counseling is provided by other team members under the supervision of a psychiatrist or licensed mental health practitioner.

c. Skill teaching. Skill teaching consists of side-by-side demonstration and observation of daily living activities by a registered nurse, licensed mental health professional, psychologist, substance abuse counselor, peer specialist, community support specialist, advanced registered nurse practitioner, or physician assistant.

d. Community support. Community support is provided by a licensed mental health professional, psychologist, substance abuse counselor, peer specialist, community support specialist, advanced registered nurse practitioner, or physician assistant. Community support consists of the following activities focused on recovery and rehabilitation:

(1) Personal and home skills training to assist the member to develop and maintain skills for self-direction and coping with the living situation.

(2) Community skills training to assist the member in maintaining a positive level of participation in the community through development of socialization skills and personal coping skills.

e. Medication monitoring. Medication monitoring services are provided by a psychiatric nurse and other team members under the supervision of a psychiatrist or psychiatric nurse and consist of:

(1) Monitoring the member's day-to-day functioning, medication compliance, and access to medications; and

(2) Ensuring that the member keeps appointments.

f. Case management for treatment and service plan coordination. Case management consists of the development by the ACT team of an individualized treatment and service plan, including personalized goals and outcomes, to address the member's medical symptoms and remedial functional impairments.

(1) Case management includes:

1. Assessments, referrals, follow-up, and monitoring.

2. Assisting the member in gaining access to necessary medical, social, educational, and other services.

3. Assessing the member to determine service needs by collecting relevant historical information through member records and other information from relevant professionals and natural supports.

(2) The team shall:

1. Develop a specific care plan based on the assessment of needs, including goals and actions to address the needed medical, social, educational, and other necessary services.

2. Make referrals to services and related activities to assist the member with the assessed needs.

3. Monitor and perform follow-up activities necessary to ensure that the plan is carried out and that the member has access to necessary services. Activities may include monitoring contacts with providers, family members, natural supports, and others.

HUMAN SERVICES DEPARTMENT[441](cont'd)

4. Hold daily team meetings to facilitate ACT services and coordinate the member's care with other members of the team.

g. Crisis response. Crisis response consists of direct assessment and treatment of the member's urgent or crisis symptoms in the community by a registered nurse, licensed mental health professional, psychologist, substance abuse counselor, community support specialist, case manager, advanced registered nurse practitioner, or physician assistant, as appropriate.

h. Work-related services. Work-related services may be provided by a registered nurse, licensed mental health professional, psychologist, substance abuse counselor, community support specialist, case manager, advanced registered nurse practitioner, or physician assistant. Services consist of assisting the member in managing mental health symptoms as they relate to job performance. Services may include:

- (1) Collaborating with the member to look for job situations that may cause symptoms to increase and creating strategies to manage these situations.
 - (2) Assisting the member to develop or enhance skills to obtain a work placement, such as individual work-related behavioral management.
 - (3) Providing supports to maintain employment, such as crisis intervention related to employment.
 - (4) Teaching communication, problem solving, and safety skills.
 - (5) Teaching personal skills such as time management and appropriate grooming for employment.
- This rule is intended to implement Iowa Code section 249A.4.

ITEM 4. Adopt a new provider category in subrule **79.1(2)** as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Assertive community treatment	Fee schedule	\$50.57 per day for each day on which a team meeting is held. Maximum of 5 days per week.

ITEM 5. Amend paragraph **79.3(2)“d,”** introductory paragraph, as follows:

d. Basis for service requirements for specific services. The medical record for the following services must include, but is not limited to, the items specified below (unless the listed item is not routinely received or created in connection with the particular service or activity and is not required to document the reason for performing the service or activity, its medical necessity, or the level of care associated with it). These items will be specified on Form 470-4479, Documentation Checklist, when the Iowa Medicaid enterprise ~~surveillance and utilization review services~~ program integrity unit requests providers to submit records for review. (See paragraph 79.4(2) “b.”)

ITEM 6. Adopt the following new paragraph **79.14(2)“d”**:

d. With the application form, an assertive community treatment program shall submit Form 470-4842, Assertive Community Services (ACT) Provider Agreement Addendum, and agree to file with the department an annual report containing information to be used for rate setting, including:

- (1) Data by practitioner on the utilization by Medicaid members of all the services included in assertive community treatment, and
- (2) Cost information by practitioner type and by type of service actually delivered as part of assertive community treatment.

ITEM 7. Amend subparagraph **79.15(2)“b”(1)** as follows:

(1) Mailing the information to the IME ~~Surveillance and Utilization Review Services~~ Program Integrity Unit, P.O. Box 36390, Des Moines, Iowa 50315; or

[Filed Emergency After Notice 3/9/11, effective 4/1/11]

[Published 4/6/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/6/11.

ARC 9454B**IOWA FINANCE AUTHORITY[265]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(1)“r,” the Iowa Finance Authority hereby rescinds Chapter 14, “Homeless Shelter Assistance Program,” Iowa Administrative Code.

The purpose of this amendment is to rescind Chapter 14 due to the fact that it has been superseded by recently adopted 265—Chapter 41, “Shelter Assistance Fund.”

Pursuant to Iowa Code section 17A.4(3), the Authority finds that notice and public participation are impracticable and contrary to the public interest in that the subject matter addressed by Chapter 14 was open for public comment during the adoption of Chapter 41, and the existence of both chapters is confusing and potentially contradictory.

The Authority finds that this amendment confers a benefit on the persons affected, namely homeless individuals and shelters that address homelessness, in that the rescission of the duplicative chapter will provide clarity, avoid confusion, and ease and speed the administration of assistance benefiting those parties and should be implemented as soon as feasible in order to facilitate assistance to Iowa’s homeless population. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of this amendment is waived.

The Authority adopted this amendment on March 2, 2011.

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

This amendment is intended to implement Iowa Code sections 16.1(1)“ad”(18), 16.3, 16.5(1), and 16.5C and 2010 Iowa Acts, chapter 1031, division XXII.

This amendment became effective March 18, 2011.

The following amendment is adopted.

Rescind and reserve **265—Chapter 14**.

[Filed Emergency 3/18/11, effective 3/18/11]

[Published 4/6/11]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/6/11.

