



# IOWA ADMINISTRATIVE BULLETIN

*Published Biweekly*

VOLUME XXXVII  
April 29, 2015

NUMBER 22  
Pages 1933 to 1990

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## PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

## CITATION of Administrative Rules

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

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

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

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

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

## Schedule for Rule Making 2015

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
24	Friday, May 8, 2015	May 27, 2015
25	Wednesday, May 20, 2015	June 10, 2015
26	Friday, June 5, 2015	June 24, 2015

**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 Friday, May 8, 2015, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

#### **ADMINISTRATIVE SERVICES DEPARTMENT[11]**

Central procurement and fleet services enterprise; procurement of goods and services;  
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#### **ARCHITECTURAL EXAMINING BOARD[193B]**

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]“umbrella”

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

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#### **INSPECTIONS AND APPEALS DEPARTMENT[481]**

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#### **INSURANCE DIVISION[191]**

COMMERCE DEPARTMENT[181]“umbrella”

Sales of cemetery merchandise, funeral merchandise and funeral services, amend chs 100 to  
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#### **LABOR SERVICES DIVISION[875]**

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

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PUBLIC HEALTH DEPARTMENT[641]"umbrella"

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PUBLIC HEALTH DEPARTMENT[641]"umbrella"

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## 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.

Senator Mark Chelgren  
819 Hutchinson  
Ottumwa, Iowa 52501

Senator Mark Costello  
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Imogene, Iowa 51645

Senator Thomas Courtney  
2609 Clearview  
Burlington, Iowa 52601

Senator Wally Horn  
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Oskaloosa, Iowa 52577

Michael Bousselot  
**Administrative Rules Coordinator**  
Governor's Ex Officio Representative  
Capitol, Room 18  
Des Moines, Iowa 50319  
Telephone (515)281-5211

**ADMINISTRATIVE SERVICES DEPARTMENT[11]**

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services enterprise; procurement  
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waivers; limitation of vendor  
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117, 118, 120  
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Room 8, A Level  
Hoover State Office Bldg.  
Des Moines, Iowa

May 5, 2015  
9 to 10 a.m.

**TRANSPORTATION DEPARTMENT[761]**

Open records; confidential records,  
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IAB 4/29/15 **ARC 1974C**

First Floor South Conference Room  
DOT Administration Bldg.  
800 Lincoln Way  
Ames, Iowa

May 21, 2015  
10 a.m.  
(If requested)

**UTILITIES DIVISION[199]**

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Room 69, Board Hearing Room  
1375 E. Court Ave.  
Des Moines, Iowa

June 2, 2015  
9 a.m.



The following list will be updated as changes occur.

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

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

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

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**ARC 1980C**

**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

**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 199.11(1), the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 40, “Agricultural Seeds,” Iowa Administrative Code.

This amendment clarifies that qualifying seed libraries are subject to permitting but not to labeling, testing and fees.

Any interested persons may make written suggestions or comments on the proposed amendment on or before May 19, 2015. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to [Margaret.Thomson@IowaAgriculture.gov](mailto:Margaret.Thomson@IowaAgriculture.gov).

The proposed amendment is subject to the Department’s general waiver provisions.

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

This amendment is intended to implement Iowa Code section 199.15.

The following amendment is proposed.

Adopt the following new rule 21—40.16(199):

**21—40.16(199) Seed libraries.** A qualified seed library may be a library district formed under Iowa Code section 336.2, a library board functioning under Iowa Code section 392.5, or an Iowa food bank or Iowa emergency feeding organization recognized by the Iowa department of revenue. A qualified seed library is subject to permitting by the department, but is not subject to labeling, testing and fees for giving, distributing or exchanging agricultural seed as long as all of the following apply:

1. The exchanges or distributions are made at a single location and no money is exchanged;
2. All seed is intended for planting in Iowa;
3. Individuals receive two pounds or less of seed annually;
4. The seed has not been treated with pesticide;
5. Patented, protected or propriety varieties of seed are used or included in the qualified seed library only with the permission of the patent or certificate holder, developer or owner of the intellectual property associated with the variety;
6. The certified seed status is not misused or misrepresented; and
7. The seed has not been placed under a stop sale order by the department or any other regulatory agency.

