



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

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CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2009

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. 24 '08	Jan. 14 '09	Feb. 3 '09	Feb. 18 '09	Feb. 20 '09	Mar. 11 '09	Apr. 15 '09	July 13 '09
Jan. 9	Jan. 28	Feb. 17	Mar. 4	Mar. 6	Mar. 25	Apr. 29	July 27
Jan. 23	Feb. 11	Mar. 3	Mar. 18	Mar. 20	Apr. 8	May 13	Aug. 10
Feb. 6	Feb. 25	Mar. 17	Apr. 1	Apr. 3	Apr. 22	May 27	Aug. 24
Feb. 20	Mar. 11	Mar. 31	Apr. 15	Apr. 17	May 6	June 10	Sep. 7
Mar. 6	Mar. 25	Apr. 14	Apr. 29	May 1	May 20	June 24	Sep. 21
Mar. 20	Apr. 8	Apr. 28	May 13	***May 13***	June 3	July 8	Oct. 5
Apr. 3	Apr. 22	May 12	May 27	May 29	June 17	July 22	Oct. 19
Apr. 17	May 6	May 26	June 10	June 12	July 1	Aug. 5	Nov. 2
May 1	May 20	June 9	June 24	***June 24***	July 15	Aug. 19	Nov. 16
May 13	June 3	June 23	July 8	July 10	July 29	Sep. 2	Nov. 30
May 29	June 17	July 7	July 22	July 24	Aug. 12	Sep. 16	Dec. 14
June 12	July 1	July 21	Aug. 5	Aug. 7	Aug. 26	Sep. 30	Dec. 28
June 24	July 15	Aug. 4	Aug. 19	***Aug. 19***	Sep. 9	Oct. 14	Jan. 11 '10
July 10	July 29	Aug. 18	Sep. 2	Sep. 4	Sep. 23	Oct. 28	Jan. 25 '10
July 24	Aug. 12	Sep. 1	Sep. 16	Sep. 18	Oct. 7	Nov. 11	Feb. 8 '10
Aug. 7	Aug. 26	Sep. 15	Sep. 30	Oct. 2	Oct. 21	Nov. 25	Feb. 22 '10
Aug. 19	Sep. 9	Sep. 29	Oct. 14	Oct. 16	Nov. 4	Dec. 9	Mar. 8 '10
Sep. 4	Sep. 23	Oct. 13	Oct. 28	***Oct. 28***	Nov. 18	Dec. 23	Mar. 22 '10
Sep. 18	Oct. 7	Oct. 27	Nov. 11	***Nov. 12***	Dec. 2	Jan. 6 '10	Apr. 5 '10
Oct. 2	Oct. 21	Nov. 10	Nov. 25	***Nov. 25***	Dec. 16	Jan. 20 '10	Apr. 19 '10
Oct. 16	Nov. 4	Nov. 24	Dec. 9	***Dec. 9***	Dec. 30	Feb. 3 '10	May 3 '10
Oct. 28	Nov. 18	Dec. 8	Dec. 23	***Dec. 23***	Jan. 13 '10	Feb. 17 '10	May 17 '10
Nov. 12	Dec. 2	Dec. 22	Jan. 6 '10	Jan. 8 '10	Jan. 27 '10	Mar. 3 '10	May 31 '10
Nov. 25	Dec. 16	Jan. 5 '10	Jan. 20 '10	Jan. 22 '10	Feb. 10 '10	Mar. 17 '10	June 14 '10
Dec. 9	Dec. 30	Jan. 19 '10	Feb. 3 '10	Feb. 5 '10	Feb. 24 '10	Mar. 31 '10	June 28 '10
Dec. 23	Jan. 13 '10	Feb. 2 '10	Feb. 17 '10	Feb. 19 '10	Mar. 10 '10	Apr. 14 '10	July 12 '10

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
24	Friday, May 1, 2009	May 20, 2009
25	Wednesday, May 13, 2009	June 3, 2009
26	Friday, May 29, 2009	June 17, 2009

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*****

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, May 12, 2009, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ACCOUNTANCY EXAMINING BOARD[193A]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

Practice of public accounting; practice privilege; transition to annual renewal for individual

licensees, chs 1 to 21 Filed **ARC 7715B** 4/22/09

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Cervids imported to Iowa—inspection for chronic wasting disease, 65.9(2)

Filed Emergency **ARC 7723B** 4/22/09

CORRECTIONS DEPARTMENT[201]

General administration; personnel; supervision under interstate compact, rescind chs 4, 6, 46

Filed **ARC 7731B** 4/22/09

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Neighborhood stabilization program, ch 27 Notice **ARC 7710B**, also Filed Emergency **ARC 7709B** 4/8/09

Brownfield redevelopment program; redevelopment tax credit, 65.1 to 65.10 Notice **ARC 7706B** 4/8/09

Disaster recovery business rental assistance program, ch 79

Notice **ARC 7707B**, also Filed Emergency **ARC 7708B** 4/8/09

EMPOWERMENT BOARD, IOWA[349]

Community empowerment, amendments to ch 1 Notice **ARC 7677B** 4/8/09

ENERGY INDEPENDENCE, OFFICE OF[350]

Electronic recording of proceedings; funds for administrative costs; confidentiality,

3.3(2)"c," 4.4(3), 4.9 to 4.11 Filed **ARC 7698B** 4/8/09

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Air emissions reduction assistance program, ch 35

Notice **ARC 7678B**, also Filed Without Notice **ARC 7679B** 4/8/09

Fee schedule—water use permit program, 50.4(2), 55.5(2) Filed **ARC 7694B** 4/8/09

Solid waste comprehensive planning, amendments to ch 101 Amended Notice **ARC 7728B** 4/22/09

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Sham newspapers not entitled to press exception, 4.48 Notice **ARC 7705B** 4/8/09

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

PUBLIC DEFENSE DEPARTMENT[601]"umbrella"

Membership requirements of joint E911 service boards; division organizational structure,

10.3(1)"a," 10.15 Filed **ARC 7695B** 4/8/09

HUMAN SERVICES DEPARTMENT[441]

Appeals and hearings, amendments to ch 7 Notice **ARC 7730B** 4/22/09

State mental health institutes and resource centers, amend ch 28; adopt chs 29 and 30

Notice **ARC 7717B** 4/22/09

Collection on food assistance claim resulting from agency error, 65.21(1) Notice **ARC 7724B** 4/22/09

Medicaid health insurance premium payment (HIPP) program, 75.21, 75.25 Notice **ARC 7718B** 4/22/09

Case management services, 78.27, 78.37, 78.43, 79.1, 79.3, 83.22(2), ch 90 title and

preamble, 90.1 to 90.8 Amended Notice **ARC 7732B** 4/22/09

IowaCare premiums—annual update, 92.7(1)"a" Filed Emergency **ARC 7667B** 4/8/09

Foster family home licensing and training; foster care and adoption services, amendments to

chs 112, 113, 117, 156, 200, 202 Notice **ARC 7712B** 4/8/09

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Licensing of insurance producers, 10.2, 10.8, 10.15, 10.16, 10.18(4) Notice **ARC 7711B** 4/8/09

Viatical and life settlements—technical corrections, amendments to ch 48

Filed Emergency **ARC 7729B** 4/22/09

IOWA FINANCE AUTHORITY[265]

Definition of "title plant" rescinded, 9.7(2) Notice **ARC 7702B** 4/8/09

Updates to compliance monitoring manual, 12.3, 12.4

Notice **ARC 7701B**, also Filed Emergency **ARC 7700B** 4/8/09
 Qualified midwestern disaster area bond allocation, ch 30 Filed **ARC 7703B** 4/8/09
 Council on homelessness, ch 31 Filed **ARC 7704B** 4/8/09

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

OSHA regulations—adoption by reference, 10.20, 26.1 Filed **ARC 7699B** 4/8/09
 Elevators, escalators, and related equipment, adopt ch 71; amend chs 72, 73; rescind chs 75,
 76 Notice **ARC 7696B** 4/8/09
 Special inspector commissions, 71.12 Notice **ARC 7697B** 4/8/09

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Contracts for public improvement projects, 8.1 Filed Emergency After Notice **ARC 7682B** 4/8/09
 Game management areas—use of stationary blinds and decoys, 51.6 Notice **ARC 7693B** 4/8/09
 Expansion of wildlife refuge area listing, 52.1(2)"a" Notice **ARC 7685B** 4/8/09
 Camping and cabin rental fees; minimum stay requirements, 61.4(1), 61.5 Filed **ARC 7684B** 4/8/09
 Swimming and beach use at state parks and recreation areas, 61.7(2) Filed **ARC 7683B** 4/8/09
 Ginseng harvesting and sale, ch 78 Filed Emergency After Notice **ARC 7680B** 4/8/09
 Waterfowl and coot hunting seasons, 91.1, 91.3 to 91.6 Notice **ARC 7686B** 4/8/09
 Nonresident deer hunting—license quotas, hunting from blinds, January antlerless season,
 94.6(2), 94.7(6), 94.12 Filed **ARC 7687B** 4/8/09
 Landowner-tenant registration, 95.2 Notice **ARC 7688B** 4/8/09
 Wild turkey fall hunting by residents, 99.2(3), 99.5(1) Notice **ARC 7689B** 4/8/09
 Deer hunting—licenses, quotas and restrictions, depredation permits, 106.1(1)"a," 106.6,
 106.11(4)"b" Notice **ARC 7690B** 4/8/09
 Hunting and trapping of certain furbearers, 108.1, 108.7(6) Notice **ARC 7691B** 4/8/09
 Trapping limitations, 110.1, 110.5 Notice **ARC 7692B** 4/8/09

NATURAL RESOURCES DEPARTMENT[561]

Contracts for public improvement projects, 8.2, 8.4(1) Filed Emergency After Notice **ARC 7681B** 4/8/09

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

ARNP supervision of fluoroscopy, 7.2 Notice **ARC 7714B** 4/22/09
 Nonpayment of child support, student loan, or state debt, rescind chs 17 and 18; adopt ch 17
Filed **ARC 7668B** 4/8/09

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Iowa prescription monitoring program, ch 37 Notice **ARC 7676B** 4/8/09

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Board of behavioral science, 31.4 to 31.8 Filed Emergency **ARC 7673B** 4/8/09

PUBLIC HEALTH DEPARTMENT[641]

Compliance with Virginia Graeme Baker Pool and Spa Safety Act, amendments to ch 15

Notice **ARC 7675B** 4/8/09
 Breast and cervical cancer early detection program, ch 37 Filed **ARC 7670B** 4/8/09
 Definition of "dental home," 50.2 Filed Emergency **ARC 7672B** 4/8/09
 WIC food package approval criteria, 73.9(3) Notice **ARC 7669B** 4/8/09
 Nonpayment of state debt, ch 194 Filed **ARC 7671B** 4/8/09

PUBLIC SAFETY DEPARTMENT[661]

Closed circuit surveillance systems, 141.1 to 141.3, 141.5(9), 141.6(9), 141.10

Filed Emergency After Notice **ARC 7720B** 4/22/09

REGENTS BOARD[681]

Monetary sanctions for parking offenses, 4.31(2) Notice **ARC 7713B** 4/22/09

REVENUE DEPARTMENT[701]

General cleanup, amend chs 71 to 75, 79, 80, 120, 123, 124; rescind ch 78 Filed **ARC 7726B** 4/22/09
 Tax stamp for unprocessed marijuana plants, 91.2, 91.3 Filed **ARC 7727B** 4/22/09

Agricultural rules, ch 226 Notice **ARC 7725B** 4/22/09
 Local option sales tax urban renewal projects, ch 239 Filed **ARC 7666B** 4/8/09

SOIL CONSERVATION DIVISION[27]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"

Summer construction incentives funding, 10.41(5), 10.60(2)
Filed Emergency After Notice **ARC 7722B** 4/22/09

TRANSPORTATION DEPARTMENT[761]

Motor carrier regulations—update CFR reference, 529.1 Notice **ARC 7716B** 4/22/09
 Driver's licenses, amendments to chs 601, 602, 604, 605, 607, 610, 611, 615, 640 Notice **ARC 7721B** 4/22/09

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Notification rules for natural gas and electric utilities and electric transmission companies,
 19.17, 20.19 Notice of Termination **ARC 7719B** 4/22/09
 Emergency outage reporting requirements for certificated local exchange carriers, 22.2(9)
Notice **ARC 7674B** 4/8/09

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular, statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

EDITOR'S NOTE: Terms ending April 30, 2011.

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 Grafton, Iowa 50440

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 Burlington, Iowa 52601

Senator Wally Horn
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 Cedar Rapids, Iowa 52404

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 Governor's Ex Officio Representative
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AGENCY	HEARING LOCATION	DATE AND TIME
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Neighborhood stabilization program, ch 27 IAB 4/8/09 ARC 7710B (See also ARC 7709B)	Iowa Room 200 E. Grand Ave. Des Moines, Iowa	April 28, 2009 1:30 to 2:30 p.m.
Brownfield redevelopment program, redevelopment tax credit, 65.1 to 65.10 IAB 4/8/09 ARC 7706B	200 E. Grand Ave. Des Moines, Iowa	April 28, 2009 2 to 4:30 p.m.
Disaster recovery business rental assistance program, ch 79 IAB 4/8/09 ARC 7707B (See also ARC 7708B)	Iowa Room 200 E. Grand Ave. Des Moines, Iowa	April 28, 2009 2:30 to 4:30 p.m.
EMPOWERMENT BOARD, IOWA[349]		
Community empowerment—updates to rules, ch 1 IAB 4/8/09 ARC 7677B	Room 142 Lucas State Office Bldg. Des Moines, Iowa	April 28, 2009 10 a.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Air emissions reduction assistance program, ch 35 IAB 4/8/09 ARC 7678B (See also ARC 7679B)	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	May 11, 2009 10 a.m.
Solid waste comprehensive management requirements, amendments to ch 101 IAB 4/22/09 ARC 7728B	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	May 12, 2009 1 p.m.
HUMAN SERVICES DEPARTMENT[441]		
Case management services, 78.27, 78.37, 78.43, 79.1, 79.3, 83.22(2), 90.1 to 90.8 IAB 4/22/09 ARC 7732B	Medicaid Enterprise Room 128 100 Army Post Rd. Des Moines, Iowa	May 13, 2009 10 to 11 a.m.
INSURANCE DIVISION[191]		
Licensing of insurance producers, 10.2, 10.8, 10.15, 10.16, 10.18(4) IAB 4/8/09 ARC 7711B	330 Maple St. Des Moines, Iowa	May 4, 2009 2 p.m.
IOWA FINANCE AUTHORITY[265]		
Definition of “title plant” rescinded, 9.7(2) IAB 4/8/09 ARC 7702B	215 Grand Ave. Des Moines, Iowa	April 28, 2009 1 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
LABOR SERVICES DIVISION[875]		
Elevators, escalators, and related equipment, adopt ch 71; amend chs 72, 73; rescind chs 75, 76 IAB 4/8/09 ARC 7696B	Capitol View Room Iowa Workforce Development 1000 E. Grand Ave. Des Moines, Iowa	April 29, 2009 1:30 p.m. (If requested)
Special inspector commissions, 71.12 IAB 4/8/09 ARC 7697B	Capitol View Room Iowa Workforce Development 1000 E. Grand Ave. Des Moines, Iowa	April 29, 2009 1:30 p.m.
NATURAL RESOURCE COMMISSION[571]		
Game management areas—use of stationary blinds and decoys, 51.6 IAB 4/8/09 ARC 7693B (ICN Network)	Contact (515)281-5034 or visit the department's Web site at www.iowadnr.com for list of 18 ICN hearing locations.	April 29, 2009 6 to 9 p.m.
Expansion of wildlife refuge area listing, 52.1(2)"a" IAB 4/8/09 ARC 7685B (ICN Network)	Contact (515)281-5034 or visit the department's Web site at www.iowadnr.com for list of 18 ICN hearing locations.	April 29, 2009 6 to 9 p.m.
Waterfowl and coot hunting seasons, 91.1, 91.3 to 91.6 IAB 4/8/09 ARC 7686B (ICN Network)	Contact (515)281-5034 or visit the department's Web site at www.iowadnr.com for list of 18 ICN hearing locations.	April 29, 2009 6 to 9 p.m.
Landowner-tenant registration, 95.2 IAB 4/8/09 ARC 7688B (ICN Network)	Contact (515)281-5034 or visit the department's Web site at www.iowadnr.com for list of 18 ICN hearing locations.	April 29, 2009 6 to 9 p.m.
Wild turkey fall hunting by residents, 99.2(3), 99.5(1) IAB 4/8/09 ARC 7689B (ICN Network)	Contact (515)281-5034 or visit the department's Web site at www.iowadnr.com for list of 18 ICN hearing locations.	April 29, 2009 6 to 9 p.m.
Deer hunting—licenses, quotas and restrictions, depredation permits, 106.1(1)"a," 106.6, 106.11(4)"b" IAB 4/8/09 ARC 7690B (ICN Network)	Contact (515)281-5034 or visit the department's Web site at www.iowadnr.com for list of 18 ICN hearing locations.	April 29, 2009 6 to 9 p.m.
Hunting and trapping of certain furbearers, 108.1, 108.7(6) IAB 4/8/09 ARC 7691B (ICN Network)	Contact (515)281-5034 or visit the department's Web site at www.iowadnr.com for list of 18 ICN hearing locations.	April 29, 2009 6 to 9 p.m.
Trapping—public roadside limitations, removal of animals from traps and snares, 110.1, 110.5 IAB 4/8/09 ARC 7692B (ICN Network)	Contact (515)281-5034 or visit the department's Web site at www.iowadnr.com for list of 18 ICN hearing locations.	April 29, 2009 6 to 9 p.m.
NURSING BOARD[655]		
ARNP supervision of fluoroscopy, 7.2 IAB 4/22/09 ARC 7714B	Des Moines West Room, Holiday Inn 1050 6th Ave. Des Moines, Iowa	June 3, 2009 6 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
PHARMACY BOARD[657]		
Iowa prescription monitoring program, ch 37 IAB 4/8/09 ARC 7676B	Board Conference Room, Suite E 400 SW 8th St. Des Moines, Iowa	April 30, 2009 1 p.m.
PUBLIC HEALTH DEPARTMENT[641]		
Compliance with Virginia Graeme Baker Pool and Spa Safety Act, amendments to ch 15 IAB 4/8/09 ARC 7675B	Room 513 Lucas State Office Bldg. Des Moines, Iowa	April 28, 2009 1 to 2 p.m.
WIC food package approval criteria, 73.9(3) IAB 4/8/09 ARC 7669B (ICN Network)	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	April 28, 2009 9 to 10 a.m.
	Room N147, Lagomarcino Hall Iowa State University - 1 Corner of Knoll Rd. and Pamel Dr. Ames, Iowa	April 28, 2009 9 to 10 a.m.
	ICN Room, Mississippi Bend AEA - 9 729 21st St. Bettendorf, Iowa	April 28, 2009 9 to 10 a.m.
	Second Floor Meeting Room Public Library 524 Parkade Cedar Falls, Iowa	April 28, 2009 9 to 10 a.m.
	ICN Room, Careers Building Iowa School for the Deaf - 1 3501 Harry Langdon Blvd. Council Bluffs, Iowa	April 28, 2009 9 to 10 a.m.
	Room 2, Keystone AEA - 1 2310 Chaney Rd. Dubuque, Iowa	April 28, 2009 9 to 10 a.m.
	Room 100 Ft. Dodge Air National Guard 1649 Nelson Ave. Ft. Dodge, Iowa	April 28, 2009 9 to 10 a.m.
	Room 121 Iowa Valley Community College 123 6th Avenue West Grinnell, Iowa	April 28, 2009 9 to 10 a.m.
	Public Library Meeting Room 150 West Willman St. Hiawatha, Iowa	April 28, 2009 9 to 10 a.m.
	Room 106 North Iowa Area Community College - 1 500 College Dr. Mason City, Iowa	April 28, 2009 9 to 10 a.m.
	Mount Pleasant Treatment Center 1200 East Washington Mount Pleasant, Iowa	April 28, 2009 9 to 10 a.m.

AGENCY	HEARING LOCATION	DATE AND TIME
PUBLIC HEALTH DEPARTMENT[641] (Cont'd)		
(ICN Network)	Public Library ICN Room 300 South Filmore St. Osceola, Iowa	April 28, 2009 9 to 10 a.m.
	Great Prairie AEA - 1 2814 North Court St. Ottumwa, Iowa	April 28, 2009 9 to 10 a.m.
	Room 206, Northwest AEA - 12 1520 Morningside Ave. Sioux City, Iowa	April 28, 2009 9 to 10 a.m.
	ICN Room Iowa Lakes Community College 800 21st St. Spirit Lake, Iowa	April 28, 2009 9 to 10 a.m.
TRANSPORTATION DEPARTMENT[761]		
Motor carrier regulations—update CFR reference, 529.1 IAB 4/22/09 ARC 7716B	Motor Vehicle Division Offices 6310 SE Convenience Blvd. Ankeny, Iowa	May 14, 2009 10 a.m. (If requested)
Driver's licenses, amendments to chs 601, 602, 604, 605, 607, 610, 611, 615, 640 IAB 4/22/09 ARC 7721B	Motor Vehicle Division Offices 6310 SE Convenience Blvd. Ankeny, Iowa	May 14, 2009 2 p.m. (If requested)
UTILITIES DIVISION[199]		
Emergency outage reporting requirements for certificated local exchange carriers, 22.2(9) IAB 4/8/09 ARC 7674B	Board Hearing Room 350 Maple St. Des Moines, Iowa	May 20, 2009 10 a.m.

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“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 which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Agricultural Development Authority[25]
 Soil Conservation Division[27]
ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF INDUSTRY COUNCIL, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
CAPITAL INVESTMENT BOARD, IOWA[123]
CITIZENS’ AIDE[141]
CIVIL RIGHTS COMMISSION[161]
COMMERCE DEPARTMENT[181]
 Alcoholic Beverages Division[185]
 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Bureau[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
 Interior Design Examining Board[193G]
 Savings and Loan Division[197]
 Utilities Division[199]
CORRECTIONS DEPARTMENT[201]
 Parole Board[205]
CULTURAL AFFAIRS DEPARTMENT[221]
 Arts Division[222]
 Historical Division[223]
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
 City Development Board[263]
IOWA FINANCE AUTHORITY[265]
EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
 College Student Aid Commission[283]
 Higher Education Loan Authority[284]
 Iowa Advance Funding Authority[285]
 Libraries and Information Services Division[286]
 Public Broadcasting Division[288]
 School Budget Review Committee[289]
EGG COUNCIL, IOWA[301]
ELDER AFFAIRS DEPARTMENT[321]
EMPOWERMENT BOARD, IOWA[349]
ENERGY INDEPENDENCE, OFFICE OF[350]
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
EXECUTIVE COUNCIL[361]
FAIR BOARD[371]
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Community Action Agencies Division[427]
Criminal and Juvenile Justice Planning Division[428]
Deaf Services Division[429]
Persons With Disabilities Division[431]
Latino Affairs Division[433]
Status of African-Americans, Division on the[434]
Status of Women Division[435]
Status of Iowans of Asian and Pacific Islander Heritage[436]
HUMAN SERVICES DEPARTMENT[441]
INSPECTIONS AND APPEALS DEPARTMENT[481]
Employment Appeal Board[486]
Foster Care Review Board[489]
Racing and Gaming Commission[491]
State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
Appeal Board, State[543]
City Finance Committee[545]
County Finance Committee[547]
NATURAL RESOURCES DEPARTMENT[561]
Energy and Geological Resources Division[565]
Environmental Protection Commission[567]
Natural Resource Commission[571]
Preserves, State Advisory Board for[575]
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]
PUBLIC DEFENSE DEPARTMENT[601]
Homeland Security and Emergency Management Division[605]
Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
Professional Licensure Division[645]
Dental Board[650]
Medicine Board[653]
Nursing Board[655]
Pharmacy Board[657]
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RECORDS COMMISSION[671]
REGENTS BOARD[681]
Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]
VETERINARY MEDICINE BOARD[811]
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
Labor Services Division[875]
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Workforce Development Board and Workforce Development Center Administration Division[877]

ARC 7728B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Amended Notice of Intended Action

Pursuant to the authority of Iowa Code sections 455B.301A, 455B.302, 455B.306, 455B.310, and 455D.3, the Environmental Protection Commission gives notice that the comment period for the Notice of Intended Action to amend Chapter 101, "Solid Waste Comprehensive Planning Requirements," that was published in the November 5, 2008, Iowa Administrative Bulletin as **ARC 7310B** has been extended.

Notice is hereby given that an additional public hearing will be held on Tuesday, May 12, 2009, at 1 p.m. in the Fifth Floor West Conference Room of the Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa. Persons are invited to present oral or written comments at the additional public hearing.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources to advise of special needs.

Any person may submit written suggestions or comments on the proposed amendments through May 12, 2009. Such written material should be submitted to Chad Stobbe, Iowa Department of Natural Resources, 502 East Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; or by E-mail to Chad.Stobbe@dnr.iowa.gov. Persons who have questions may contact Chad Stobbe at (515)242-5851.

ARC 7730B

HUMAN SERVICES DEPARTMENT[441]

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 17A.22, the Department of Human Services proposes to amend Chapter 7, "Appeals and Hearings," Iowa Administrative Code.

The proposed amendments change the definition of "aggrieved person" by adding:

- A drug manufacturer that has received a notice of decision regarding disputed drug rebates, pursuant to the dispute resolution procedures of a national drug rebate agreement or Iowa Medicaid supplemental drug rebate agreement.
- Persons applying for the Iowa Disaster Aid Individual Assistance Grant Program.

Pursuant to the national drug rebate agreements and Iowa supplemental rebate agreements, the state is required to make available to the manufacturer the state hearing mechanism available under the Medicaid program. The Office of Inspector General and the Centers for Medicare & Medicaid Services of the federal Department of Health and Human Services have recommended that the state develop policies and procedures to allow manufacturers to file administrative appeals. Currently, most drug rebate disputes are settled by the state informally through working with the manufacturer. The Department expects that pattern to continue after this change.

The rules regarding time limits for appeals have been reworked to make them easier to understand. Language about the timeliness of child abuse appeals has been incorporated. Other technical changes are made to:

- Remove references to the "Food Stamp" program and replace with "Food Assistance."
- Update form names and numbers and rule references.
- Conform to current practices.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Chapter 7 does provide for waivers in various situations. Waiver of any Department rule may be requested 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 May 13, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, 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.

These amendments are intended to implement Iowa Code sections 17A.10 through 17A.20.

The following amendments are proposed.

ITEM 1. Amend rule **441—7.1(17A)**, definitions of “Aggrieved person,” “Food stamp administrative disqualification hearing,” “Intentional program violation,” “PROMISE JOBS displacement grievance” and “Reconsideration,” as follows:

“*Aggrieved person*” means a person against whom the department has taken an adverse action. This includes a person who meets any of the following conditions:

1. For financial assistance (including the family investment program, refugee cash assistance, child care assistance, diversion, emergency assistance, family or community self-sufficiency grants, family investment program hardship exemptions, and state supplementary assistance dependent person, in-home health related care, and residential care facility benefits), a person:

- Whose request to be given an application was denied.
- Whose application for assistance has been denied or has not been acted on in a timely manner.
- Who contests the effective date of assistance.
- Who contests the amount of benefits granted.
- Who has been notified that there will be a ~~suspension~~, reduction, or cancellation of assistance.
- Who has been notified that an overpayment of benefits has been established and repayment is

requested.

2. For food ~~stamps~~ assistance, a person:

- Whose request to be given an application was denied.
- Whose application has been denied or has not been acted on in a timely manner.
- Who contests the effective date of assistance.
- Who contests the amount of benefits granted.
- Who has been notified that there will be a ~~suspension~~, reduction, or cancellation of benefits.
- Whose request to ~~replace~~ receive a credit for benefits ~~that were lost in the mail from an electronic~~

benefit transfer (EBT) account has been denied.

• Who has been notified that an overpayment of benefits has been established and repayment is requested.

3. For ~~Medicaid~~ medical assistance, healthy and well kids in Iowa, IowaCare, family planning services, and waiver services, a person (see numbered paragraph “7” for providers):

- Whose request to be given an application was denied.
- Whose application has been denied or has not been acted on in a timely manner.
- Who has been notified that level of care requirements have not been met.
- Who has been aggrieved by a failure to take into account the appellant's choice in assignment

to a coverage group.

- Who contests the effective date of assistance, services, or premium payments.
- Who contests the amount of health insurance premium payments, healthy and well kids in Iowa premium payments, Medicaid for employed people with disabilities premium payments, IowaCare premium payments, or the spenddown amount under the medically needy program.

- Who contests the amount of client participation.
- Whose claim for payment or prior authorization has been denied.
- Who has been notified that the reconsideration process has been exhausted and who remains dissatisfied with the outcome.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Who has received notice from the ~~Medicaid~~ medical assistance hotline that services not received or services for which an individual is being billed are not payable by ~~Medicaid~~ medical assistance.
 - Who has been notified that there will be a ~~suspension~~, reduction, or cancellation of assistance or waiver services.
 - Who has been notified that an overpayment of benefits has been established and repayment is requested.
4. For social services, including, but not limited to, adoption, foster care, and family-centered services, a person (see numbered paragraph “7” for providers):
- Whose request to be given an application was denied.
 - Whose application for services or payment for adoption subsidy or foster care has been denied or has not been acted on in a timely manner.
 - For whom it is determined that the person must participate in a service program.
 - Whose claim for payment of services has been denied.
 - Who has been notified that a protective or vendor payment will be established.
 - Who has been notified that there will be a ~~suspension~~, reduction, or cancellation of services.
 - Who has been notified that an overpayment of ~~benefits~~ services has been established and repayment is requested.
 - Who applies for an adoption subsidy after the adoption has been finalized.
 - Who alleges that the adoptive placement of a child has been denied or delayed when an adoptive family is available outside the jurisdiction with responsibility for handling the child’s case.
 - Who has not been referred to community care as provided in rule 441—186.2(234).
 - Who has been referred to community care as provided in rule 441—186.2(234) and has exhausted the community care provider’s dispute resolution process.
 - Who has been referred to aftercare services under 441—Chapter 187 and has exhausted the aftercare provider’s dispute resolution process.
5. and 6. No change.
7. For providers, a person or entity:
- Whose license, certification, registration, approval, or accreditation has been denied or revoked or has not been acted on in a timely manner.
 - Whose claim for payment or request for prior authorization of payment has been denied in whole or in part and who states that the denial was not made according to department policy. Providers of Medicaid services must accept reimbursement based on the department’s methodology.
 - Whose contract as a Medicaid patient manager has been terminated.
 - Who has been subject to the withholding of a payment to recover a prior overpayment or who has received an order to repay an overpayment pursuant to ~~441—paragraph 79.4(4)“e.”~~ 441—subrule 79.4(7).
 - Who has been notified that the managed care reconsideration process has been exhausted and who remains dissatisfied with the outcome.
 - Whose application for child care quality rating has not been acted upon in a timely fashion, who disagrees with the department’s quality rating decision, or whose certificate of quality rating has been revoked.
8. No change.
9. For mental health and developmental disabilities, a person:
- Whose application for ~~statement payment program benefits~~ or state community mental health or mental retardation service funds has been denied or has not been acted upon in a timely manner.
 - Who has been notified that there will be a reduction or cancellation of ~~state payment program benefits~~ or state community mental health or mental retardation service funds.
- ~~Individuals and providers that are not listed above may meet the definition of an aggrieved person if the department has taken an adverse action against that individual or provider.~~
10. No change.
11. For Iowa disaster aid individual assistance grant program, a person:
- Whose request to be given an application was denied.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Whose application has been denied or has not been acted on in a timely manner.
- Who contests the amount of reimbursement granted.

12. For drug manufacturers, a manufacturer that has received a notice of decision regarding disputed drug rebates pursuant to the dispute resolution procedures of a national drug rebate agreement or an Iowa Medicaid supplemental drug rebate agreement.

13. Individuals and providers that are not listed in paragraphs “1” to “12” may meet the definition of an aggrieved person if the department has taken an adverse action against that individual or provider.

“Food ~~stamp~~ assistance administrative disqualification hearing” means a type of hearing used to determine if an individual fraudulently received benefits for which the individual was not eligible. A presiding officer shall determine if the individual will be banned from participating in the food ~~stamp~~ assistance program for a period of time.

“Intentional program violation” means deliberately making a false or misleading statement; or misrepresenting, concealing, or withholding facts; or committing ~~an~~ any act that is a violation of the ~~Food Stamp Act~~ Food and Nutrition Act of 2008, food ~~stamp~~ assistance program regulations, or any state rule law relating to the use, presentation, transfer, acquisition, receipt, ~~or~~ possession, or trafficking of a ~~benefit transfer instrument~~ an electronic benefit transfer (EBT) card. An intentional program violation is determined through a food ~~stamp~~ assistance administrative disqualification hearing. The hearing may result in a period of ineligibility for the program, a claim for overpayment of benefits, or both.