ARC 9455B**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby amends Chapter 39, "Iowa Main Street Program," Iowa Administrative Code.

The amendments change the rules by updating language and descriptions, expanding eligibility to include Iowa cities of any population size, eliminating operational grants for start-up local Main Street programs and expanding designation of Main Street Iowa districts to include historic traditional neighborhood commercial districts as well as historic downtowns. In addition, minor administrative changes were made to the rules.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on January 12, 2011, as **ARC 9336B**. The Department held a public hearing February 1, 2011, and accepted comments until the same date. No comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 15.108.

These amendments will become effective May 11, 2011.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [39.1 to 39.11] is being omitted. These amendments are identical to those published under Notice as **ARC 9336B**, IAB 1/12/11.

[Filed 3/18/11, effective 5/11/11]

[Published 4/6/11]

[For replacement pages for IAC, see IAC Supplement 4/6/11.]

ARC 9453B**EDUCATIONAL EXAMINERS BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 18, "Issuance of Administrator Licenses and Endorsements," Iowa Administrative Code.

An applicant for a Class A license who is employed by an Iowa educational unit and who holds an expired administrator license because the applicant does not meet the renewal requirements will be required to have the signature of the applicant's superintendent before the applicant's license will be issued. If the superintendent does not meet the renewal requirements, the superintendent must secure the signature of the school board president.

This amendment addresses a situation in which the applicant has not completed the required credits for license renewal. In addition, this amendment provides for the notification of employers when an employee has not completed renewal requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 29, 2010, as **ARC 9306B**. A public hearing on the amendment was held on Wednesday, January 19, 2011. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective May 11, 2011.

The following amendment is adopted.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Adopt the following **new** subrule 18.7(7):

18.7(7) *Renewal.* The holder of an expired administrator license who is currently under contract with an Iowa educational unit (area education agency/local education agency/local school district) and who does not meet the renewal requirements for the administrator license held shall be required to secure the signature of the superintendent or designee before the license will be issued. If the superintendent does not meet the renewal requirements, the superintendent shall be required to secure the signature of the school board president before the license will be issued.

[Filed 3/18/11, effective 5/11/11]

[Published 4/6/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/6/11.

ARC 9451B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 20, "Renewals," Iowa Administrative Code.

This amendment formalizes what has been the Board's policy for several years. A license is valid for only five years and may only be renewed less than one year before it expires. If a license could be renewed when more than one year remains on the license, then the licensee would hold the license for more than five years, which would be a violation of the Board's policy.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 29, 2010, as **ARC 9300B**. A public hearing on the amendment was held on Wednesday, January 19, 2011. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective May 11, 2011.

The following amendment is adopted.

Adopt the following **new** subrule 20.3(6):

20.3(6) *Timely renewal.* A license may only be renewed less than one year before it expires.

[Filed 3/18/11, effective 5/11/11]

[Published 4/6/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/6/11.

ARC 9452B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 27, "Issuance of Professional Service Licenses," Iowa Administrative Code.

This amendment formalizes what has been the Board's policy for several years. A license is valid for only five years and may only be renewed less than one year before it expires. If a license could be renewed when more than one year remains on the license, then the licensee would hold the license for more than five years, which would be a violation of the Board's policy.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 29, 2010, as **ARC 9301B**. A public hearing on the amendment was held on Wednesday, January 19, 2011. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective May 11, 2011.

The following amendment is adopted.

Adopt the following new rule 282—27.7(272):

282—27.7(272) Timely renewal. A license may only be renewed less than one year before it expires.

[Filed 3/18/11, effective 5/11/11]

[Published 4/6/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/6/11.

ARC 9439B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 239B.4(6) and 249A.4, the Department of Human Services amends Chapter 40, "Application for Aid," Chapter 41, "Granting Assistance," and Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

These amendments update and clarify the Family Investment Program (FIP) and Medicaid rules on eligibility for persons who are not United States citizens. There has been frequent federal legislation in this area and development of federal regulations which necessitate changes to conform to federal funding requirements.

For the Family Investment Program (FIP), the amendments:

- Clarify that a FIP participant must be a citizen or national of the United States or a qualified alien and specify how applicants and participants attest to citizenship or alien status.
- Add definitions of "qualified alien" and "qualifying quarters" and specify which qualified aliens are subject to a five-year bar on assistance and which are exempt from the bar.
- Require consideration of the income and resources of a sponsor when an alien has been sponsored by a person who executed an enforceable affidavit of support. Deeming of the sponsor's income ends when the alien becomes a naturalized citizen, can be credited with 40 qualifying quarters of employment or has been determined to be a battered alien or when the sponsor or the sponsored alien dies.
- Exempt the income and resources of a sponsor from consideration when the sponsored alien is considered indigent and define that determination.

For Medicaid, the amendments:

- Update the definitions of "care and services necessary for the treatment of an emergency medical condition," "emergency medical condition," and "qualified alien."
- Clarify how qualified aliens become eligible for Medicaid.
- Add an exemption from verifying citizenship for a person born to a Medicaid-eligible mother and make technical corrections to clarify other exemptions from verifying citizenship.
- Define the deductions allowable in calculating the income and resources subject to sponsor-to-alien deeming when an alien is sponsored by a person who executed an enforceable affidavit of support.
- Allow an exception to consideration of the income and resources of a sponsor when the sponsored alien is considered indigent and define that determination.
- Clarify that deeming of the sponsor's income does not apply when the sponsored alien is a child under age 21, is a battered alien, becomes a naturalized citizen, or can be credited with 40 qualifying quarters of employment. Deeming ends when the sponsor or the sponsored alien dies. For SSI-related Medicaid, deeming also ends when the sponsored alien becomes blind or disabled after admission to the United States as a lawful permanent resident or three years after the date the sponsored alien was admitted to the United States as a lawful permanent resident.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments do not provide for waivers in specified situations because the amendments are required by federal law or confer a benefit. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on December 29, 2010, as **ARC 9309B**. The Department received no comments on the Notice of Intended Action. However, the Department has added a technical change to subparagraph 75.11(2)“c”(2) to limit the prohibition on approving Medicaid eligibility during a second “reasonable” period for providing proof of citizenship or nationality. The amended language reads as follows:

“An applicant or member who has already received benefits during any portion of a reasonable period shall not be granted coverage for a second reasonable period except as required to protect the confidentiality of an individual who received only limited Medicaid benefits provided pursuant to subrule 75.1(41) during the first period.”