## ARC 1982C

## 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 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

These changes are proposed in direct response to requirements from the Centers for Medicare and Medicaid Services (CMS) for the Intellectual Disability (ID) and Brain Injury (BI) waivers. These proposed amendments address three issues:

- The amendments remove transportation to medical appointments from the Home- and Community-Based Services (HCBS) waiver transportation service description and clarify the use of transportation when provided as part of the supported community living (SCL) service in the Intellectual Disability (ID) and Brain Injury (BI) waivers.
- The amendments remove a “related condition” as a basis of eligibility for Residential Based Supported Community Living (RBSCL) services under the ID waiver. No children have accessed this service within the “related condition” diagnostic category.
- The amendments change the definition of “intellectual disability” to the updated definition found in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).

These amendments also update the BI waiver SCL service to be the same as the ID waiver SCL service that allows transportation to and from work or day programs to be an SCL service component.

During the ID and BI waiver application renewal review, CMS indicated that the state may no longer provide transportation to medical appointments for HCBS waiver members through the HCBS waiver transportation service. CMS also identified that medical transportation may not be provided to HCBS members as part of the supported community living service within the ID and BI waivers. Transportation provided through the HCBS waiver programs may include only nonmedical transportation. All nonemergency medical transportation (NEMT) must be provided through the state plan NEMT program.

As part of the renewal review, CMS also identified that the state may not include a related condition as a basis of eligibility only for RBSCL services under the ID waiver. Eligibility for the ID waiver must be the same for all services within the waiver. Eligibility cannot be based on a related condition only for the RBSCL service.

The definition of an intellectual disability has changed with the most recent DSM-5 edition. These amendments will update the current DSM-IV definition of “intellectual disability” for use in the ID waiver. Changes to the rules reflect the DSM-5 criteria and the developmental time periods for making the diagnosis. The time line for having current psychological documentation was changed for consistency with recertification requirements.

Any interested person may make written comments on the proposed amendments on or before May 19, 2015. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 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](mailto:policyanalysis@dhs.state.ia.us).

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

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

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

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

The following amendments are proposed.

ITEM 1. Amend subrule 78.37(11) as follows:

**78.37(11) *Transportation.*** Transportation services may be provided for members to conduct business errands and essential shopping, ~~to receive medical services when not reimbursed through nonemergency medical transportation,~~ and to reduce social isolation. A unit of service is one mile of transportation or one one-way trip.

ITEM 2. Amend subparagraph **78.41(1)“a”(5)** as follows:

(5) Transportation services are activities and expenditures designed to assist the member to travel from one place to another to obtain services or carry out life's activities. The services exclude transportation provided as nonemergency medical transportation pursuant to rule 441—78.13(249A).

ITEM 3. Amend subrule 78.41(11) as follows:

**78.41(11) *Transportation.*** Transportation services may be provided for members to conduct business errands and essential shopping, ~~to receive medical services when not reimbursed through nonemergency medical transportation,~~ to travel to and from work or day programs, and to reduce social isolation. A unit of service is one mile of transportation or one one-way trip. Transportation may not be reimbursed simultaneously with HCBS intellectual disability waiver supported community living service when the transportation costs are included within the supported community living reimbursement rate.

ITEM 4. Amend subparagraph **78.43(2)“a”(5)** as follows:

(5) Transportation services are activities and expenditures designed to assist the member to travel from one place to another to obtain services or carry out life's activities. The service excludes services exclude transportation to and from work or day programs provided as nonemergency medical transportation pursuant to rule 441—78.13(249A).

ITEM 5. Amend subrule 78.43(7) as follows:

**78.43(7) *Transportation.*** Transportation services may be provided for members to conduct business errands and essential shopping, ~~to receive medical services when not reimbursed through nonemergency medical transportation,~~ to travel to and from work or day programs, and to reduce social isolation. A unit of service is one mile of transportation or one one-way trip. Transportation may not be reimbursed simultaneously with HCBS brain injury waiver supported community living service when the transportation costs are included within the supported community living reimbursement rate.

ITEM 6. Amend subrule 78.46(5) as follows:

**78.46(5) *Transportation.*** Transportation services may be provided for members to conduct business errands and essential shopping, ~~to receive medical services when not reimbursed through nonemergency medical transportation,~~ to travel to and from work or day programs, and to reduce social isolation. A unit of service is one mile of transportation or one one-way trip.

ITEM 7. Amend rule **441—83.60(249A)**, definition of “Intellectual disability,” as follows:

“Intellectual disability” means a diagnosis of ~~mental retardation~~ intellectual disability (intellectual developmental disorder), global developmental delay, or unspecified intellectual disability (intellectual developmental disorder) which shall be made only when the onset of the person’s condition was before the age of 18 years during the developmental period and shall be based on an assessment of the person’s intellectual functioning and level of adaptive skills. The diagnosis shall be made by a person who is a licensed psychologist or psychiatrist who is professionally trained to administer the tests required to assess intellectual functioning and to evaluate a person’s adaptive skills. A ~~The diagnosis of mental retardation~~ shall be made in accordance with the criteria provided in the Diagnostic and Statistical Manual of Mental Disorders, ~~Fourth~~ Fifth Edition (DSM-5), Text Revision, published by the American Psychiatric Association.