“PROMISE JOBS displacement grievance” means any written complaint filed with a PROMISE JOBS contractee by regular employees or their representatives which alleges that the work assignment of an individual under the PROMISE JOBS program violates any of the prohibitions against displacement of regular workers described in rule ~~441—93.144(239B)~~ 441—93.17(239B).

“Reconsideration” means a review process that must be exhausted before an appeal hearing is granted. Such review processes include, but are not limited to, a reconsideration request through the ~~Iowa Foundation for Medical Care~~ Medicaid enterprise or its subcontractors, Magellan Behavioral Health Care, a health maintenance organization, a prepaid health plan, ~~Medicaid~~ medical assistance patient management services, the managed health care review committee, a division or bureau within the department, the mental health, mental retardation, and developmental disabilities, and brain injury commission, or a licensed health care professional as specified in 441—paragraph 9.9(1) “i.” Once the reconsideration process is complete, a notice of decision will be issued with appeal rights.

ITEM 2. Rescind and reserve rule ~~441—7.2(17A)~~.

ITEM 3. Amend subrule 7.5(2) as follows:

7.5(2) *When a hearing is not granted.* A hearing shall not be granted when:

a. One of the following issues is appealed:

(1) No change.

(2) ~~Rescinded IAB 7/6/05, effective 7/1/05.~~ Repayment of food assistance benefits as a result of trafficking has been requested on Form 470-4179, Notice of Food Assistance Trafficking Debt.

(3) to (7) No change.

(8) Notice has been issued from the treasury offset program for a food ~~stamp~~ assistance overpayment.

(9) to (11) No change.

(12) The appellant has a complaint about child support recovery matters other than those described in numbered paragraph “5” of the definition of an aggrieved person in rule 441—7.1(17A). This includes collection of an annual fee for child support services as specified in Iowa Code chapter 252B.

(13) to (15) No change.

(16) ~~Based~~ The issue appealed is not eligible for further hearing based on the doctrine of issue preclusion.

(17) No change.

b. to f. No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

g. The appellant is an “aggrieved party” as defined in rule 441—22.1(225C) and is eligible for a compliance hearing with the mental health, mental retardation, ~~and~~ developmental disabilities, and brain injury commission in accordance with rule 441—22.5(225C).

h. and i. No change.

ITEM 4. Amend subrule 7.5(4) as follows:

7.5(4) Time limit for granting hearing to an appeal. Subject to the provisions of subrule 7.5(1), when an appeal is made, the granting of a hearing to that appeal shall be governed by the following timeliness standards:

~~a. — In general, a hearing shall be held if the appeal is made within 30 days after official notification of an action or before the effective date of action. Time limits for food stamps and offsets vary as follows:~~

~~(1) — For appeals regarding food stamps, a hearing shall be held if the appeal is made within 90 days after official notification of an action.~~

~~(2) — For appeals regarding state or federal tax or debtor offsets, a hearing shall be held if the appeal is made within 15 days after official notification of the action. Counties have 30 days to appeal offsets, as provided in 441—paragraph 14.4(1)“e.”~~

~~b. a. General standards. In general, a hearing shall be held if the appeal is made within 30 days after official notification of an action or before the effective date of action. When the appeal is made more than 30 days (or more than 15 days for state or federal tax or debtor offsets) but less than 90 days after notification, the director shall determine whether a hearing shall be granted.~~

~~(1) The director may grant a hearing if one or more of the following conditions existed:~~

~~(1) 1. There was a serious illness or death of the appellant or a member of the appellant’s family.~~

~~(2) 2. There was a family emergency or household disaster, such as a fire, flood, or tornado.~~

~~(3) 3. The appellant offers a good cause beyond the appellant’s control, which can be substantiated.~~

~~(4) 4. There was a failure to receive the department’s notification for a reason not attributable to the appellant. Lack of a forwarding address is attributable to the appellant. A hearing may be granted if an appellant provides proof that a forwarding address was not supplied due to fear of domestic violence, homelessness, or other good cause.~~

~~e. (2) The time in which to appeal an agency action shall not exceed 90 days. Appeals made more than 90 days after notification shall not be heard.~~

~~f. (3) The day after the official notice is mailed is the first day of the time period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.~~

b. Food assistance standard. For appeals regarding food assistance, a hearing shall be held if the appeal is made within 90 days after official notification of an action.

c. Offset standards. For appeals regarding state or federal tax or debtor offsets, a hearing shall be held if the appeal is made within 15 days after official notification of the action. Counties have 30 days to appeal offsets, as provided in 441—paragraph 14.4(1)“e.” When the appeal is made more than 15 days but less than 90 days after notification, the director shall determine whether a hearing shall be granted.

(1) The director may grant a hearing if one or more of the following conditions existed:

1. There was a serious illness or death of the appellant or a member of the appellant’s family.

2. There was a family emergency or household disaster, such as a fire, flood, or tornado.

3. The appellant offers a good cause beyond the appellant’s control, which can be substantiated.

4. There was a failure to receive the department’s notification for a reason not attributable to the appellant. Lack of a forwarding address is attributable to the appellant. A hearing may be granted if an appellant provides proof that a forwarding address was not supplied due to fear of domestic violence, homelessness, or other good cause.

(2) The time in which to appeal an offset action shall not exceed 90 days. Appeals made more than 90 days after notification shall not be heard.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) The day after the official notice is mailed is the first day of the period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

d. Abuse standard. For appeals regarding child and dependent adult abuse, a hearing shall be held if the appeal is made within six months after official notification of the action as provided in Iowa Code section 235A.19. The day after the official notice is mailed is the first day of the period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

e. Displacement and discrimination standard. PROMISE JOBS displacement and discrimination appeals shall be granted hearing on the following basis:

(1) An appeal of an informal grievance resolution on a PROMISE JOBS displacement grievance shall be made in writing within ~~ten~~ 10 days of issuance (i.e., mailing) of the resolution decision or within 24 days of the filing of the displacement grievance, whichever is the shorter time period, unless good cause for late filing as described in ~~paragraph "b"~~ subparagraph 7.5(4) "a"(1) is found.

(2) An appeal of a PROMISE JOBS discrimination complaint shall be made within the time frames provided in ~~paragraphs "a," "b," and "e"~~ paragraph 7.5(4) "a" in relation to the action alleged to have involved discrimination ~~unless good cause for late filing as described in paragraph "b" is found.~~

f. Risk assessment standard. An appeal of a sex offender risk assessment shall be made in writing within 14 calendar days of issuance of the notice.

ITEM 5. Amend paragraph 7.5(6) "c" as follows:

c. Subject to the time limits described in subrule 7.5(4), a person's right to appeal the recovery of an overpayment through benefit reduction, as described at rule 441—46.25(239B), but not the existence, computation, or amount of an overpayment, begins when the person receives Form 470-0485, 470-0485(S), or 470-0486, or 470-0486(S), Notice of Decision, informing the person that benefits will be reduced to recover a FIP or RCA overpayment.

ITEM 6. Amend paragraph 7.5(7) "a" as follows:

a. Subject to the time limits described in subrule 7.5(4), a person's right to appeal the existence and amount of a ~~Medicaid~~ medical assistance, SSA state supplementary assistance, or healthy and well kids in Iowa (HAWK-I) program overpayment begins when the department sends the first notice informing the person of the overpayment. The notice shall be sent on:

~~1- (1) Form 470-2891, Notice of Overpayment Demand Letter for the Medicaid or State Supplementary Medical Assistance Overpayment; or~~

~~2- (2) Form 470-3984, Demand Letter for HAWK-I~~ Notice of Healthy and Well Kids in Iowa (HAWK-I) Overpayment.

ITEM 7. Amend subrules 7.5(9) and 7.5(10) as follows:

7.5(9) Appeals of child care assistance benefit overissuances or overpayments.

a. Subject to the time limits described in subrule 7.5(4), a person's right to appeal the existence, computation, and amount of a child care assistance benefit overissuance or overpayment begins when the department sends the first notice informing the person of the child care assistance overpayment. ~~The notice shall be sent on Form 470-3627 470-4530, Demand Letter for Notice of Child Care Assistance Provider Error Overissuance Overpayment, or Form 470-3807, Demand Letter for Child Care Assistance Client Error Benefit Overissuance, informing the person of the child care assistance overpayment.~~

b. A hearing shall not be held if an appeal is filed in response to a second or subsequent ~~Demand Letter for Child Care Assistance Provider Error Overissuance or Demand Letter for Child Care Assistance Client Error Benefit Overissuance~~ notice about the same overpayment.

7.5(10) Appeals of food assistance overpayments.

a. Subject to the time limits described in subrule 7.5(4), a person's right to appeal the existence, computation, and amount of a food ~~stamp~~ assistance overpayment begins when the department sends the first notice informing the person of the food assistance overpayment. The notice shall be sent on:

(1) Form 470-0338, Demand Letter for Food Assistance Agency Error Overissuance;

HUMAN SERVICES DEPARTMENT[441](cont'd)

(2) Form 470-3486, Demand Letter for Food ~~Stamp~~ Assistance Intentional Program Violation Overissuance; or

(3) Form 470-3487, Demand Letter for Food ~~Stamp~~ Assistance Inadvertent Household Error Overissuance, ~~informing the person of the food stamp overpayment.~~

b. Subject to the time limits described in subrule 7.5(4), a person's right to appeal the recovery of an overpayment through benefit reduction, but not the existence, computation, or amount of an overpayment, begins when the person receives Form 470-0485, 470-0485(S), 470-0486, or 470-0486(S), Notice of Decision, informing the person that benefits will be reduced to recover a food assistance overpayment.

ITEM 8. Amend subrule 7.6(2) as follows:

7.6(2) Representation. All persons shall be advised that they may be represented at hearings by others, including legal counsel, relatives, friends, or any other spokesperson of choice, unless otherwise specified by statute or federal regulations. The ~~agency~~ department shall advise the persons of any legal services which may be available and ~~assist in securing the services if the persons desire~~ that the person may be represented by counsel at the person's own expense.

ITEM 9. Amend subrule 7.7(1) as follows:

7.7(1) Notification.

a. Whenever the department proposes to cancel, ~~or reduce, or suspend~~ assistance or services or to revoke a license, certification, approval, registration, or accreditation, it shall give timely and adequate notice of the pending action, except:

(1) ~~when~~ When a service is deleted from the state's comprehensive annual service plan in the social services block grant program at the onset of a new program year, or

(2) ~~as~~ As provided in subrule 7.7(2).

b. For the purpose of this subrule, "assistance" includes food ~~stamps~~ assistance, ~~Medicaid~~ medical assistance, the family investment program, refugee cash assistance, child care assistance, diversion, emergency assistance, family or community self-sufficiency grant, PROMISE JOBS, state supplementary assistance, ~~and~~ healthy and well kids in Iowa (HAWK-I) program, foster care, adoption, aftercare services, or other programs or services provided by the department.

c. The department shall give adequate notice of the approval or denial of assistance or services; the approval or denial of a license, certification, approval, registration, or accreditation; and pending action for a state or federal tax or debtor offset.

~~a-~~ d. "Timely" means that the notice is mailed at least ten calendar days before the date the action would become effective. The timely notice period shall begin on the day after the notice is mailed.

~~b-~~ e. "Adequate" means a written notice that includes:

(1) to (5) No change.

ITEM 10. Amend subrule 7.7(2) as follows:

7.7(2) Dispensing with timely notice. Timely notice may be dispensed with, but adequate notice shall be sent no later than the date benefits would have been issued when:

a. to j. No change.

k. The ~~agency~~ department terminates or reduces benefits or makes changes based on a completed Form 470-2881, 470-2881(S), 470-2881(M), ~~470-4083(Spanish)~~, or ~~470-4083(M)~~ 470-4083(MS), Review/Recertification Eligibility Document, as described at 441—paragraph 40.27(1) "~~b-~~" or rule 441—75.52(249A).

l. to n. No change.

ITEM 11. Amend subrule 7.7(6) as follows:

7.7(6) Reinstatement.

a. Whenever the ~~county office~~ department determines that a previously canceled case must remain canceled for a reason other than that covered by the original notice, timely and adequate notice shall be sent except as specified in subrule 7.7(2).

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b. Whenever the ~~county office~~ department determines that a previously canceled case is eligible for reinstatement at a lower level of benefits, for a reason other than that covered by the original notice, timely and adequate notice shall be sent except as specified in subrule 7.7(2).

c. Food ~~stamp~~ assistance cases are eligible for reinstatement only in circumstances found in rule 441—65.44(234) and ~~441—subrule 65.19(13)~~. FIP cases are eligible for reinstatement only in circumstances found in 441—subrule 40.22(5).

ITEM 12. Amend subrules 7.8(1) and 7.8(8) as follows:

7.8(1) *Initiating ~~a request~~ an appeal.* ~~When To initiate an appeal, a person, or the person's authorized representative, expresses must state in writing to the appeals section, the local office, or the office that took the adverse action dissatisfaction with any that the person disagrees with a decision, action, or failure to act with reference to the on the person's case, the agency shall determine from the nature of the complaint whether the person wishes to appeal and receive an appeal hearing before a presiding officer.~~

a. ~~Food stamp~~ All appeals shall be made in writing, except for food assistance appeals, which may be made orally; all other appeals shall be made in writing.

b. The written request may be sent or delivered by any means to the appeals section, to the local office, or to the office that took the adverse action.

c. The oral request may be made to the appeals section or to the department office that took the adverse action.

7.8(8) *Withdrawal.* ~~When the appellant desires to voluntarily withdraw the an appeal, the worker, the presiding officer, or the appeals section shall request that a clear, written statement from the appellant sign to withdraw the appeal. The appellant may use Form 470-0492 or 470-0492(S), Request for Withdrawal of Appeal, if the appellant is in the local office for this purpose. In all other cases the appeals section will request that the appellant sign the form or the presiding officer will secure a statement on the hearing record. The appeals section will accept any clear, written statement from the appellant to withdraw the appeal.~~

ITEM 13. Amend paragraph **7.8(9)“c”** as follows:

c. Provide the appellant and the appellant's representative copies of all materials sent to the appeals section for inclusion in the appeal file or the presiding officer to be considered in reaching a decision on the appeal to the appellant and the appellant's representative at the same time as the materials are sent to the appeals section or the presiding officer.

ITEM 14. Amend paragraph **7.9(1)“b”** as follows:

b. The appellant requests a hearing within ten days from the date adequate notice is issued for cancellation, or reduction, or suspension of food assistance, family investment program, or Medicaid medical assistance benefits, based on the completed report form, including:

(1) Review/Recertification Eligibility Document, Form 470-2881, 470-2881(S), 470-2881(M), 470-4083 (Spanish), or 470-4083(M) 470-4083(MS).

(2) Transitional Medicaid Notice of Decision/Quarterly Income Report, Form 470-2663, 470-2663(S), or 470-2663(M), or 470-2663(MS).

ITEM 15. Amend paragraphs **7.10(4)“a”** and **“b”** as follows:

a. In cases involving individual appellants, the hearing shall be held by teleconference call or in the appropriate departmental department office, provided that when the appellant is incapacitated due to illness or other disability and is housebound, hospitalized, or in a nursing home, the place of the hearing shall be at the convenience of the appellant even to the extent of holding the hearing in the appellant's home except where otherwise restricted.

b. In cases of appeals by vendors or agencies, the hearing shall be scheduled by teleconference call or at the most appropriate department office, giving due consideration to the convenience of the vendor or agency and availability of department employees.

ITEM 16. Amend subrule 7.13(4) as follows:

7.13(4) *Default.* If a party to the appeal fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default

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decision or proceed with the hearing pursuant to subrules 7.13(1), 7.13(2) and 7.13(3) and render a proposed decision on the merits in the absence of the defaulting party.

a. to d. No change.

ITEM 17. Amend paragraph 7.13(6)“e” as follows:

e. “Good cause” for purposes of this rule shall have the same meaning as “good cause” for setting aside a default judgment under Iowa Rule of Civil Procedure ~~236~~ 1.977.

ITEM 18. Amend subrules 7.16(3) and 7.16(9) as follows:

7.16(3) Proposed decision. Following the reception of evidence, the presiding officer shall issue a proposed decision, consisting of the issues of the appeal, the decision, the findings of fact and the conclusions of law, ~~separately stated~~. Each item shall be separately stated under individual headings. The proposed decision shall be mailed by first-class mail, postage prepaid, addressed to the appellant at the appellant’s last-known address.

7.16(9) Time ~~limit~~ limits. ~~Prompt, definite and final administrative action to carry out the decision rendered shall be taken~~ A final decision on the appeal shall be issued within 90 days from the date of the appeal on all decisions except food stamps assistance and vendors. Food stamps assistance-only decisions shall be rendered in 60 days. ~~Vendor decisions shall be rendered in 120 days.~~ PROMISE JOBS displacement grievance decisions shall be rendered within 90 days from the date the displacement grievance was filed with the PROMISE JOBS contractee. Failure to reach a decision within these time frames shall not affect the merits of the appellant’s appeal.

a. Time frames may be extended based on continuances or additional time frames as approved by the presiding officer. Should the appellant request a delay in the hearing in order to prepare the case or for other essential reasons, reasonable time, not to exceed 30 days except with the approval of the administrative law judge, shall be granted and the extra time shall be added to the maximum for final administrative action.

b. ~~Within seven~~ The department shall take prompt, definite and final administrative action to carry out the decision rendered within 7 calendar days of receipt of a copy of the final decision, ~~the department shall take the action required by the decision.~~ When the final decision is favorable to the appellant, or when the department decides in favor of the appellant before the hearing, the department shall make any additional corrective payments due, retroactive to the date of the incorrect action.

ITEM 19. Amend rule 441—7.21(17A) as follows:

441—7.21(17A) Food stamp assistance hearings and appeals.

7.21(1) Appeal hearings. All appeal hearings in the food stamp assistance program shall be conducted in accordance with federal regulation, Title 7, Section 273.15, as amended to January 1, ~~2002~~ 2008.

7.21(2) Food stamp assistance administrative disqualification hearings. All food stamp assistance administrative disqualification hearings shall be conducted in accordance with federal regulation, Title 7, Section 273.16, as amended to January 1, ~~2002~~ 2008.

a. —Rescinded IAB 4/30/03, effective 7/1/03.

b. —Rescinded IAB 4/30/03, effective 7/1/03.

c. —Rescinded IAB 4/30/03, effective 7/1/03.

7.21(3) Conduct of a food stamp assistance administrative disqualification hearing. Hearings over disqualification of a household member for an intentional program violation shall be conducted by a presiding officer.

a. to c. No change.

7.21(4) Consolidating hearings. Appeal hearings and food stamp assistance administrative disqualification hearings may be consolidated if the issues arise out of the same or related circumstances, and the household member has been provided with notice of the consolidation by the department of inspections and appeals.

a. If the hearings are combined, the time frames for conducting a food stamp assistance administrative disqualification hearing shall apply.

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b. No change.

7.21(5) No change.

7.21(6) *Food ~~stamp~~ assistance administrative disqualification hearing decisions.* The presiding officer shall base the determination of an intentional program violation on clear and convincing evidence that demonstrates the person committed, and intended to commit, an intentional program violation.

a. No change.

b. The appeals section shall notify the household member and the ~~county~~ local office of the final decision within 90 days of the date the household member is notified in writing that the hearing has been scheduled. If the hearing was postponed pursuant to subrule 7.21(3), paragraph “*b*,” the 90 days for notifying the household member of the final decision shall be extended for as many days as the hearing is postponed.

c. The department shall take no action to disqualify a person from receiving food ~~stamps~~ assistance before receiving the final appeal decision finding that the person has committed an intentional program violation.

d. No change.

e. When a court decision reverses a determination of an intentional program violation, the appeals section shall notify the ~~county~~ local office of the specifics of the court decision.

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HUMAN SERVICES DEPARTMENT[441]

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 218.4, the Department of Human Services proposes to amend Chapter 28, “Policies for All Institutions,” and to rescind Chapter 29, “Mental Health Institutes,” and Chapter 30, “State Resource Centers,” Iowa Administrative Code, and adopt new Chapters 29 and 30 with the same titles.

These proposed amendments update and reorganize rules relating to state mental health institutes and resource centers. Most of the changes are technical changes to reflect the current Department management structure for the facilities, create a uniform term for persons served, update form numbers, and remove obsolete forms and procedures to reflect current practice. Rules specific to one type of facility have been moved from Chapter 28 to Chapter 29 or 30, as applicable.

An individual’s right to file a grievance is clarified and established by rule. Clarification has been made as to which persons, besides the individual being served, have the right to make decisions on behalf of the individual. The lists of rights for individuals with mental illness or mental retardation have been updated to reflect current language and practice.

The voluntary application process for admissions to state mental health institutes is revised to reflect the change in Iowa Code section 331.440(3) requiring all applications for admission to go through the individual’s county of residence central point of coordination process. As required by Iowa Code section 229.42, applications are required to have an authorized county signature before the mental health institute can accept the application. Counties will have broad discretion in determining which person or persons may provide the authorization.

These amendments do not provide for waivers in specified situations except for waivers to the established catchment areas for the facilities. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217). However, Iowa law places authority and responsibility with county government to accept, process, and approve applications. The rights of individuals served to confidentiality and privacy are also defined by law. The Department has

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no authority to waive those requirements. Individuals are given the right to make their own decisions about maintaining confidentiality and privacy.

Any interested person may make written comments on the proposed amendments on or before May 13, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, 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.

These amendments are intended to implement Iowa Code chapters 217, 218, 222, 225C, 228, 229, and 230.

The following amendments are proposed.

ITEM 1. Amend rule 441—28.1(218), introductory paragraph, as follows:

441—28.1(218) Definitions. The definitions in this rule apply to 441—Chapters 28, 29, and 30.

ITEM 2. Rescind the definitions of “Administrator” and “Director” in rule **441—28.1(218)**.

ITEM 3. Amend rule **441—28.1(218)**, definition of “Superintendent,” as follows:

“*Superintendent*” means the superintendent of any of the four mental health institutes and the two state ~~hospital-schools~~ resource centers.

ITEM 4. Adopt the following new definitions in rule **441—28.1(218)**:

“*Admission*” means the acceptance of an individual for full residence at a state mental health institute or resource center on either a voluntary or involuntary basis.

“*Adult*” means an individual who is 18 years of age or older.

“*Board of supervisors*” means the elected governing body of a county as defined in Iowa Code section 331.101.

“*Catchment area*” means the group of counties, designated by the deputy director, that each mental health institute or state resource center is assigned to serve.

“*Central point of coordination process*” means the process defined in Iowa Code section 331.440(1)“a.”

“*Child*” means an individual who is under the age of 18.

“*Deputy director*” means the deputy director for field operations within the Iowa department of human services.

“*Family contact*,” for an adult individual, means:

1. The family member the individual has designated in writing to receive information concerning the individual’s services; or

2. A person, often referred to as a substitute decision maker, who has been legally authorized to make care decisions for the individual if the individual loses decision-making capacity.

“*Grievance*” means a written or oral complaint by or on behalf of an individual involving:

1. A rights violation or unfairness to the individual, or

2. Any aspect of the individual’s life with which the individual does not agree.

“*Guardian*” means the person other than a parent of a child who has been appointed by the court to have custody of the person of the individual as provided under Iowa Code section 232.2(21) or 633.3(20).

“*Individual*” means any person seeking or receiving services from a state mental health institute or a state resource center.

“*Informed consent*” means an agreement by an individual or by the individual’s parent, guardian, or legal representative to participate in an activity based upon an understanding of all of the following:

1. A full explanation of the procedures to be followed, including an identification of those that are experimental.

2. A description of the attendant discomforts and risks.

3. A description of the benefits to be expected.

4. A disclosure of appropriate alternative procedures that would be advantageous for the individual.

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5. Assurance that consent is given freely and voluntarily without fear of retribution or withdrawal of services.

“Legal representative” means a person, including an attorney, who is authorized by law to act on behalf of an individual.

“Legal settlement” means the determination made under Iowa Code sections 252.16 and 252.17 to identify whether one of the 99 Iowa counties has a legal obligation to provide financial support for an individual.

“Parent” means a natural or adoptive mother or father of a child but does not include a mother or father whose parental rights have been terminated.

“Rights” means the human, civil, and constitutional liberties an individual possesses through federal and state constitutions and laws.

“State case” means the determination made under Iowa Code section 252.16 that identifies an individual as not having legal settlement in an Iowa county and places funding responsibility with the state.

ITEM 5. Adopt the following **new** implementation sentence in rule **441—28.1(218)**:

This rule is intended to implement Iowa Code section 218.4.

ITEM 6. Rescind rule 441—28.2(218) and adopt the following **new** rule in lieu thereof:

441—28.2(218,222) Selection of facility.

28.2(1) Application for voluntary admission to a state mental health institute or resource center shall be made to the facility in the catchment area within which the individual for whom admission is sought is a resident as defined in:

- a. Rule 441—29.1(218) for the state mental health institutes; or
- b. Rule 441—30.1(218,222) for the state resource centers.

28.2(2) Court commitment of an individual shall be made:

- a. To the facility in the catchment area within which the individual who is being committed is a resident as defined in rule 441—29.1(218) or 441—30.1(218,222); or
- b. As designated by the deputy director.

28.2(3) The deputy director shall consider granting exceptions to the established catchment areas when requested by the individual seeking a voluntary admission or by the committing court. The deputy director’s decision shall be made within 48 hours of receipt of the request. The decision shall be based on:

- a. The clinical needs of the individual;
- b. The availability of appropriate program services;
- c. Available bed space within the program at the requested facility; and
- d. The consent of the superintendents of both facilities involved.

This rule is intended to implement Iowa Code sections 218.19, 218.20, and 222.6.

ITEM 7. Rescind rule 441—28.3(218) and adopt the following **new** rule in lieu thereof:

441—28.3(222,230) Evidence of legal settlement. The supporting evidence for determination of an individual’s legal settlement shall include all available information used to make a determination of legal settlement as defined in Iowa Code sections 252.16 and 252.17.

28.3(1) Supporting evidence shall include, but need not be limited to:

- a. The current and former addresses of the individual, including the dates for the period when the individual resided at each address;
- b. The individual’s current services and service history, including the name and location of the provider and the dates when services were received;
- c. The history of addresses and services received by the individual’s custodial parent or guardian (when the individual takes the legal settlement of the custodial parent or guardian as defined in Iowa Code section 252.16);
- d. Copies of any court orders affecting a minor individual’s custody or guardianship; and

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e. Any other information needed to make a determination of legal settlement.

28.3(2) Copies of the following forms may be submitted as supporting evidence, if properly completed:

- a.* Form 470-3439, Legal Settlement Worksheet.
- b.* A county central point of coordination application.
- c.* Form 470-4160, Notice of Court Action on Mental Health Hospitalization.

28.3(3) If a county asserts that an individual's legal settlement is unknown so that the individual is deemed a state case, the county that makes the assertion shall provide documentation of all attempts made by the county to ascertain the facts necessary to make a legal settlement determination. Documentation shall include:

- a.* Information about each person contacted during the investigation, including the person's name, address, telephone number, and E-mail address if available;
- b.* The information obtained during the investigation; and
- c.* Identification of the person conducting the investigation.

This rule is intended to implement Iowa Code sections 222.50, 222.60 to 222.79, 230.1 to 230.6, 230.10, and 230.11.

ITEM 8. Rescind rule 441—28.4(229) and adopt the following new rule in lieu thereof:

441—28.4(225C,229) Grievances. Any individual who believes the individual's rights have been violated by a mental health institute or resource center or who has any complaint concerning the individual's treatment at a mental health institute or resource center may file a grievance. A grievance shall be filed using Form 470-4498, Individual Grievance. The individual's parent, family, guardian, or legal representative may file a grievance on behalf of the individual.

This rule is intended to implement Iowa Code sections 225C.27 and 229.23.

ITEM 9. Amend rule 441—28.5(218) as follows:

441—28.5(217,218) Photographing and recording of ~~patients~~ individuals and use of cameras.

28.5(1) Use of cameras ~~and~~ or voice recorders by anyone other than an authorized employee, individual, parent, guardian, or legal representative to photograph or record an individual shall be allowed ~~within the institution~~ only with the prior authorization of the superintendent or the superintendent's designee. Permission to photograph and record shall be granted for one specific use, and the authorization shall not extend to any other use.

28.5(2) Photographs and recordings of ~~a voluntary patient of legal age~~ an adult individual shall be taken for publication only with a signed ~~release~~ informed consent from the ~~patient~~ individual or the individual's guardian or legal representative.

28.5(3) Photographs and recordings of ~~a patient who is a minor, committed mental patient, mentally retarded, or ward of the state~~ minor individual shall be taken for publication only with a signed ~~release~~ informed consent from the ~~parent, or legal guardian, or legal representative~~.

28.5(4) Every effort shall be made to preserve the inherent dignity of the ~~patient~~ individual and to preclude exploitation or embarrassment of the ~~patients~~ individual or the family of the ~~patients~~ individual.

28.5(5) Pictures and recordings of ~~patients~~ individuals are not to be altered to prevent identification in any manner that would tend to perpetuate the stigma attached to the public image of individuals with mental illness or mental retardation.

This rule is intended to implement Iowa Code sections 217.30 and 218.4.

ITEM 10. Amend rule 441—28.6(218) as follows:

441—28.6(217,218) Interviews and statements.

28.6(1) Releases to the news media shall be the responsibility of the superintendent. Authority for dissemination and release of information ~~shall~~ may be designated to other ~~persons~~ employees at the discretion of the superintendent.

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28.6(2) Interviews of ~~patients~~ individuals by the news media or other outside persons or groups shall be permitted only with the consent of the ~~patient~~ individual or the ~~patient's legal~~ individual's parent, guardian, or legal representative.

a. When a request without known prior consent is received, the superintendent or designee shall not acknowledge the presence or nonpresence of ~~a person as a patient~~ an individual at the institution.

b. If the ~~patient~~ individual is in the ~~hospital facility~~, the superintendent or designee shall make the ~~patient~~ individual or the individual's parent, guardian, or legal representative aware of the request. Notice to the ~~patient~~ individual or the individual's parent, guardian, or legal representative shall be documented in the ~~patient's~~ individual's record. The ~~patient~~ individual or the individual's parent, guardian, or legal representative shall be free to decide whether ~~or not~~ an interview is granted.

This rule is intended to implement Iowa Code ~~section~~ sections 217.30 and 218.4.

ITEM 11. Amend rule 441—28.8(218) as follows:

441—28.8(218) Tours of institution. Groups or ~~individuals~~ persons shall be permitted to tour the institution only with approval of the superintendent or designee.

This rule is intended to implement Iowa Code section 218.4.

ITEM 12. Amend rule 441—28.9(218) as follows:

441—28.9(218) Donations. Donations of money, clothing, books, games, recreational equipment or other gifts shall be made directly to the superintendent or designee. The superintendent or designee shall evaluate the donation in terms of the nature of the contribution to the hospital program. The superintendent or designee shall be responsible for accepting the donation and reporting the gift to the ~~administrator, division of mental health, mental retardation, and developmental disabilities~~ deputy director. All monetary gifts shall be acknowledged in writing to the donor.

This rule is intended to implement Iowa Code chapter 218.

ITEM 13. Rescind and reserve rules **441—28.10(218)** and **441—28.11(218)**.

ITEM 14. Rescind 441—Chapter 29 and adopt the following new chapter in lieu thereof:

CHAPTER 29 MENTAL HEALTH INSTITUTES

PREAMBLE

This chapter sets policies for the state mental health institutes listed in Iowa Code section 218.1. These rules apply in addition to the general rules in 441—Chapter 28.

441—29.1(218) Catchment areas. The catchment areas for the four mental health institutes shall be as follows.

29.1(1) Cherokee. Audubon, Boone, Buena Vista, Calhoun, Carroll, Cerro Gordo, Cherokee, Clay, Crawford, Dallas, Dickinson, Emmet, Franklin, Greene, Guthrie, Hamilton, Hancock, Hardin, Harrison, Humboldt, Ida, Kossuth, Lyon, Marshall, Monona, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Polk, Pottawattamie, Sac, Shelby, Sioux, Story, Webster, Winnebago, Woodbury, Worth, and Wright Counties form the catchment area for the Cherokee mental health institute.

29.1(2) Clarinda. Adair, Adams, Cass, Clarke, Decatur, Fremont, Madison, Mills, Montgomery, Page, Ringgold, Taylor, Union, Warren, and Wayne Counties form the catchment area for the Clarinda mental health institute.