The Council on Human Services adopted these amendments on March 9, 2011.

These amendments are intended to implement Iowa Code sections 239B.3, 239B.5, 239B.6, and 249A.3 and 8 United States Code Section 1641 as amended by the Immigration and Nationality Act, the Immigration Reform Act of 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Balanced Budget Act of 1997, the Trafficking Victims Protection Act of 2000, and the Children's Health Insurance Reauthorization Act of 2009.

These amendments shall become effective on June 1, 2011.

The following amendments are adopted.

ITEM 1. Adopt the following new definitions of “Qualified alien” and “Qualifying quarters” in rule **441—40.21(239B)**:

“*Qualified alien*” means an alien:

1. Who is lawfully admitted for permanent residence in the United States under the Immigration and Nationality Act (INA);
2. Who is granted asylum in the United States under Section 208 of the INA;
3. Who is a refugee admitted to the United States under Section 207 of the INA;
4. Who is paroled into the United States under Section 212(d)(5) of the INA for a period of at least one year;
5. Whose deportation from the United States is withheld under Section 243(h) of the INA as in effect before April 1, 1997, or under Section 241(b)(3) of the INA as amended to December 20, 2010;
6. Who is granted conditional entry to the United States pursuant to Section 203(a)(7) of the INA as in effect before April 1, 1980;
7. Who is admitted to the United States as an Amerasian as described in 8 U.S.C. Section 1612(b)(2)(A)(ii)(V);
8. Who is a Cuban/Haitian entrant to the United States as described in 8 U.S.C. Section 1641(b)(7);
9. Who is a battered alien as described in 8 U.S.C. Section 1641(c); or
10. Who is certified as a victim of trafficking as described in Section 107(b)(1)(A) of Public Law 106-386 as amended to December 20, 2010.

“*Qualifying quarters*” means all of the qualifying quarters of coverage as defined under Title II of the Social Security Act that were worked by a parent of an alien while the alien was under the age of 18 and all of the qualifying quarters that were worked by a spouse of the alien during their marriage if the alien remains married to the spouse or the spouse is deceased. No qualifying quarter of coverage that is creditable under Title II of the Social Security Act for any period beginning after December 31, 1996, may be credited to an alien if the parent or spouse of the alien received any federal means-tested public benefit during the period for which the qualifying quarter is so credited.

ITEM 2. Amend subrule 41.23(5) as follows:

41.23(5) *Citizenship and alienage.*

a. *Eligible status.* A family investment program assistance grant may include the needs of a citizen or national of the United States; or a qualified alien as defined at ~~8 United States Code Section 1641~~ rule 441—40.21(239B).

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) A person who is a qualified alien as defined at ~~8 United States Code Section 1641 rule 441—40.21(239B)~~ is not eligible for family investment program assistance for ~~five years~~. ~~The a~~ five-year period of ineligibility begins beginning on the date of the person's entry into the United States with a qualified alien status as ~~defined at 8 United States Code Section 1641~~.

(2) EXCEPTIONS: The five-year prohibition from family investment program assistance does not apply to: ~~battered aliens as described at 41.23(4), qualified aliens described in 8 United States Code Section 1612, or to qualified aliens as defined at 8 United States Code Section 1641 who entered the United States before August 22, 1996.~~

1. A qualified alien residing in the United States before August 22, 1996.
2. A battered alien as described at subrule 41.23(4).
3. A qualified alien veteran who has an honorable discharge that is not due to alienage.
4. A qualified alien who is on active duty in the Armed Forces of the United States other than active duty for training.
5. A qualified alien who is the spouse or unmarried dependent child of a qualified alien described in numbered paragraph "3" or "4," including a surviving spouse who has not remarried.
6. A refugee admitted under Section 207 of the Immigration and Nationality Act (INA).
7. An alien granted asylum under Section 208 of the INA.
8. An alien admitted as an Amerasian as described in 8 U.S.C. Section 1612(a)(2)(A)(ii)(V).
9. A Cuban/Haitian entrant as described in 8 U.S.C. Section 1641(b)(7).
10. An alien whose deportation is withheld under Section 243(h) or Section 241(b)(3) of the INA.
11. An alien certified as a victim of trafficking as described in Section 107(b)(1)(A) of Public Law 106-386 as amended to December 20, 2010.
12. An Iraqi or Afghan immigrant treated as a refugee pursuant to Section 1244(g) of Public Law 110-181 as amended to December 20, 2010, or to Section 602(b)(8) of Public Law 111-8 as amended to December 20, 2010.

~~(2) A person who is not a United States citizen, a battered alien as described at 41.23(4), or a qualified alien as defined at 8 United States Code Section 1641 is not eligible for the family investment program regardless of the date the person entered the United States.~~

b. Attestation of status. ~~As a condition of eligibility, each applicant shall attest to the applicant's citizenship or alien status by signing an attestation of citizenship or alien status shall be made for all applicants and recipients on Form 470-0462 or 470-0466 470-0462(S), Health and Financial Support Application, or Form 470-2549, Statement of Citizenship Status. Form 470-2881, 470-2881(S), 470-2881(M), or 470-2881(MS), Review/Recertification Eligibility Document, may be used to attest to the citizenship of dependent children who enter a recipient household. Failure to sign a form attesting to citizenship when required to do so creates ineligibility for the entire eligible group. The attestation may be signed by:~~

(1) ~~The applicant or, when the applicant is incompetent or incapacitated, someone acting responsibly on the applicant's behalf shall sign the form.~~

(2) ~~An adult shall sign the form for dependent children. Form 470-2881, Review/Recertification Eligibility Document, may be used to attest to the citizenship of dependent children who enter a recipient household. Someone acting responsibly on the applicant's or recipient's behalf if the applicant or recipient is incompetent or incapacitated; or~~

(3) ~~Failure to sign a form attesting to citizenship when required to do so creates ineligibility for the entire eligibility group. Any adult member of the assistance unit, when eligibility is determined on a family or household basis.~~

ITEM 3. Amend paragraph **41.24(2)"f"** as follows:

f. A person who is not a United States citizen and is not a qualified alien as defined in ~~8 United States Code Section 1641 or a battered alien as described at 41.23(4) rule 441—40.21(239B)~~.