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

ITEM 8. Amend paragraph **83.61(1)“a”** as follows:

a. Have a diagnosis of ~~mental retardation or, for residential-based supported community living services only, be a person with a related condition~~ intellectual disability as defined in rule 441—83.60(249A). The diagnosis shall be initially established and recertified as follows:

Age	Initial application to HCBS intellectual disability waiver program	Recertification for persons with a diagnosis of moderate, severe or profound <del>mental retardation level of severity</del>	Recertification for persons with a diagnosis of mild or unspecified <del>mental retardation level of severity</del>
0 through 17 years	Psychological documentation within three years of the application date substantiating a diagnosis of <del>mental retardation or, for residential-based supported community living services, a diagnosis of a related condition</del> intellectual disability as defined in rule 441—83.60(249A)	After the initial psychological evaluation, substantiate a diagnosis of <del>mental retardation or, for residential-based supported community living services, a diagnosis of a related condition</del> intellectual disability as defined in rule 441—83.60(249A) every six years and when a significant change occurs	After the initial psychological evaluation, substantiate a diagnosis of <del>mental retardation or, for residential-based supported community living services, a diagnosis of a related condition</del> intellectual disability as defined in rule 441—83.60(249A) every three years and when a significant change occurs
18 through 21 years	<ul style="list-style-type: none"> <li>Psychological documentation substantiating diagnosis of mental retardation within three years before the application date, or</li> <li>Diagnosis of mental retardation made before age 18 and current psychological documentation substantiating a diagnosis of mental retardation</li> </ul>	Psychological documentation substantiating a diagnosis of <del>mental retardation</del> every ten years and whenever a significant change occurs	Psychological documentation substantiating a diagnosis of <del>mental retardation</del> every five years and whenever a significant change occurs
<del>22</del> 18 years and above	<del>Diagnosis made before age 18 and current</del> Current psychological documentation substantiating a diagnosis of <del>mental retardation</del> intellectual disability if the last testing date was (1) more than five six years ago for an applicant with a diagnosis of mild or unspecified <del>mental retardation severity</del> , or (2) more than ten years ago for an applicant with a diagnosis of moderate, severe or profound <del>mental retardation severity</del>	Psychological documentation substantiating a diagnosis of <del>mental retardation</del> intellectual disability made since the member reached <del>18</del> 22 years of age	Psychological documentation substantiating a diagnosis of <del>mental retardation</del> intellectual disability every six years and whenever a significant change occurs

## ARC 1981C

## INSPECTIONS AND APPEALS DEPARTMENT[481]

## Notice of Termination

Pursuant to the authority of Iowa Code sections 135C.14 and 135C.36, the Department of Inspections and Appeals terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on April 1, 2015, as **ARC 1939C**, proposing to amend Chapter 56, “Fining and Citations,” Iowa Administrative Code.

The Notice proposed to amend Chapter 56 by removing a facility’s option to request surveyor worksheets for the citation(s) being disputed in an informal conference.

The Department is terminating the rule making commenced in **ARC 1939C** to allow additional time for interested parties and the Department to discuss the rule making.

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

## ARC 1979C

## PHARMACY BOARD[657]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 3, “Pharmacy Technicians,” Chapter 6, “General Pharmacy Practice,” and Chapter 7, “Hospital Pharmacy Practice”; to rescind Chapter 13, “Sterile Compounding Practices”; and to rescind Chapter 20, “Pharmacy Compounding Practices,” and adopt a new Chapter 20, “Compounding Practices,” Iowa Administrative Code.

The amendments were approved at the March 9, 2015, regular meeting of the Board of Pharmacy.

The proposed amendments are intended to combine the requirements currently in Chapters 13 and 20 for the compounding of drug products into a single chapter, Chapter 20, that fully adopts national minimum practice standards for compounding found in General Chapters 795 and 797 of the United States Pharmacopeia (USP). The proposed amendments also incorporate new federal regulations as established in the Drug Quality and Security Act of 2013, also known as the Compounding Quality Act, with respect to compounding and outsourcing facilities. Current Chapter 13 will be rescinded and reserved.