29.1(3) Independence. Allamakee, Benton, Black Hawk, Bremer, Buchanan, Butler, Cedar, Chickasaw, Clayton, Clinton, Delaware, Dubuque, Fayette, Floyd, Grundy, Howard, Iowa, Jackson, Jasper, Johnson, Jones, Linn, Mitchell, Muscatine, Poweshiek, Scott, Tama, and Winneshiek Counties form the catchment area for the Independence mental health institute.

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29.1(4) *Mount Pleasant.* Appanoose, Davis, Des Moines, Henry, Jefferson, Keokuk, Lee, Louisa, Lucas, Mahaska, Marion, Monroe, Van Buren, Wapello, and Washington Counties form the catchment area for the Mount Pleasant mental health institute.

29.1(5) *Substance abuse or dual diagnosis treatment.* For the purpose of an adult individual seeking substance abuse or dual diagnosis treatment, the Mount Pleasant catchment area shall include the entire state.

29.1(6) *Adolescent or children's treatment.*

a. For the purpose of treating a minor from the Clarinda catchment area who requires admission or commitment to a mental health institute's adolescent or children's treatment program, the Clarinda catchment area is deemed to be a part of the Cherokee catchment area.

b. For the purpose of treating a minor in the Mount Pleasant catchment area who requires admission or commitment to a mental health institute's adolescent or children's treatment program, the Mount Pleasant catchment area is deemed to be a part of the Independence catchment area.

441—29.2(218,229) Voluntary admissions.

29.2(1) *Application form.*

a. Any individual who has symptoms of mental illness may apply for voluntary inpatient treatment or voluntary outpatient or day treatment using Form 470-0420, Application for Voluntary Admission to a Mental Health Institute.

b. Any individual requesting substance abuse treatment shall complete Form 470-0425, Application for Voluntary Admission—Substance Abuse.

29.2(2) *Children.* A parent, guardian, or legal representative of a minor individual may make application for the individual's voluntary admission directly to the mental health institute using Form 470-0420, Application for Voluntary Admission to a Mental Health Institute. When a minor objects to the admission and the chief medical officer of the mental health institute determines that the admission is appropriate, the parent, guardian, or custodian must petition the juvenile court for approval of admission before the minor is actually admitted.

29.2(3) *County approval.* When an adult individual applying for voluntary admission or those responsible for the individual are unable to pay costs of care, application for admission shall be made to and authorized through the central point of coordination of the individual's county of residence before application for admission is made to the mental health institute. Authorization shall be provided by the signature of one or more official agents designated by the county board of supervisors using Form 470-0420, Application for Voluntary Admission to a Mental Health Institute, before the form is forwarded to the mental health institute.

441—29.3(229,230) Certification of settlement.

29.3(1) *Certification data.* By the end of the next working day following an adult individual's admission, the facility shall send a copy of Form 470-4161, DHS Institution Admission Core Data, by facsimile to the central point of coordination of the county of admission. If the facility is aware that the county of legal settlement may be other than the admitting county, the facility shall alert the admitting county.

29.3(2) *County response.* For voluntary cases where the admitting county has accepted legal settlement using Form 470-0420, Application for Voluntary Admission to a Mental Health Institute, no further response is needed. For all other cases, within four working days after receiving Form 470-4161, DHS Institution Admission Core Data, the admitting county shall return to the facility page 3 of the form, the response sheet for determining legal settlement.

a. If the central point of coordination for the admitting county accepts legal settlement, the admitting county shall mark the response sheet accordingly. No supporting evidence is necessary.

b. If the central point of coordination for another county notified by the admitting county accepts legal settlement, that county shall provide written notice to the facility of that county's acceptance.

c. If the central point of coordination for the admitting county finds the individual's legal settlement to be in another Iowa county, the admitting county shall mark the response sheet accordingly.

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and shall send certification as described in Iowa Code section 230.4 to the county auditor of the other county. A copy of the evidence supporting the determination as prescribed in rule 441—28.3(222,230) shall accompany the certification. If the other county disputes the certification, that county may file a notice of dispute under rule 441—15.2(225C).

d. If the central point of coordination for the admitting county of residence finds that the person has not acquired legal settlement in an Iowa county, the admitting county shall mark the response sheet accordingly. The admitting county shall send certification as described in Iowa Code section 230.5 to the Administrator, DHS Division of Fiscal Management, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. A copy of the evidence supporting the determination as prescribed in rule 441—28.3(222,230) shall accompany the certification.

441—29.4(218,230) Charges for care. The rates for cost of hospitalization are established by the deputy director and shall be available by contacting the business manager of the mental health institute that serves the catchment area in which the individual's county of residence is located.

29.4(1) Individuals requesting voluntary admission without going through the central point of coordination process shall be required to pay the cost of hospitalization in advance. This cost shall be computed at 30 times the last per diem rate and shall be collected weekly in advance upon admission. The weekly amount due shall be determined by dividing the monthly rate by 4.3.

29.4(2) The department shall bill each county for services provided to individuals chargeable to the county during the preceding calendar quarter as required in Iowa Code section 230.20. In determining the charges for services, direct medical services shall include:

- a.* X-ray services.
- b.* Laboratory services.
- c.* Dental services.
- d.* Electroconvulsive treatment (ECT).
- e.* Electrocardiogram (EKG).
- f.* Basal metabolism rate (BMR).
- g.* Pharmaceutical services.
- h.* Physical therapy.
- i.* Electroencephalograph (EEG).
- j.* Outside physician and hospital services billed to the mental health institutes.
- k.* Optometric services.
- l.* Outside ambulance services billed to the mental health institutes.

29.4(3) The liability of a person legally liable for support of an individual with mental illness after 120 days of hospitalization shall be standard for one person in the family investment program as established in 441—subrule 41.28(2).

441—29.5(229) Authorization for treatment. No individual receiving services, either on a voluntary or involuntary basis, shall be provided treatment other than what is necessary to preserve life or protect others from physical injury unless:

1. The individual has given consent by signing Form 470-0428, Mental Health Institute Agreement and Consent to Treatment;
2. A court has ordered treatment; or
3. The individual's parent, guardian, or legal representative has given consent by signing Form 470-0428, Mental Health Institute Agreement and Consent to Treatment.

441—29.6(217,228,229) Rights of individuals. An individual receiving care from a state mental health institute shall have the following rights.

29.6(1) Information. An individual receiving care from a state mental health institute shall have the right to:

- a.* Receive an explanation and written copy of the rules of the facility.

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b. Be provided information on the provisions of law pertaining to admission to and discharge from the facility.

c. Receive an explanation of the individual's medical condition and be informed as to treatment plans and the attendant risks of treatment.

d. Be provided with complete and current information concerning the individual's diagnosis, treatment, and progress in terms and language understandable to the individual.

e. Have the information required in this subrule made available to the individual's parent, guardian, or legal representative when it is not feasible to give the information directly to the individual.

29.6(2) *Care and treatment.* An individual receiving care from a state mental health institute shall have the right to:

a. Be evaluated promptly following admission and receive emergency services appropriate to the individual's needs.

b. Have a current individualized written plan of treatment.

c. Receive appropriate treatment, services, and rehabilitation for the individual's mental illness, including appropriate and sufficient medical and dental care.

d. Have the opportunity for educational, vocational, rehabilitative, and recreational programs appropriate to the individual's treatment needs.

e. Have the confidentiality of the individual's personal mental health institute records maintained and have access to those records within a reasonable period.

f. Work, when available and desired and as appropriate to the individual's plan of treatment, and be compensated for that work in accordance with federal and state laws.

g. Have an individualized posthospitalization plan.

29.6(3) *Living conditions.* An individual receiving care from a state mental health institute shall have the right to:

a. Live in the least restrictive conditions necessary to achieve the purposes of treatment.

b. Receive care in a manner that respects and maintains the individual's dignity and individuality.

c. Have opportunities for personal privacy, including during the care of personal needs.

d. Keep and use appropriate personal possessions, including wearing the individual's own clothing.

e. Share a room with a spouse when both live on a long-term basis in the same facility.

f. Be free from unnecessary drugs, restraints, and seclusion except when necessary to protect the immediate health or safety of the individual or others.

g. Be free from physical, psychological, sexual, or verbal abuse, neglect and exploitation.

29.6(4) *Communication.* An individual receiving care from a state mental health institute shall have the right to:

a. Have a family contact or representative of the individual's choice or the individual's community physician notified promptly of the individual's admission.

b. Communicate with people and access services at the facility and in the community, including organizing and participating in resident groups while at the facility.

c. Receive visits of the individual's choice from parents, guardians, legal representatives, or family without prior notice given to the facility unless the visits have been determined inappropriate by the individual's treatment team.

d. Communicate and meet privately with persons of the individual's choice without prior notice given to the facility unless the communication is determined inappropriate by the individual's treatment team.

e. Send and receive unopened mail.

f. Make and receive private telephone calls, unless the calls have been determined inappropriate by the individual's treatment team.

g. Access current informational and recreational media such as newspapers, television, or periodicals.

29.6(5) *Self-determination.* An individual receiving care from a state mental health institute shall have the right to:

HUMAN SERVICES DEPARTMENT[441](cont'd)

- a. Have a dignified existence with self-determination, making choices about aspects of the individual's life that are significant to the individual.
- b. Participate in the development and implementation of the individual's treatment plan.
- c. Give informed consent, including the right to withdraw consent at any given time.
- d. Refuse treatment (such as medication, surgery or electroconvulsive therapy) offered without the individual's expressed informed consent, and be provided with an explanation of the consequences of those refusals unless treatment is necessary to protect the health or safety of the individual or is ordered by a court.
- e. Immediate discharge (if admitted voluntarily) by submitting a written notice to the superintendent or chief medical officer, unless a written request for involuntary hospitalization is submitted to a court.
- f. Refuse to perform services for the facility and not be coerced to perform services.
- g. Manage the individual's own financial affairs unless doing so is limited under law or determined not appropriate by the individual's treatment team.
- h. Choose activities, schedules, and care consistent with the individual's interests, needs, and treatment plans.
- i. Engage in social, religious, and community activities of the individual's choice.
- j. Formulate advanced directives and be provided care in compliance with these directives.

29.6(6) Advocacy. An individual receiving care from a state mental health institute shall have the right to:

- a. Exercise the individual's rights as a citizen or resident of the United States.
- b. File a grievance pursuant to rule 441—28.4(225C,229) without any intimidation or reprisal resulting from the grievance.
- c. Request a judicial review of the hospitalization, file for a writ of habeas corpus, have an attorney of the individual's choice, and communicate and meet privately with the individual's attorney without prior notice given to the facility.

441—29.7(218) Visiting.

29.7(1) Visiting hours on Monday through Friday are from 12 noon to 8 p.m. and are from 10 a.m. to 8 p.m. on Saturday, Sunday, and holidays. Visiting hours shall be posted in each institution. The physician may designate exceptions for special hours on an individual or ward basis. Therapy for the individual shall take precedence over visiting. Visiting shall not interfere with the individual's treatment program or meals.

29.7(2) A visit shall be terminated when behavior on the part of the individual or visitor is disruptive to the individual's treatment plan.

29.7(3) The individual's attending physician or designee shall approve persons wishing to visit an individual.

29.7(4) Visiting on grounds shall be permitted when the individual has a grounds pass.

29.7(5) Visitors wishing to take an individual off grounds shall receive prior approval from the attending physician.

29.7(6) All visitors shall obtain a visitor's pass at the switchboard or another area as designated by the superintendent and posted. The pass shall be given to a ward employee before the visitor is allowed on the ward.

29.7(7) Persons under 12 years of age shall not visit on the ward.

These rules are intended to implement Iowa Code chapters 217, 218, 228, 229, and 230.

ITEM 15. Rescind 441—Chapter 30 and adopt the following new chapter in lieu thereof:

CHAPTER 30
STATE RESOURCE CENTERS

HUMAN SERVICES DEPARTMENT[441](cont'd)

PREAMBLE

This chapter sets policies for the state resource centers listed in Iowa Code section 218.1. These rules apply in addition to the general rules in 441—Chapter 28.

441—30.1(218,222) Catchment areas. The catchment areas for the two state resource centers shall be as follows.

30.1(1) *Glenwood.* Adair, Adams, Appanoose, Audubon, Benton, Carroll, Cass, Cedar, Cherokee, Clarke, Clinton, Crawford, Davis, Decatur, Des Moines, Fremont, Greene, Guthrie, Harrison, Henry, Ida, Iowa, Jefferson, Johnson, Jones, Keokuk, Lee, Linn, Louisa, Lucas, Lyon, Mahaska, Mills, Monona, Monroe, Montgomery, Muscatine, Page, Plymouth, Pottawattamie, Ringgold, Sac, Scott, Shelby, Sioux, Taylor, Union, Van Buren, Wapello, Washington, Wayne, and Woodbury Counties form the catchment area for the Glenwood resource center.

30.1(2) *Woodward.* Allamakee, Black Hawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Cerro Gordo, Chickasaw, Clay, Clayton, Dallas, Delaware, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Grundy, Hamilton, Hancock, Hardin, Howard, Humboldt, Jackson, Jasper, Kossuth, Madison, Marion, Marshall, Mitchell, O'Brien, Osceola, Palo Alto, Pocahontas, Polk, Poweshiek, Story, Tama, Warren, Webster, Winnebago, Winneshiek, Worth, and Wright Counties form the catchment area for the Woodward resource center.

This rule is intended to implement Iowa Code section 222.6.

441—30.2(218,222) Admission. Express written consent of the individual or the individual's parent, guardian, or legal representative shall be secured before admission.

30.2(1) *Application for an adult.* Applications for the care, treatment, or evaluation of an adult individual by a resource center shall be made through the central point of coordination for the board of supervisors of the individual's county of residence.

a. The application shall be made using Form 470-4402, Application for Admission to a State Resource Center, and shall be accompanied by:

- (1) Completed Form 470-4403, Resource Center Agreement and Consent for Services, and
- (2) Other information specifically requested in writing by the resource center.

b. The application shall be submitted through the deputy director or the deputy director's designee.

30.2(2) *Application for a minor.* Application for a minor individual shall be made through the deputy director or the deputy director's designee using Form 470-4402, Application for Admission to a State Resource Center. The application shall be accompanied by:

a. Completed Form 470-4403, Resource Center Agreement and Consent for Services, and

b. Other information specifically requested in writing by the deputy director or the deputy director's designee.

30.2(3) *Application for readmission.* When the application is for a readmission, the resource center may waive the resubmittal of any information already in the files other than Form 470-4402, Application for Admission to a State Resource Center.

30.2(4) *Receipt of application.* Upon receipt of an application, the resource center may:

- a.* Provide an individual with outpatient evaluation treatment, training, or habilitation services; or
- b.* Admit an individual on a temporary basis for either:

(1) A preadmission diagnostic evaluation to determine whether the individual would be appropriate to admit to the regular program, or

(2) A diagnostic evaluation to assist in planning for community-based services or respite care.

30.2(5) *Eligibility for admission.* Eligibility for admission shall be determined by:

- a.* A preadmission diagnostic evaluation,
- b.* An established diagnosis of mental retardation,
- c.* The availability of an appropriate program, and
- d.* The availability of space at the facility.

This rule is intended to implement Iowa Code sections 222.13 and 222.13A.

HUMAN SERVICES DEPARTMENT[441](cont'd)

441—30.3(222) Certification of settlement.

30.3(1) *Certification.* At the time of an individual's application for admission to a resource center, the board of supervisors shall certify through the central point of coordination process that the legal settlement of the person applying for admission is one of the following:

- a. In the county from which the application is received or where the court is located;
- b. In another county in Iowa;
- c. In another state or in a foreign country; or
- d. Unknown or no legal settlement.

30.3(2) *Supporting evidence.*

a. If legal settlement is certified in the county of admission, no supporting evidence is necessary.
b. If legal settlement is certified in another county, the certification shall be sent to that county as described in Iowa Code section 222.63. A copy of the evidence supporting the determination, as described in 441—subrules 28.3(1) and 28.3(2), shall accompany the certification.

c. If the central point of coordination for the admitting county finds that the person has not acquired legal settlement in an Iowa county, the admitting county shall send the certification as described in Iowa Code section 222.64 to the Administrator, DHS Division of Fiscal Management, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. The certification shall be accompanied by a copy of the evidence supporting the determination, as described in 441—subrules 28.3(1), 28.3(2), and 28.3(3).

This rule is intended to implement Iowa Code sections 222.31, 222.60, 222.61 to 222.65, 222.69, and 222.70.

441—30.4(222) Liability for support. The liability of any person, other than the individual, who is legally bound for the support of any individual under 18 years of age shall be determined in the same manner as parent liability in rule 441—156.2(234), except that the maximum liability shall not exceed the standards for personal allowances established by the department under the family investment program.

This rule is intended to implement Iowa Code section 222.78.

441—30.5(217,218,225C) Rights of individuals.

30.5(1) *Information.* An individual receiving care from a state resource center shall have the right to:

- a. Receive an explanation and written copy of the rules of the facility.
- b. Receive an explanation of the individual's medical condition, developmental status, and behavioral status, and be informed as to treatment plans and the attendant risks of treatment.

30.5(2) *Care and treatment.* An individual receiving care from a state resource center shall have the right to:

- a. Receive appropriate treatment, services, and habilitation for the individual's disabilities, including appropriate and sufficient medical and dental care.
- b. Have the confidentiality of the individual's personal resource center records maintained and have access to those records within a reasonable period.
- c. Work, when available and desired and as appropriate to the individual's plan of treatment, and be compensated for that work in accordance with federal and state laws.

30.5(3) *Living conditions.* An individual receiving care from a state resource center shall have the right to:

- a. Receive care in a manner that respects and maintains the individual's dignity and individuality.
- b. Have opportunities for personal privacy, including during the care of personal needs.
- c. Keep and use appropriate personal possessions, including wearing the individual's own clothing.
- d. Share a room with a spouse when both live in the same facility.
- e. Be free from unnecessary drugs and restraints.
- f. Be free from physical, psychological, sexual, or verbal abuse, neglect and exploitation.

30.5(4) *Communication.* An individual receiving care from a state resource center shall have the right to:

HUMAN SERVICES DEPARTMENT[441](cont'd)

- a.* Communicate with people and access services at the facility and in the community, including organizing and participating in resident groups while at the facility.
- b.* Receive visits of the individual's choice from parents, guardians, legal representatives, or family without prior notice given to the facility unless the visits have been determined inappropriate by the individual's treatment team.
- c.* Communicate and meet privately with persons of the individual's choice without prior notice given to the facility unless the communication is determined inappropriate by the individual's treatment team.
- d.* Send and receive unopened mail.
- e.* Make and receive private telephone calls, unless the calls have been determined inappropriate by the individual's treatment team.

30.5(5) *Self-determination.* An individual receiving care from a state resource center shall have the right to:

- a.* Have a dignified existence with self-determination, making choices about aspects of the individual's life that are significant to the individual.
- b.* Give informed consent, including the right to withdraw consent at any given time.
- c.* Refuse treatment (such as medication or behavioral interventions) offered without the individual's expressed informed consent, and be provided with an explanation of the consequences of those refusals unless treatment is necessary to protect the health or safety of the individual or is ordered by a court.
- d.* Refuse to perform services for the facility and not be coerced to perform services.
- e.* Manage the individual's own financial affairs unless doing so is limited under law or determined not appropriate by the individual's treatment team.
- f.* Choose activities, schedules, and care consistent with the individual's interests, needs and care plans.
- g.* Engage in social, religious, and community activities of the individual's choice.

30.5(6) *Advocacy.* An individual receiving care from a state resource center shall have the right to:

- a.* Exercise the individual's rights as a citizen or resident of the United States.
- b.* File a grievance pursuant to rule 441—28.4(225C,229) without any intimidation or reprisal resulting from the grievance.

This rule is intended to implement Iowa Code sections 217.30, 218.4, 225C.28A, and 225C.28B.

441—30.6(218) Visiting.

30.6(1) The visiting hours at state resource centers shall be from 9 to 11 a.m. and 1 to 4 p.m. for on-ward visits; and from 8:30 a.m. to 8:30 p.m. for off-campus visits. Visiting hours may be extended at the superintendent's or designee's discretion when visitors have traveled a great distance to visit or are able to make visits only rarely.

30.6(2) The individual's treatment team social worker designee must approve persons wishing to visit an individual before the visit.

30.6(3) The individual shall be available only when the individual is not actively involved in a scheduled treatment activity.

30.6(4) A visit shall be terminated when behavior on the part of the individual or the visitor is disruptive to the individual's treatment plan.

30.6(5) Visitors wishing to take a resident off grounds shall obtain prior approval from the individual's treatment team social worker or designee.

This rule is intended to implement Iowa Code section 218.4.

ARC 7724B

HUMAN SERVICES DEPARTMENT[441]**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 234.6(4), the Department of Human Services proposes to amend Chapter 65, "Food Assistance Program Administration," Iowa Administrative Code.

The proposed amendment shortens the maximum period for which the Department can collect on a food assistance claim that is the result of an agency error. With this change, the Department will be limited to establishing a claim for benefits incorrectly issued up to a maximum of one year before the date the Department's error is discovered.

The Department is proposing this change to make the process for correcting agency errors more equitable. If food assistance benefits are underissued, the Department goes back only 12 months when issuing corrective benefits. However, the Department currently goes back 36 months to collect on benefits overissued due to agency error. Most agency errors are discovered within 12 months. Since all collected overpayments for agency errors are paid to the federal government, the state will not lose out on potential collections.

Claims resulting from household errors will continue to be calculated for up to 36 months before the date when the error is discovered. Claims resulting from intentional program violations will continue to be calculated for up to six years before the date when the violation is determined.

This amendment does not provide for waivers in specified situations because shortening the claim period is a benefit to households with overissued benefits due to an agency error.

Any interested person may make written comments on the proposed amendment on or before May 13, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, 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.

This amendment is intended to implement Iowa Code section 234.6(7).

The following amendment is proposed.

Amend subrule 65.21(1) as follows:

65.21(1) *Time period.* Inadvertent household error ~~and agency error~~ claims shall be calculated back to the month the error originally occurred to a maximum of three years ~~prior to~~ before the month of discovery of the overissuance. Agency error claims shall be calculated back to the month the error originally occurred to a maximum of one year before the month of discovery of the overissuance.

ARC 7718B

HUMAN SERVICES DEPARTMENT[441]

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 249A.4, the Department of Human Services proposes to amend Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

The proposed amendments make technical changes to clarify and update policy for the Medicaid Health Insurance Premium Payment (HIPP) program to reflect the changing health insurance picture in the public domain. The changes:

- Clarify the two types of plans (group and individual) and the differences in their policy treatment.
- Specify a definite period (12 months) for considering past claims for the cost-effectiveness determination.
- Eliminate the cost-effectiveness determination deemed for certain types of plans based on low monthly premiums or pregnancy. The cost-effectiveness of these plans would be assessed using the same methodology applied to all other plans. This methodology takes into account the cost to Medicaid for the plan deductibles, which can sometimes be \$5,000 to \$10,000.
- Correct program names, rule cross references, form names and numbers, and references to policies that are no longer in effect.

These amendments do not provide for waivers in specified situations because the Department believes these technical amendments, clarifications, and updates should apply in all cases. However, 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 May 13, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, 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.

These amendments are intended to implement Iowa Code section 249A.3.

The following amendments are proposed.

ITEM 1. Amend rule 441—75.21(249A) as follows:

441—75.21(249A) Health insurance premium payment (HIPP) program. Under the health insurance premium payment program, the department shall pay for the cost of premiums, coinsurance and deductibles for Medicaid-eligible individuals when the department determines that those costs will be less than the cost of paying for the individual's care ~~directly.~~ through Medicaid. Payment shall include only the cost to the Medicaid member or household.

75.21(1) Condition of eligibility for group plans. ~~The recipient, Medicaid member or a person acting on the recipient's member's behalf, shall cooperate in providing information necessary for the department to establish availability and the cost-effectiveness of a group health insurance plan. Persons who are eligible to enroll in a group health insurance plan which~~ When the department has determined that a group health plan is cost-effective, and who are otherwise eligible for Medicaid, shall apply for enrollment in the plan as is a condition of Medicaid eligibility unless it can be established that insurance is being maintained on the Medicaid-eligible persons members through another source (e.g., an absent parent is maintaining insurance on the Medicaid-eligible children).

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. When a parent fails to provide information necessary to determine availability and cost-effectiveness of a group health insurance plan, fails to enroll in a group health insurance plan that has been determined cost-effective, or disenrolls from a group health insurance plan ~~the department that has been~~ determined cost-effective, Medicaid benefits of the parent shall be terminated unless good cause for failure to cooperate is established.

b. Good cause for failure to cooperate shall be established when the parent or family demonstrates one or more of the following conditions exist:

- ~~a.~~ (1) There was a serious illness or death of the parent or a member of the parent's family.
- ~~b.~~ (2) There was a family emergency or household disaster, such as a fire, flood, or tornado.
- ~~c.~~ (3) The parent offers a good cause beyond the parent's control.
- ~~d.~~ (4) There was a failure to receive the department's request for information or notification for a reason not attributable to the parent. Lack of a forwarding address is attributable to the parent.

c. Medicaid benefits of a child shall not be terminated due to the failure of the parent to cooperate. Additionally, the Medicaid benefits of ~~the a spouse of the employed person who cannot enroll in the plan independently of the other spouse~~ shall not be terminated due to the ~~employed person's other spouse's~~ failure to cooperate ~~when the spouse cannot enroll in the plan independently of the employed person.~~

d. The presence of good cause does not relieve the parent of the requirement to cooperate. When necessary, the parent may be given additional time to cooperate when good cause is determined to exist.

75.21(2) ~~Non-employer-related~~ Individual health insurance plans. Participation in ~~a an individual health insurance plan that is not group health insurance as defined in rule 441—75.25(249A)~~ is not a condition of Medicaid eligibility. The department shall pay for the cost of premiums, coinsurance, and deductibles of individual health insurance plans for a Medicaid member if:

- a. A household member is currently enrolled in the plan; and
- b. The health plan is cost-effective as defined in 75.21(3).

75.21(3) Cost-effectiveness. Cost-effectiveness for both group and individual plans shall mean the expenditures in Medicaid payments for a set of services are likely to be greater than the cost of paying the premiums and cost-sharing obligations under ~~an insurance~~ the health plan for those services. When determining the cost-effectiveness of the ~~insurance health~~ plan, the following data shall be considered:

a. The cost to the Medicaid member or household of the insurance premium, coinsurance, and deductibles. ~~An employer-related group health insurance plan that provides major medical coverage and costs \$50 or less per month shall be determined cost-effective when establishing eligibility for one person Medicaid-eligible households. An employer-related group health insurance plan that provides major medical coverage and costs \$100 or less per month shall be determined cost-effective when establishing eligibility for households of two or more Medicaid-eligible persons. No cost paid by an employer or other plan sponsor shall be considered in the cost-effectiveness determination.~~

b. The scope of services covered under the ~~insurance~~ health plan, including but not limited to exclusions for preexisting conditions, etc.

c. The average anticipated Medicaid utilization, by age, sex, institutional status, Medicare eligibility, and coverage group, for ~~persons~~ members covered under the ~~insurance~~ health plan.

d. The specific health-related circumstances of the ~~persons~~ members covered under the ~~insurance~~ health plan. The HIPPA Medical History Questionnaire, Form 470-2868, shall be used to obtain this information. ~~Employer-related group health insurance plans that provide major medical coverage shall be determined cost-effective when there is a Medicaid-eligible pregnant woman who can be covered under the plan. When the information indicates any health conditions that could be expected to result in higher than average bills for any Medicaid member:~~

(1) If the member is currently covered by the plan, the department shall obtain from the insurance company a summary of the member's paid claims for the previous 12 months. If there is sufficient evidence to indicate that such claims can be expected to continue in the next 12 months, the claims will be considered in determining the cost-effectiveness of the plan. The cost of providing the health insurance is compared to the actual claims to determine the cost-effectiveness of providing the coverage.

(2) If the member was not covered by the health plan in the previous 12 months, paid Medicaid claims may be used to project the cost-effectiveness of the plan.

HUMAN SERVICES DEPARTMENT[441](cont'd)

e. Annual administrative expenditures of \$50 per Medicaid ~~recipient~~ member covered under the health ~~insurance policy plan~~.

f. Whether the estimated savings to Medicaid for ~~persons~~ members covered under the health insurance plan are at least \$5 per month per household.

75.21(4) *Coverage of non-Medicaid-eligible family members.*

a. When ~~it~~ a group plan is determined to be cost-effective, the department shall pay for health insurance premiums for non-Medicaid-eligible family members if a non-Medicaid-eligible family member must be enrolled in the health plan in order to obtain coverage for the Medicaid-eligible family members. However,:

(1) ~~the~~ The needs of the non-Medicaid-eligible family members shall not be taken into consideration when determining cost-effectiveness, and

(2) ~~payments~~ Payments for deductibles, coinsurances or other cost-sharing obligations shall not be made on behalf of family members who are not Medicaid-eligible.

b. When an individual plan is determined cost-effective, the department shall pay for the portion of the premium necessary to cover the Medicaid-eligible family members. If the portion of the premium to cover the Medicaid-eligible family members cannot be established, the department shall pay the entire premium. The family members who are not Medicaid-eligible shall not be considered when determining cost-effectiveness.

75.21(5) *Exceptions to payment.* Premiums shall not be paid for health insurance plans under any of the following circumstances:

a. to *e.* No change.

f. The persons covered under the plan are not Medicaid-eligible on the date the decision regarding eligibility for the HIPPA program is made. No retroactive payments shall be made if the case is not Medicaid-eligible on the date of decision.

g. The person is eligible only for ~~limited~~ a coverage group that does not provide full Medicaid services under, such as the specified low-income Medicare beneficiary (SLMB) coverage group, in accordance with subrule 75.1(34) or the IowaCare program in accordance with the provisions of 441—Chapter 92. Members under the medically needy coverage group who must meet a spenddown are not eligible for HIPPA payment.

h. Insurance coverage is being provided through the ~~Iowa Comprehensive Health Insurance Association~~ Health Insurance Plan of Iowa (HIPOWA), in accordance with Iowa Code chapter 514E.

i. and *j.* No change.

k. The person has health coverage through Medicare. If other Medicaid members in the household are covered by the health plan, cost-effectiveness is determined without including the Medicare-covered member.

l. The health plan does not provide major medical coverage but pays only for specific situations (i.e., accident plans) or illnesses (i.e., cancer policy).

m. The health plan pays secondary to another plan.

n. The only Medicaid members covered by the plan are currently in foster care.

o. All Medicaid members covered by the plan are eligible for Medicaid only under subrule 75.1(43). This coverage group requires the parent to apply for, enroll in, and pay for coverage available from the employer as a condition of Medicaid eligibility for the children.

75.21(6) *Duplicate policies.* When more than one cost-effective health ~~insurance plan or policy~~ is available, the department shall pay the premium for only one plan. The ~~recipient member~~ may choose ~~in which the~~ the cost-effective plan in which to enroll. However, in situations where the department is buying in to the cost of Medicare Part A or Part B for eligible Medicare beneficiaries, the cost of premiums for a Medicare supplemental insurance policy may also be paid if the department determines it is likely to be cost effective to do so.

75.21(7) *Discontinuation of premium payments.*

a. When the household loses Medicaid eligibility, premium payments shall be discontinued as of the month of Medicaid ineligibility.

HUMAN SERVICES DEPARTMENT[441](cont'd)

b. When only part of the household loses Medicaid eligibility, the department shall complete a review shall be completed in order to ascertain whether payment of the health insurance premium continues to be cost-effective. ~~If it is determined the department determines that the policy health plan~~ is no longer cost-effective, premium payment shall be discontinued pending timely and adequate notice.

c. If the household fails to cooperate in providing information necessary to establish ongoing eligibility, the department shall discontinue premium payment after timely and adequate notice. The department shall request all information in writing and allow the ~~policyholder~~ household ten calendar days in which to provide it.

d. If the policyholder leaves the Medicaid household, premium payments shall be discontinued pending timely and adequate notice.

e. If the ~~insurance coverage~~ health plan is no longer available or the policy has lapsed, premium payments shall be discontinued as of the effective date of the termination of the coverage.