ITEM 4. Amend subrule 41.26(9) as follows:

41.26(9) Aliens sponsored by individuals. ~~Rescinded IAB 10/4/00, effective 12/1/00.~~ When an alien admitted for lawful permanent residence is sponsored by a person who executed an enforceable affidavit

HUMAN SERVICES DEPARTMENT[441](cont'd)

of support as described in 8 U.S.C. Section 1631(a)(1) on behalf of the alien, the resources of the alien shall be deemed to include the resources of the sponsor (and of the sponsor's spouse if living with the sponsor). The amount of the resources of the sponsor and the sponsor's spouse deemed to the alien shall be the total countable resources as described in rule 441—41.26(239B) remaining after a \$1,500 deduction is subtracted. The following are exceptions to deeming of a sponsor's resources:

a. Deeming of the sponsor's resources does not apply when:

(1) The sponsored alien attains citizenship through naturalization pursuant to Chapter 2 of Title III of the Immigration and Nationality Act;

(2) The sponsored alien has earned 40 qualifying quarters of coverage as defined in Title II of the Social Security Act or can be credited with 40 qualifying quarters as defined at rule 441—40.21(239B);
or

(3) The sponsored alien or the sponsor dies.

b. An indigent alien is exempt from the deeming of a sponsor's resources for 12 months after indigence is determined. An alien shall be considered indigent if:

(1) The alien does not live with the sponsor; and

(2) The alien's gross income, including any income received from or made available by the sponsor, is less than 100 percent of the federal poverty level for the sponsored alien's household size.

c. A battered alien as described in 8 U.S.C. Section 1641(c) is exempt from the deeming of a sponsor's resources for 12 months.

ITEM 5. Amend subrule 41.27(10) as follows:

41.27(10) Aliens sponsored by individuals. ~~Rescinded IAB 10/4/00, effective 12/1/00.~~ When an alien admitted for lawful permanent residence is sponsored by a person who executed an enforceable affidavit of support as described in 8 U.S.C. Section 1631(a)(1) on behalf of the alien, the income of the alien shall be deemed to include the income of the sponsor (and of the sponsor's spouse if living with the sponsor). The amount of the income of the sponsor and the sponsor's spouse deemed to the alien shall be the total gross earned and unearned income remaining after allowing the earned income deduction described at paragraph 41.27(2) "a," the work incentive disregard described at paragraph 41.27(2) "c," and diversions described at subrule 41.27(4). The following are exceptions to deeming of a sponsor's income:

a. Deeming of the sponsor's income does not apply when:

(1) The sponsored alien attains citizenship through naturalization pursuant to Chapter 2 of Title III of the Immigration and Nationality Act;

(2) The sponsored alien has earned 40 qualifying quarters of coverage as defined in Title II of the Social Security Act or can be credited with 40 qualifying quarters as defined at rule 441—40.21(239B);
or

(3) The sponsored alien or the sponsor dies.

b. An indigent alien is exempt from the deeming of a sponsor's income for 12 months after indigence is determined. An alien shall be considered indigent if:

(1) The alien does not live with the sponsor; and

(2) The alien's gross income, including any income received from or made available by the sponsor, is less than 100 percent of the federal poverty level for the sponsored alien's household size.

c. A battered alien as described in 8 U.S.C. Section 1641(c) is exempt from the deeming of a sponsor's income for 12 months.

ITEM 6. Amend paragraph **41.30(3)"a"** as follows:

a. Exclusions. Families with an adult as defined in subrule 41.30(1) who is not a U.S. citizen, a battered alien as described at 41.23(4), or a qualified alien under 8 United States Code Section 1641 as described in subrule 41.23(5) as defined in rule 441—40.21(239B) are prohibited from receiving more than 60 months of FIP assistance. The family of an adult who is a nonqualified alien cannot meet the requirements of paragraph "g" of this subrule since the department is precluded from using public funds to provide a nonqualified alien with family investment agreement or PROMISE JOBS services by Iowa Code sections 239B.8 and 239B.18 and rule 441—41.24(239B).

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 7. Amend subrule **75.11(1)**, definitions of “Care and services necessary for the treatment of an emergency medical condition,” “Emergency medical condition” and “Qualified alien,” as follows:

“*Care and services necessary for the treatment of an emergency medical condition*” ~~shall mean~~ means services provided in a hospital, clinic, office or other facility that is equipped to furnish the required care after the sudden onset of for an emergency medical condition, provided the care and services are not related to an organ transplant procedure furnished on or after August 10, 1993. Payment for emergency medical services shall be limited to the day treatment is initiated for the emergency medical condition and the following two days.

“*Emergency medical condition*” ~~shall mean~~ means a medical condition of sudden onset (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in one or more of the following:

1. to 3. No change.

“*Qualified alien*” means an alien ~~who is~~:

1. ~~Lawfully~~ Who is lawfully admitted for permanent residence in the United States under the Immigration and Nationality Act (INA);

2. ~~Granted~~ Who is granted asylum in the United States under Section 208 of the Immigration and Nationality Act INA;

3. ~~A~~ Who is a refugee and who is admitted to the United States under Section 207 of the Immigration and Nationality Act INA;

4. ~~Paroled~~ Who is paroled into the United States under Section 212(d)(5) of the Immigration and Nationality Act INA for a period of at least one year;

5. ~~An alien whose~~ Whose deportation from the United States is being withheld under Section 243(h) of the Immigration and Nationality Act INA as in effect before April 1, 1997, or under Section 241(b)(3) of the INA as amended to December 20, 2010; or

6. ~~Granted~~ Who is granted conditional entry to the United States pursuant to Section 203(a)(7) of the Immigration and Nationality Act, INA as in effect prior to before April 1, 1980;

7. Who is an Amerasian admitted to the United States as described in 8 U.S.C. Section 1612(b)(2)(A)(i)(V);

8. Who is a Cuban/Haitian entrant to the United States as described in 8 U.S.C. Section 1641(b)(7);

9. Who is a battered alien as described in 8 U.S.C. Section 1641(c);

10. Who is certified as a victim of trafficking as described in Section 107(b)(1)(A) of Public Law 106-386 as amended to December 20, 2010;

11. Who is an American Indian born in Canada to whom Section 289 of the INA applies or is a member of a federally recognized Indian Tribe as defined in 25 U.S.C. Section 450b(e); or

12. Who is under the age of 21 and is lawfully residing in the United States as allowed by 42 U.S.C. Section 1396b(v)(4)(A)(ii).