Requests for waiver or variance of the discretionary provisions of Board rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on May 19, 2015. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by e-mail to [terry.witkowski@iowa.gov](mailto:terry.witkowski@iowa.gov).

After analysis and review of this rule making, the Board has been unable to determine any impact on jobs.

These amendments are intended to implement Iowa Code sections 124.302, 124.303, 124.306, 124.308, 124.501, 126.9, 126.10, 126.18, 155A.2, 155A.13, 155A.28, 155A.33, and 155A.35.

The following amendments are proposed.

ITEM 1. Amend rule 657—3.22(155A) as follows:

**657—3.22(155A) Technical functions.** At the discretion of the supervising pharmacist, the following technical functions, in addition to any of the functions authorized for a pharmacy support person pursuant to 657—Chapter 5, may be delegated to a pharmacy technician as specified in the following subrules.

**3.22(1) Certified pharmacy technician.** Under the supervision of a pharmacist, a certified pharmacy technician may perform technical functions delegated by the supervising pharmacist including, but not limited to, the following:

*a. to h.* No change.

*i.* Perform drug compounding processes ~~for nonsterile compounding~~ as provided in 657—Chapter 20.

~~*j.* Perform drug compounding processes for sterile compounding as provided in 657—Chapter 13.~~

~~*k. j.*~~ As provided in rule 657—3.24(155A), accept new prescription drug orders or medication orders communicated to the pharmacy by a prescriber or by the prescriber’s agent.

**3.22(2) Pharmacy technician trainee.** Under the supervision of a pharmacist, a pharmacy technician trainee may perform only the following technical functions delegated by the supervising pharmacist:

## PHARMACY BOARD[657](cont'd)

a. to g. No change.

h. Under the supervision of a pharmacist who provides training and evaluates and monitors trainee competence in the compounding processes, perform drug compounding processes ~~for nonsterile compounding~~ as provided in 657—Chapter 20.

~~i. Under the supervision of a pharmacist who provides training and evaluates and monitors trainees, and contingent on successful completion of appropriate media fill testing processes, perform drug compounding processes for sterile compounding as provided in 657—Chapter 13.~~

ITEM 2. Amend subrule 6.10(2) as follows:

**6.10(2) Exceptions.** The requirements of subrule 6.10(1) do not apply to unit dose dispensing systems, 657—22.1(155A); ~~sterile products, 657—Chapter 13;~~<sub>2</sub> and patient med paks, 657—22.5(126,155A).

ITEM 3. Amend paragraph 7.8(1)“b” as follows:

b. Pharmacy personnel shall, except as specified in policies and procedures, prepare all sterile products in conformance with 657—Chapter ~~13~~ 20.

ITEM 4. Rescind and reserve **657—Chapter 13**.

ITEM 5. Rescind 657—Chapter 20 and adopt the following **new** chapter in lieu thereof:

CHAPTER 20  
COMPOUNDING PRACTICES

**657—20.1(124,126,155A) Purpose and scope.** The requirements of this chapter apply to compounded preparations that are dispensed, distributed, or administered to an ultimate user in the state of Iowa, regardless of the location of the pharmacy or outsourcing facility where the preparation was compounded. This chapter applies to compounded preparations intended for humans and animals. In addition to the requirements in this chapter, all pharmacies and outsourcing facilities engaged in compounding shall comply with all applicable federal laws and regulations governing compounding and all applicable state laws, rules and regulations governing the practice of pharmacy. In the event the requirements in this chapter directly conflict with any federal law or regulation, the federal law or regulation shall supersede the requirements in this chapter. The requirements of 657—Chapter 16 apply to the compounding of radiopharmaceuticals.

**657—20.2(124,126,155A) Definitions.** For purposes of this chapter, the following definitions apply:

“*Anticipatory compounding*” means the compounding of preparations in advance of the pharmacy’s receipt of patient-specific prescriptions.

“*Batch preparation compounding*” means anticipatory compounding, compounding preparations intended for multiple disbursements, or compounding preparations in a multiple-dose container for administration to more than one patient.

“*Beyond-use date*” means the date after which a compounded preparation should not be used, determined from the date that the preparation is compounded.

“*Bulk drug substance*” means any substance that is represented for use in a drug and that, when used in the manufacturing, processing, or packaging of a drug, becomes an active ingredient or a finished dosage form of the drug. The term does not include intermediates used in the synthesis of such substances.