75.21(8) Effective date of premium payment. The effective date of premium payments for a cost-effective health ~~insurance plans plan~~ shall be determined as follows:

a. Premium payments shall begin no earlier than the later of:

(1) ~~the~~ The first day of the month in which the Employer's Statement of Earnings, Form 470-2844, or the Health Insurance Premium Payment Application, Form 470-2875, or the automated HIPP referral, Form H301-1, is received by the division of medical services HIPP unit; or

(2) ~~the~~ The first day of the first month in which the plan is determined to be cost-effective, whichever is later.

b. If the person is not enrolled in the plan when eligibility for participation in the HIPP program is established, premium payments shall begin in the month in which the first premium payment is due after enrollment occurs.

c. If there was a lapse in coverage during the application process (e.g., the ~~policy~~ health plan is dropped and reenrollment occurs at a later date), premium payments shall not be made for any period of time ~~prior to~~ before the current effective date of coverage.

d. In no case shall payments be made for premiums ~~which that~~ were used as a deduction to income when determining client participation, or the amount of the spenddown obligation, or for premiums due for periods of time covered prior to July 1, 1991.

e. The Employer Verification of Insurance Coverage, Form 470-3036, shall be used to verify the effective date of coverage and ~~premiums costs~~ for persons enrolled in group ~~health insurance~~ plans through an employer.

f. The effective date of coverage for individual plans or for group plans not obtained through an employer shall be verified by a copy of the certificate of coverage for the plan or by some other verification from the insurer.

75.21(9) Method of premium payment. Payments of ~~health insurance~~ premiums will be made directly to the insurance carrier except as follows:

a. The department may arrange for payment to ~~the an~~ an employer in order to circumvent a payroll deduction.

b. When ~~the an~~ employer will not agree to accept premium payments from the department in lieu of a payroll deduction to the employee's wages, the department shall reimburse the ~~policyholder employee~~ directly for payroll deductions or for payments made directly to the employer for the payment of ~~health insurance~~ premiums. The department shall issue reimbursement to the ~~policyholder employee~~ five working days ~~prior to~~ before the ~~policyholder's~~ employee's pay date.

c. When premium payments are occurring through an automatic withdrawal from a bank account by the insurance carrier, the department may reimburse the policyholder for ~~said~~ those withdrawals.

d. ~~When the department is otherwise unable to make direct premium payments because the health insurance is offered through a contract that covers a group of persons identified as individuals by reference to their relationship to the entity, the department shall reimburse the policyholder for premium payments made to the entity.~~ Payments for COBRA coverage shall be made directly to the insurance carrier or the former employer. Payments may be made directly to the former employee only in those cases where:

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- (1) Information cannot be obtained for direct payment, or
- (2) The department pays for only part of the total premium.

75.21(10) No change.

75.21(11) *Reviews of cost-effectiveness and eligibility.* Reviews of cost-effectiveness and eligibility shall be completed annually ~~or~~ and may be conducted more frequently at the discretion of the department.

a. For a group health plan, the review of cost-effectiveness and eligibility may be completed at the time of the next health insurance plan contract renewal date for employer-related group health plans. Reviews may be conducted more frequently at the discretion of the department. The employer shall complete Health Insurance Premium Payment (HIPP) Program Review, Form 470-3016, shall be used for this purpose the review.

b. Reviews of cost-effectiveness shall be completed annually for non-employer-related group For individual health plans. The recipient shall sign the Insurance Carrier Authorization to Release Information, Form 470-3015, as part of the review of non-employer-related plans so that the department may obtain pertinent information necessary to establish continued eligibility, the client shall complete HIPP Individual Policy Review, Form 470-3017, for the review.

c. Failure of the policyholder household to cooperate in the review process shall result in cancellation of premium payment and may result in Medicaid ineligibility as provided in subrule 75.21(1).

d. Redeterminations shall also be completed whenever:

- (1) a predetermined A premium rate, deductible, or coinsurance increases changes,
- (2) some of the persons A person covered under the policy lose loses full Medicaid eligibility,
- (3) employment terminates or hours are reduced which affects Changes in employment or hours of employment affect the availability of health insurance,

(4) the The insurance carrier changes,

(5) the The policyholder leaves the Medicaid home, or

(6) there There is a decrease in the services covered under the policy.

e. The policyholder shall report changes that may affect the availability or cost-effectiveness of the policy within ten calendar days from the date of the change. Changes may be reported by telephone, in writing, or in person. A The department sends a HIPP Change Report, Form 470-3007, shall accompany with all premium payments.

f. If a change in the number of members in the Medicaid household causes the plan not to be cost-effective, lesser health plan options, as defined in paragraph 75.21(16) "a," shall be considered if available and cost-effective.

g. When employment terminates ends, hours of employment are reduced, or some other qualifying event affecting the availability of the group health insurance coverage plan occurs, the department shall verify whether insurance coverage may be continued under the provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, the Family Leave Act, or other insurance coverage continuation provisions.

(1) The Employer Verification of COBRA Eligibility, Form 470-3037, shall be used for this purpose.

(2) If cost-effective to do so, the department shall pay premiums to maintain insurance coverage for eligible Medicaid recipients members after the occurrence of the qualifying event which would otherwise result in termination of coverage.

75.21(12) *Time frames for determining cost-effectiveness.* The department shall determine cost-effectiveness of the insurance health plan and notify the recipient applicant of the decision regarding payment of the premiums within 65 calendar days from the date an Employer's Statement of Earnings, Form 470-2844, indicating the availability of group insurance or a Health Insurance Premium Payment Application, Form 470-2875, application or referral (as defined in subrule 75.21(8)) is received. Additional time may be granted taken when, for reasons beyond the control of the department or the recipient applicant, information needed to establish cost-effectiveness cannot be obtained within the 65-day period.

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75.21(13) Notices.

a. An adequate notice shall be provided to the household under the following circumstances:

~~a.~~ (1) To inform the household of the initial decision on cost-effectiveness and premium payment.

~~b.~~ (2) To inform the household that premium payments are being discontinued because Medicaid eligibility has been lost by all persons covered under the ~~policy~~ health plan.

~~c.~~ (3) The ~~policy~~ health plan is no longer available to the family (e.g., the employer drops insurance coverage or the policy is terminated by the insurance company).

b. The department shall provide a timely and adequate notice as defined in 441—subrule 7.7(1) to inform the household ~~informing them~~ of a decision to discontinue payment of the health insurance premium because:

(1) ~~the~~ The department has determined the ~~policy~~ health plan is no longer cost-effective, ~~or because the~~

(2) ~~recipient~~ The member has failed to cooperate in providing information necessary to establish continued eligibility for the program.

75.21(14) No change.

75.21(15) Reinstatement of eligibility.

a. When eligibility for the HIPPP program is canceled because the persons covered under the ~~policy~~ health plan lose Medicaid eligibility, HIPPP eligibility shall be reinstated when Medicaid eligibility is reestablished if all other eligibility factors are met.

b. When HIPPP eligibility is canceled because of the ~~recipient's~~ member's failure to cooperate in providing information necessary to establish continued eligibility for the HIPPP program, benefits shall be reinstated the first day of the first month in which cooperation occurs, if all other eligibility factors are met.

75.21(16) Amount of premium paid.

a. For group plans, the individual eligible to enroll in the plan shall provide verification of the cost of all possible health plan options (i.e., single, employee/children, family).

(1) The HIPPP program shall pay only for the option that provides coverage to the Medicaid-eligible family members in the household and is determined to be cost-effective.

(2) The HIPPP program shall not pay the portion of the premium cost which is the responsibility of the employer or other plan sponsor.

b. For individual plans, the HIPPP program shall pay the cost of covering the Medicaid members covered by the plan.

c. For both group and individual plans, if another household member must be covered to obtain coverage for the Medicaid members, the HIPPP program shall pay the cost of covering that household member if the coverage is cost-effective as determined pursuant to subrules 75.21(3) and 75.21(4).

75.21(17) Reporting changes. Failure to report and verify changes may result in cancellation of Medicaid benefits.

a. The client shall verify changes in an employer-sponsored health plan by providing a pay stub reflecting the change or a statement from the employer.

b. Changes in employment or the employment-related insurance carrier shall be verified by the employer.

c. The client shall verify changes in individual policies, such as premiums or deductibles, with a statement from the insurance carrier.

d. Any benefits paid during a period in which there was ineligibility for HIPPP due to unreported changes shall be subject to recovery in accordance with the provisions of 441—Chapter 11.

e. Any underpayment that results from an unreported change shall be paid effective the first day of the month in which the change is reported.

This rule is intended to implement Iowa Code section 249A.3.

ITEM 2. Rescind the definition of “Group health insurance” in rule 441—75.25(249A).

ARC 7732B**HUMAN SERVICES DEPARTMENT[441]****Amended 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 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," Chapter 83, "Medicaid Waiver Services," and Chapter 90, "Case Management for People With Mental Retardation, Chronic Mental Illness, or Developmental Disabilities," Iowa Administrative Code.

This filing amends the Notice of Intended Action published in the Iowa Administrative Bulletin on March 11, 2009, as **ARC 7631B**, by substituting a new Item 27. In the original publication, Item 27 inadvertently duplicated rules 441—90.6(249A) and 441—90.7(249A) on terminating case management services and appealing adverse decisions instead of proposing new rule 441—90.8(249A) on provider standards for targeted case management. That proposed new rule, including standards for incident reporting, emergency coverage, and quality assurance activities, was published on the Department's policy Web site.

In addition, in Item 10, the phrase "Effective July 1, 2009," has been added to subparagraph 79.1(24)"a"(1) to clarify that the new billing unit and cost methodology are intended to take effect for state fiscal year 2010. Also, a correction was made to Item 24, paragraph 90.5(1)"b," to clarify the basis for development of the comprehensive service plan. The first sentence of the paragraph now reads as follows: "The case manager shall develop and periodically revise a comprehensive service plan based on the comprehensive assessment, which shall include a crisis intervention plan based on the risk factors identified in the risk assessment portion of the comprehensive assessment."

The proposed amendments make the following changes related to the provision of case management services under the Medicaid program:

- Redefine the scope of case management services to closely match the language of federal regulations published at 72 Federal Register 68,077 (December 4, 2007) that, following a moratorium, became effective on April 1, 2009. These amendments will ensure that case management services funded by Iowa Medicaid are consistent with the federal regulations.
- Clarify the role of the case manager in ensuring the health, safety, and welfare of members, including requirements for monitoring in response to incident reports.
- Remove the requirement for preauthorization for members not covered under the Iowa Plan managed behavioral care contract and add quality assurance oversight.
- Lengthen from 30 days to 60 days the period that case management may be provided to Medicaid members before they transition from an institution to a community setting.
- Change the basis of reimbursement for case management from a monthly unit to a 15-minute unit as required by federal regulations.
- Delete the scope of service for case management for the home- and community-based (HCBS) habilitation services and elderly and brain injury waiver programs and instead refer to the case management scope of service in 441—Chapter 90. Case management services provided through the HCBS habilitation services program and the HCBS brain injury waiver and elderly waiver programs will be required to meet the same service requirements as case management provided under 441—Chapter 90.

Specific waivers are not provided because the changes are required by federal regulations, which do not allow for exceptions, or should apply to all targeted case management services. Requests

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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 May 12, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, 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.

The Department will also hold a public hearing for the purpose of receiving comments on these proposed amendments on Wednesday, May 13, 2009, from 10 to 11 a.m. at Iowa Medicaid Enterprise Room 128, 100 Army Post Road, Des Moines, Iowa. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Bureau of Policy Analysis and Appeals at (515) 281-8440 in advance of the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement Iowa Code sections 249A.4, 249A.26, and 249A.27.

The following amendments are proposed.

ITEM 1. Amend paragraphs **78.27(2)“d”** and **“e”** as follows:

d. Needs assessment. The member's case manager has completed an assessment of the member's need for service, and, based on that assessment, the Iowa Medicaid enterprise medical services unit has determined that the member is in need of home- and community-based habilitation services. A member who is not eligible for Medicaid case management services under 441—Chapter 90 shall receive case management as a home- and community-based habilitation service. The designated case manager shall:

(1) Complete a needs-based evaluation that meets the standards for assessment established in 441—subrule ~~24.4(2)~~ 90.5(1) before services begin and annually thereafter.

(2) Use the evaluation results to develop a comprehensive service plan as specified in subrule 78.27(4).

e. Plan for service. The department has approved the member's plan for home- and community-based habilitation services. A service plan that has been validated through ISIS shall be considered approved by the department. Home- and community-based habilitation services provided before department approval of a member's eligibility for the program cannot be reimbursed.

(1) The member's comprehensive service plan shall be completed annually according to the requirements of subrule 78.27(4). A service plan may change at any time due to a significant change in the member's needs.

~~(2) The member shall receive at least one billable unit of service other than case management per calendar quarter.~~

~~(3) (2)~~ The member's habilitation services shall not exceed the maximum number of units established for each service in 441—subrule 79.1(2).

~~(4) (3)~~ The cost of the habilitation services shall not exceed unit expense maximums established in 441—subrule 79.1(2).

ITEM 2. Amend paragraph **78.27(5)“e”** as follows:

e. Service costs are not reimbursable while the member is in a medical institution, including but not limited to a hospital or nursing facility, except case management provided when the member is transitioning from the institution to a community setting as provided in 441—Chapter 90.

ITEM 3. Amend subrule 78.27(6) as follows:

78.27(6) Case management. Case management assists members who reside in a community setting or are transitioning to a community setting in gaining access to needed home and community-based habilitation services, as well as medical, social, educational, housing, transportation, vocational, and other appropriate services, regardless of the funding source for the services in order to ensure the health, safety, and welfare of the member.

a. Scope. Case management services shall be provided as set forth in ~~rule rules~~ rules 441—90.5(249A) and 90.8(249A). ~~The case manager shall be responsible for the following activities:~~

~~(1) Explaining the member's right to freedom of choice.~~

~~(2) Ensuring that all unmet needs of the member are identified in the service plan.~~

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- ~~(3) — Retaining the comprehensive service plan, as specified in rule 441—79.3(249A).~~
- ~~(4) — Explaining to the member what abuse is, and how to report abuse.~~
- ~~(5) — Explaining to the member how to make a complaint about the member's services or providers.~~
- ~~(6) — Monitoring the service plan, with review occurring regularly.~~
- ~~(7) — Meeting with the member face to face at least quarterly.~~
- ~~(8) — Assessing and revising the service plan at least annually to determine achievement, continued need, or changes in goals or intervention methods. The review shall include the member using the service and shall involve the interdisciplinary team.~~
- ~~(9) — Notifying the member of any changes in the service plan by sending the member a notice of decision. When the change is an adverse action such as a reduction in services, the notice shall be sent ten days before the change and shall include appeal rights.~~

b. Exclusion. Payment shall not be made for case management provided to a member who is eligible for case management services under 441—Chapter 90.

ITEM 4. Amend subrule 78.37(17) as follows:

78.37(17) Case management services. Case management services are services that assist ~~a consumer~~ Medicaid members who reside in a community setting or are transitioning to a community setting in gaining access to needed medical, social, educational, housing, transportation, vocational, and other appropriate services needed for the consumer to remain in the consumer's home in order to ensure the health, safety, and welfare of the member. Case management is provided at the direction of the ~~consumer member~~ and the interdisciplinary team established pursuant to 441—subrule 83.22(2).

a. Case management services shall ~~include:~~ be provided as set forth in rules 441—90.5(249A) and 90.8(249A).

~~(1) — A comprehensive assessment of the consumer's needs, which must be made within 30 days of referral to case management.~~

~~(2) — Development and implementation of a service plan to meet those needs.~~

~~(3) — Coordination, authorization, and monitoring of all services.~~

~~(4) — A face to face meeting by the case manager with the consumer at least quarterly.~~

~~(5) — Monitoring of the consumer's health, safety, and welfare.~~

~~(6) — Evaluation of outcomes.~~

~~(7) — Periodic reassessment and revision of the service plan as needed but at least annually.~~

~~(8) — Assurance that consumers have a choice of providers.~~

b. Case management shall not include the provision of direct services by the case managers.

c. Payment for case management shall not be made until the consumer is enrolled in the waiver. Payment shall be made only for case management activity services performed on behalf of the consumer during a month when the consumer is enrolled.

~~*d.* — A unit of service is one month.~~

ITEM 5. Amend subrule 78.43(1) as follows:

78.43(1) Case management services. Individual case management services means ~~activities provided, using an interdisciplinary process, to persons with a brain injury to ensure that the consumer has received a comprehensive evaluation and diagnosis, to give assistance to the consumer in obtaining appropriate services and living arrangements, that assist members who reside in a community setting or are transitioning to a community setting in gaining access to~~ coordinate the delivery of needed medical, social, educational, housing, transportation, vocational, and other appropriate services, and to provide monitoring in order to ensure the continued appropriate provision of services and the appropriateness of the selected living arrangement health, safety, and welfare of the member.

a. Case management services shall be provided as set forth in rules 441—90.5(249A) and 90.8(249A).

b. ~~The service is to~~ shall be delivered in such a way as to enhance the capabilities of consumers and their families to exercise their rights and responsibilities as citizens in the community. The goal is to enhance the ability of the consumer to exercise choice, make decisions, take risks ~~which~~ that are a typical part of life, and fully participate as members of the community.

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~~c.~~ ~~It is essential that the~~ The case manager must develop a relationship with the consumer so that the abilities, needs and desires of the consumer can be clearly identified and communicated and the case manager can help to ensure that the system and specific services are responsive to the needs of the individual consumers.

~~d.~~ Those Members who are at the ICF/MR level of care ~~where the~~ whose county has voluntarily chosen to participate in the HCBS brain injury waiver are eligible for targeted case management and, therefore, are not eligible for case management as a waiver service.

Case management services shall consist of the following components:

~~a.~~ — Intake, which includes ensuring that there is sufficient information to identify all areas of need for services and appropriate living arrangements.

~~b.~~ — Assurance that a service plan is developed which addresses the consumer's total needs for services and living arrangements.

~~c.~~ — Assistance to the consumer in obtaining the services and living arrangements identified in the service plan.

~~d.~~ — Coordination and facilitation of decision making among providers to ensure consistency in the implementation of the service plan.

~~e.~~ — Monitoring of the services and living arrangements to ensure their continued appropriateness for the consumer.

~~f.~~ — Crisis assistance to facilitate referral to the appropriate providers to resolve the crisis. The intent and purpose of the individual case services are to facilitate the consumer's access to the service system and to enable consumers and their families to make decisions on their own behalf by providing:

(1) — Information necessary for decision making.

(2) — Assistance with decision making and participation in the decision making process affecting the consumer.

(3) — Assistance in problem solving.

(4) — Assistance in exercising the consumer's rights.

ITEM 6. Amend paragraph 79.1(1)"d" as follows:

~~d.~~ ~~Monthly fee~~ Fee for service with cost settlement. ~~Providers~~ Effective July 1, 2009, providers of MR/CMI/DD case management services ~~are~~ shall be reimbursed on the basis of a payment rate for a ~~month's provision~~ 15-minute unit of service for each client enrolled in an MR/CMI/DD case management program for any portion of the month 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) Providers are reimbursed throughout each fiscal year on the basis of a projected ~~monthly unit~~ rate for each participating provider. The projected rate is based on reasonable and proper costs of operation, pursuant to federally accepted reimbursement principles (generally Medicare or OMB A-87 principles) ~~with.~~

(2) Payments are subject to annual retrospective cost settlement based on submission of actual costs of operation and service utilization data by the provider on ~~financial and statistical reports~~ Form 470-0664, Financial and Statistical Report. The cost settlement represents the difference between the amount received by the provider during the year for covered services and the amount supported by the actual costs of doing business, determined in accordance with an accepted method of cost appointment.

(3) The methodology for determining the reasonable and proper cost for service provision assumes the following:

(1) 1. The indirect administrative costs shall be limited to 20 percent of other costs.

(2) 2. Mileage shall be reimbursed at a rate no greater than the state employee rate.

(3) 3. The rates a provider may charge are subject to limits established at 79.1(2).

(4) 4. Costs of operation shall include only those costs ~~which~~ that pertain to the provision of services which are authorized under rule 441—90.3(249A).

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ITEM 7. Amend subrule **79.1(2)**, provider category “HCBS waiver service providers,” numbered item **“17,”** as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
17. Case management	Fee schedule <u>with cost settlement. See 79.1(1)“d.”</u>	For brain injury waiver: \$598.68 per month Retrospective cost-settled rate. For elderly waiver: \$70 per month.

ITEM 8. Amend subrule **79.1(2)**, provider category “Home- and community-based habilitation services,” numbered item **“1,”** as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
1. Case management	Fee schedule based on MR/CMI/DD case management rates as set under with cost settlement. See 79.1(1)“d.”	\$598.68 per month. Retrospective cost-settled rate.

ITEM 9. Amend subrule **79.1(2)**, provider category “MR/CMI/DD case management providers,” as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
MR/CMI/DD Targeted case management providers	Monthly fee Fee for service with cost settlement. See 79.1(1)“d.”	Retrospective cost-settled rate.

ITEM 10. Amend subparagraph **79.1(24)“a”(1)** as follows:

- (1) ~~As~~ Effective July 1, 2009, a unit of case management is ~~one month~~ 15 minutes.

ITEM 11. Amend subparagraph **79.3(2)“d”(33)** as follows:

(33) Case management services, including HCBS case management services:

- Form 470-3956, MR/CMI/DD Case Management Service Authorization Request, for services authorized before May 1, 2007.
- Notice of decision for service authorization.
- Service notes or narratives.
- Social history.
- ~~Individual treatment~~ Comprehensive service plan.
- Reassessment of member needs.
- Incident reports in accordance with 441—subrule 24.4(5).

ITEM 12. Amend paragraph **83.22(2)“a”** as follows:

a. *Case management.* ~~As a condition of eligibility, all consumers~~ Consumers under the elderly waiver shall receive case management services from a provider qualified pursuant to 441—subrule 77.33(21). Case management services shall be provided as set forth in rules 441—90.5(249A) and 90.8(249A). ~~The case manager shall be responsible for doing the following:~~

- ~~Making a comprehensive assessment of the consumer’s needs within 30 days of referral to case management.~~
- ~~Initiating development and review of the service plan as required by this subrule.~~
- ~~Ensuring that the consumer exhausts all services available under the state Medicaid plan before accessing the waiver.~~
- ~~Ensuring that all unmet needs of the consumer are identified in the service plan.~~
- ~~Explaining the following to the consumer:~~
 - ~~What abuse is and how to report abuse.~~
 - ~~How to file a complaint about the consumer’s services or providers.~~

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- ~~3. —The consumer's right to freedom of choice.~~
~~(6) —Verifying that providers of consumer directed attendant care are adequately skilled to meet the needs of the consumer.~~

ITEM 13. Amend **441—Chapter 90**, title, as follows:

**TARGETED CASE MANAGEMENT FOR PEOPLE WITH MENTAL RETARDATION,
CHRONIC MENTAL ILLNESS, OR DEVELOPMENTAL DISABILITIES**

ITEM 14. Amend **441—Chapter 90**, preamble, as follows:

PREAMBLE

These rules define and structure medical assistance targeted case management services provided in accordance with Iowa Code section 225C.20 for ~~consumers~~ Medicaid members with mental retardation (~~MR~~), chronic mental illness (~~CMI~~), or a developmental disability (~~DD~~) and ~~consumers~~ members eligible for the home- and community-based services (HCBS) children's mental health waiver. Provider accreditation standards are set forth in 441—Chapter 24.

Case management is a method to manage multiple resources effectively for the benefit of Medicaid ~~consumers~~ members. The service is designed to ~~help consumers gain~~ ensure the health, safety, and welfare of members by assisting them in gaining access to appropriate and necessary medical services and interrelated social ~~and~~ educational, housing, transportation, vocational, and other services. ~~Case management ensures that necessary evaluations are conducted; individual service and treatment plans are developed, implemented, and monitored; and reassessment of consumer needs and services occurs on an ongoing and regular basis.~~

ITEM 15. Rescind the definition "MR/CMI/DD case management" in rule **441—90.1(249A)**.

ITEM 16. Amend rule **441—90.1(249A)**, definitions of "Adult" and "Targeted population," as follows:

"*Adult*" means a person 18 years of age or older on the first day of the month in which service begins.

"*Targeted population*" means people who meet one of the following criteria:

1. An adult who is identified with a primary diagnosis of mental retardation, chronic mental illness or developmental disability; or
2. A child who is eligible to receive HCBS mental retardation waiver or HCBS children's mental health waiver services according to 441—Chapter 83; ~~or~~
3. ~~—A child who has a primary diagnosis of mental retardation or developmental disability, resides in a child welfare decategorization county, and is likely to become eligible to receive HCBS mental retardation waiver services.~~

ITEM 17. Adopt the following new definitions in rule **441—90.1(249A)**:

"*Major incident*" means an occurrence involving a member using the service that:

1. Results in a physical injury to or by the member that requires a physician's treatment or admission to a hospital; or
2. Results in a member's death or the death of another person; or
3. Requires emergency mental health treatment for the member; or
4. Requires the intervention of law enforcement; or
5. Requires a report of child abuse pursuant to Iowa Code section 232.69 or a report of dependent adult abuse pursuant to Iowa Code section 235B.3; or
6. Constitutes a prescription medication error or a pattern of medication errors that leads to the outcome in paragraph "1," "2," or "3."
7. Results when a member's location is unknown by provider staff who are assigned responsibility for oversight.

"*Member*" means a person who has been determined to be eligible for Medicaid under 441—Chapter

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“Rights restriction” means limitations not imposed on the general public in the areas of communication, mobility, finances, medical or mental health treatment, intimacy, privacy, type of work, religion, place of residence, and people with whom a person may share a residence.

“Targeted case management” means services furnished to assist members who are part of a targeted population who reside in a community setting or are transitioning to a community setting in gaining access to needed medical, social, educational, housing, transportation, vocational, and other services in order to ensure the health, safety, and welfare of the member. Case management is provided to a member on a one-to-one basis by one case manager.

ITEM 18. Amend rule 441—90.2(249A) as follows:

441—90.2(249A) Eligibility. A person who meets all of the following criteria shall be eligible for ~~MR/CMI/DD~~ targeted case management:

90.2(1) The person is eligible for Medicaid or is conditionally eligible under 441—subrule 75.1(35).

90.2(2) The person is a member of the targeted population.

90.2(3) The person ~~does not reside~~ resides in a ~~medical institution~~ community setting or is ~~within 30 days of discharge~~ transitioning to a community setting from a ~~medical institution~~ Medicaid-covered short-term or long-term institutional stay.

a. In the case of a short-term institutional stay of less than 180 consecutive days, a person may be considered to be transitioning to a community setting during the last 14 days before discharge.

b. In the case of a long-term institutional stay of 180 or more consecutive days, a person may be considered to be transitioning to a community setting during the last 60 days before discharge.

c. Eligibility for persons transitioning to a community setting is contingent upon a successful transition.

90.2(4) The person has applied for ~~MR/CMI/DD~~ targeted case management in accordance with the policies of the provider.

90.2(5) ~~The person has been authorized~~ person’s need for ~~MR/CMI/DD~~ targeted case management has been determined in accordance with rule 441—90.3(249A).

ITEM 19. Amend rule 441—90.3(249A), catchwords, as follows:

441—90.3(249A) ~~Authorization and~~ Determination of need for service.

ITEM 20. Rescind and reserve subrule **90.3(1)**.

ITEM 21. Amend subrules 90.3(2) and 90.3(3) as follows:

90.3(2) Need for service. Assessment of the need for targeted case management is required at least annually as a condition of payment under the medical assistance program. The ~~department case management provider~~ shall determine the initial and ongoing need for service based on ~~evidence presented by the MR/CMI/DD case management provider, including~~ diagnostic reports, documentation of provision of services, and information supplied by the ~~consumer member~~ and other appropriate sources. The evidence shall be documented in the member’s file and shall demonstrate that all of the following criteria are met:

a. The ~~consumer member~~ has a need for ~~MR/CMI/DD~~ targeted case management to manage ~~multiple resources pertaining to~~ needed medical, and interrelated social, and educational, housing, transportation, vocational, and other services for the benefit of the ~~consumer member~~.

b. The ~~consumer member~~ has functional limitations and lacks the ability to independently access and sustain involvement in necessary services.

c. The ~~consumer member~~ is not receiving other paid benefits under the medical assistance program or under a Medicaid managed health care plan that serve the same purpose as ~~MR/CMI/DD~~ targeted case management.

90.3(3) Managed health care. For ~~consumers members~~ receiving ~~MR/CMI/DD~~ targeted case management under a ~~Medicaid managed health care~~ the Iowa plan for behavioral health as described in 441—Chapter 88, Division IV, the department delegates authorization and determination of need for service to the ~~managed health care~~ Iowa plan contractor.

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. The ~~managed health care~~ Iowa plan contractor shall ~~authorize~~ determine the need for targeted case management services according to the criteria ~~and procedures set forth in this chapter~~ subrule 90.3(2).

b. The Iowa plan contractor is not required to pay for targeted case management services that it has not authorized or that are provided during a month of Medicaid ineligibility.

ITEM 22. Rescind and reserve subrule **90.3(4)**.

ITEM 23. Amend rule 441—90.4(249A) as follows:

441—90.4(249A) Application. The provider shall process an application for ~~MR/CMI/DD~~ targeted case management no later than 30 days after receipt of the application. The provider shall refer the applicant to the department's service unit if other services are needed or requested.

90.4(1) Application ~~record~~ process and documentation. The application shall include the ~~consumer's~~ member's name, the nature of the request for services, and a summary of any evaluation activities completed. The provider shall inform the applicant in writing of the applicant's right to choose the provider of case management services and, at the applicant's request, shall provide a list of other case management agencies from which the applicant may choose. The provider shall maintain this documentation for at least five years.

90.4(2) No change.

90.4(3) Delayed services. The application shall be approved and the ~~consumer~~ member put on the referral list for assignment to a case manager when ~~MR/CMI/DD~~ targeted case management cannot begin immediately because there is no opening on a caseload. The provider shall notify the applicant or the applicant's legally authorized representative in writing of approval and placement on the referral list. If an applicant is on a referral list for more than 90 days from the date of application, this shall be considered a denial of service.

90.4(4) Denying applications. The provider shall deny applications for service when:

a. to d. No change.

e. The applicant is receiving ~~MR/CMI/DD~~ targeted case management from another Medicaid provider; or

f. The applicant does not have a need for ~~MR/CMI/DD~~ targeted case management.

ITEM 24. Rescind rule 441—90.5(249A) and adopt the following **new** rule in lieu thereof:

441—90.5(249A) Service provision.

90.5(1) Covered services. The following shall be included in the assistance that case managers provide to members in obtaining services:

a. *Assessment.* The case manager shall perform a comprehensive assessment and periodic reassessment of the member's individual needs using Form 470-4694, Targeted Case Management Comprehensive Assessment, to determine the need for any medical, social, educational, housing, transportation, vocational or other services. The comprehensive assessment shall address all of the member's areas of need, strengths, preferences, and risk factors, considering the member's physical and social environment. A face-to-face reassessment must be conducted at a minimum annually and more frequently if changes occur in the member's condition. The assessment and reassessment activities include the following:

(1) Taking the member's history, including current and past information and social history in accordance with 441—subrule 24.4(2), and updating it annually.

(2) Identifying the needs of the member and completing related documentation.

(3) Gathering information from other sources, such as family members, medical providers, social workers, legally authorized representatives, and others as necessary to form a complete assessment of the member.

b. *Service plan.* The case manager shall develop and periodically revise a comprehensive service plan based on the comprehensive assessment, which shall include a crisis intervention plan based on the risk factors identified in the risk assessment portion of the comprehensive assessment. The case manager

HUMAN SERVICES DEPARTMENT[441](cont'd)

shall ensure the active participation of the member and work with the member or the member's legally authorized representative and other sources to choose providers and develop the goals. This plan shall:

- (1) Document the parties participating in the development of the plan.
- (2) Specify the goals and actions to address the medical, social, educational, housing, transportation, vocational or other services needed by the member.
- (3) Identify a course of action to respond to the member's assessed needs, including identification of all providers, services to be provided, and time frames for services.
- (4) Document services identified to meet the needs of the member which the member declined to receive.
- (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.
 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.
- (6) Include a discharge plan.
- (7) Be revised at least annually, and more frequently if significant changes occur in the member's medical, social, educational, housing, transportation, vocational or other service needs or risk factors.

c. Referral and related activities. The case manager shall perform activities to help the member obtain needed services, such as scheduling appointments for the member, and activities that help link the member with medical, social, educational, housing, transportation, vocational or other service providers or other programs and services that are capable of providing needed services to address identified needs and risk factors and to achieve goals specified in the service plan.

d. Monitoring and follow-up. The case manager shall perform activities and make contacts that are necessary to ensure the health, safety, and welfare of the member and to ensure that the service plan is effectively implemented and adequately addresses the needs of the member. At a minimum, monitoring shall include assessing the member, the places of service (including the member's home when applicable), and all services. Monitoring may also include review of service provider documentation. Monitoring shall be conducted to determine whether:

- (1) Services are being furnished in accordance with the member's service plan, including the amount of service provided and the member's attendance and participation in the service.
- (2) The member has declined services in the service plan.
- (3) Communication is occurring among all providers to ensure coordination of services.
- (4) Services in the service plan are adequate, including the member's progress toward achieving the goals and actions determined in the service plan.
- (5) There are changes in the needs or status of the member. Follow-up activities shall include making necessary adjustments in the service plan and service arrangements with providers.

e. Contacts. Case management contacts shall occur as frequently as necessary and shall be conducted and documented as follows:

- (1) The case manager shall have at least one face-to-face contact with the member every three months.
- (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. A copy of any written communication must be maintained in the case file.
- (3) The case manager shall have contacts with non-eligible persons that are directly related to identifying the member's needs and care as necessary for the purpose of helping the member access services, identifying needs and supports to assist the member in obtaining services, providing case managers with useful feedback, and alerting case managers to changes in the member's needs.
- (4) When applicable, documentation of case management contacts shall include:

HUMAN SERVICES DEPARTMENT[441](cont'd)

1. The name of the service provider.
2. The need for and occurrences of coordination with other case managers within the same agency or of referral or transition to another case management agency.