ITEM 8. Amend subrule 75.11(2) as follows:

75.11(2) Citizenship and alienage.

a. To be eligible for Medicaid, a person must be one of the following:

(1) and (2) No change.

(3) ~~An A~~ qualified alien child under the age of 19 who is lawfully admitted for permanent residence under the Immigration and Nationality Act 21.

(4) A refugee ~~who is~~ admitted to the United States under Section 207 of the Immigration and Nationality Act (INA).

(5) An alien who has been granted asylum under Section 208 of the ~~Immigration and Nationality Act INA.~~

(6) An alien whose deportation is being withheld under Section 243(h) or Section 241(b)(3) of the ~~Immigration and Nationality Act INA.~~

(7) to (10) No change.

(11) An Amerasian admitted as described in 8 U.S.C. Section 1612(b)(2)(A)(i)(V).

HUMAN SERVICES DEPARTMENT[441](cont'd)

(12) A Cuban/Haitian entrant as described in 8 U.S.C. Section 1641(b)(7).

(13) A certified victim of trafficking as described in Section 107(b)(1)(A) of Public Law 106-386 as amended to December 20, 2010.

(14) An American Indian born in Canada to whom Section 289 of the INA applies or who is a member of a federally recognized Indian Tribe as defined in 25 U.S.C. Section 450b(e).

(15) An Iraqi or Afghan immigrant treated as a refugee pursuant to Section 1244(g) of Public Law 110-181 as amended to December 20, 2010, or to Section 602(b)(8) of Public Law 111-8 as amended to December 20, 2010.

b. As a condition of eligibility, each member shall complete and sign Form 470-2549, Statement of Citizenship Status, attesting to the member's citizenship or alien status. When the member is incompetent or deceased, the form shall be signed by someone acting responsibly on the member's behalf. An adult shall sign the form for dependent children.

(1) and (2) No change.

(3) An attestation of citizenship or alien status completed on any one of the following forms shall meet the requirements of subrule 75.11(2) for children under the age of 19 who are otherwise eligible pursuant to 441—subrule 76.1(8):

1. Application for Food Assistance, Form 470-0306 or 470-0307 (Spanish);

2. Health and Financial Support Application, Form 470-0462 or ~~470-0466 (Spanish)~~ 470-0462(S);

or

3. Review/Recertification Eligibility Document, Form 470-2881, 470-2881(S), 470-2881(M), or 470-2881(MS);

c. Except as provided in paragraph "*f*," applicants or members for whom an attestation of United States citizenship has been made pursuant to paragraph "*b*" shall present satisfactory documentation of citizenship or nationality as defined in paragraph "*d*," "*e*," or "*i*." A reference to a form in paragraph "*d*" or "*e*" includes any successor form. An applicant or member shall have a reasonable period to obtain and provide required documentation of citizenship or nationality.

(1) No change.

(2) Medicaid shall be approved for new applicants and continue for members not previously required to provide documentation of citizenship or nationality until the end of the reasonable period to obtain and provide required documentation of citizenship or nationality. However, the receipt of Medicaid or HAWK-I benefits pending documentation of citizenship or nationality is limited to one reasonable period of up to 90 days under either program for each individual. ~~Medicaid shall not be approved for an~~ An applicant or continued for a member who has already received benefits during any portion of a reasonable period until satisfactory documentation is provided shall not be granted coverage for a second reasonable period except as required to protect the confidentiality of an individual who received only limited Medicaid benefits provided pursuant to subrule 75.1(41) during the first period.

(3) No change.

d. Any one of the following documents shall be accepted as satisfactory documentation of citizenship or nationality:

(1) to (4) No change.

(5) Documentation issued by a federally recognized Indian Tribe showing membership or enrollment in or affiliation with that Tribe.

~~(5)~~ (6) Another document that provides proof of United States citizenship or nationality and provides a reliable means of documentation of personal identity, as the ~~secretary~~ Secretary of the U.S. Department of Health and Human Services may specify by regulation pursuant to 42 U.S.C. Section 1396b(x)(3)(B)(v).

e. No change.

f. A person for whom an attestation of United States citizenship has been made pursuant to paragraph "*b*" is not required to present documentation of citizenship or nationality for Medicaid eligibility if any of the following circumstances apply:

(1) to (3) No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(4) The person is a child in foster care who is ~~eligible for~~ assisted by child welfare services funded under Part B of Title IV of the federal Social Security Act.

(5) The person is ~~eligible for adoption or receiving~~ foster care maintenance or adoption assistance payments funded under Part E of Title IV of the federal Social Security Act; ~~or~~.

(6) No change.

(7) The person is or was eligible for medical assistance pursuant to 42 U.S.C. Section 1396a(e)(4) as the newborn of a Medicaid-eligible mother.

(8) The person is or was eligible for medical assistance pursuant to 42 U.S.C. Section 1397II(e) as the newborn of a mother eligible for assistance under a State Children's Health Insurance Program (SCHIP) pursuant to Title XXI of the Social Security Act.

g. to i. No change.