“*Compounding*” means the combining, mixing, diluting, pooling, flavoring, or otherwise altering of a drug or bulk drug substance to create a drug. Compounding includes the preparation of drugs or devices in which all bulk drug substances and components are nonprescription products. Compounding does not include the use of a flavoring agent to flavor a drug pursuant to rule 657—20.13(124,126,155A), nor does it include mixing or reconstituting a drug according to the product’s manufacturer label.

“*FDA*” means the Food and Drug Administration of the U.S. Department of Health and Human Services.



## PHARMACY BOARD[657](cont'd)

*“Flavoring agent”* means a therapeutically inert, nonallergenic substance consisting of inactive ingredients that is added to a drug to improve the drug’s taste and palatability.

*“Outsourcing facility”* means a facility that is located at a single geographic location and has registered with the FDA as an outsourcing facility in accordance with Section 503B of the Federal Food, Drug, and Cosmetic Act.

*“USP”* means United States Pharmacopeia.

**657—20.3(124,126,155A) Nonsterile compounding.** Iowa-licensed pharmacies that compound nonsterile preparations for ultimate users in the state of Iowa shall follow the current revision of USP Chapter 795 standards. Additional USP chapters incorporated by reference into USP Chapter 795 shall also be followed.

**657—20.4(124,126,155A) Sterile compounding.** Iowa-licensed pharmacies that compound sterile preparations for ultimate users in the state of Iowa shall follow the current revision of USP Chapter 797 standards. Additional USP chapters incorporated by reference into USP Chapter 797 shall also be followed.

**657—20.5(126,155A) Delayed compliance.** A pharmacy that is unable to meet the requirements for full compliance with these rules and with USP Chapter 795 or USP Chapter 797 by [six months following the effective date of these rules] shall, prior to that date, request and obtain from the board a waiver of the specific requirement or requirements that the pharmacy is unable to meet. A pharmacy that cannot meet the requirements for full compliance with these rules, including applicable USP chapters, and that has not obtained from the board a waiver of the specific requirement or requirements shall not engage in compounding until the pharmacy is in full compliance with all requirements or the board has approved a waiver of the specific requirement or requirements.

**657—20.6(126,155A) Compounding standards for outsourcing facilities.** An FDA-registered outsourcing facility shall be properly licensed in Iowa and shall follow the FDA’s current good manufacturing practices (cGMPs) for outsourcing facilities when compounding preparations for hospitals, practitioners, or patients in the state of Iowa.

**657—20.7 and 20.8** Reserved.

**657—20.9(124,155A) Prescriber/patient/pharmacist relationship.** All compounded preparations shall be dispensed pursuant to a patient-specific prescription unless the compounded preparation is distributed pursuant to rule 657—20.15(124,126,155A) or 657—20.16(124,126,155A). A prescription for a compounded preparation shall be authorized by the prescriber for a specific patient. Prescriptions for all compounded preparations shall be maintained on file at the dispensing pharmacy.

**657—20.10(126,155A) Anticipatory compounding.**

**20.10(1) Outsourcing facilities.** Outsourcing facilities are authorized to engage in anticipatory compounding. Outsourcing facilities are not required to obtain patient-specific prescriptions in order to distribute compounded preparations.

**20.10(2) Pharmacies.** Pharmacies may engage in anticipatory compounding only if the anticipatory compounding is based on a history of receiving valid prescriptions generated solely within an established prescriber/patient/pharmacist relationship, so long as each compounded preparation is dispensed pursuant to a patient-specific prescription.

**657—20.11(126,155A) Prohibition on resale of compounded preparations.** The sale of compounded preparations to other pharmacies, prescribers, or facilities, except as explicitly authorized by this chapter, is considered manufacturing.

## PHARMACY BOARD[657](cont'd)

**657—20.12(126,155A) Compounding copies of an approved drug.** A pharmacy or outsourcing facility may only compound preparations that are essentially copies of approved drugs if the compounded preparation is changed to produce for an individual patient a clinically significant difference to meet a medical need as determined and authorized by the prescriber. A pharmacy or outsourcing facility may compound a preparation that is essentially a copy of an approved drug if the approved drug is identified as currently in shortage on the FDA drug shortages database published on the FDA Web site, <http://www.accessdata.fda.gov/scripts/drugshortages/default.cfm>.

**657—20.13(124,126,155A) Use of flavoring agents.** A flavoring agent may be added to a drug at the discretion of the pharmacist or upon the request of the prescriber, the patient, or the patient's agent. The pharmacist may add flavoring agents not to exceed 5 percent of the total volume of the drug to which the flavoring agents are added. The pharmacist shall label the flavored drug with a beyond-use date no greater than 14 days past the date the flavoring agent is added if the drug is required to be stored in a refrigerator. A different beyond-use date or alternate storage conditions may be indicated if such variation is supported by peer-reviewed medical literature. The pharmacist shall electronically or manually document that a flavoring agent was added to a drug, and such documentation shall be made available for inspection and copying upon the request of the board or an agent of the board.