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.
- b. The activities constitute the direct delivery of underlying medical, social, educational, housing, transportation, vocational or other services to which a member has been referred. Such services include, but are not limited to:

- (1) Services under parole and probation programs.
- (2) Public guardianship programs.
- (3) Special education programs.
- (4) Child welfare and child protective services.
- (5) Foster care programs.

- c. The activities are integral to the administration of foster care programs, including but not limited to the following:

- (1) Research gathering and completion of documentation required by the foster care program.
- (2) Assessing adoption placements.
- (3) Recruiting or interviewing potential foster care parents.
- (4) Serving legal papers.
- (5) Home investigations.
- (6) Providing transportation.
- (7) Administering foster care subsidies.
- (8) Making placement arrangements.

- d. The activities for which a member may be eligible are integral to the administration of another nonmedical program, such as a guardianship, child welfare or child protective services, parole, probation, or special education program, except for case management that is included in an individualized education program or individualized family service plan consistent with Section 1903(c) of the Social Security Act.

- e. The activities duplicate institutional discharge planning.

90.5(3) Transition to a community setting. Case management services may be provided to members transitioning to a community setting during the 60 days before discharge from a medical institution when the following requirements are met:

- a. Case management services shall be coordinated with institutional discharge planning, but shall not duplicate institutional discharge planning.

- b. The amount, duration, and scope of case management services shall be documented in the member's plan of care, which must include case management services before and after discharge, to facilitate a successful transition to community living.

- c. Payment shall be made only for services provided by community case management providers.

- d. Claims for reimbursement for case management shall not be submitted until the member's discharge from the medical institution and enrollment in community services.

90.5(4) Rights restrictions. Member rights may be restricted only with the consent of the member or the member's legally authorized representative and only if the service plan includes:

- a. Documentation of why there is a need for the restriction;
- b. A plan to restore those rights or a reason why restoration is not necessary or appropriate; and
- c. Documentation that periodic evaluations of the restriction are conducted to determine continued need.

90.5(5) Documentation. Service documentation shall also meet the requirements set forth in rule 441—79.3(249A) and 441—subrule 24.4(4).

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 25. Strike “MR/CMI/DD” wherever it appears in rules **441—90.6(249A)** and **441—90.7(249A)** and insert “targeted” in lieu thereof.

ITEM 26. Strike “consumer” wherever it appears in rules **441—90.6(249A)** and **441—90.7(249A)** and insert “member” in lieu thereof.

ITEM 27. Adopt the following **new** rule 441—90.8(249A):

441—90.8(249A) Provider requirements.

90.8(1) Incident reporting.

a. When a major incident occurs during the provision of targeted case management services, the case management provider shall:

- (1) Notify the member’s legally authorized representative within 24 hours of the incident.
- (2) Record the incident on an incident report form. The form shall be completed and signed by the case manager who was directly involved at the time of the incident or who first became aware of the incident. The report shall include the following information:

1. The name of the member involved.
2. The date and time the incident occurred.
3. A description of the incident, including designation of the incident as a major or minor incident.
4. The names of all staff and others who were present at the time of the incident or responded after becoming aware of the incident. The confidentiality of other members who were involved in the incident must be maintained by the use of initials or other means.

5. The action that the case manager took to manage the incident.

6. The resolution of or follow-up to the incident.

- (3) Distribute the completed incident report form as follows:

1. Forward the report to the case management supervisor within 24 hours of the incident.
2. Send a copy of the report to the department’s bureau of long-term care within 24 hours of the incident.

3. File a copy of the report in a centralized location and make a notation in the member’s file.

- (4) Monitor the situation as required in paragraph 90.5(1)“d” to ensure the member’s needs continue to be met.

b. When an incident report for a major incident is received from any provider, monitor the situation as required in paragraph 90.5(1)“d” to ensure the member’s needs continue to be met.

c. When any major incident occurs, the case manager shall reevaluate the risk factors identified in the risk assessment portion of the comprehensive assessment as required in paragraph 90.5(1)“a” in order to ensure the continued health, safety, and welfare of the member.

90.8(2) Emergency coverage. A provider of case management shall have an on-call system to ensure that, in the event of an emergency, members have access to a case manager 24 hours per day, including weekends and holidays.

90.8(3) Quality assurance. Providers shall cooperate with quality assurance activities conducted by the Iowa Medicaid enterprise to ensure the health, safety, and welfare of Medicaid members. These activities may include, but are not limited to:

- a. Post-payment reviews of case management services;

- b. Review of incident reports;

- c. Review of reports of abuse or neglect; and

- d. Technical assistance in determining the need for service.

ARC 7714B

NURSING BOARD[655]

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 and 147.76, the Board of Nursing hereby gives Notice of Intended Action to amend Chapter 7, "Advanced Registered Nurse Practitioners," Iowa Administrative Code.

These proposed amendments allow the advanced registered nurse practitioner (ARNP) to be permitted to provide direct supervision in the use of fluoroscopic X-ray equipment. The amendments define the provisions necessary for the ARNP to supervise fluoroscopy.

Any interested person may make written comments or suggestions on or before June 3, 2009. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. Persons who wish to convey their views orally should contact the Executive Director at (515)281-3256, or in the Board office at 400 S.W. 8th Street by appointment.

There will be a public hearing on June 3, 2009, at 6 p.m. in the Des Moines West Room, Holiday Inn, 1050 6th Avenue, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapter 152.

The following amendments are proposed.

ITEM 1. Renumber subrules **7.2(2)** to **7.2(11)** as **7.2(3)** to **7.2(12)**.

ITEM 2. Adopt the following new subrule 7.2(2):

7.2(2) *Supervision of fluoroscopy.* An advanced registered nurse practitioner (ARNP) shall be permitted to provide direct supervision in the use of fluoroscopic X-ray equipment, pursuant to 641—subrule 42.1(2), definition of "supervision."

a. The ARNP shall provide direct supervision of fluoroscopy pursuant to the following provisions:

(1) Completion of an educational course including content in radiation physics, radiobiology, radiological safety and radiation management applicable to the use of fluoroscopy and maintenance of documentation verifying successful completion.

(2) Collaboration, as needed, as defined in 7.1(152).

(3) Compliance with facility policies and procedures.

b. The ARNP shall complete an annual radiological safety course whose content includes, but is not limited to, time, dose, distance, shielding and the effects of radiation.

c. The ARNP shall maintain documentation of the initial educational course and all annual radiological safety updates.

d. The initial and annual education requirements are subject to audit by the board pursuant to 655—subrule 5.2(5).

PUBLIC SAFETY DEPARTMENT

Public Notice

Pursuant to the authority of Iowa Code sections 321J.11 and 321J.15, and in accordance with 661 Iowa Administrative Code 157.2(321J), the following devices are approved for use in the State of Iowa in conducting evidentiary tests of breath samples for the purpose of establishing whether a person is intoxicated:

Device	Company	Company Location
Datamaster DMT (with or without option G)	National Patent Analytical Systems, Inc	Mansfield, Ohio
Datamaster cdm	National Patent Analytical Systems, Inc	Mansfield, Ohio

The listed devices are approved for use in Iowa effective April 1, 2009.

This list represents devices that have been approved by the Commissioner of Public Safety as of the effective date of this notice. This list is published for the convenience of the public. The Commissioner may approve other devices in the future. This list will be updated periodically to show any additional devices that have been approved. You may contact the Iowa Division of Criminal Investigation Criminalistics Laboratory to inquire whether the Commissioner has approved any additional devices.

Any manufacturer of an evidentiary breath testing device may apply to have the device approved for use in the State of Iowa. Contact the Iowa Division of Criminal Investigation Criminalistics Laboratory at the following address for instructions:

Iowa Department of Public Safety
DCI Criminalistics Laboratory
2240 South Ankeny Blvd
Ankeny, IA 50023

ARC 7713B

REGENTS BOARD[681]

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 262.9(3), the Board of Regents hereby gives Notice of Intended Action to amend Chapter 4, "Traffic and Parking at Universities," Iowa Administrative Code.

The proposed amendment revises subrule 4.31(2) to increase the monetary sanctions for five parking offenses at Iowa State University.

Any interested person may make written comments on this amendment on or before May 12, 2009, addressed to Andrea Anania, Board of Regents, State of Iowa, 11260 Aurora Avenue, Urbandale, Iowa 50322-7905; fax (515)281-6420; or E-mail at anania@iastate.edu.

A waiver provision is not included. The Board has adopted a uniform waiver rule, which may be found at 681 IAC 19.18(17A).

This amendment is intended to implement Iowa Code section 262.9(3).

The following amendment is proposed.

Amend subrule 4.31(2) as follows:

4.31(2) Sanction. Reasonable monetary sanctions may be imposed for violation of these rules. The amount of the sanction approved by the board of regents, state of Iowa, is as follows:

REGENTS BOARD[681](cont'd)

Offenses	Sanctions for Each Offense
Altering, forging or counterfeiting any parking permit (4.30(5))	\$80 <u>\$150</u>
Unauthorized possession and use of a parking permit (4.30(5))	\$80 <u>\$150</u>
Failure to comply with signs regulating campus traffic flow (4.27(262))	\$30
Driving on campus walks or lawns (4.27(6), 4.27(8))	\$30
Driving on closed streets (4.27(3))	\$30
Driving on bike paths (4.27(7))	\$30
Access to restricted areas by means other than established gate openings (4.29(5))	\$30
Moving or driving around a barricade (4.29(5))	\$30
Improper use of gate card (4.29(262))	\$20
Illegal parking (4.29(7))	\$15 <u>\$30</u>
Improper parking (4.29(7))	\$15
Overtime parking at meters (4.29(2))	\$7.50 <u>\$10</u>
Parking without an appropriate permit in a reserved lot or space (4.29(262))	\$25
Improper affixing or failure to display a permit (4.28(262))	\$5
Failure to purchase a parking receipt (4.29(2))	\$7.50 <u>\$10</u>
Improper parking in a space or stall designated for persons with disabilities (4.29(262), 4.30(4))	\$100
Failure to display a current bicycle registration (4.28(4))	\$5
Bicycle improperly parked (4.29(9))	\$7.50
Improper use of roller skates, roller blades or skateboard (4.27(9))	\$25
All other violations	\$15

Violations that continue for more than one hour may receive additional sanctions.

Sanctions may be assessed against the owner or operator of the vehicle involved in each violation or against any person in whose name the vehicle is registered or parking privileges have been granted and may be charged to the violator's university account. Sanctions may be added to student tuition bills or may be deducted from student deposits or from the salaries or wages of employees or from other funds in the possession of the university.

ARC 7725B

REVENUE DEPARTMENT[701]

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 chapter 17A, sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to adopt new Chapter 226, "Agricultural Rules," Iowa Administrative Code.

The proposed new chapter is intended to implement Iowa Code chapter 423, otherwise known as the Streamlined Sales and Use Tax Act. The newly drafted rules are intended to accomplish three things: (1) to explain the changes to Iowa sales and use tax law made by the Streamlined Sales and Use Tax Act; (2) to preserve the existing interpretation of portions of Iowa sales and use tax law which the Streamlined Sales and Use Tax Act does not change; and (3) to remove from the new rules as many references as

REVENUE DEPARTMENT[701](cont'd)

possible to sales and use tax law as it existed prior to July 1, 2004, the effective date of the Streamlined Sales and Use Tax Act.

In addition, proposed rule 701—226.1(423) incorporates changes to Iowa sales and use tax law as a result of 2008 Iowa Acts, Senate File 2400, sections 55 and 56, which pertain to the sales and use tax exemption for replacement parts used in the repair or reconstruction of farm machinery used in certain activities related to agricultural production.

The proposed rules will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these rules would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed rules may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than May 26, 2009, to the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed rules on or before May 12, 2009. Such written comments should be directed to the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by May 15, 2009.

These rules are intended to implement Iowa Code chapter 423.

The following amendment is proposed.

Adopt the following new 701—Chapter 226:

CHAPTER 226
AGRICULTURAL RULES

701—226.1(423) Sale or rental of farm machinery and equipment. The sales price from the sale or rental of farm machinery and equipment is exempt from sales and use tax.

226.1(1) Farm machinery and equipment.

a. Exempt. To be eligible under this rule for exemption from the tax, the farm machinery or equipment must be directly and primarily used in production of agricultural products and must also be one of the following:

- (1) A self-propelled implement; or
- (2) An implement customarily drawn or attached to a self-propelled implement; or
- (3) A grain dryer; or
- (4) An auxiliary attachment which improves the performance, safety, operation, or efficiency of a qualifying implement or grain dryer; or
- (5) A replacement part for any item described in subparagraph (1), (2), (3), or (4).

b. Taxable. A vehicle subject to registration as defined in Iowa Code section 423.1, an implement customarily drawn or attached to a vehicle, an auxiliary attachment for a vehicle, or any replacement part for a vehicle, implement, or auxiliary attachment for a vehicle is not eligible for the exemption allowed under this rule.

REVENUE DEPARTMENT[701](cont'd)

226.1(2) Definitions and specific provisions. For the purposes of this rule, the following definitions and provisions apply.

a. Production of agricultural products. The term “production of agricultural products” means the same as the term “agricultural production,” which is defined in rule 701—211.1(423) to mean a farming operation undertaken for profit by the raising of crops or livestock. Not included within the meaning of the term is the clearing or preparation of previously uncultivated land, the creation of farm ponds, or the erection of machine sheds, confinement facilities, storage bins, or other farm buildings. See *Trullinger v. Fremont County*, 223 Iowa 677, 273 N.W. 124 (1937). Machinery and equipment used for these purposes would be used for activities which are preparatory to, but not a part of, the production of agricultural products and, therefore, are not exempt.

b. Farm machinery and equipment. The term “farm machinery and equipment” means machinery and equipment specifically designed for use in the production of agricultural products and machinery and equipment that are not specifically designed for use in the production of agricultural products but are directly and primarily used for that purpose.

EXAMPLE: Farmer Jones raises livestock, and his farming operation requires that fences be built to confine the livestock. Farmer Jones purchases a posthole digger that is customarily attached to a tractor and uses the digger to construct the fences used to confine the livestock. The posthole digger is not specifically designed for use in the production of agricultural products but is directly and primarily used in the production of agricultural products. Therefore, the exemption would apply.

c. Self-propelled implement. The term “self-propelled implement” means an implement which is capable of movement from one place to another under its own power. The term “self-propelled implement” includes, but is not limited to, the following items: skid loaders and tractors. The term also includes, but is not limited to, the following machinery if capable of movement under its own power: combines, corn pickers, fertilizer spreaders, hay conditioners and windrowers, sprayers, and bean buggies.

d. Implements customarily drawn or attached to self-propelled implements. The following is a nonexclusive, representative list of implements which are customarily drawn or attached to self-propelled implements: augers, balers, blowers, combines, conveyers, cultivators, disks, drags, dryers (portable), farm wagons, feeder wagons, fertilizer spreaders, front- and rear-end loaders, harrows, hay loaders, hay mowers, hay rakes, husking machines, manure spreaders, planters, plows, rotary hoes, sprayers and tanks, and tillage equipment.

e. Directly used in agricultural production.

(1) Property is “directly used” only if it is used to initiate, sustain, or terminate an exempt activity. In determining whether any property is directly used, consideration should be given to the following factors:

1. The physical proximity of the property to other property clearly exempt as directly used in agricultural production. The closer the property is to exempt property, the more likely it is that the property is directly used in agricultural production.

2. The chronological proximity of the use of the property in question to the use of property clearly exempt as directly used in agricultural production. The closer the proximity of the property’s use within the production process to the use of exempt property, the more likely the use is direct rather than remote.

3. The active causal relationship between the use of the property in question and agricultural production. The fewer intervening causes between the use of the property and the production of the product, the more likely it is that the property is directly used in agricultural production.

(2) The fact that particular machinery or equipment is essential to the production of agricultural products because its use is required either by law or practical necessity does not, of itself, mean that the machinery or equipment is directly used in the production of agricultural products. Machinery or equipment that comes into actual physical contact with the soil or crops during the operations of planting, cultivating, harvesting, and soil preparation will be presumed to be machinery or equipment used in agricultural production.

f. Primarily used in agricultural production. Property is “primarily used” in agricultural production based on the total time it is used in agricultural production in comparison to the time it is

REVENUE DEPARTMENT[701](cont'd)

used for other purposes. Any property used in agricultural production more than 50 percent of its total use time is eligible for exemption.

g. Beginning and end of agricultural production. Agricultural production begins with the cultivation of land previously cleared for the planting of crops or begins with the purchase or breeding of livestock or domesticated fowl. Agricultural production ceases when an agricultural product has been transported to the point where it will be sold by the producer or processed for further use.

EXAMPLE: Farmer Brown uses a tractor and wagon to haul harvested corn from a field to a grain dryer located on the farm. After the corn is dried, the same tractor and wagon are used to move the grain to a storage bin, also located on the farm. Later, the same tractor and wagon are used to deliver the corn from the farm to the local elevator where the corn is sold. After Farmer Brown deposits the corn there, the local elevator uses its own tractor and wagon to move the corn to a place of relatively permanent storage. Farmer Brown has used the tractor and wagon in the production of agricultural products, and the exemption would apply. However, the elevator has not used its tractor and wagon in agricultural production; thus, the exemption would not be allowed.

h. Grain dryer. The term “grain dryer” includes the heater and the blower necessary to force the warmed air into a grain storage bin. The term “grain dryer” does not include equipment, such as augers and spreaders, used in grain storage or movement, nor does it include any other equipment, such as specialized flooring, that is not a grain dryer. Equipment that is not a grain dryer but is used in grain drying may be exempt if the equipment is a self-propelled implement or customarily drawn or attached to a self-propelled implement.

i. Replacement parts. The term “replacement parts” means any farm machinery or equipment which is substituted for another part that has broken, worn out or has become obsolete or otherwise unable to perform its intended function. Replacement parts are those parts which materially add to the value of farm machinery or equipment, appreciably prolong its life or keep it in its ordinarily efficient operating condition. Excluded from the meaning of the term “replacement parts” are supplies and computer software. Sales of supplies and computer software are taxable. Nonexclusive examples of supplies include: lubricants, oils, greases, and coolants.

Tangible personal property which has an expected useful life of 12 months or more and is used in the operation of farm machinery or equipment is rebuttably presumed to be a replacement part. Tangible personal property which is used in the same manner but has an expected useful life of less than 12 months is rebuttably presumed to be a supply.

(1) For periods prior to July 1, 2008, the sale or lease of a replacement part is exempt from tax if the replacement part is essential to any repair or reconstruction necessary to the exempt piece of farm machinery or equipment used in the production of agricultural products. The term “replacement parts” does not include attachments and accessories which are not essential to the operation of the farm machinery or equipment. Nonexclusive examples of attachments or accessories that are not essential include: cigarette lighters, radios, portable global positioning devices, and add-on air-conditioning units.

(2) For periods beginning on and after July 1, 2008, the sale or lease of a replacement part is exempt from tax if the replacement part is used in any repair or reconstruction of the exempt piece of farm machinery or equipment used in the production of agricultural products. Nonexclusive examples of replacement parts to machinery and equipment which would be exempt include: air-conditioning parts, computer equipment parts, fire equipment parts, glass parts, mirrors, headlights, communication systems, and global positioning equipment parts.

226.1(3) Taxable and nontaxable transactions. The following are nonexclusive examples of sales and leases of and services for farm machinery or equipment subject to or exempt from tax. Taxable services performed on farm machinery or equipment are subject to tax even when the replacement parts are exempt.

a. A lessor’s purchase of farm machinery or equipment is not subject to tax if the machinery or equipment is leased to a lessee who uses it directly and primarily in the production of agricultural products and if the lessee’s use of the machinery or equipment is otherwise exempt. To claim exemption from tax, the lessor does not need to make an exempt use of the machinery or equipment as long as the lessee uses the machinery or equipment for an exempt purpose. On and after July 1, 2004, the lease of

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tangible personal property is treated as the sale of that property for the purposes of Iowa sales and use tax law because leases of tangible personal property are taxable retail sales of that property.

b. The owner or lessee of farm machinery or equipment need not be a farmer as long as the machinery or equipment is directly and primarily used in the production of agricultural products and the owner or lessee and the machinery or equipment meet the other requirements of this rule. For example, a person who purchases an airplane designed for use in agricultural aerial spraying and who uses the airplane directly and primarily for agricultural production is entitled to the benefits provided under this rule even though that person is not the owner or occupant of the land where the airplane is used.

c. The sale or lease, within Iowa, of any farm machinery, equipment, or replacement part for direct and primary use in agricultural production outside of Iowa is a transaction eligible for the exemption if the transaction is otherwise qualified under this rule.

226.1(4) Auxiliary attachments. The following is a noninclusive list of auxiliary attachments for which the sale or use in Iowa is exempt from tax: auxiliary hydraulic valves, cabs, coil tine harrows, corn head pickup reels, dry till shanks, dual tires, extension shanks, fenders, fertilizer attachments and openers, fold kits, grain bin extensions, herbicide and insecticide attachments, kit wraps, no-till coulters, quick couplers, rear wheel assists, rock boxes, rollover protection systems, rotary shields, stalk choppers, step extensions, trash whips, upper beaters, silage bags, and weights.

This rule is intended to implement Iowa Code subsections 423.3(8) and 423.3(11).

701—226.2(423) Packaging material used in agricultural production. The sales price from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock, or dairy production is exempt from sales tax.

This rule is intended to implement Iowa Code subsection 423.3(15).

701—226.3(423) Irrigation equipment used in agricultural production. The sales price from the sale or rental of irrigation equipment used in agricultural production is exempt from tax. The term “irrigation equipment” includes, but is not limited to, circle irrigation systems and trickle irrigation systems, whether installed aboveground or belowground, as long as the equipment is sold or rented by a contractor or farmer and the equipment is directly and primarily used in agricultural production. The term “agricultural production” is defined in rule 701—211.1(423).

This rule is intended to implement Iowa Code subsections 423.3(12) and 423.3(13).

701—226.4(423) Sale of a draft horse. The sales price from the sale of draft horses, when they are purchased for use and used as draft horses, is not subject to tax. Draft horses are horses that pull loads, including loads in shows, or transport persons or property. For purposes of this rule, horses commonly known as Clydesdales, Belgians, Shires, and Percherons are draft horses. However, upon proper showing by the person or entity claiming exemption, the sales price exemption will be granted by the director for other breeds. However, the burden of proof lies with the person or entity claiming exemption.

This rule is intended to implement Iowa Code subsection 423.3(14).

701—226.5(423) Veterinary services. Veterinary services are not subject to sales tax. Purchases of food, drugs, medicines, bandages, dressings, serums, tonics, and the like which are used in treating livestock raised as part of agricultural production are exempt from tax. Where these same items are used in treating animals maintained as pets or for hobby purposes, sales tax is due. Purchases of equipment and tools used in the veterinary practice are subject to tax. Rule 701—226.17(423) explains the exemption for machinery or equipment used in livestock or dairy production which may be applicable to veterinarians, but should only be claimed with caution. A veterinarian must charge sales tax on any sales of tangible property or enumerated services, such as pet grooming, that are not part of professional veterinarian services.

This rule is intended to implement Iowa Code subsection 423.3(5).

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701—226.6(423) Commercial fertilizer and agricultural limestone. Sales of commercial fertilizer and agricultural limestone are exempt from tax only if the purchaser intends to use the fertilizer or limestone for the health promotion of plants produced for market as part of agricultural production. See rule 701—211.1(423) for definitions of “agricultural production” and “plants.” Plant hormones are considered to be commercial fertilizer. Sales of commercial fertilizer or agricultural limestone used for other purposes are subject to sales tax. Examples of taxable use include, but are not limited to: commercial fertilizer sold for application on a lawn, golf course, or cemetery.

This rule is intended to implement Iowa Code subsections 423.3(4) and 423.3(5).

701—226.7(423) Sales of breeding livestock. The sale of agricultural livestock is exempt from tax only if at the time of purchase the purchaser intends to use the livestock primarily for breeding. The sale of agricultural livestock which is capable of breeding, but will not be used for breeding or primarily for breeding, is not exempt from tax. However, sales of most nonbreeding agricultural livestock to farmers would be a sale for resale and exempt from tax. See rule 701—211.1(423) for a definition of “livestock.”

EXAMPLE 1: A breeding service purchases a prize bull from a farmer. At the time of sale, the intent of the purchaser is to use the bull for breeding other cattle. The sale of the bull is exempt from tax even though three years later the breeding service sells the bull to a meat packer.

EXAMPLE 2: A farmer purchases dairy cows. To ensure production of milk over a sustained period of time, dairy cows must be bred to produce calves. If a farmer purchases dairy cows for the primary purpose of using them to produce milk and incidentally breeds them to ensure that this milk will be produced, the sale of the dairy cows to the farmer is not exempt from tax. If the farmer purchases the dairy cows for the primary purpose of using them to produce calves and, incidental to that purpose, at times sells the milk which the cows produce, the sale of the dairy cows to the farmer is exempt from tax.

This rule is intended to implement Iowa Code subsection 423.3(3).

701—226.8(423) Domesticated fowl. The purchase of any domesticated fowl for the purpose of providing eggs or meat is exempt from tax, whether purchased by a person engaged in agricultural production or not. See rule 701—211.1(423) for a definition of the term “domesticated fowl.”

This rule is intended to implement Iowa Code subsection 423.3(3).

701—226.9(423) Agricultural health promotion items.

226.9(1) Definitions. For purposes of this rule, the following definitions apply:

“*Adjuvant*” means any substance which is added to a herbicide, a pesticide, or an insecticide to increase its potency.

“*Agricultural production*” means the same as defined in rule 701—211.1(423).

“*Food*” includes vitamins, minerals, other nutritional food supplements, and hormones sold to promote the growth of livestock.

“*Herbicide*” means any substance intended to prevent, destroy, or retard the growth of plants including fungi. The term shall include preemergence, postemergence, lay-by, pasture, defoliant, and desiccant herbicides and fungicides.

“*Insecticide*” means any substance used to kill insects. Any substance used merely to repel insects is not an insecticide. Mechanical devices which are used to kill insects are not insecticides.

“*Livestock*” means the same as defined in rule 701—211.1(423). For the purposes of this rule, “livestock” includes domesticated fowl.

“*Medication*” includes antibiotics or other similar drugs administered to livestock.

“*Plants*” means the same as defined in rule 701—211.1(423).

“*Pesticide*” means any substance which is used to kill rodents or smaller vermin, other than insects, such as nematodes, spiders, or bacteria. For the purposes of this rule, a disinfectant is a pesticide. Excluded from the term “pesticide” is any substance which merely repels pests or any device, such as a rat trap, which kills pests by mechanical action.

“*Surfactant*” means a substance which is active on a surface.

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226.9(2) Sales of agricultural health promotion items and adjuvants. Sales of herbicides, pesticides, insecticides, food, and medication which are to be used in disease, weed, or insect control or health promotion of plants or livestock produced as part of agricultural production for market are exempt from tax. Sales of adjuvants, surfactants, and other products which enhance the effects of herbicides, pesticides, or insecticides used in disease, weed, or insect control or health promotion of plants or livestock produced as part of agricultural production for market are also exempt from tax. Sales of herbicides, pesticides, insecticides, food, medication, and products to any person not engaged in agricultural production for market are exempt if the property sold will be used for an exempt purpose, e.g., in disease control or on the behalf of another person engaged in agricultural production for market.

This rule is intended to implement Iowa Code subsections 423.3(5) and 423.3(16).

701—226.10(423) Drainage tile. The sale or installation of drainage tile which is to be used in disease control or weed control or in health promotion of plants or livestock produced as part of agricultural production for market is exempt from tax. In all other cases, drainage tile will be considered a building material and subject to tax under the provisions of Iowa Code section 423.2. Sales of the following materials associated with the installation of agricultural drainage tile are also exempt from tax: tile intakes, outlet pipes and outlet guards, aluminum and gabion structures, erosion control fabric, water control structures, and tile fittings.

This rule is intended to implement Iowa Code section 423.3.

701—226.11(423) Materials used for seed inoculations. Materials used for seed inoculations are exempt from sales tax. All forms of inoculation, whether for promotion of better growth and healthier plants or for the prevention or cure of plant mildew or disease of seeds and bulbs, are intended for the same general purpose and are therefore exempt.

This rule is intended to implement Iowa Code section 423.3.

701—226.12(423) Fuel used in agricultural production.

226.12(1) Definitions. For purposes of this rule, the following definitions apply:

“Aquaculture” means the cultivation of aquatic animals and plants, including fish, shellfish, and seaweed, in natural or controlled marine or freshwater environments.

“Fuel” includes electricity.

“Implement of husbandry” means the same as defined in rule 701—211.1(423).

“Livestock” means the same as defined in rule 701—211.1(423) and includes domesticated fowl.

“Plants” means flowering, ornamental or vegetable plants intended for sale in the ordinary course of business. The term does not include trees, shrubs, other woody perennials, or fungi.

226.12(2) Exemptions.

a. *Fuel used for livestock buildings.* The sale of fuel used to provide heating or cooling for livestock buildings is exempt from tax.

b. *Fuel used for plant production buildings.*

(1) Sales of fuel for heating or cooling greenhouses, buildings, or parts of buildings used for the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business are exempt from tax. See subparagraph (3) for the formula for calculating exempt use if a building is only partially used for growing plants.

(2) Fuel used in a plant production building for purposes other than heating or cooling (e.g., lighting) or for purposes other than direct use in plant production (e.g., heating or cooling office space) is not eligible for this exemption. Examples of nonexempt purposes for which a portion of a greenhouse might be used include, but are not limited to, portions used for office space, loading docks, storage of property other than plants, housing of heating and cooling equipment, and packaging plants for shipment.

(3) Calculating proportional exemption. It may be possible to calculate the amount of total fuel used in plant production by dividing the number of square feet of the greenhouse heated or cooled and used for raising plants by the number of square feet heated or cooled in the entire greenhouse. It may

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be necessary to alter this formula (by the use of separate metering, for example) if a greenhouse has a walk-in cooler and the cooler is used directly in plant production. See 701—subrule 15.3(3) regarding fuel exemption certificates and subrule 226.18(12) regarding seller's and purchaser's liability for sales tax.

EXAMPLE 1: Bill Brown's herb farming operation has a separate greenhouse used to grow his herbs. All other aspects of his farm operations are conducted in other facilities. Because the greenhouse is used exclusively for raising plants, Bill Brown is able to claim exemption from sales tax on the cost of fuel used to heat and cool the greenhouse.

EXAMPLE 2: Martha Green's greenhouse has a separate meter to track the electricity used only for heating or cooling. Her greenhouse is used partially for growing plants and partially for a nonexempt purpose. Martha Green is able to claim a proportional exemption from sales tax on the cost of fuel used to heat and cool her growing plants. Martha Green calculates her exempt amount by dividing the number of heated or cooled square feet of her greenhouse that are used for raising plants by the total number of square feet heated or cooled in the entire greenhouse.

Total square footage used for raising plants	=	800
Total square footage	=	1,000
TOTAL:	$800 \div 1,000$	= .80 or 80%

Thus, 80 percent of the cost of the fuel used to heat and cool Martha Green's greenhouse is exempt from sales tax.

c. *Sales of fuel used for aquaculture.* Sales of fuel used in the raising of agricultural products by aquaculture are exempt from tax.

d. *Sales of fuel, gas, electricity, water, and heat consumed in implements of husbandry.* The sale of fuel used in any implement of husbandry, whether self-propelled or not, is exempt from tax if the fuel is consumed while the implement is engaged in agricultural production. For example, the sale of fuel used not only in tractors or combines, but also used in implements which cannot move under their own power, is exempt from tax. The sale of fuel used in milk coolers and milking machines, grain dryers, and stationary irrigation equipment and in implements used to handle feed, grain, and hay and to provide water for livestock is exempt from tax even though these implements of husbandry would not ordinarily be considered self-propelled.