ITEM 9. Amend subrule 75.11(3) as follows:

75.11(3) Deeming of sponsor's income and resources.

a. ~~In determining the eligibility and amount of benefits of~~ When an alien admitted for lawful permanent residence is sponsored by a person who executed an affidavit of support as described in 8 U.S.C. Section 1631(a)(1) on behalf of the alien, the income and resources of the alien shall be deemed to include the following:

(1) ~~The income and resources of any person who executed an affidavit of support pursuant to Section 213A of the Immigration and Nationality Act (as implemented by the Personal Responsibility and Work Reconciliation Act of 1996) on behalf of the alien.~~

(2) ~~The~~ the income and resources of the sponsor (and of the sponsor's spouse of the person who executed the affidavit of support if living with the sponsor). The amount deemed to the sponsored alien shall be the total gross countable income and resources of the sponsor and the sponsor's spouse for the FMAP-related or SSI-related coverage group applicable to the sponsored alien's household as described in 441—75.13(249A) less the following deductions:

(1) For FMAP-related coverage groups: The same income deductions, diversions, and disregards allowed for stepparent cases as described at 75.57(8) "b" and a \$1,500 resource deduction.

(2) For SSI-related coverage groups: The deductions described at 20 CFR 416.1166a and 416.1204, as amended to April 1, 2010.

b. ~~When an alien attains citizenship through naturalization pursuant to Chapter 2 of Title III of the Immigration and Nationality Act or has worked 40 qualifying quarters of coverage as defined in Title II of the Social Security Act or can be credited with qualifying quarters as defined at subrule 75.11(1) and, in the case of any qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any federal means tested public benefits, as defined in subrule 75.11(1), during any period, deeming of the sponsor's income and resources no longer applies. An indigent alien is exempt from the deeming of a sponsor's income and resources for 12 months after indigence is determined. An alien shall be considered indigent if the following are true:~~

(1) The alien does not live with the sponsor; and

(2) The alien's gross income, including any income actually received from or made available by the sponsor, is less than 100 percent of the federal poverty level for the sponsored alien's household size.

c. A battered alien as described in 8 U.S.C. Section 1641(c) is exempt from the deeming of a sponsor's income and resources for 12 months.

d. Deeming of the sponsor's income and resources does not apply when:

(1) The sponsored alien attains citizenship through naturalization pursuant to Chapter 2 of Title II of the Immigration and Nationality Act.

(2) The sponsored alien has earned 40 qualifying quarters of coverage as defined in Title II of the Social Security Act or can be credited with 40 qualifying quarters as defined at subrule 75.11(1).

(3) The sponsored alien or the sponsor dies.

(4) The sponsored alien is a child under age 21.

(5) For SSI-related Medicaid, the sponsored alien becomes blind or disabled as defined under Title XVI of the Social Security Act after admission to the United States as a lawful permanent resident.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(6) For SSI-related Medicaid, three years after the date the sponsored alien was admitted to the United States as a lawful permanent resident.

[Filed 3/9/11, effective 6/1/11]

[Published 4/6/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/6/11.

ARC 9441B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 237A.12, the Department of Human Services amends Chapter 109, "Child Care Centers," Iowa Administrative Code.

The amendment clarifies when record checks are required for persons who volunteer or substitute for staff at a child care center. The amendment provides that criminal and child abuse record checks are required when the volunteer or substitute:

- Is included in meeting the required child-to-staff ratio,
- Has direct responsibility for a child or children, or
- Has access to a child or children with no other staff present.

The child care center is responsible for the cost of the record checks and must maintain documentation that the checks were completed when required.

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

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on January 12, 2011, as **ARC 9333B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on March 9, 2011.

This amendment is intended to implement Iowa Code section 237A.5.

This amendment shall become effective on June 1, 2011.

The following amendment is adopted.

Amend paragraph **109.6(5)"c"** as follows:

c. ~~Undergo the record check process when the person is responsible for child care for a child other than the person's own child or has access to other children when they are alone.~~ any of the following criteria are met:

- (1) The volunteer or substitute is included in meeting the required child-to-staff ratio;
- (2) The volunteer or substitute has direct responsibility for a child or children; or
- (3) The volunteer or substitute has access to a child or children with no other staff present.

d. Have on file at the facility a record containing the statements required in paragraphs 109.6(5) "a" and "b" and Records documentation of the any record check process. The record shall be maintained as required in subparagraph paragraph 109.9(1) "b."

[Filed 3/9/11, effective 6/1/11]

[Published 4/6/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/6/11.

ARC 9446B**NATURAL RESOURCE COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby amends Chapter 45, "Boat Motor Regulations," Iowa Administrative Code.

The adopted amendments replace the use of "no-wake zones" with defined speed restrictions of 5 miles per hour for the listed areas.

Notice of Intended Action was published in the October 6, 2010, Iowa Administrative Bulletin as **ARC 9117B**. A public hearing was held October 28, 2010. Comments received and the Department's responses are as follows:

There was concern from the public that boat operators who do not have GPS or a tachometer that registers speed under 10 miles per hour would be unable to determine the speed of their boats. A tachometer on a boat uses the same technology as a tachometer in a car, which registers the motor speed immediately. Boats equipped with fish finders have a built-in GPS unit that measures the accurate speed of the boat. The Department expects that this technology will facilitate boat operators' compliance with the new amendments. In addition, a boat traveling 5 miles per hour or less does not make a wake and therefore does not generate white water behind the boat. The Department feels confident that this visual cue for boat operators will be sufficient to enable their compliance with the amendments.

The Department received comments expressing a preference to change the speed limit in the amendments to 10 miles per hour. At 10 miles per hour, the bow of a boat is up and the stern is down which causes water to be forced to the bottom of the artificial marsh or artificial lake causing churning to the bed of the marsh or lake. This fact makes a speed limit of 10 miles per hour undesirable. Also, at a speed of 10 miles per hour, the operator is unable to clearly see if a swimmer or other small vessel is in the path of the boat because of the raised bow.

Due to the perception that there is little or ineffective enforcement of the current rule, several comments suggested leaving the "no-wake" requirement in the rule. The Department finds that the adopted amendments further the Department's ongoing process of improving boating enforcement efforts on Iowa's waterways. The intent is to align this chapter with rules found in 571—Chapter 40, Boating Speed and Distance Zoning. Enforcement efforts are challenged by the use of the no-wake requirement instead of a mile-per-hour restriction because under the current rules the wake needs to adversely affect the activities of another boat or the shoreline to be enforceable.