**657—20.14** Reserved.

**657—20.15(124,126,155A) Compounding for office use.**

**20.15(1) Human compounded preparations.** Only an FDA-registered outsourcing facility properly licensed in Iowa may distribute to a practitioner for office use human compounded preparations without a patient-specific prescription.

**20.15(2) Veterinary compounded preparations.** Veterinary compounded preparations may be sold to a practitioner for office use if compounded by an Iowa-licensed pharmacy and sold directly to the practitioner by the compounding pharmacy.

**20.15(3) Office administration.** Compounded preparations distributed for office use pursuant to subrule 20.15(1) or 20.15(2) and in accordance with the labeling requirements of subrule 20.15(4) do not require a patient-specific prescription but do require that the compounded preparation be administered to an individual patient in the practitioner's office. Compounded preparations distributed for office use pursuant to this rule shall not be further distributed to other practitioners or to patients for administration outside of the office.

**20.15(4) Labeling.** Compounded preparations for office use, in addition to the labeling requirements specified in rule 657—20.19(124,126,155A), shall include on the prescription label the practitioner's name in place of the patient's name. The label shall state "For Office Use Only—Not for Resale." If the sterility or integrity of the compounded preparation cannot be maintained after the initial opening of the container, the label shall state "Single-Dose Only."

**657—20.16(124,126,155A) Compounding for hospital use.** Compounded preparations distributed or dispensed to a hospital or hospital pharmacy pursuant to this rule shall be administered to an individual patient in the hospital.

**20.16(1) By an FDA-registered outsourcing facility.** Only an FDA-registered outsourcing facility properly licensed in Iowa may distribute human compounded preparations to a hospital or hospital pharmacy in the absence of a patient-specific prescription. The compounded preparation shall be labeled in compliance with subrule 20.19(3).

**20.16(2) By a pharmacy that is not an FDA-registered outsourcing facility.** Human compounded preparations that are not compounded at an FDA-registered outsourcing facility may be dispensed to a hospital or hospital pharmacy by an Iowa-licensed pharmacy pursuant to a prescriber's authorization for administration to a specific patient. The compounded preparation shall be labeled in compliance with subrule 20.19(2).

**657—20.17 and 20.18** Reserved.

## PHARMACY BOARD[657](cont'd)

**657—20.19(124,126,155A) Labeling.** The label, or attached auxiliary labeling if necessary, affixed to the container of any compounded preparation dispensed or distributed into or within Iowa shall contain at least the information identified in one of the following subrules, as applicable.

**20.19(1) General pharmacy or outpatient dispensing.** The label shall meet the labeling requirements of 657—subrule 6.10(1) and shall include the following additional information:

- a. The name and concentration of each active ingredient.
- b. The date that the preparation was compounded.
- c. The beyond-use date of the compounded preparation.
- d. Special storage and handling instructions, if applicable.
- e. FDA contact information ([www.fda.gov/medwatch](http://www.fda.gov/medwatch) and 1-800-FDA-1088 or successor Web site or telephone number) to facilitate adverse event reporting.
- f. The statement “COMPOUNDED PREPARATION” or a reasonable comparable alternative statement that prominently identifies the drug as a compounded preparation.
- g. If the compounded preparation is sterile, the word “STERILE.”
- h. If the compounded preparation was prepared from batch preparation compounding, the batch identification or control number.

**20.19(2) Hospital pharmacy or inpatient administration.** The label shall meet the labeling requirements of 657—subrule 22.1(3) and shall include the following additional information:

- a. The name and concentration of each active ingredient.
- b. The date that the preparation was compounded.
- c. The beyond-use date of the compounded preparation.
- d. If the compounded preparation was prepared from batch preparation compounding, the batch identification or control number.
- e. Special storage and handling instructions, if applicable.