226.12(3) Partial use. If a building is used partially for an exempt agricultural purpose and partially for a nonexempt purpose, a proportional exemption from sales tax may be claimed based upon a percentage obtained by dividing the number of square feet of the building heated or cooled and used for an exempt agricultural purpose by the number of square feet heated or cooled in the entire building.

This rule is intended to implement Iowa Code subsection 423.3(6).

701—226.13(423) Water used in agricultural production. Water sold to farmers who are purchasing water for household use, sanitation, swimming pools, or other personal use is subject to sales tax. Water sold to farmers and others and used directly as drinking water for livestock production (including the production of domesticated fowl) is exempt from sales tax. When water is used for exempt purposes, as in livestock production, as well as for taxable purposes, the water may, when practical, be separately metered and separately billed to clearly distinguish the water consumed for exempt purposes from taxable purposes. When it is impractical to separately meter exempt water from taxable water, the purchaser may furnish to the seller a statement enabling the seller to determine the percentage of water subject to exemption. In the absence of proof to the contrary, the retailer of the water shall bill and collect tax on the first 5,000 gallons of water per month. The first 5,000 gallons of water per month will be considered to be for nonexempt use, and the balance will be considered to be used as part of agricultural production.

This rule is intended to implement Iowa Code subsection 423.3(5).

701—226.14(423) Bedding for agricultural livestock or fowl. The sales price from the sale of woodchips, sawdust, hay, straw, paper, or any other materials used for bedding in the production of

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agricultural livestock (including domesticated fowl) is exempt from tax. See rule 701—211.1(423) for definitions applicable to this rule.

This rule is intended to implement Iowa Code subsection 423.3(9).

701—226.15(423) Sales by farmers. The sale of grain, livestock, or any other farm or garden product by the producer thereof ordinarily constitutes a sale for resale, processing, or human consumption, and is not subject to tax. Farmers selling tangible personal property not otherwise exempt to ultimate consumers or users shall hold a permit and collect and remit sales tax on the sales price from their sales.

This rule is intended to implement Iowa Code subsections 423.3(2), 423.3(51), and 423.3(57).

701—226.16(423) Sales of livestock (including domesticated fowl) feeds. Tax shall not apply to the sale of feed for any form of animal life when the product of the animals constitutes food for human consumption. Tax shall apply on feed sold for consumption by pets. Antibiotics that are administered as an additive to feed or drinking water and vitamins and minerals that are sold for livestock (including domesticated fowl) are exempt from tax.

This rule is intended to implement Iowa Code subsection 423.3(16).

701—226.17(423) Farm machinery, equipment, and replacement parts used in livestock or dairy production.

226.17(1) Sales or rentals of farm machinery, equipment, and replacement parts used in livestock or dairy production are exempt from sales and use tax.

226.17(2) Definitions and special provisions. For purposes of this rule, the following definitions and special provisions apply.

a. Machinery. The term “machinery” means major mechanical machines, or major components thereof, which contribute directly and primarily to the livestock or dairy production process. Usually, a machine is a large object with moving parts which performs work through the expenditure of energy, either mechanical (e.g., gasoline or other fuel) or electrical.

b. Equipment. The term “equipment” means tangible personal property (other than a machine) that is directly and primarily used in livestock or dairy production. Equipment may be characterized as property which performs a specialized function and which has no moving parts, or if the equipment does possess moving parts, its source of power is external to it. The following nonexclusive examples differentiate between machinery and equipment:

EXAMPLE 1: An auger places feed into a cattle feeder. The auger is a piece of machinery; the cattle feeder is a piece of equipment.

EXAMPLE 2: An electric pump is used to pump milk into a bulk milk tank. The electric pump is a piece of machinery; the bulk milk tank is equipment.

c. Property used in livestock or dairy production which is neither equipment nor machinery.

(1) Real property. The ground or the earth is not machinery or equipment. A building is not machinery or equipment. See *Cloverleaf Cold Storage Co. v. Dep’t of Revenue and Fin.*, 2002 WL 31769009 (Iowa Dept. Insp. App. July 26, 2002). Therefore, tangible personal property which is sold for incorporation into the ground or a building in such a manner that the property will become a part of the ground or the building is taxable except for machinery and equipment. Generally, property incorporated into the ground or a building has become a part of the ground or the building if its removal would substantially damage the property, ground, or building or would substantially diminish the value of the property, ground, or building. Fence posts embedded in concrete, electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. For the purpose of the following example, assume that property is being sold to a contractor rather than a person engaged in livestock or dairy production. If the property is sold to a contractor, the retailer would be required to consider the property building material and charge the contractor sales tax upon the purchase price of the building material. If the property is building material, sale of the property is not exempt from Iowa sales tax. Rule 701—219.3(423) contains a characterization of building material and a list of specific examples of building material.

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(2) **Supplies.** Supplies are neither machinery nor equipment. Tangible personal property is a farm supply if it is used up or destroyed by virtue of its use in livestock or dairy production or, because of its nature, can only be used once in livestock or dairy production. A light bulb is an example of a farm supply which is not machinery or equipment. See subrule 226.19(4) for examples of farm supplies which could be mistaken for equipment and are not exempt from tax on other grounds.

d. Hand tools. The term “hand tools” means tools which can be held in the hand or hands and which are powered by human effort. Hand tools specifically designed for use in livestock or dairy production are exempt from tax as equipment. Mechanical devices that are held in the hand and driven by electricity from some source other than human muscle power are, if they meet all other qualifications, exempt from tax as farm machinery.

e. “Directly used” in livestock or dairy production. To determine if machinery or equipment is “directly used” in livestock or dairy production, one must first ensure that the machinery or equipment is used during livestock or dairy production and not before that process has begun or after it has ended. See paragraph “g” of this subrule for an explanation of when livestock or dairy production begins and ends.

(1) **Definition.** If the machinery or equipment is used in livestock or dairy production, “directly used” means the use is an integral and essential part of production as distinguished from use that is incidental or merely convenient to production or use that is remote from production. Machinery or equipment may be necessary to livestock or dairy production, but its use is so remote from production that it is not directly used in that production.

(2) **Determination.** In determining whether machinery or equipment is directly used, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment clearly exempt as directly used in livestock or dairy production. The closer the machinery or equipment is to exempt machinery or equipment, the more likely it is that the machinery or equipment is directly used in livestock or dairy production.

2. The chronological proximity of the use of machinery or equipment in question to the use of machinery clearly exempt as directly used in livestock or dairy production. The closer the proximity of the machinery’s or equipment’s use within the production process to the use of exempt machinery or equipment, the more likely the use is direct rather than remote.

3. The active causal relationship between the use of the machinery or equipment in question and livestock or dairy production. The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in production.

f. “Primarily used” in livestock or dairy production. Machinery or equipment is “primarily used” in livestock or dairy production based on the total time it is used in livestock or dairy production in comparison to the time it is used for other purposes. Any unit of machinery or equipment directly used in livestock or dairy production more than 50 percent of its total use time is eligible for exemption.

g. Beginning and end of livestock or dairy production. Livestock or dairy production begins with the purchase or breeding of livestock or dairy animals. Livestock or dairy production ceases when an animal or the product of an animal’s body (e.g., wool) has been transported to the point where it will be sold by the farmer or processed.

h. Machinery and equipment design. Farm machinery and equipment used in livestock or dairy production is eligible for exemption if specifically designed for use in livestock or dairy production. Farm machinery and equipment which are not specifically designed for use in livestock or dairy production, but are directly and primarily used in livestock or dairy production, are eligible for exemption with the exception of common or ordinary hand tools.

EXAMPLE: Farmer Jones raises livestock and must use fans to cool the animals. Farmer Jones buys electric fans designed for use in a residence, but uses them directly and primarily to cool the livestock. The fans’ use would be considered exempt.

i. Replacement parts. The term “replacement parts” means the same as defined in subrule 226.1(2), paragraph “i.”

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226.17(3) Examples of machinery and equipment directly used in livestock or dairy production.

a. Machinery and equipment used to transport or limit the movement of livestock or dairy animals (e.g., electric fence equipment, portable fencing, head gates, and loading chutes) are directly used in livestock or dairy production.

b. Machinery and equipment used in the conception, birth, feeding, and watering of livestock or dairy animals (e.g., artificial insemination equipment, portable farrowing pens, feed carts, and automatic watering equipment) are directly used in livestock or dairy production.

c. Machinery and equipment used to maintain healthful or sanitary conditions in the immediate area where livestock are kept (e.g., manure gutter cleaners, automatic cattle oilers, fans, and heaters if not real property) are directly used in livestock or dairy production.

d. Machinery and equipment used to test or inspect livestock during production are directly used in livestock or dairy production.

226.17(4) Taxable examples. The following are nonexclusive examples of machinery or equipment which would not be directly used in livestock or dairy production.

a. Machinery or equipment used to assemble, maintain, or repair other machinery or equipment directly used in livestock or dairy production (e.g., welders, paint sprayers, and lubricators).

b. Machinery or equipment used in farm management, administration, advertising, or selling (e.g., a computer used for record keeping, calculator, office safe, telephone, books, and farm magazines).

c. Machinery or equipment used in the exhibit of livestock or dairy animals (e.g., blankets, halters, prods, leads, and harnesses).

d. Machinery or equipment used in safety or fire prevention, even though the machinery or equipment is required by law.

e. Machinery or equipment for employee or personal use. Machinery or equipment used for the personal comfort, convenience, or use by a farmer, the farmer's family or employees, or persons associated with the farmer is not exempt from tax. Examples of such machinery and equipment include the following: beds, mattresses, blankets, tableware, stoves, refrigerators, and other equipment used in conjunction with the operation of a farm home, or other facilities for farm employees.

f. Machinery or equipment used for heating, cooling, ventilation, and lighting of farm buildings generally.

g. Vehicles subject to registration.

226.17(5) The sales price, not including services, of the following machinery or equipment is exempt from tax regardless of whether the machinery or equipment remains tangible personal property after installation or is incorporated into the realty: auxiliary attachments which improve the performance, safety, operation, or efficiency of the machinery and equipment, including auger systems, curtains and curtain systems, drip systems, fan and fan systems, shutters, inlets, shutter or inlet systems, refrigerators, and replacement parts if all of the following conditions are met:

a. The implement, machinery, or equipment is directly and primarily used in livestock or dairy production.

b. The implement is not a self-propelled implement or implement customarily drawn or attached to self-propelled implements.

c. The replacement part is used in a repair or reconstruction of the exempt piece of farm machinery or equipment used in the production of agricultural products.

226.17(6) Auxiliary attachments exemption. Sales of auxiliary attachments which improve the performance, safety, operation, or efficiency of exempt machinery or equipment are exempt from tax. Sales of replacement parts for these auxiliary attachments are also exempt.

226.17(7) Seller's and purchaser's liability for sales tax. The seller shall be relieved of sales tax liability if the seller takes from the purchaser an exemption certificate stating that the purchase is of machinery and equipment meeting the requirements of this rule. The exemption certificate must be fully completed. If items purchased tax-free pursuant to an exemption certificate are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely and directly liable for sales tax and shall remit the tax to the department.

This rule is intended to implement Iowa Code subsections 423.3(11) and 423.3(15).

701—226.18(423) Machinery, equipment, and replacement parts used in the production of flowering, ornamental, and vegetable plants.

226.18(1) The sales or rentals of machinery, equipment, and replacement parts used in the production of flowering, ornamental, and vegetable plants are exempt from sales and use tax. The production of flowering, ornamental, or vegetable plants by a grower in a commercial greenhouse or at another location is considered to be a part of agricultural production and exempt from sales tax. The term “plants” does not include trees, shrubs, other woody perennials, or fungi.

226.18(2) Definitions and special provisions. For purposes of this rule, the following definitions and special provisions apply.

a. Machinery. The term “machinery” means major mechanical machines, or major components thereof, which contribute directly and primarily to the flowering, ornamental, or vegetable plant production process. Usually, a machine is a large object with moving parts which performs work through the expenditure of energy, either mechanical (e.g., gasoline or other fuel) or electrical.

b. Equipment. The term “equipment” means tangible personal property (other than a machine) that is directly and primarily used in the flowering, ornamental, or vegetable plant production process. Equipment may be characterized as property which performs a specialized function which, of itself, has no moving parts, or if the equipment does possess moving parts, its source of power is external to it.

c. Plants. The term “plants” means flowering, ornamental or vegetable plants intended for sale in the ordinary course of business. The term does not include trees, shrubs, other woody perennials, or fungi.

d. Property used in the flowering, ornamental, or vegetable plant production process which is neither equipment nor machinery.

(1) Real property. The ground or the earth is not machinery or equipment. A building is not machinery or equipment. See *Cloverleaf Cold Storage Co. v. Dep’t of Revenue and Fin.*, 2002 WL 31769009 (Iowa Dept. Insp. App. July 26, 2002). Therefore, tangible personal property which is sold for incorporation into the ground or a building in such a manner that the property will become a part of the ground or the building is taxable except for machinery and equipment. Generally, property incorporated into the ground or a building has become a part of the ground or the building if its removal would substantially damage the property, ground, or building or would substantially diminish the value of the property, ground, or building. Fence posts embedded in concrete, electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. For the purpose of this example, assume that the property is being sold to a contractor rather than a person engaged in the flowering, ornamental, or vegetable plant production process. If the property is sold to a contractor, the retailer would be required to consider the property building material and charge the contractor sales tax upon the purchase price of this building material. If the property is building material, sale of the property is not exempt from Iowa sales tax. Rule 701—219.3(423) contains a characterization of building material and a list of specific examples of building material.

(2) Supplies. Supplies are neither machinery nor equipment. Tangible personal property is a supply if it is used up or destroyed by virtue of its use in the flowering, ornamental, or vegetable plant production process or, because of its nature, can only be used once in the flowering, ornamental, or vegetable plant production process. A light bulb is an example of a supply which is not machinery or equipment. See subrule 226.19(4) for examples of supplies which could be mistaken for equipment and are not exempt from tax on other grounds.

e. Hand tools. The term “hand tools” means tools which can be held in the hand or hands and which are powered by human effort. Hand tools specifically designed for use in the flowering, ornamental, or vegetable plant production process are exempt from tax as equipment. Mechanical devices that are held in the hand and driven by electricity from some source other than human muscle power are, if they meet all other qualifications, exempt from tax.

f. “Directly used” in the flowering, ornamental, or vegetable plant production process. To determine if machinery or equipment is “directly used” in the flowering, ornamental, or vegetable plant production process, one must first ensure that the machinery or equipment is used during the flowering, ornamental, or vegetable plant production process and not before that process has begun or after it has

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ended. See paragraph “h” of this subrule for an explanation as to when the flowering, ornamental, or vegetable plant production process begins and ends.

(1) Definition. If the machinery or equipment is used in the flowering, ornamental, or vegetable plant production process, “directly used” means the use is an integral and essential part of production as distinguished from use that is incidental or merely convenient to production or use that is remote from production. Machinery or equipment may be necessary to the flowering, ornamental, or vegetable plant production process, but its use is so remote from production that it is not directly used in that production.

(2) Determination. In determining whether machinery or equipment is directly used, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment clearly exempt as directly used in the flowering, ornamental, or vegetable plant production process. The closer the machinery or equipment is to exempt machinery or equipment, the more likely it is that the machinery or equipment is directly used in the flowering, ornamental, or vegetable plant production process.

2. The chronological proximity of the use of machinery or equipment in question to the use of machinery clearly exempt as directly used in the flowering, ornamental, or vegetable plant production process. The closer the proximity of the machinery’s or equipment’s use within the production process is to the use of exempt machinery or equipment, the more likely the use is direct rather than remote.

3. The active causal relationship between the use of the machinery or equipment in question and the flowering, ornamental, or vegetable plant production process. The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in production.

g. *“Primarily used” in flowering, ornamental, or vegetable plant production.* Machinery or equipment is “primarily used” in flowering, ornamental, or vegetable plant production based upon the total time it is used in flowering, ornamental, or vegetable plant production in comparison to the time it is used for other purposes. Any unit of machinery or equipment directly used in flowering, ornamental, or vegetable plant production more than 50 percent of its total use time is eligible for exemption.

h. *Beginning and end of flowering, ornamental, or vegetable plant production.* Flowering, ornamental, or vegetable plant production begins with the purchase of seeds or starter plants. Flowering, ornamental, or vegetable plant production ceases when a plant has grown to the size or weight at which it will be prepared for shipment to the destination where it will be marketed.

i. *Machinery and equipment design.* Machinery and equipment used in flowering, ornamental, or vegetable plant production are eligible for exemption if they were specifically designed for use in flowering, ornamental, or vegetable plant production. Machinery and equipment which are not specifically designed for use in flowering, ornamental, or vegetable plant production, but are directly and primarily used in flowering, ornamental, or vegetable plant production, are eligible for exemption with the exception of common or ordinary hand tools.

EXAMPLE: Bob Jones raises tulips and must use a thermometer to monitor the temperature in his greenhouse. Bob Jones buys a thermometer designed for use in a residence, but uses it directly and primarily to monitor the temperature in his greenhouse. The thermometer’s use would be considered exempt.

j. *Replacement parts.* The term “replacement parts” means the same as defined in subrule 226.1(2), paragraph “i.”

226.18(3) Examples of machinery and equipment directly used in flowering, ornamental, or vegetable plant production can be found in subrule 226.19(3).

226.18(4) Taxable examples. The following are nonexclusive examples of machinery or equipment which would not be directly used in flowering, ornamental, or vegetable plant production.

a. Machinery or equipment used to assemble, maintain, or repair other machinery or equipment directly used in flowering, ornamental, or vegetable plant production.

b. Machinery or equipment used in the growing operation’s management, administration, advertising, or selling (e.g., calculators, office safes, telephones, books, and plant magazines).

c. Machinery or equipment used in the exhibit of flowering, ornamental, or vegetable plants.

REVENUE DEPARTMENT[701](cont'd)

d. Machinery or equipment used in safety or fire prevention, even though the machinery or equipment is required by law.

e. Machinery or equipment for employee or personal use. Machinery or equipment used for the personal comfort, convenience, or use by a grower, the grower's family or employees, or persons associated with the grower is not exempt from tax. Examples of such machinery and equipment include the following: beds, mattresses, blankets, tableware, stoves, refrigerators, and other equipment used in conjunction with the operation of a grower's home, or other facilities for the grower's employees.

f. Machinery or equipment used for heating, cooling, ventilation, and lighting of office, retail, or display buildings where production does not occur.

g. Vehicles subject to registration.

226.18(5) Packing material used in flowering, ornamental, or vegetable plant production. The sales price for the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in the production of flowering, ornamental, or vegetable plants in commercial greenhouses or other places which sell such items in the ordinary course of business is not subject to sales tax. Containers and packaging materials include but are not limited to boxes, trays, labels, sleeves, tape, and staples.

226.18(6) Sales of self-propelled implements. Sales of self-propelled implements or implements customarily drawn or attached to self-propelled implements and replacement parts for the same are exempt from tax if the implements are used directly and primarily in the production of plants in commercial greenhouses or elsewhere. Exempt implements include, but are not limited to, forklifts used to transport pallets of plants, wagons containing sterilized soil, and tractors used to pull these items.

226.18(7) Sales of machinery and equipment used in plant production which are not self-propelled or attached to self-propelled machinery and equipment are exempt from tax. Rule 701—226.19(423) includes nonexclusive examples of machinery and equipment which are not self-propelled or attached to self-propelled machinery and equipment and which are directly and primarily used in plant production.

226.18(8) Fuel used in plant production. See subrule 226.12(2), paragraph "b."

226.18(9) Sales of water used in the production of plants are exempt from tax. If water is not separately metered, the plants' grower must determine by use of a percentage the portion of water used for a taxable purpose and the portion used for an exempt purpose. Nonexclusive examples of taxable usage include rest rooms, sanitation, lawns, and vehicle wash.

226.18(10) Agricultural health promotion items. Sales to a commercial greenhouse of fertilizer, limestone, herbicides, pesticides, insecticides, plant food, and medication for use in disease, weed, and insect control or in other health promotion of flowering, ornamental, or vegetable plants are exempt from tax. For the purposes of this rule, a virus, bacteria, fungus, or insect which is purchased for use in killing insects or other pests is an insecticide or pesticide. Refer to rule 701—226.9(423) for more information regarding these exemptions.

226.18(11) Miscellaneous exempt and taxable plant sales.

a. Sales of pots, soil, seeds, bulbs, and starter plants for use in plant production are not the sale of machinery or equipment, but can be sales for resale and exempt from tax if the pots and soil are sold with the final product or become the finished product.

b. Sales of portable buildings which will be used to display plants for retail sales are taxable.

c. Sales of whitewash which will be painted on greenhouses to control the amount of sunlight entering those greenhouses are taxable sales of a supply rather than exempt sales of equipment.

226.18(12) Seller's and purchaser's liability for sales tax. The seller shall be relieved of sales tax liability if the seller receives from the purchaser an exemption certificate stating that the purchase is of machinery and equipment meeting the requirements of this rule. The exemption certificate must be fully completed. If items purchased tax-free pursuant to an exemption certificate are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely and directly liable for the sales tax and shall remit the tax to the department.

This rule is intended to implement Iowa Code subsections 423.3(11) and 423.3(15).

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701—226.19(423) Nonexclusive lists. The following tables list items that are taxable or exempt.

226.19(1) Exempt for agricultural production.

adjuvants	irrigation equipment
alternators and generators*	kill cones
augers*	limestone, agricultural
balers	manure spreaders
bale transportation equipment	mowers, hay
baling wire and binding twine	oil filters
batteries for exempt machinery	oil pumps
blowers, grain dryer	packing materials
brush hogs*	pesticides
combines, cornheads, platforms	pickers
conveyors, temporary or portable*	plants (seeds)
corn pickers	planters
crawlers, tractor	plows
cultipackers	piston rings
cultivators	pruning and picking equipment*
discs	replacement parts
draft horses	rock pickers
drags	rollers*
drainage pipe and tile	rotary blade mowers; not lawn mowers
dusters*	rotary hoes
ensilage cutters	seeders
ensilage forks and trucks (a pickup does not qualify)	seed cleaners*
farm wagons and accessories	seed planters
fertilizer, agricultural	seeds
fertilizer spreaders	self-propelled implements
filters	shellers*
forage harvesters, boxes	silo blowers, unloaders*
fuel for grain drying or other agricultural production	sowers
gaskets	spark plugs for exempt machinery
grain augers, portable*	sprayers*
grain drills	spreaders
grain dryer, heater and blower only	sprinklers
grain planters	subsoilers
harrows	surfactants
hay conditioners	tillers
hay hooks	tires for exempt machinery
hay loaders	tractors, farm
herbicides	tractor chains
implements customarily drawn or attached to a self-propelled implement	tractor weights

REVENUE DEPARTMENT[701](cont'd)

insecticides

vegetable harvesters

weeders*

*Exempt if drawn or attached to a self-propelled farm implement or, if portable, used directly and primarily in agricultural production.

226.19(2) *Exempt for dairy and livestock production.*

adjuvants

heaters, portable

alternators and generators¹

hog feeders, portable

artificial insemination equipment

hog ringers³

auger systems

hoof trimmers, portable³

automatic feeding systems, portable

hypodermic syringes and needles, nondisposable

batteries for exempt machinery

implements customarily drawn or attached to a self-propelled implement

barn ventilators

incubators, portable

bedding materials²

inlets and inlet systems

breeding stock, agricultural

inoculation materials

bulk feeding tanks, portable

insecticides

bulk milk coolers and tanks, portable

kill cones

calf weaners and feeders, portable

livestock feeding, watering and handling equipment, portable

cattle feeders, portable

loading chutes, portable

chain and rope hoists, portable¹manure brooms, portable³

chick guards

manure handling equipment, includes front end and rear end loaders, portable³

chicken pickers, plucking equipment

manure scoops, portable¹clipping machines, portable³

medications

conveyors, temporary or portable¹

milk coolers, portable

cow stalls, portable

milking equipment, includes cans, etc.³

cow ties, portable

milking machines

cow watering and feeding bowls, portable

milk strainers and strainer disks, if not disposable

crawlers, tractor

milk tanks, portable

currying and oiling machines, portable

pesticides

curtains and curtain systems

poultry feeders, portable

dehorner

poultry founts, portable

domestic fowl

poultry litters, portable

draft horses

poultry nests, portable

drip systems

refrigerators

electric fence equipment, portable

replacement parts

fans and fan systems

sawdust²

farm wagons and accessories

self-propelled implements

farrowing houses, crates, stalls, portable

shutters and shutter systems

feed

space heaters, portable

feed bins, portable

specialized flooring, portable

feed carts, portable

sprayers¹

REVENUE DEPARTMENT[701](cont'd)

feed elevators, portable	squeeze chutes, stalls, portable
feed grinders, portable	stanchions, portable
feed scoops ³	surfactants
feed tanks, portable	tires for exempt machinery
feeders, portable	thermometers ³
feeder chutes, portable	tractors, farm
fence and fencing supplies, temporary or portable	tractor chains
foggers	tractor weights
fuel to heat or cool livestock buildings	vacuum coolers
gaskets	ventilators
gates, portable	water filters, heaters, pumps, softeners, portable
gestation stalls, portable	waterers/watering tanks, portable
grooming equipment, portable ³	weaners
head gates, portable	wood chips ²

¹Exempt if drawn or attached to a self-propelled farm implement or, if portable, used directly and primarily in dairy or livestock production.

²Exempt when used as livestock and poultry bedding.

³Designed for farm use.

226.19(3) *Exempt for flowering, ornamental or vegetable plant production.*

air-conditioning pads	greenhouse monorail systems*
airflow control tubes	greenhouse thermometers
atmospheric CO ₂ control and monitoring equipment	handcarts used to move plants
backup generators	lighting which provides artificial sunlight
bins holding sterilized soil	overhead heating, lighting, and watering systems*
control panels for heating and cooling systems*	overhead tracks for holding potted plants*
coolers used to chill plants*	plant tables*
cooling walls* or membranes	plant watering systems*
equipment used to control water levels for subirrigation	portable buildings used to grow plants*
fans used for cooling and ventilating*	seeding and transplanting machines
floor mesh for controlling weeds	soil pot and soil flat filling machines
germination chambers	steam generators for soil sterilization*
greenhouse boilers*	warning devices which monitor excess heat or cold
greenhouse netting or mesh when used for light and heat control	watering booms

*Exempt if not real property. "Real property" is defined in Iowa Code subsection 4.1(13) as "lands, tenements, hereditaments, and all rights thereto and interests therein, equitable as well as legal." See 701—Chapter 219.

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

additives	lubricants and fluids
air compressors	lumber*
air conditioners, unless a replacement part for exempt machinery	marking chalk

REVENUE DEPARTMENT[701](cont'd)

air tanks	mops
antifreeze	motor oils
axes	nails
barn cleaner, permanent	office supplies
baskets	oxygen
belt dressing	packing room supplies
bins, permanent	paint and paint sprayers
brooms	pliers
buckets	posthole diggers, hand tool
building materials* and supplies	poultry brooders, permanent
burlap cleaners	poultry feeders, permanent
cattle feeders, permanent	poultry nests, permanent
cement	pruning tools
chain saws	pumps for household or lawn use
cleaning brushes	radios, unless a replacement part for exempt machinery
cleansing agents and materials	refrigerators for home use
computers (including laptop), for personal use	repair tools
computer software	road maintenance equipment
construction tools	road scraper
concrete	roofing
conveyors, permanent	sanders
cow ties, permanent	scrapers
ear tags	screwdrivers
fence, posts, wire, permanent	shingles
field toilets	shovels
fire prevention equipment	silos
freon	snow fence unless portable and used directly in dairy and livestock production
fuel additives	snow plows and snow equipment
fuel tanks and pumps	space heaters, permanent
garden hoses and rakes	specialized flooring, permanent
glass	sprinklers, permanent
grain bins and tanks, permanent*	stalls, permanent
grease	staples
grease guns	stanchions, permanent
hammers	storage tanks
hog rings	tarps
hydraulic fluids	tiling machinery and equipment
hypodermic syringes, disposable	tractors, garden
lamps	welders

REVENUE DEPARTMENT[701](cont'd)

lanterns

wheel barrows

light bulbs (for household use)

wrenches

*The buyer of building materials is responsible for paying sales tax or use tax on those materials, including materials to construct grain bins. The buyer is the person who pays the vendor.

This rule is intended to implement Iowa Code subsections 423.3(6) and 423.3(11).

ARC 7716B**TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 529, "For-Hire Interstate Motor Carrier Authority," Iowa Administrative Code.

The Code of Federal Regulations (CFR) was updated in October 2008, and the Department needs to cite the current version in these rules. No changes to 49 CFR Parts 365-368 and 370-379 have occurred.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed amendment, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: tracy.george@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than May 12, 2009.

A meeting to hear requested oral presentations is scheduled for Thursday, May 14, 2009, at 10 a.m. at the Iowa Department of Transportation's Motor Vehicle Division offices located at 6310 SE Convenience Boulevard, Ankeny, Iowa.

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

This amendment is intended to implement Iowa Code chapter 327B.

Proposed rule-making action:

Amend rule 761—529.1(327B) as follows:

761—529.1(327B) Motor carrier regulations. The Iowa department of transportation adopts the Code of Federal Regulations, 49 CFR Parts 365-368 and 370-379, dated October 1, ~~2007~~ 2008, for regulating interstate for-hire carriers.

Copies of this publication are available from the state law library or through the Internet at <http://www.fmcsa.dot.gov>.

ARC 7721B**TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 601, "Application for License," Chapter 602, "Classes of Driver's Licenses," Chapter 604, "License Examination," Chapter 605, "License Issuance," Chapter 607, "Commercial Driver Licensing," Chapter 610, "Release of Computerized Driver's License and Nonoperator's Identification Card Records," Chapter 611, "Driver's Privacy Protection—Driver's License and Nonoperator's Identification Card," Chapter 615, "Sanctions," and Chapter 640, "Financial Responsibility," Iowa Administrative Code.

Item 1 proposes a change to one of the acceptable social security number verification documents allowed when a person applies for a new or duplicate driver's license or nonoperator's identification card. This amendment is consistent with the change in paragraph 601.5(2)"b" in Item 2. Item 2 proposes changes to the acceptable primary and secondary documents needed to prove age and identity when a person applies for a new or duplicate driver's license or nonoperator's identification card. The changes in Item 2 assist in fraud prevention by eliminating the acceptance of out-of-state driver's licenses and IDs as primary proof of identity, although those may continue to be used as secondary proof. The changes in Item 2 also update terms used by the federal government for immigration status documents. Items 3, 4, 5 and 9 propose amendments to remove references to a marriage license. The Department will accept a marriage certificate as proof that the marriage actually occurred and the name has been legally changed. Items 6 to 8 propose changes to the rules concerning driving test requirements. The proposed changes allow a person with an out-of-state driver's license expired less than one year to apply for an Iowa driver's license without taking the driving test. Currently, the rules require a person with an out-of-state license to take a driving test when an out-of-state license is expired within the past six months. Item 10 proposes a change to the definition of "air brake system" on a commercial motor vehicle to establish conformity with federal guidelines. Item 11 updates the citation to 49 Code of Federal Regulations (CFR), Part 383. The amendments to 49 CFR, Part 383, Commercial Driver's License Standards; Requirements and Penalties, that have become final and effective since the 2004 edition of the CFR are listed in the information below. The parts affected are followed by Federal Register (FR) citations.

Part 383 (FR Vol. 71, No. 11, Page 2897, 1-18-06)

The Federal Motor Carrier Safety Administration (FMCSA) adopts as final and without change its interim regulations which implement Section 4140 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The regulations specify that a driver who passed FMCSA-approved knowledge and skills tests for a Commercial Driver's License (CDL) school bus endorsement before September 30, 2002, has met the requirements for a school bus endorsement.

Parts 350, 375, 383, 384, 385, 386, 390 and 395 (FR Vol. 72, No. 128, Page 36760, 7-5-07)

The FMCSA adopts as final certain regulations required by SAFETEA-LU. These regulations govern state compliance plans under the Motor Carrier Safety Assistance Program; withholding of federal-aid highway funds based on state noncompliance with the commercial driver's license program; intrastate operations of interstate motor carriers; civil penalties and disqualifications for violations of out-of-service orders; civil penalties for denial of access to records and property and for violations of statutes and regulations governing hazardous materials transportation; exemption from the federal hours-of-service regulations for operators of commercial motor vehicles engaged in certain defined operations; exemption of drivers of propane service or pipeline emergency vehicles during emergency conditions requiring immediate response; and interstate transportation of household goods.