The Department finds that a set mile-per-hour speed limit is an objective criterion that can be enforced instead of the current no-wake requirement, which is subjective. However, changing the speed to not greater than 5 miles per hour does not lessen the boat operator's responsibility for any damage caused by the operator's wake.

Comments were also received suggesting that the 10 horsepower limit on Lake Macbride be removed. The law governing Lake Macbride is found in Iowa Code section 462A.31 and cannot be changed by administrative rule.

Two changes were made in Item 1 to conform the spelling of Lake Macbride and motorboats to the spelling used elsewhere in the Commission's rules. No other changes have been made to the amendments as published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 462A.

These amendments shall become effective May 11, 2011.

The following amendments are adopted.

ITEM 1. Amend subrules 45.4(2) and 45.4(3) as follows:

45.4(2) *Horsepower limitation exceptions for artificial lakes of 100 acres or less.* Motors larger than 1½ horsepower may be operated on the following lakes as designated:

Avenue of the Saints Lake, Bremer County—unrestricted horsepower at a ~~no-wake~~ speed not greater than 5 miles per hour.

NATURAL RESOURCE COMMISSION[571](cont'd)

Banner Lakes at Summerset State Park, Warren County—~~motor boats~~ motorboats of outboard or inboard/outdrive type and unrestricted horsepower at a ~~no-wake~~ speed not greater than 5 miles per hour.

Beaver Lake, Dallas County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Beeds Lake, Franklin County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Black Hawk Pits, Sac County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Crawford Creek Recreation Area Lake, Ida County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Deer Creek Lake, Plymouth County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Fogle Lake, Ringgold County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

George Wyth Lake, Black Hawk County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Lake Iowa, Iowa County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Lake of Three Fires, Taylor County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Loch Ayr, Ringgold County—outboard motors not greater than 100 horsepower.

Meadow Lake, Adair County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Otter Creek Lake, Tama County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Silver Lake, Delaware County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Thayer Lake, Union County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Williamson Pond, Lucas County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

45.4(3) *Horsepower limitations for artificial lakes of more than 100 acres in size.* On artificial lakes of more than 100 acres, vessels may be operated with unrestricted horsepower at a ~~no-wake~~ speed not greater than 5 miles per hour except as otherwise permitted by subrule 45.4(2). The following artificial lakes have special horsepower restrictions:

a. Green Valley Lake, Union County—no inboard or racing-type craft are permitted. Vessels must be operated at a ~~no-wake~~ speed not greater than 5 miles per hour except in designated ski areas as established in 571—36.7(462A).

b. Lake Icaria, Adams County—motorboats of outboard or inboard/outdrive type. Vessels must be operated at a ~~no-wake~~ speed not greater than 5 miles per hour when within 50 feet of another vessel which is not underway or is operating at a ~~no-wake~~ speed not greater than 5 miles per hour. Additional speed and distance regulations apply as established in 571—40.20(462A).

c. Lake McBride Macbride, Johnson County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour only from September 8 through May 20 of each year. A motorboat with a power unit exceeding 10 horsepower shall not be permitted the remainder of the year.

d. Three Mile Lake, Union County—motorboats of outboard or inboard/outdrive type with power not to exceed 200 horsepower. Vessels must be operated at a ~~no-wake~~ speed not greater than 5 miles per hour when within 50 feet of another vessel which is not underway or is operating at a ~~no-wake~~ speed not greater than 5 miles per hour. Additional speed and distance regulations apply as established in 571—40.44(462A).

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 2. Amend rule 571—45.5(462A), introductory paragraph, as follows:

571—45.5(462A) Artificial marshes. A motorboat equipped with any power unit mounted or carried aboard the vessel may be operated on the following listed artificial marshes under the jurisdiction of the department of natural resources at a ~~no-wake~~ speed not greater than 5 miles per hour between January 1 and August 31 and with no speed restrictions between September 1 and December 31.

[Filed 3/11/11, effective 5/11/11]

[Published 4/6/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/6/11.

ARC 9443B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby rescinds Chapter 131, "Emergency Medical Services Provider Education/Training/Certification," Iowa Administrative Code, and adopts a new Chapter 131 with the same title.

The rules in Chapter 131 describe the standards for the education, training, and certification of emergency medical care providers and establish a standard of conduct for training programs, students, and providers.

A summary of the major changes from the existing rules follows.

Definitions for "advanced emergency medical technician," "emergency medical responder," "emergency medical technician," and "paramedic" have been added.

The definition for "endorsement" has been revised, and the definition for "emergency rescue technician" has been removed.

Rule 641—131.2(147A) has been revised to include the certification levels of EMT, AEMT and Paramedic.

In subrule 131.3(3), paragraph "b," the January 2011 Scope of Practice for Iowa EMS Providers is adopted by reference.

In subrule 131.4(1), the National Registry of Emergency Medical Technicians (NREMT) is identified as the certification testing standard.

A new subrule 131.4(3) concerning the transition of current emergency medical care providers to the newly identified levels is added, and the content of existing subrule 131.4(3) is now contained in subrule 131.4(4).

In subrule 131.4(5), which is numbered as 131.4(4) in existing Chapter 131, the newly identified certification levels are incorporated into the renewal requirements, and late renewal applicants are required to report continuing education using the form provided by the Department.

Existing subrule 131.4(5) pertaining to renewal by testing has been deleted.

In subrule 131.4(6), specific continuing education hours are applied to college credit courses.

In subrule 131.4(8), newly identified certification levels are added.

In subrule 131.4(9), current registration with the NREMT is now required for individuals applying for certification by reciprocity in Iowa.

Existing subrule 131.4(10) regarding temporary certification by endorsement has been deleted, and existing subrules 131.4(11) and 131.4(12) are numbered as 131.4(10) and 131.4(11) in new Chapter 131.

In subrule 131.5(1), new education standards are identified for EMR, EMT, AEMT and Paramedic training, and training programs are permitted to waive portions of training for previous emergency medical care provider experience.

In subrule 131.5(10), training programs concluding Paramedic courses after December 31, 2012, must have received, or be in the process of receiving, accreditation by the Committee on Accreditation for the Emergency Medical Services Professions.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

New subrule 131.7(2) contains language to reflect methods of discipline identified in Iowa Code chapter 272C, including reexamination, requiring additional training, and restricting specific procedures, methods, acts or activities.