**20.19(3) Outsourcing facility distribution or dispensing.** The label, or auxiliary labeling if necessary, shall include the following information:

- a. The statement “THIS IS A COMPOUNDED DRUG” or a reasonable comparable alternative statement that prominently identifies the drug as a compounded preparation.
- b. The name, address, and telephone number of the outsourcing facility that compounded the preparation.
- c. The established name of the preparation.
- d. The dosage form and strength.
- e. The quantity of the preparation.
- f. The date that the preparation was compounded.
- g. The beyond-use date of the compounded preparation.
- h. Storage and handling instructions.
- i. The lot or batch identification or control number.
- j. The national drug code number, if available.
- k. The statement “Not for resale” and, if the preparation is dispensed or distributed other than pursuant to a prescription for an individual identified patient, the statement “OFFICE USE ONLY.”
- l. The following additional information, which can be included on the labeling of a container (such as a plastic bag containing individual product syringes) from which individual units of the drug are removed for dispensing or for administration if there is not space on the label for such information:
  - (1) Directions for use including, as appropriate, dosage and administration;
  - (2) A list of the active and inactive ingredients, identified by established name and quantity or proportion of each ingredient;
  - (3) FDA contact information ([www.fda.gov/medwatch](http://www.fda.gov/medwatch) and 1-800-FDA-1088 or successor Web site or telephone number) to facilitate adverse event reporting.
- m. If the preparation is compounded pursuant to a prescription for a specific patient, the label shall also include the label requirements in 657—subrule 6.10(1).
- n. If the preparation is compounded for office use, the label shall also include the label requirements in subrule 20.15(4).

## PHARMACY BOARD[657](cont'd)

**657—20.20(126,155A) Labeling for batch preparation compounding.** Compounded preparations resulting from batch preparation compounding shall be labeled with the following information until such time as the preparations are labeled pursuant to rule 657—20.19(124,126,155A) for distribution to hospitals or practitioners or for dispensing or administration to patients:

1. The date that the preparation was compounded.
2. Compounded preparation name or formula.
3. Dosage form.
4. Strength.
5. Quantity per container.
6. Unique internal batch identification or control number.
7. Beyond-use date.
8. Special storage and handling instructions, if applicable.

**657—20.21 and 20.22** Reserved.

**657—20.23(124,126,155A) Records.** All records required by this chapter shall be retained as original records of the pharmacy or outsourcing facility and shall be readily available for inspection and photocopying by agents of the board or other authorized authorities for at least two years following the date of the record. Records shall allow for the identification of all ingredients used in compounding, all personnel involved in compounding, and all personnel involved in reviewing compounded preparations. The pharmacy or outsourcing facility shall maintain records documenting the disbursements from each batch of a compounded preparation.

These rules are intended to implement Iowa Code sections 124.302, 124.303, 124.306, 124.308, 124.501, 126.9, 126.10, 126.18, 155A.2, 155A.13, 155A.28, 155A.33, and 155A.35.

**ARC 1974C**

**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 305.15, 307.10 and 307.12, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 4, “Public Records and Fair Information Practices,” Iowa Administrative Code.

Proposed amendments within Items 1 to 5 update Chapter 4 to reflect the technological changes in the way records are now created, stored, requested and accessed; correct the address of the records center; clarify rule language; correct citations, implementation statutes, and implementation sentences; and comply with Iowa Code sections 22.8 and 23.6. The proposed amendment in Item 6 rewrites the rule concerning confidential records to eliminate several subrules that were simply repeating Iowa Code section 22.7, add a new subrule to include all records that are exempt from disclosure under Iowa Code section 22.7, and correct and add other subrules to comply with Iowa Code sections 21.5(1)“j,” 22.2, 22.7, 321.11A and 804.29.

These rules do not provide for waivers. Any person who believes that the 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.

## TRANSPORTATION DEPARTMENT[761](cont'd)

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 Tracy George, Rules Administrator, Iowa Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; Internet e-mail address: [tracy.george@dot.iowa.gov](mailto:tracy.george@dot.iowa.gov).

5. Be received by the Office of Policy and Legislative Services no later than May 19, 2015.

A meeting to hear requested oral presentations is scheduled for Thursday, May 21, 2015, at 10 a.m. in the Administration Building, First Floor South Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

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

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

These amendments are intended to implement Iowa Code sections 21.5(1), 22.2, 22.7, 22.8, 23.6, 321.11A and 804.29.

The following amendments are proposed.

ITEM 1. Amend rule 761—4.1(22,304) as follows:

**761—4.1(22,304 305) General provisions.**

**4.1(1) Scope of chapter.**

a. and b. No change.

c. This chapter does not make available records compiled by the department in reasonable anticipation of court litigation or formal administrative proceedings. The availability of these records to the public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the department.

**4.1(2) Custodian.** The custodian of a record is the person who heads the departmental office responsible for that record. The department's electronic Records Management Manual identifies the offices that are responsible for particular records.

a. No change.

b. The A custodian's ~~designees~~ designee may include but ~~are~~ is not limited to the records center and the department's general counsel.

c. No change.