Parts 365, 369, 381-393, 395 and 397 (FR Vol. 72, No. 189, Page 55697, 10-1-07)

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The FMCSA adopts a final rule to make technical corrections throughout 49 Code of Federal Regulations Subtitle B, Chapter III. This rule does not make any substantive changes to the FMCSA regulations.

Item 12 proposes new definitions for Chapter 610. Item 13 proposes to rescind a rule concerning copying files to computer tape cartridges. Item 14 proposes amendments relating to certified driving records. Items 12 to 14 make changes to the terms used in Chapter 610 and require persons requesting a certified abstract of an operating record to complete a form and provide a legible photocopy of the person's driver's license or nonoperator's identification card to the Department. Item 15 proposes to amend the definition of "personal information" in Chapter 611. Item 16 proposes to correct a form number. Items 17 to 19 propose to make changes relating to 2008 Iowa Acts, chapter 1172, section 14 [2009 Iowa Code section 272D.8] and require the Department to suspend a person's driver's license when noncompliance notification is received from the Iowa Department of Revenue. Items 20 and 22 propose to allow SR-22 lift notices to indicate that future proof of insurance is on file with the state rather than list specific motor vehicle information. This change eliminates the need for customers to continually update their SR-22 lift documents each time they have a new SR-22 filing in regard to coverage for specific motor vehicles. Item 21 proposes to eliminate completion of a driver improvement interview when a driver who is subject to graduated driver licensing is convicted of a moving traffic violation or is involved in a contributive accident. However, a new proposed rule is added to allow the Department to implement any or all of the following actions: suspension, safety advisory letter, additional restrictions, vision screening, knowledge examination or driving examination.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: tracy.george@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than May 12, 2009.

A meeting to hear requested oral presentations is scheduled for Thursday, May 14, 2009, at 2 p.m. at the Iowa Department of Transportation's Motor Vehicle Division offices located at 6310 SE Convenience Boulevard, Ankeny, Iowa.

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

These amendments are intended to implement Iowa Code chapters 272D, 321 and 321A.

Proposed rule-making actions:

ITEM 1. Amend paragraph **601.5(1)“c”** as follows:

c. Document issued by the Internal Revenue Service or a state tax agency. Form W-2 ~~and tax forms~~ form completed by the ~~taxpayer are not~~ employer is acceptable.

ITEM 2. Amend subrule 601.5(2) as follows:

601.5(2) Proof of age and identity. An applicant shall submit one primary document and one secondary document from the following lists as proof of age and identity. The documents must be issued in the United States unless otherwise specified.

a. Acceptable primary documents include:

(1) ~~Photo~~ An Iowa photo driver's license ~~or a certified copy of the license. The license cannot be expired for more than one year.~~

TRANSPORTATION DEPARTMENT[761](cont'd)

~~(2) Photo An Iowa photo identification card or a certified copy of the card. The agency that issued the card must be the same agency that issues drivers' licenses in the state of issuance. The card cannot be expired for more than one year.~~

(3) Birth certificate issued in the United States ~~or Canada~~. It must be ~~an original or~~ a certified copy, have the stamp or raised seal of the issuing authority, and be issued by the state bureau of vital statistics, the state board of health, or a comparable agency. A hospital-issued certificate is not acceptable.

(4) ~~Immigration and Naturalization~~ United States Citizenship and Immigration Service document from the following list:

1. Certificate of Naturalization (N-550, N-570 or N-578).
 2. Certificate of Citizenship (N-560, N-561 or N-645).
 3. ~~Northern Mariana Card (I-551).~~
 4. ~~American Indian Card (I-551).~~
 5. ~~U.S. Citizen Identification Card (I-179 or I-197).~~
 6. 3. Permanent Resident Alien Card (I-151, I-551, AR-3, AR-3A or AR-103).
 7. ~~Temporary Resident Identification Card (K-688).~~
 8. ~~Nonresident Alien Canadian Border Crossing Card (I-185 or I-586).~~
 9. 4. Record of Arrival and Departure (I-94) with attached photo that is stamped "Temporary Proof of Lawful Permanent Resident."
 10. 5. "Processed for I-551" stamp in a valid foreign passport.
 11. ~~Permanent Resident Re-entry Permit (I-327).~~
 12. ~~Refugee Travel Document (I-571).~~
 6. Travel Document indicating Permit to Re-enter (I-327) or Refugee Travel Document (I-571).
 13. 7. Record of Arrival and Departure (I-94) in a Certificate of Identity.
 14. 8. Employment Authorization Card (I-688A, I-688B, or I-766).
 15. 9. Record of Arrival and Departure (I-94) stamped "Refugee," "Parole," "Parolee," or "Asylee."
 16. 10. Record of Arrival and Departure (I-94) coded Section 207 (Refugee), Section 208 (Asylum), Section 209 (Refugees), Section 212d(5) (Parolee), HP (Humanitarian Parolee), or PIP (Public Interest Parolee).
- ~~(5) Court order. It must contain the full name, date of birth, and court seal. This does not include an abstract of criminal or civil conviction.~~

~~(6) (5) Military identification card. This does not include a military dependent identification card.~~

~~(7) (6) Valid United States passport issued by the United States or Canada. If the passport is Canadian, the appropriate Immigration and Naturalization Service document is also required.~~

~~(8) Identification card issued by Canadian Department of Indian Affairs. A card issued by the United States Bureau of Indian Affairs is not acceptable. A tribal identification card is not acceptable.~~

~~(9) (7) Inmate Descriptor Inquiry, Client Information Inquiry or Offender Snapshot document issued by the Iowa department of corrections. The document must contain the full name and date of birth and be notarized.~~

b. Acceptable secondary documents include:

- (1) Any primary document.
- (2) Bureau of Indian Affairs or Indian Treaty Card. A tribal identification card is not acceptable.
- (3) Photo driver's license or state-issued photo identification card that has not been expired for more than one year.
- (4) Court order that does not contain the applicant's date of birth but does contain the full name.
- (5) Foreign birth certificate. It must be translated by an approved translator, if translation is necessary.
- (6) Military discharge, military orders or separation papers.
- (7) Military dependent identification card.
- (8) Employer identification card.
- (9) Health insurance card.

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(10) Document issued by the Internal Revenue Service or a state tax agency. Form W-2 ~~and tax forms form~~ completed by the ~~taxpayer are not~~ employer is acceptable.

(11) Marriage ~~license or~~ certificate.

~~(12) Medical records from a doctor or hospital, original or authenticated.~~

~~(13)~~ (12) Gun permit.

~~(14)~~ (13) Pilot's license.

~~(15)~~ (14) School record or transcript. It must be certified.

~~(16)~~ (15) Social security card issued by the Social Security Administration. A metal version of the card is not acceptable.

~~(17)~~ (16) Social insurance card issued by the Canadian government.

~~(18)~~ (17) Photo student identification card.

~~(19) Vehicle certificate of title. A vehicle registration is not acceptable.~~

~~(20)~~ (18) Voter registration card.

~~(21)~~ (19) Welfare card.

~~(22)~~ (20) Prison release document.

~~(23)~~ (21) Parent or guardian affidavit. The parent or guardian must appear in person, submit proof of the parent's or guardian's age and identity, and submit a certified or notarized affidavit regarding the child's identity. This applies only to minors.

c. The department may require additional documentation if the department believes that the documentation submitted is questionable or if the department has reason to believe that the person is not who the person claims to be.

ITEM 3. Amend paragraph **601.5(3)“c”** as follows:

c. Marriage ~~license or~~ certificate.

ITEM 4. Amend rule 761—601.6(321) as follows:

761—601.6(321) Parental consent. An unmarried person under the age of 18 who applies for an Iowa license shall submit parental consent and birth date confirmation on Form 430018, “Parents Consent Form.” The parent's signature must be notarized; however, in lieu of notarization it may be witnessed by a ~~driver~~ driver's license examiner or clerk. No exception shall be made for parental absence from Iowa. A married person under the age of 18 shall submit ~~documentation of marriage~~ an original or certified copy of a marriage certificate to avoid submission of the consent form.

This rule is intended to implement Iowa Code section 321.184.

ITEM 5. Amend paragraph **602.2(3)“c”** as follows:

c. The form must be signed by the licensee's parent or guardian. However, the parent's or guardian's signature is not required if the licensee is married and the original or a certified copy of the marriage ~~license~~ certificate is in the licensee's possession when the licensee is driving during the hours to which the waiver applies.

ITEM 6. Amend paragraph **604.31(2)“e”** as follows:

e. The applicant is applying for a Class C Iowa driver's license that permits unaccompanied driving and has an equivalent out-of-state license that is valid or has expired within the past ~~six months~~ year.

ITEM 7. Amend paragraph **604.31(2)“f”** as follows:

f. The applicant is applying for a Class D Iowa driver's license and has an equivalent out-of-state license that is valid or has expired within the past ~~six months~~ year.

ITEM 8. Amend paragraph **604.31(2)“g”** as follows:

g. The applicant is applying for a Class M driver's license or a motorcycle endorsement and has an equivalent out-of-state Class M driver's license or motorcycle endorsement that is valid or has expired within the past ~~six months~~ year.

ITEM 9. Amend subparagraph **605.11(2)“c”(3)** as follows:

(3) Marriage ~~license or~~ certificate.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 10. Amend rule **761—607.3(321)**, definition of “Air brake system,” as follows:

“*Air brake system*” means a system that uses air as a medium for transmitting pressure or force from the driver’s control to the service brake. “Air brake system” ~~does not include a system that uses compressed air or vacuum only to assist the driver in applying muscular force to hydraulic, electrical or mechanical components~~ shall include any braking system operating fully or partially on the air brake principle.

ITEM 11. Amend paragraph **607.10(1)“c,”** introductory paragraph, as follows:

c. The following portions of 49 CFR Part 383 (October 1, ~~2004~~ 2008):

ITEM 12. Adopt the following new definitions in rule **761—610.2(321)**:

“*Certified abstract of operating record*” means the same as described in Iowa Code subsection 321A.3(1).

“*Highly restricted personal information*” means an individual’s photograph or image, social security number, or medical or disability information.

“*Person*” means an individual, organization or entity.

“*Personal information*” means the same as defined in 761—Chapter 611.

“*Recipient*” means an individual who has obtained a certified abstract of operating record from the department.

ITEM 13. Rescind and reserve rule **761—610.3(321)**.

ITEM 14. Amend rule 761—610.4(321) as follows:

761—610.4(321,321A) Certified driver abstract of operating records.

610.4(1) In accordance with Iowa Code section 321A.3, a printed, certified ~~driver~~ abstract of the operating record of an individual is available. The record includes the information that is on the face of the individual’s driver’s license, plus information on the individual’s sanctions, reportable vehicle accidents, and convictions. The certified ~~driver~~ abstract of operating record does not include the individual’s photograph, social security number, or medical or disability information.

610.4(2) To obtain a certified ~~driver~~ abstract of operating record, a ~~requester~~ requestor shall complete Form 431069, “Privacy Act Agreement for Request of Motor Vehicle Records,” and submit a written request ~~it~~ to the office of driver services. Form 431069 must be completed with all required attachments before the department will consider a request for a certified abstract of operating record. A requestor must attach a legible photocopy of the requestor’s driver’s license or nonoperator’s identification card to the form. The statutory fee, if applicable, shall accompany the ~~request form~~. ~~The request must include sufficient information to identify the individual whose record is requested.~~

610.4(3) Personal information and highly restricted personal information protected by Iowa Code section 321.11 and the Driver’s Privacy Protection Act may be released only in the following situations:

a. ~~The personal information was included in the request.~~ The requestor has complied with each of the following requirements:

- (1) Completed Form 431069 and submitted it to the office of driver services;
- (2) Included all required attachments with the form, including a photocopy of the requestor’s driver’s license or nonoperator’s identification card; and
- (3) Paid the fee, if applicable, for the requested record.

b. ~~The requester is authorized by the Driver’s Privacy Protection Act to use the information. In this situation, the department may require the requester to:~~ The department is satisfied that the requestor provided adequate and truthful information in Form 431069 and in the documents that the requestor attached to Form 431069.

- ~~(1) Provide proof of identity and authority to secure access to the information.~~
- ~~(2) Sign a certified statement or affidavit listing the specific reasons justifying access to the information and provide any proof necessary to establish relevant facts.~~

c. ~~The requester demonstrates to the department that the requester has obtained the express written consent of the individual to whom the personal information pertains. See 761—Chapter 611 for requirements regarding express written consent.~~

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~~d. — The requester is the individual to whom the personal information pertains. The department shall require the requester to provide proof of identity.~~

610.4(4) The single-use restriction in Iowa Code subsection 321A.3(8) applies only to the certified abstract of operating records and to persons who are subject to the fee listed in Iowa Code subsection 321A.3(1).

610.4(5) Any person who obtains a certified abstract of operating record from the department is required to comply with Iowa Code section 321.11 and the Driver's Privacy Protection Act.

ITEM 15. Amend rule **761—611.3(321)**, definition of "Personal information," as follows:

"Personal information" means information that identifies an individual, including the items listed in Iowa Code section 321.11 and 18 U.S.C. § 2725 of the Driver's Privacy Protection Act adopted in rule 761—611.2(321). "Personal information" also includes information on an individual's nonoperator's identification card ~~number~~.

ITEM 16. Amend subrule 611.4(2) as follows:

611.4(2) Form ~~411069~~ 431069, "Privacy Act Agreement for Request of Motor Vehicle ~~Record(s)~~ Records," must be completed by an applicant and approved by the department before the department may disclose personal information to the applicant without the express written consent of the individual to whom such information applies. On the form, the applicant shall indicate the provision of law that allows the release of personal information to that applicant. For the purpose of this subrule, "applicant" means a person who is not an authorized employee of the department.

ITEM 17. Amend rule 761—615.24(252J,261), parenthetical implementation statute, as follows:

761—615.24(252J,261,272D) Suspension upon receipt of a certificate of noncompliance.

ITEM 18. Adopt the following new subrule 615.24(3):

615.24(3) *From department of revenue.*

a. The department shall suspend a person's Iowa-issued driver's license upon receipt of a certification of noncompliance from the department of revenue.

b. The suspension shall begin 30 days after the department's notice of suspension is served.

c. The suspension shall continue until receipt of a withdrawal of the certificate of noncompliance from the department of revenue.

d. The filing of an application pursuant to Iowa Code section 272D.9 stays the suspension pending the outcome of the district court hearing.

ITEM 19. Amend rule **761—615.24(252J,261,272D)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 252J.1, 252J.8, 252J.9, 261.126₂ ~~and 261.127₂~~, 272D.8 and 272D.9.

ITEM 20. Amend subrule 615.40(1) as follows:

615.40(1) Filed proof of financial responsibility under Iowa Code chapter 321A, when required, for all vehicles to be operated. The class of license issued will depend on the examinations passed and other qualifications of the applicant. Regardless of the class of license issued, the license shall be valid only for the operation of the ~~specific~~ motor vehicles covered under the proof of financial responsibility filed by the applicant.

ITEM 21. Amend rule 761—615.42(321) as follows:

761—615.42(321) Remedial driver improvement action under Iowa Code section 321.180B.

615.42(1) The department shall require remedial driver improvement action when a person holding an instruction permit, an intermediate license or a full-privilege driver's license under Iowa Code section 321.180B is convicted of a moving violation or has a contributive accident and the violation or accident occurred during the term of the instruction permit or intermediate license.

615.42(2) Completion of remedial driver improvement action means ~~completion of a driver improvement interview with the department plus any suspension ordered by the department as a result~~

TRANSPORTATION DEPARTMENT[761](cont'd)

~~of the interview~~ any or all of the following as determined by the department: suspension, safety advisory letter, additional restriction(s), vision screening, knowledge examination, and driving examination.

~~615.42(3)~~ Participation in the driver improvement interview by both the licensee and the licensee's parent or guardian may be required. The interview shall be held by a reviewing officer appointed by the director of the office of driver services. The interview may include one or more of the following: a discussion of motor vehicle laws, a discussion of driving behavior, a vision screening, a knowledge examination, and a driving examination.

~~615.42(4)~~ The department may take one or more of the following actions after the interview and shall take one or more of the following actions if the licensee fails to appear for or does not otherwise complete the interview:

~~a. — Execute an agreement with the licensee and the parent or guardian, setting out a plan to improve the licensee's driving behavior.~~

~~b. — Add appropriate license restrictions.~~

~~c. — Suspend the licensee's driving privilege.~~

~~615.42(5)~~ **615.42(3)** A suspension period under this rule shall be for no less than 30 days nor longer than one year. A person whose driving privilege has been suspended under this rule is not eligible for a temporary restricted license.

~~615.42(6)~~ **615.42(4)** Remedial driver improvement action or suspension under this rule terminates when a person attains the age of 18.

This rule is intended to implement Iowa Code section 321.180B.

ITEM 22. Amend subrule 640.6(4) as follows:

640.6(4) *Terminating the suspension upon filing of proof.* When future proof of financial responsibility is shown and the person is otherwise eligible for licensing, the department shall issue Form 431009, a suspension termination notice, to the person whose privileges were suspended under Iowa Code sections 321A.13, 321A.14, 321A.16 or 321A.17 or rules 640.5(321A) and 640.6(321A). To regain operating privileges, the person shall appear before an Iowa driver license examiner, pass the required examinations, and pay the required fees. The person's operating and registration privileges are restricted to the motor vehicles and coverage described in the notice covered under the proof of financial responsibility filed by the applicant.

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for April is 5.00%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate

TREASURER OF STATE(cont'd)

a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective April 9, 2009, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum 0.35%
32-89 days	Minimum 0.60%
90-179 days	Minimum 0.50%
180-364 days	Minimum 0.70%
One year to 397 days	Minimum 1.00%
More than 397 days	Minimum 1.40%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 7719B**UTILITIES DIVISION[199]****Notice of Termination**

Pursuant to the authority of Iowa Code section 17A.4(1)“b,” the Utilities Board (Board) gives notice that on March 26, 2009, the Board issued an order in Docket No. RMU-2009-0001, In re: Amendments to Incident and Outage Notification Requirements for Natural Gas and Electric Utilities and Establishing Notification Rules for Electric Transmission Companies [199 IAC 19.17 and 20.19], “Order Terminating Rule Making.” On February 2, 2009, the Board issued an order commencing a rule making to consider amending its notification requirements for natural gas and electric utilities when incidents or outages occur that meet certain criteria and a new rule to require notification in certain instances by electric transmission companies in Iowa. The proposed amendments and new rule were published in IAB Vol. XXXI, No. 18 (2/25/09) p. 1884, as **ARC 7585B**.

Written comments concerning the proposed amendments and new rule were filed by the Consumer Advocate Division of the Department of Justice, MidAmerican Energy Company, the Iowa Association of Electric Cooperatives, Interstate Power and Light Company, and ITC Midwest LLC. To allow for oral comments and Board questions of interested parties, the Board had scheduled an oral presentation for March 26, 2009.

On March 23, 2009, the Board issued an order canceling the oral presentation scheduled for March 26, 2009. In the order, the Board stated that the comments from the utilities demonstrated that the proposed amendments and new rule would not accomplish the intended improvement in notification of incidents and outages. The Board indicated that it would terminate the rule making and would schedule informal discussions with the affected utilities to address the problems encountered with the existing notification rules.

Pursuant to the authority of Iowa Code section 17A.4(1)“b,” the Board hereby terminates the rule making initiated in **ARC 7585B**.

ARC 7723B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 163.1, the Iowa Department of Agriculture and Land Stewardship amends Chapter 65, "Animal and Livestock Importation," Iowa Administrative Code.

The amendment removes the requirement that all Cervidae imported from outside Iowa be inspected by a department representative prior to release in the herd. This action is being taken in response to federal and state budget constraints.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because the change has been approved by the Farm Deer Council and because the annual inventory inspection requirement will provide for the identification of the animals, verification of the chronic wasting disease (CWD) testing documentation, and review of the movement documents.

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 be made effective April 2, 2009, because the amendment provides a benefit to the public by allowing for more effective budgeting.

This amendment is intended to implement Iowa Code section 163.1.

This amendment became effective April 2, 2009.

The following amendment is adopted.

Amend subrule 65.9(2) as follows:

65.9(2) *Requirements and limitations, general. Chronic wasting disease.*

~~a. — Cervidae permitted entry into the state shall be quarantined to the premises of destination and held in isolation until inspected by a department representative.~~

~~b. Chronic wasting disease.~~

~~(1) a.~~ Cervidae originating from an area considered to be endemic for chronic wasting disease shall not be allowed entry into Iowa. Cervidae that originate from a herd that has had animal introductions from an area endemic to chronic wasting disease during the preceding five years shall not be allowed entry into Iowa.

~~(2) b.~~ CWD susceptible Cervidae shall only be allowed into Iowa from herds which are currently enrolled in and have satisfactorily completed at least three years in an official recognized CWD monitoring program. The CWD herd number, anniversary date, expiration date, and herd status for each individual animal must be listed on the CVI.

~~(3) c.~~ One of the following statements must be accurate and listed on the CVI:

~~1. (1)~~ For CWD susceptible Cervidae:

"All Cervidae on this certificate originate from a CWD monitored or certified herd in which these animals have been kept for at least one year or were natural additions. There has been no diagnosis, sign, or epidemiological evidence of CWD in this herd for the past five years. ~~All cervids listed are quarantined to the destination and shall be held in isolation until inspected by a department representative.~~"

~~2. (2)~~ For Cervidae other than CWD susceptible Cervidae:

"All Cervidae on this certificate have not spent any time within the past 36 months in a zoo, animal menagerie or like facility, and have not been on the same premises as a cervid herd which has been classified as a CWD infected herd, exposed herd or trace herd. ~~All cervids listed are quarantined to the destination and shall be held in isolation until inspected by a department representative.~~"

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

~~(4)~~ d. Each animal must have official individual identification, and all forms of identification must be listed on the certificate.

[Filed Emergency 4/2/09, effective 4/2/09]

[Published 4/22/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/22/09.

ARC 7729B

INSURANCE DIVISION[191]**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 508E.19, the Insurance Division hereby amends Chapter 48, "Viatical and Life Settlements," Iowa Administrative Code.

The rules in Chapter 48 provide for the administration of viatical and life settlements in this state by providing rules under which viatical and life settlements may be made and safeguards by which viatical settlement providers may be monitored and remain in good standing. The amendments provide technical corrections to conform the rules to the Iowa Code. The Division intends that Iowa viatical settlement brokers and providers will comply with these rules for all viatical settlement purchase agreements issued on or after April 3, 2009.

In compliance with Iowa Code section 17A.4(3), the Division finds that notice and public participation are unnecessary because the amendments are merely corrections of inconsistencies within the rules. Further, the amendments adopted herein are necessary for the administration of the rules.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments, 35 days after publication, should be waived and these amendments should be made effective on April 3, 2009, because the corrections need to be in place immediately to avoid confusion.

The Insurance Division adopted these amendments on April 3, 2009.

These amendments became effective on April 3, 2009.

These amendments are intended to implement Iowa Code chapters 508E, 252J, 261 and 272D.

The following amendments are adopted.

ITEM 1. Amend rule 191—48.1(508E) as follows:

191—48.1(508E) Purpose and authority. The purpose of this chapter is to provide for the administration of viatical and life settlements in this state by providing rules under which viatical and life settlements may be made, disclosures and other provisions by which viators may be protected, and safeguards by which viatical settlement providers may be monitored and remain in good standing. These rules are adopted by the commissioner pursuant to the authority in Iowa Code chapter 508E ~~as amended by 2008 Iowa Acts, Senate File 2392.~~

ITEM 2. Amend rule 191—48.2(508E), introductory paragraph, as follows:

191—48.2(508E) Definitions. For purposes of this chapter, the definitions in Iowa Code chapter 508E ~~as amended by 2008 Iowa Acts, Senate File 2392,~~ are incorporated by reference. In addition, the following definitions shall apply:

ITEM 3. Amend rule 191—48.3(508E) as follows:

191—48.3(508E) License requirements.

48.3(1) Viatical settlement provider.

a. To be considered for licensure as a viatical settlement provider, pursuant to ~~2008 Iowa Acts, Senate File 2392, section 3~~ Iowa Code section 508E.3, a person must complete the viatical settlement provider application form, ~~to be found at the commissioner's Web site, file with the commissioner the~~ completed application in the format prescribed by the commissioner, and include the payment of an

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application fee in the amount of \$100. An application shall not be deemed filed until all information necessary to process the application has been received by the commissioner. In addition to complying with ~~2008 Iowa Acts, Senate File 2392, section 3~~ Iowa Code section 508E.3, the applicant also shall provide the following:

(1) and (2) No change.

(3) If a legal entity intending to have any partners, officers, members, and designated employees act as viatical settlement providers or viatical settlement brokers under the legal entity's license, pursuant to ~~2008 Iowa Acts, Senate File 2392, section 3~~ Iowa Code section 508E.3, all completed forms, fees, and information required to be filed under subrule 48.3(2) for each such person named in the application and any supplements to the application;

(4) and (5) No change.

(6) Initial viatical settlement contracts, ~~and~~ disclosure statements, ~~and~~ advertising material that have been or are being submitted for approval and that have been approved or that are approved during the course of the application process pursuant to Iowa Code section 508E.5;

(7) and (8) No change.

b. A form for the antifraud plan that is required to be submitted with an application, pursuant to ~~2008 Iowa Acts, Senate File 2392, section 3~~ Iowa Code section 508E.3, to meet the requirements of ~~2008 Iowa Acts, Senate File 2392, section 15~~ Iowa Code section 508E.15, can be found on the commissioner's Web site.

c. No change.

d. In addition to the information required in this subrule, the commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement provider complies with the requirements of this subrule and Iowa Code subsection 508E.3(7).

48.3(2) Viatical settlement broker.

a. To be considered for licensure as a viatical settlement broker, pursuant to ~~2008 Iowa Acts, Senate File 2392, section 3~~ Iowa Code section 508E.3, a person must complete the viatical settlement broker application form, ~~to be found at the commissioner's Web site~~, file the completed application in the format prescribed by the commissioner, and include the payment of an application fee in the amount of \$100. In addition to finding compliance with ~~2008 Iowa Acts, Senate File 2392, section 3~~ Iowa Code section 508E.3, the commissioner also shall find that the applicant:

~~(1) Has passed the test required by the commissioner or has taken and passed a test on viatical and life settlement contracts required by another state insurance department;~~

(1) Has provided proof of one of the following:

1. The applicant is a licensed insurance producer with a life line of authority for at least the 12 months preceding the date of application; or

2. The applicant has taken and passed an examination on viatical and life settlement contracts required by another state insurance department and currently holds a license as a viatical settlement broker from that state; or

3. The applicant has passed the viatical settlement examination required by the commissioner. Examination results are valid for 90 days after the date of the examination. If the applicant fails to apply for licensure within 90 days after passing the examination, the examination results shall be void;

(2) and (3) No change.

b. ~~—If a person is a life insurance producer who meets the requirements of 2008 Iowa Acts, Senate File 2392, section 3, the requirements of paragraph 48.3(2) "a" shall be deemed to have been met, and the life insurance producer shall file a form, to be found at the commissioner's Web site, and shall include the payment of \$100. The one year that a life insurance producer must be licensed to meet the requirements of 2008 Iowa Acts, Senate File 2392, section 3, shall immediately precede the producer's request for a viatical settlement broker license.~~

c. ~~b.~~ A form for the antifraud plan that is required to be submitted with an application, pursuant to ~~2008 Iowa Acts, Senate File 2392, section 3~~ Iowa Code section 508E.3, to meet the requirements of ~~2008 Iowa Acts, Senate File 2392, section 15~~ Iowa Code section 508E.15, can be found on the commissioner's Web site.

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~~d. c.~~ In addition to the information required in this subrule, the commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement broker complies with the requirements of this subrule and has made a filing pursuant to Iowa Code subsection 508E.3(7).

48.3(3) *Governing law where viators are residents of different states.* For purposes of this subrule, if there is more than one viator on a single policy and the viators are residents of different states, the viatical settlement contract shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all viators. If another state does not have a statute or rule substantially similar to Iowa Code chapter 508E ~~as amended by 2008 Iowa Acts, Senate File 2392,~~ and this rule, the actions related to the viatical settlement contract shall be governed by the law of this state.

48.3(4) *License term.*

a. and b. No change.

c. A viatical settlement broker license is valid for an initial term of one year from the last day of the applicant's ~~birth anniversary~~ month following the issuance of the license, and automatically terminates on the last day of the month of the initial term unless renewed pursuant to subrule 48.3(6).

d. and e. No change.

48.3(5) *Continuing education for viatical settlement broker.*

a. to i. No change.

j. A viatical settlement broker may elect to comply with the continuing education requirements by taking and passing the viatical settlement broker licensing examination within 90 days prior to the date on which the renewal application is submitted.

k. to m. No change.

48.3(6) *License renewal.* A viatical settlement provider license or a viatical settlement broker license may be renewed as follows:

a. A viatical settlement provider license may be renewed by payment of \$100 within 60 days prior to the expiration date of the license and by demonstration that the viatical settlement provider continues to meet the requirements of ~~2008 Iowa Acts, Senate File 2392, section 3~~ Iowa Code section 508E.3 and subrule 48.3(1), has provided biographical affidavits not older than one year prior to the renewal date on all persons listed in subparagraph 48.3(1)"a"(4), has provided business character reports for any new persons listed in subparagraph 48.3(1)"a"(4), and has provided the reports required by rule 48.7(508E).

(1) and (2) No change.

b. No change.

c. If a legal entity has any partners, officers, members, or designated employees acting as viatical settlement providers or viatical settlement brokers under the legal entity's license, pursuant to ~~2008 Iowa Acts, Senate File 2392, section 3~~ Iowa Code section 508E.3, the legal entity must provide all completed forms, fees, and information required to be filed under paragraphs 48.3(6)"a" and "b" for each such person named in the application, or in any supplements to the application, and must provide any deletions to the list of names that was provided with the original application. If there are any new partners, officers, members, and designated employees that the legal entity intends will act as viatical settlement providers or viatical settlement brokers under the legal entity's license, the legal entity shall provide for each such person the forms, information and fees required by subrule 48.3(2).

d. If a viatical settlement provider or viatical settlement broker fails to comply with the renewal procedures within the time prescribed, or a viatical settlement provider fails either to meet the requirements of ~~2008 Iowa Acts, Senate File 2392, section 3,~~ Iowa Code section 508E.3 and subrule 48.3(1) or to submit the reports required in rule 48.7(508E), such nonpayment or failure shall result in lapse of the license.

e. No change.

48.3(7) No change.

48.3(8) *Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance.*

a. to c. No change.

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d. An order of reinstatement or reissuance shall be based upon a written decision which incorporates findings of fact and conclusions of law. An order granting an application for reinstatement or reissuance may impose such terms and conditions as the commissioner or the commissioner's designee deems desirable, which may include one or more of the types of disciplinary sanctions provided by this chapter or by Iowa Code chapter 508E ~~amended by 2008 Iowa Acts, Senate File 2392~~. The order shall be a public record, available to the public, and may be disseminated in accordance with Iowa Code chapter 22.

e. No change.

f. A license may be voluntarily forfeited in lieu of compliance with an order of the commissioner or the commissioner's designee with the written consent of the commissioner. The forfeiture becomes effective when and upon such conditions as required by order of the commissioner, which may include one or more of the types of disciplinary sanctions provided by this chapter or by Iowa Code chapter 508E ~~as amended by 2008 Iowa Acts, Senate File 2392~~.

g. No change.

48.3(9) to 48.3(11) No change.

48.3(12) Fees.

a. Fees shall be paid by check.

b. The fee for an examination shall be set by the outside testing service under contract with the division and approved by the division.

c. The annual fee for issuance or renewal of a viatical broker, legal entity or provider license is \$100.

d. The fee for reinstatement of a viatical broker, legal entity or provider license is the sum of the renewal fee plus \$100.

e. The division may charge a reasonable fee for the compilation and production of viatical broker, legal entity or provider licensing records.

ITEM 4. Amend subrule 48.7(1), introductory paragraph, as follows:

48.7(1) On March 1 of each calendar year, the secretary and either the president or the vice president of each viatical settlement provider licensed in this state shall submit, under oath, the following: the annual statement required by ~~2008 Iowa Acts, Senate File 2392, section 6~~ Iowa Code section 508E.6; a report of all viatical settlement transactions in which the viator is a resident of this state; and a report for all states in the aggregate. The report shall contain the following information for the previous calendar year:

ITEM 5. Amend rule 191—48.8(508E) as follows:

191—48.8(508E) Examination or investigations.