The content of existing subrule 131.7(2) relating to grounds for discipline is now contained in subrule 131.7(3).

In subrule 131.8(2), methods of discipline have been reformatted, and content relating to grounds for discipline has been moved to new subrule 131.8(3).

Notice of Intended Action was published in the January 26, 2011, Iowa Administrative Bulletin as **ARC 9342B**. A public hearing was held on February 18, 2011. One comment was received supporting the changes. The adopted rules are identical to those published under Notice.

The State Board of Health adopted these rules on March 9, 2011.

These rules will become effective on August 1, 2011.

These rules are intended to implement Iowa Code chapter 147A.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 131] is being omitted. These rules are identical to those published under Notice as **ARC 9342B**, IAB 1/26/11.

[Filed 3/10/11, effective 8/1/11]

[Published 4/6/11]

[For replacement pages for IAC, see IAC Supplement 4/6/11.]

ARC 9444B**PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147A.4 and 147A.27, the Department of Public Health hereby amends Chapter 132, "Emergency Medical Services—Service Program Authorization," and Chapter 136, "Trauma Registry," Iowa Administrative Code.

The rules in Chapter 132 describe the standards for the authorization of EMS services. The rules in Chapter 136 describe the trauma registry procedures and policies. These amendments require the electronic submission of ambulance report data.

Notice of Intended Action was published in the January 26, 2011, Iowa Administrative Bulletin as **ARC 9343B**. No comments were received. These amendments are identical to those published under Notice.

The State Board of Health adopted these amendments on March 9, 2011.

These amendments will become effective on May 11, 2011.

These amendments are intended to implement Iowa Code chapter 147A.

The following amendments are adopted.

ITEM 1. Adopt the following new paragraphs **132.8(3)"q"** and **"r"**:

q. Submit reportable patient data identified in subrule 132.8(7) via electronic transfer. Data shall be submitted in a format approved by the department.

r. Submit reportable patient data identified in subrule 132.8(7) to the department for each calendar quarter. Reportable patient data shall be submitted no later than 90 days after the end of the quarter.

ITEM 2. Amend paragraph **136.2(3)"a"** as follows:

a. Submit reportable patient data identified in 136.2(1) via electronic transfer ~~or in writing~~. Data shall be submitted in a format approved by the department.

[Filed 3/10/11, effective 5/11/11]

[Published 4/6/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/6/11.

ARC 9445B**PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147A.4 and 147A.27, the Department of Public Health hereby amends Chapter 134, "Trauma Care Facility Categorization and Verification," Iowa Administrative Code.

The rules in Chapter 134 describe the standards for the verification of trauma care facilities. This amendment updates the categorization criteria.

Notice of Intended Action was published in the January 26, 2011, Iowa Administrative Bulletin as **ARC 9344B**. No comments were received. This amendment is identical to that published under Notice.

The State Board of Health adopted this amendment on March 9, 2011.

This amendment will become effective on May 11, 2011.

This amendment is intended to implement Iowa Code chapter 147A.

The following amendment is adopted.

Amend subrule 134.2(3) as follows:

134.2(3) Adoption by reference.

a. ~~"Iowa Trauma System Resource (Level I) & Regional (Level II) Hospital and Emergency Care Facility Categorization Criteria" (November 2004)~~ "Resources for Optimal Care of the Injured Patient" (2006) published by the American College of Surgeons Committee on Trauma is incorporated and adopted by reference for Resource (Level I) and Regional (Level II) hospital and emergency care facility categorization criteria, and the "Iowa Trauma System Regional (Level II) Hospital and Emergency Care Facility Categorization Criteria" (2006) is incorporated and adopted by reference for Regional (Level II) hospital and emergency care facility categorization criteria. "Iowa Trauma System Area (Level III) & Community (Level IV) Hospital and Emergency Care Facility Categorization Criteria" (November 2004 2006) is incorporated and adopted by reference and adopted for Area (Level III) and Community (Level IV) hospital and emergency care facility categorization criteria. "Iowa Trauma System Community Hospital and Emergency Care Facility Categorization Criteria" (2010) is incorporated and adopted by reference for Community (Level IV) hospital and emergency care categorization criteria. For any differences which may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

b. ~~"Iowa Trauma System Resource & Regional (Level II) Hospital and Emergency Care Facility Categorization Criteria" (November 2004 2006), "Iowa Trauma System Area (Level III) Hospital and Emergency Care Facility Categorization Criteria" (2006) and the "Iowa Trauma System Area & Community (Level IV) Hospital and Emergency Care Facility Categorization Criteria" (November 2004 2010)~~ are available through the Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the bureau of EMS Web site (www.idph.state.ia.us/ems).

[Filed 3/10/11, effective 5/11/11]

[Published 4/6/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/6/11.

ARC 9447B**STATE PUBLIC DEFENDER[493]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender hereby amends Chapter 7, "Definitions," Chapter 11, "Attorney Fee Contracts," and Chapter 12, "Claims for Indigent Defense Services," Iowa Administrative Code.

STATE PUBLIC DEFENDER[493](cont'd)

These amendments clarify the rules regarding attorney fee contracts in appellate cases and fee limitations to bring the State Public Defender's administrative rules into compliance with the Iowa Supreme Court's decisions in State v. Dudley and Simmons v. State Public Defender.

Notice of Intended Action to solicit public comment on these amendments was published in the Iowa Administrative Bulletin on December 29, 2010, as **ARC 9294B**. In addition, these amendments were Adopted and Filed Emergency and published as **ARC 9293B** on the same date.

A public hearing was held, and no comments were received, either at the public hearing or in writing. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

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

These amendments will become effective May 11, 2011, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [7.1, 11.2, 11.5, 12.2(1)"c," 12.5, 12.6] is being omitted. These amendments are identical to those published under Notice as **ARC 9294B** and Adopted and Filed Emergency as **ARC 9293B**, IAB 12/29/10.

[Filed 3/17/11, effective 5/11/11]

[Published 4/6/11]

[For replacement pages for IAC, see IAC Supplement 4/6/11.]