48.8(1) *Authority, scope and scheduling of examinations.* In addition to the authority, scope and scheduling of examinations set forth in ~~2008 Iowa Acts, Senate File 2392, section 7~~ Iowa Code section 508E.7, the following provisions shall apply:

a. to c. No change.

48.8(2) *Immunity from liability.* No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this rule or of Iowa Code chapter 508E ~~as amended by 2008 Iowa Acts, Senate File 2392~~.

ITEM 6. Amend rule 191—48.10(508E) as follows:

191—48.10(508E) Penalties; injunctions; civil remedies; cease and desist.

48.10(1) Unfair trade practices. Pursuant to ~~2008 Iowa Acts, Senate File 2392, section 17~~ Iowa Code section 508E.17, a violation of rule 48.4(508E), 48.5(508E), 48.6(508E), 48.7(508E) or 48.9(508E) shall be considered an unfair trade practice under Iowa Code chapter 507B, and a violator shall be subject to the penalties contained in that chapter.

48.10(2) and 48.10(3) No change.

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48.10(4) A viatical settlement provider licensed in this state that in the time required fails to file either the annual statement referred to in ~~2008 Iowa Acts, Senate File 2392, section 6,~~ Iowa Code section 508E.6 or the annual audited financial statement referred to in subparagraph 48.3(1) "a"(1), ~~in the time required~~ shall pay an administrative penalty pursuant to ~~2008 Iowa Acts, Senate File 2392, section 16~~ Iowa Code section 508E.16. The viatical settlement provider's right to transact further new business in this state shall immediately cease until the provider has fully complied with this rule.

48.10(5) Pursuant to ~~2008 Iowa Acts, Senate File 2392, section 16~~ Iowa Code section 508E.16, if the commissioner finds that an activity in violation of this rule presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains in effect for 90 days. If the commissioner begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective, absent an order by a court of competent jurisdiction pursuant to 191—Chapters 2 and 3.

ITEM 7. Amend rule 191—48.13(82GA,SF2428) as follows:

191—48.13(~~82GA,SF2428~~ 272D) Suspension for failure to pay state debt.

48.13(1) The commissioner shall deny the issuance or renewal of a viatical settlement broker license upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures in ~~2008 Iowa Acts, Senate File 2428~~ Iowa Code chapter 272D. In addition to the procedures set forth in ~~2008 Iowa Acts, Senate File 2428~~ Iowa Code chapter 272D, this rule shall apply.

48.13(2) Upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures set forth in ~~2008 Iowa Acts, Senate File 2428~~ Iowa Code chapter 272D, the commissioner shall issue a notice to the viatical settlement broker that the viatical settlement broker's pending application for licensure, pending request for renewal, or current license will be suspended 30 days after the date of the notice. Notice shall be sent to the viatical settlement broker's last-known address by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensed viatical settlement broker may accept service personally or through authorized counsel.

48.13(3) Pursuant to ~~2008 Iowa Acts, Senate File 2428, section 14~~ Iowa Code section 272D.8, the notice shall contain the following items:

a. to c. No change.

d. A statement that the viatical settlement broker does not have a right to a hearing before the commissioner, but that the viatical settlement broker may file an application for a hearing in district court pursuant to ~~2008 Iowa Acts, Senate File 2428, section 15~~ Iowa Code section 272D.9;

e. and f. No change.

48.13(4) Viatical settlement brokers shall keep the commissioner informed of all court actions and all actions taken by the centralized collection unit of the department of revenue under or in connection with ~~2008 Iowa Acts, Senate File 2428~~ Iowa Code chapter 272D; and viatical settlement brokers shall provide to the commissioner, within seven days of filing or issuance, copies of all applications filed with the district court pursuant to ~~2008 Iowa Acts, Senate File 2428, section 15~~ Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit of the department of revenue.

48.13(5) The effective date of revocation or suspension of a viatical settlement broker license, as specified in the notice required by ~~2008 Iowa Acts, Senate File 2428, section 14,~~ Iowa Code section 272D.8 and subrule 48.13(2), shall be 60 days following service of the notice upon the applicant or licensed viatical settlement broker.

48.13(6) In the event an applicant or licensed viatical settlement broker timely files a district court action following service of notice by the commissioner pursuant to ~~2008 Iowa Acts, Senate File 2428, section 15~~ Iowa Code section 272D.9, the commissioner's suspension proceedings will be stayed until the commissioner is notified by the district court of the resolution of the application. Upon receipt of a

INSURANCE DIVISION[191](cont'd)

court order lifting the stay, or otherwise directing the commissioner to proceed, the commissioner shall continue with the intended action described in the notice. For purposes of determining the effective date of the denial of the issuance or renewal of a viatical settlement broker license, the commissioner shall count the number of days before the action was filed and the number of days after the court disposed of the action.

48.13(7) No change.

48.13(8) Upon receipt of a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue, suspension proceedings shall halt, and the named viatical settlement broker shall be notified that the proceedings have been halted. If the viatical settlement broker's license has already been suspended, the license shall be reinstated if the viatical settlement broker is otherwise in compliance with this chapter. All fees required for license renewal or license reinstatement must be paid by the viatical settlement broker, and all continuing education requirements must be met before the viatical settlement broker's license will be renewed or reinstated after a license suspension or revocation pursuant to ~~2008 Iowa Acts, Senate File 2428~~ Iowa Code chapter 272D.

48.13(9) No change.

48.13(10) Notwithstanding any statutory confidentiality provision, the commissioner may share information with the centralized collection unit of the department of revenue for the sole purpose of identifying viatical settlement brokers subject to enforcement under ~~2008 Iowa Acts, Senate File 2428~~ Iowa Code chapter 272D.

ITEM 8. Amend **191—Chapter 48**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter chapters~~ 508E, as amended by 2008 Iowa Acts, Senate File 2392; Iowa Code chapters 252J, and 261; and 2008 Iowa Acts, Senate File 2428 272D.

[Filed Emergency 4/3/09, effective 4/3/09]

[Published 4/22/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/22/09.

ARC 7720B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 99F.4, the Department of Public Safety hereby amends Chapter 141, "Closed Circuit Surveillance Systems," Iowa Administrative Code.

Iowa Code section 99F.4, subsection 18, and administrative rules of the Iowa Racing and Gaming Commission authorize the Department of Public Safety to adopt administrative rules establishing requirements for video surveillance systems in gaming establishments licensed by the Commission. These rules have been in effect for nearly two decades and have been updated from time to time to reflect changing requirements and technological advances.

During 2008, changes to the rules in Chapter 141 that were proposed (**ARC 6282B**, IAB 10/10/07) and adopted (**ARC 6591B**, IAB 2/13/08) became controversial, and the effective date of those amendments was delayed by action of the Administrative Rules Review Committee (see IAB 3/26/08 and IAB 7/2/08). After further consultation with representatives of the gaming industry, the Iowa Racing and Gaming Commission, and legal counsel, it was determined that further changes in the rules regarding video surveillance were needed. The amendments adopted herein are intended to make these rules more consistent with rules of the Iowa Racing and Gaming Commission and with the statutory authority afforded the Department of Public Safety in Iowa Code section 99F.4.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin as **ARC 7563B** on February 11, 2009. A public hearing on the amendments as proposed in the Notice of Intended Action was held on March 10, 2009, and comments were received from representatives of the Iowa Gaming Association. The comments noted inconsistencies in the definitions. Specifically, commenters noted that it was unclear as to whether surveillance requirements extend only to entrances

PUBLIC SAFETY DEPARTMENT[661](cont'd)

and exits available to the public. As a result of these comments, changes have been made to the text of the definition of “gambling activities” in Item 4 and to subrule 141.10(6) in Item 9 to clarify that video surveillance is required for public entrances and public exits, but not for other entrances and exits.

Pursuant to Iowa Code section 17A.5(2)“b”(2), the Department of Public Safety finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective April 1, 2009. Amendments to Chapter 141 previously adopted in 2008 are under a session delay imposed by the Administrative Rules Review Committee (see IAB 7/2/08). Consequently, it is essential that the amendments adopted herein take effect prior to adjournment of the 2009 Session of the Iowa General Assembly to satisfy the requirements of Iowa Code section 99F.4 and to avoid confusion that may result if the previously delayed amendments are allowed to take effect.

These amendments are intended to implement Iowa Code section 99F.4.

These amendments became effective April 1, 2009.

The following amendments are adopted.

ITEM 1. Rescind the definition of “Casino” in rule **661—141.1(99F)**.

ITEM 2. Rescind the definition of “Casino surveillance” in rule **661—141.1(99F)** and adopt the following new definition in lieu thereof:

“*Casino surveillance*” means the observation of gambling activities in a gaming facility licensed by the commission. The purpose of a surveillance system is to safeguard the licensee’s assets, to protect both the public and the licensee’s employees, and to promote public confidence that licensed gambling activities are conducted honestly and free of criminal elements and activities. It is the responsibility of the licensee to ensure that casino surveillance is used to accomplish the stated purpose and is not used in an improper manner which would bring discredit to the industry.

ITEM 3. Rescind the definition of “Closed network” or “closed circuit” in rule **661—141.1(99F)** and adopt the following new definition in lieu thereof:

“*Closed network*” or “*closed circuit*” means all digital recording equipment and all other associated surveillance equipment that shall be designed, configured, and maintained on a separate and exclusive network system located on the same premises as the casino, or on property adjacent to the casino which has been approved by the DCI for the location of surveillance equipment pursuant to subrule 141.10(1). This closed network system shall not be touched by, connected to, or partitioned from any other network, unless approval has been received from the assistant director for gaming operations of the DCI. Approval or disapproval of such a request by the assistant director is subject to review by the director of the DCI or the commissioner of public safety.

ITEM 4. Adopt the following new definition in rule **661—141.1(99F)**:

“*Gambling activities*” means participating in or wagering on gambling games on the gaming floor; the movement, storage, and handling of uncounted gambling revenues; the manual exchange of moneys for forms of wagering credit on the gaming floor; public entrance into and public egress from the gaming floor, except that egress through emergency exits that are actively alarmed is not included; and any other activities so defined by the commission.

ITEM 5. Rescind and reserve rule **661—141.2(99F)**.

ITEM 6. Rescind and reserve rule **661—141.3(99F)**.

ITEM 7. Rescind paragraph **141.5(9)“d”** and adopt the following new paragraph in lieu thereof:

d. If the licensee chooses to use a network for the digital recording equipment, it must be a closed network with limited access located on the same premises as the casino or, with the approval of the DCI, on a property adjacent to the casino. Nothing in this paragraph shall be interpreted to prevent the commission from utilizing or transmitting for regulatory purposes images recorded by a video surveillance system.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 8. Rescind and reserve subrule **141.6(9)**.

ITEM 9. Rescind rule 661—141.10(99F) and adopt the following **new** rule in lieu thereof:

661—141.10(99F) Surveillance room. There shall be provided in each gambling facility or gambling structure a room specifically utilized to monitor and record gambling activities. This room shall have a trained surveillance person present at all times during casino operation hours. In addition, an excursion gambling boat, racetrack enclosure, or gambling structure may have satellite monitoring equipment. The following are requirements for the operation of equipment in the surveillance room and of satellite monitoring equipment:

141.10(1) Surveillance equipment location. All equipment that may be utilized to monitor or record views obtained by a casino surveillance system must remain in a room located on the same premises as the casino or, with the approval of the DCI, on property adjacent to the casino. The room must be used exclusively for casino surveillance security purposes. The satellite monitoring equipment must be capable of being disabled from the casino surveillance room when not in use. The entrance to the casino surveillance room must be locked or secured at all times.

141.10(2) Override capability. Casino surveillance equipment must have total override capability over any other satellite monitoring equipment in other casino offices, with the exception of the DCI rooms.

141.10(3) Access. DCI and commission employees shall at all times be provided immediate access to the casino surveillance room and satellite monitoring equipment. Also, all DCI and commission employees shall have access to all records and areas of such rooms.

141.10(4) Surveillance logs. Entries in the log shall be required when specific surveillance is requested by the DCI or the commission, or whenever any activity that appears unusual, irregular, illegal or in violation of commission rules is observed. Also, all communications received or sent from the surveillance room in regard to surveillance activities or casino operations shall be logged.

141.10(5) Blueprints. A copy of the configuration of the casino floor shall be posted and updated immediately upon any approved change. The location of any change and the location of surveillance cameras, gaming tables and slot machines by assigned numbers shall also be included. Copies of the blueprints shall be made available immediately to the DCI and commission.

141.10(6) Storage and retrieval. Surveillance personnel shall label and file all recordings. The date and time of the recording shall be recorded. Recordings of public admission entrances, public exits, and casino cashier cages where check-cashing activities occur shall be retained for 21 days unless a longer period is required by the DCI, the commission, or court order. All other recordings shall be retained for at least 7 days after recording unless a longer period is required by the DCI, the commission, or court order. Original audio, video, and digital recordings shall be released to the DCI or commission upon demand.

141.10(7) Malfunctions. Each malfunction of surveillance equipment must be repaired within 24 hours of the malfunction. If, after 24 hours, activity in the affected area cannot be monitored, the game or machine shall be closed until such coverage can be provided. A record of all malfunctions shall be kept and reported to the DCI each day. In the event of a dedicated coverage malfunction, the licensee must immediately provide alternative camera coverage or other security measures that will protect the subject activity. If other security measures are taken, the licensee must immediately notify the DCI. The DCI, in its discretion, will determine whether the other security measures are adequate.

141.10(8) Security. Entry to the surveillance room and access to satellite monitoring equipment shall be limited to persons approved by the DCI or the commission. A log of personnel entering and exiting the surveillance room and accessing satellite monitoring equipment shall be maintained and submitted to the DCI or the commission upon request.

141.10(9) Playback station. Within the DCI room, there shall be an area that includes, but is not limited to, a monitor and a recorder with the capability of producing first-generation copies.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

141.10(10) Additional requirements.

a. Audio and video or digital monitoring and recording shall be continuous in the detention areas when someone is being detained. These recordings must be retained for 30 days after the recorded event, unless directed otherwise by the administrator, DCI or court order.

b. The commission, its employees, and DCI agents shall, at all times, be provided immediate access to the surveillance room and all areas of the casino.

141.10(11) Written plans and alterations.

a. Every operator or applicant for licensing shall submit to the commission for approval by the administrator and to the DCI for approval a written casino surveillance system plan no later than 60 days prior to the start of gaming operations.

b. A written casino surveillance system plan must include a casino floor plan that shows the placement of the surveillance room and all casino surveillance equipment in relation to the locations required to be covered and a detailed description of the casino surveillance system and its equipment. In addition, the plan may include other information that evidences compliance with these rules by the licensee, operator or applicant.

c. The operator may change the location of the surveillance room, table games, slot machines, and other gaming devices. The surveillance system must also be adjusted, if necessary, to provide the coverage required by these rules. A DCI agent must approve the change in the surveillance system before the relocated surveillance room, table games, slot machines, or other gaming devices may be placed into operation.

EXCEPTION: A commission representative may allow a gambling game to be placed in operation pending approval by a DCI agent.

[Filed Emergency After Notice 3/31/09, effective 4/1/09]

[Published 4/22/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/22/09.

ARC 7722B**SOIL CONSERVATION DIVISION[27]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 161A.4(1), the Division of Soil Conservation of the Department of Agriculture hereby amends Chapter 10, "Iowa Financial Incentive Program for Soil Erosion Control," Iowa Administrative Code.

The previous summer construction incentive provisions for soil erosion control provided an increased cost-share rate for constructing conservation practices from June 1 to September 15. The summer construction incentive provisions have been revised with an incentive payment for the establishment of conservation cover in place of cropland to allow for the establishment of permanent conservation practices during the growing season.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 25, 2009, as **ARC 7594B**. The public comment period closed on March 17, 2009. Comments made were generally supportive.

Since publication of the Notice, two changes have been made. Provisions for summer construction incentives were amended to limit the availability of the state summer construction incentives in conjunction with federal summer construction incentives. Additionally, the language concerning the planting of a conservation cover was clarified by stating that the cover is for erosion control purposes on the construction site.

The Department finds that these amendments confer a benefit on the public by permitting sufficient time for program implementation. The Department also finds that delaying the effective date would be impracticable. 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.

SOIL CONSERVATION DIVISION[27](cont'd)

These amendments are subject to the Division's general waiver provisions.

These amendments are intended to implement Iowa Code section 161A.2.

These amendments became effective on April 1, 2009.

The following amendments are adopted.

ITEM 1. Amend subrule 10.41(5) as follows:

10.41(5) Summer construction incentives (SCI). ~~Unspent funds distributed to the voluntary program in any fiscal year may be used for SCI cost share up to 60 percent if there are not adequate requests for permanent practices to obligate the balance.~~ Funds are available for the planting of a conservation cover crop in place of cropland during the growing season to extend the construction season for the purpose of the installation of conservation practices. This practice shall be applied using the conservation crop rotation standard. Summer construction incentives are only available in conjunction with state-funded conservation practices.

ITEM 2. Amend subrule 10.60(2) as follows:

10.60(2) *Summer construction incentives.* ~~Commissioners may enter agreements providing for cost sharing up to 60 percent of the cost of establishing approved, permanent soil and water conservation practices where the establishment of that practice involves a construction project which begins after June 1 but before September 15 of any calendar year. Commissioners shall not use state cost sharing funds to pay such incentives when requests for cost sharing at the 50 percent level are sufficient to use all of the district's allocation for that fiscal year.~~ In addition to cost share for the establishment of a permanent conservation practice, up to \$200 per acre is available for the establishment of a conservation cover crop and to offset income lost from cropland acres taken out of production during the growing season. Payment will be made upon completion of the permanent conservation practice. To qualify:

a. The field being treated shall be in row cropland during the growing season in which the permanent conservation practice is being constructed.

b. The construction area shall be planted with a conservation cover for erosion control purposes on the construction site.

c. The construction of the permanent conservation practice shall take place between June 15 and October 15. Work must be started and completed between these dates and verified by the technician prior to payment of the incentive.

d. Only the land necessary for the construction is eligible for this incentive. The construction work area shall be determined by the technician.

e. The construction work area shall not be used to grow a row crop except for the required conservation cover crop.

[Filed Emergency After Notice 4/1/09, effective 4/1/09]

[Published 4/22/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/22/09.

ARC 7715B**ACCOUNTANCY EXAMINING BOARD[193A]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 542.4, the Accountancy Examining Board hereby amends Chapters 1 to 4, 9 to 11, 13, and 15 to 17; rescinds and adopts new Chapters 5 to 8, 12, 14, and 18; rescinds Chapter 19; and adopts new Chapters 20 and 21, Iowa Administrative Code.

During the process of drafting these rules, the Board solicited participation from numerous constituent groups. A task force that included members of the Board as well as members from the Iowa Society of Certified Public Accountants and the Accountants Association of Iowa reviewed several drafts of these amendments prior to publication of the Notice of Intended Action.

Most of the amendments implement changes required as a result of 2008 Iowa Acts, chapter 1106, which becomes effective July 1, 2009. This legislation allows out-of-state CPAs and CPA firms to practice in Iowa without licensure under some conditions. New Chapters 20 and 21 describe the practice privilege in some detail, and many of the chapters are amended to incorporate references to practice privilege where relevant. The legislation increases civil penalties for firms to \$10,000 and authorizes the Board to confidentially supply licensee social security numbers to the National Association of State Boards of Accountancy for use in a national data bank of licensee information. The legislation also allows licensees to voluntarily provide the Board with a final peer review report and, absent objection from the licensee, similarly allows the administering entity of a peer review program to provide a final peer review report to the Board.

Other amendments:

- Update references to the 2001 Iowa Accountancy Act;
- Outline the Board's planned transition from biennial to annual renewal for individual licensees;
- Clarify provisions on who is authorized to perform attest or compilation services in Iowa, and under what conditions;
- Make a number of changes to the CPA and LPA firm application and renewal process;
- Add discipline provisions to the continuing education chapter and allow ethics continuing education to be earned in half-hour increments under certain conditions;
- Reorganize fee information and change the fee to reinstate a lapsed license. The Board has not yet established a fee schedule for annual renewals commencing with certificates and licenses that expire on and after June 30, 2010, and will amend the rules when the revised fee schedule is available;
- Add guidelines for licensees regarding how to address conflicts of interest; and
- Provide a detailed list of grounds for discipline.

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

Notice of Intended Action was published in the January 14, 2009, Iowa Administrative Bulletin as **ARC 7484B**. A public hearing was held on February 3, 2009, at 10 a.m. in the Second Floor Conference Room of the Board's offices located at 1918 S.E. Hulsizer Road, Ankeny, and public comments were allowed until close of business on that same day. One individual from the Iowa Society of Certified Public Accountants attended the hearing and spoke in support of the amendments. Additionally, the Society appeared before the Administrative Rules Review Committee on Friday, February 9, 2009, at 9:25 a.m. in Room 116, State Capitol, Des Moines, Iowa, and again expressed support for the amendments.

The Board received written comments on the proposed amendments in a letter cowritten by Deloitte & Touche, LLP, Ernst & Young, LLP, Grant Thornton, LLP, KPMG LLP, and PricewaterhouseCoopers LLP (collectively "Deloitte") raising concerns on the following six specific topics.

1. Substantial equivalency. Deloitte requested that the Board by rule mandate deference to the National Association of State Boards of Accountancy (NASBA) and the Uniform Accountancy Act (UAA) in determining whether an applicant for an Iowa CPA certificate who holds a CPA certificate in another state satisfies qualifications substantially equivalent to those required in Iowa. This suggestion relates back to the Iowa Accountancy Act of 2001, effective July 1, 2002, in which the Iowa Legislature rejected the suggested UAA language and instead vested discretionary authority in the Board to

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

determine substantial equivalency. See Iowa Code sections 542.3(23) and 542.19(1). The rules as amended do not make any substantive changes to the process of establishing substantial equivalency. UAA is often amended. The Board lacks control over what the UAA model act provides and could not accordingly delegate its duty to determine substantial equivalency in the manner suggested. The Board is unaware, however, of any serious discrepancies between the Board's determinations and the guidelines provided by NASBA. If such issues are brought to the Board's attention, they can be resolved on a case-by-case basis.

2. Inactive status. Deloitte suggested a new rule to provide guidance to out-of-state CPAs on how they can comply with Iowa's continuing education requirements when applying to reactivate an inactive Iowa CPA certificate to active status. The suggested rule is unnecessary. Board rules already outline the process for requesting inactive status and for reinstating to active status. See 193A IAC 5.9(542). When reinstating to active status in Iowa, CPAs are deemed to satisfy Iowa's continuing education requirement if the CPAs satisfy the continuing education requirement of the state in which they reside or maintain their principal place of business. See Iowa Code section 272C.2(4) and subrules 5.9(7) and 10.3(5).

3. Document production. Deloitte asked the Board to restrict by rule the statutory requirement that CPAs exercising a practice privilege respond to Board requests for "such information or records as licensees are similarly required to provide." See Iowa Code section 542.20(7)"c." Deloitte raised concerns that practice privilege practitioners may not be familiar with Iowa's requirements and that the Board lacks a process to challenge the request. Both concerns are misplaced. Practice privilege practitioners are required by Iowa law (and UAA) to comply with all laws of the state in which they are practicing. By requiring the production of the same information and records Iowa licensees provide, but upon the Board's request rather than as part of the application and renewal procedures required of licensees, the Board will in effect be giving the practice privilege practitioner precise notice of the requested information. A practice privilege practitioner who fails or refuses to respond would be subject to revocation of a practice privilege pursuant to the procedures described in Iowa Code section 542.14, procedures that include a right to a contested case hearing. The Board may alternatively issue a subpoena, which is enforceable through the administrative procedures outlined in 193 IAC Chapter 6 and through district court procedures which provide an opportunity to resist. See Iowa Code sections 17A.13(1) and 272C.6(3).

Mobility was not intended to shield practitioners from state Board investigations. Until there is a national data bank of CPAs both the Board and the public can consult, it is entirely reasonable to require CPAs practicing in the same way as Iowa licensees to provide the Board basic information needed to assure lawful compliance with Iowa law.

4. Iowa licensure. The task force that developed Iowa's version of mobility legislation for consideration by the Iowa Legislature was comprised of representatives of the Board, the Iowa Society of CPAs, the Accountants Association of Iowa, the Auditor of State, and the Department of Agriculture and Land Stewardship. There was broad consensus that it was critical to preserve the Auditor's requirement of Iowa licensure for CPAs performing governmental audits and the Department of Agriculture's requirement of Iowa licensure for CPAs performing audits or reviews in connection with grain warehouse licensing. Iowa law states:

"A provision of this section or of any other section in this chapter shall not prevent the auditor of state, the department of agriculture and land stewardship, other governmental official or body, or a client from requiring that public accounting services performed in Iowa or for an Iowa client be performed by a person or firm holding a license under this chapter." See Iowa Code section 542.20(2).

Deloitte asked the Board to attempt to minimize the impact of this provision by rule. The Board lacks that authority and, in any event, has consistently expressed strong support for this provision.

5. Principal place of business. Deloitte objected to Board rules that provide guidance to licensees on identifying a licensee's principal place of business for purposes of determining compliance with mobility provisions. See rule 193A IAC 1.1(542). The Board's rules are, however, entirely consistent with Iowa law. "'Principal place of business' means the primary location from which public accounting services are performed, as the Board may further define by rule. A person or firm may only have one principal place of business at any one time." See Iowa Code section 542.3(20B). Board rules address how a CPA

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

who often practices in multiple jurisdictions may identify the “primary” location from which the CPA practices.

6. Disclosures on application forms. Deloitte asked that the Board reduce the volume of information Iowa Code section 542.7 requires that CPA firms provide in applications and within 30 days of changes. CPA firms are required, for instance, to notify the Board within 30 days of “a change in the identity of a partner, officer, shareholder, member, or manager who performs professional services in this state or for clients in this state.” See Iowa Code section 542.7(6)“a.” The Board appreciates and shares the concerns and has already taken steps to allow an affirmation and audit process for much of the information at issue. See subrules 7.3(8) and 7.7(1). The Board plans to consult with the Iowa Society of CPAs in developing application forms and, to the extent allowed by statute, will address the concerns raised in this paragraph.

Upon consideration of all comments received, the Board made no changes. These amendments are identical to those published under Notice.

These amendments were adopted by the Board during a conference call held March 12, 2009.

These amendments will become effective July 1, 2009.

These amendments are intended to implement Iowa Code chapters 17A, 272C, 542 and 546 and 2008 Iowa Acts, chapter 1106.

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 [Chs 1 to 21] is being omitted. These amendments are identical to those published under Notice as **ARC 7484B**, IAB 1/14/09.

[Filed 3/24/09, effective 7/1/09]

[Published 4/22/09]

[For replacement pages for IAC, see IAC Supplement 4/22/09.]

ARC 7731B

CORRECTIONS DEPARTMENT[201]

Adopted and Filed

Pursuant to the authority of Iowa Code section 904.108, the Iowa Department of Corrections hereby rescinds Chapter 4, “General Administration,” Chapter 6, “Personnel,” and Chapter 46, “Supervision Under Interstate Compact,” Iowa Administrative Code.

The Department has conducted a thorough review of its administrative rules to determine if outdated or unnecessary rules are in place and has determined that Chapter 4, “General Administration,” Chapter 6, “Personnel,” and Chapter 46, “Supervision Under Interstate Compact,” Iowa Administrative Code, are not statutorily required.

With regard to Chapter 4, the Department is following State of Iowa contract and purchasing standards pursuant to standards developed by the Department of Administrative Services[11] in Chapter 105, “Procurement of Goods and Services of General Use,” Chapter 106, “Purchasing Standards for Service Contracts,” and Chapter 107, “Uniform Terms and Conditions for Service Contracts,” Iowa Administrative Code.

With regard to Chapter 6, the Department of Administrative Services covers the subject of background investigations currently contained in 201—Chapter 6 under 11—Chapter 54, “Recruitment, Application and Examination,” Iowa Administrative Code.

With regard to Chapter 46, the subject of supervision under interstate compact is addressed in Iowa Code chapter 907B, “Interstate Compact for Adult Offender Supervision,” and there exists in Iowa a State Council for Interstate Adult Offender Supervision that is statutorily required to develop, and that has developed, policies concerning operations and procedures for the compact in Iowa. Therefore, administrative rules are not needed or statutorily required.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 11, 2009, as **ARC 7560B**.

CORRECTIONS DEPARTMENT[201](cont'd)

A public hearing was held on March 3, 2009. No one attended the hearing, and no written or oral comments were received.

The Department of Corrections Board adopted this amendment on April 3, 2009.

This amendment will become effective on May 27, 2009.

This amendment is intended to implement Iowa Code chapters 907B and 913 and Iowa Code sections 904.108 and 906.13.

The following amendment is adopted.

Rescind and reserve **201—Chapter 4, Chapter 6 and Chapter 46.**

[Filed 4/3/09, effective 5/27/09]

[Published 4/22/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/22/09.

ARC 7726B

REVENUE DEPARTMENT[701]**Adopted and Filed**

Pursuant to the authority of Iowa Code chapter 17A and sections 421.14, 421.17, 425.8, 425.37, 426A.7, 427.1(19), and 428A.11, the Department of Revenue hereby amends Chapter 71, "Assessment Practices and Equalization," Chapter 72, "Examination and Certification of Assessors and Deputy Assessors," Chapter 73, "Property Tax Credit and Rent Reimbursement," Chapter 74, "Mobile, Modular, and Manufactured Home Tax," and Chapter 75, "Property Tax Administration," rescinds Chapter 78, "Property Tax Exemptions," and amends Chapter 79, "Real Estate Transfer Tax and Declarations of Value," Chapter 80, "Property Tax Credits and Exemptions," Chapter 120, "Organization and Operation," Chapter 123, "Certification," and Chapter 124, "Courses," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXI, No. 18, p. 1870, on February 25, 2009, as **ARC 7592B**.

These amendments clean up various provisions in existing rules.

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

These amendments will become effective May 27, 2009, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapters 404, 405, 425, 426A, 427, 427A, 427B, 427C, 428, 428A, 435, and 441.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amend Chs 71 to 75, 79, 80, 120, 123, 124; rescind Ch 78] is being omitted. These amendments are identical to those published under Notice as **ARC 7592B**, IAB 2/25/09.

[Filed 4/3/09, effective 5/27/09]

[Published 4/22/09]

[For replacement pages for IAC, see IAC Supplement 4/22/09.]

ARC 7727B

REVENUE DEPARTMENT[701]**Adopted and Filed**

Pursuant to the authority of Iowa Code chapter 17A and section 453B.2, the Department of Revenue hereby adopts amendments to Chapter 91, "Administration of Marijuana and Controlled Substances Stamp Tax," Iowa Administrative Code.

REVENUE DEPARTMENT[701](cont'd)

Notice of Intended Action was published in IAB Vol. XXXI, No. 18, p. 1881, on February 25, 2009, as **ARC 7593B**.

These amendments reflect that the Department sells four different tax stamps and imposes four different tax rates for controlled substances and correct an Iowa Code reference.

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

These amendments will become effective May 27, 2009, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapter 453B.

The following amendments are adopted.

ITEM 1. Amend rule **701—91.2(453B)**, first unnumbered paragraph, as follows:

The director shall offer for sale ~~three~~ four different stamps: (1) a stamp for a substance consisting of or containing marijuana, (2) a stamp for taxable substances other than marijuana which are sold by weight, ~~and~~ (3) a stamp for taxable substances other than marijuana which are not sold by weight, and (4) a stamp for each unprocessed marijuana plant. Each package or container which contains a taxable substance must have a stamp affixed to it. The stamps will be issued in denominations requested by the purchaser so long as the minimum purchase price for a single stamp purchase transaction is \$215 or more. In addition, the denomination of individual stamps cannot be less than the price for ten dosage units, multiples of ten dosage units, one whole gram, or multiples of one gram even if the stamp will be affixed to a package containing less than ten dosage units or multiples thereof, or only a portion of one gram or multiples thereof.

ITEM 2. Amend rule 701—91.3(453B), introductory paragraph, as follows:

701—91.3(453B) Refunds pertaining to unused stamps. At any time up to 30 days after the expiration date as indicated on the stamp, any unused stamp may be returned to the department and a refund requested in accordance with Iowa Code section ~~422.73(2)~~ 422.73(1) and rules promulgated thereunder.

[Filed 4/3/09, effective 5/27/09]

[Published 4/22/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/22/09.

AGENCY	RULE	DELAY
Environmental Protection Commission[567]	Items 2, 27, and 33 to 38 [IAB 3/11/09, ARC 7625B]	Effective date of April 15, 2009, delayed 70 days by the Administrative Rules Review Committee at its meeting held April 8, 2009. [Pursuant to §17A.4(7)]