**4.1(3) Address of records center.** The address of the department's records center is: Records Center Management Section, Office of Document Services Information Technology Division, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

**4.1(4) Records Management Manual.**

a. The department's electronic Records Management Manual contains the records management information required by Iowa Code chapter ~~304~~ 305, including descriptions of department records and their formats, management, maintenance, storage, retention, security, and disposal.

b. ~~Chapter III of the~~ The manual also contains the descriptive information on records that is required by Iowa Code section 22.11. ~~Chapter III, as revised through 2001, is made a~~ The manual is updated as needed and its provisions are made a part of these rules.

c. The manual is available for examination and copying at the department's records center and at various other departmental offices located throughout the state. A copy of the manual may also be obtained ~~at cost, upon request,~~ from the records center.

**4.1(5) Availability of open records.** Open records of the department are available to the public for examination and copying unless otherwise provided by ~~rule or statute~~ state or federal law, regulation or rule.

**4.1(6) and 4.1(7)** No change.

**4.1(8) Existing records.** A request for access shall apply only to records that exist at the ~~times~~ time the request is made and access is provided. The department is not required to create, compile or procure

## TRANSPORTATION DEPARTMENT[761](cont'd)

a record solely for the purpose of making it available. EXCEPTIONS: See Iowa Code section 22.3A and subrule 4.4(5) 4.4(4).

**4.1(9)** No change.

This rule is intended to implement Iowa Code chapter 22 and section ~~304.17~~ 305.15.

ITEM 2. Amend subrule 4.3(7) as follows:

**4.3(7) Copies.** A photocopy of an open record may be made on department photocopiers. If a photocopier is not available in the office where an open record is kept, the custodian shall permit its examination in that office and, if requested, arrange to have a copy made elsewhere. Most department records are stored in electronic formats; therefore, if the requested record is electronic, an electronic copy will be provided. If the requester is unable to open and read an electronic copy, or if the record does not exist in electronic form, a hard copy will be provided.

ITEM 3. Amend subrule 4.3(8) as follows:

**4.3(8) Fees.** The department may charge fees for records as authorized by Iowa Code section 22.3 or another provision of law. Under Iowa Code section 22.3, the fee for the copying service, whether electronic or hard copy, shall not exceed the cost of providing the service.

ITEM 4. Amend rule 761—4.4(22) as follows:

**761—4.4(22) Access to confidential records.** The following provisions are in addition to those specified in rule 761—4.3(22) and are minimum requirements. A statute or another department rule may impose additional requirements for access to certain classes of confidential records. A confidential record may, due to its nature or the way it is compiled or stored, contain a mixture of confidential and nonconfidential information. The department shall not refuse to release the nonconfidential information simply because of the manner in which the record is compiled or stored.

**4.4(1)** No change.

**4.4(2) Release of confidential records by the custodian.** The custodian may release a confidential record or a portion of it:

*a.* to *e.* No change.

*f.* To the public information board pursuant to Iowa Code section 23.6.

**4.4(3) Release of confidential records by the director.**

*a.* No change.

*b.* Before the director of transportation releases a record to a person not covered in subrule 4.4(2), the director of transportation may notify the subject of the record of the impending release and may give the subject a reasonable amount of time to seek an injunction.

~~**4.4(4) Mixed record.** A confidential record may, due to its nature or the way it is compiled or stored, contain a mixture of confidential and nonconfidential information. The department shall not refuse to release the nonconfidential information simply because the record is compiled or stored in this fashion.~~

**4.4(5) 4.4(4) Information released.** If a person is provided access to less than an entire record, the department shall take measures to ensure that the person is furnished only the information that is to be released. This may be done by providing to the person either an extraction of the information to be released; or a copy of the record from which the information not to be released has been deleted.

This rule is intended to implement Iowa Code section 22.11.

ITEM 5. Amend rule 761—4.6(22) as follows:

**761—4.6(22) Requests for confidential treatment.**

**4.6(1)** A person may request that all or a portion of a record be confidential. The request must be submitted in writing to the custodian and:

*a.* and *b.* No change.

*c.* Demonstrate that disclosure of the information would clearly not be in the public interest.

~~*e.*~~ *d.* Give the reasons why the any person or persons would be aggrieved or adversely affected substantially and irreparably injured by disclosure of the information. The person requester may be required to provide any proof necessary to support these reasons.

## TRANSPORTATION DEPARTMENT[761](cont'd)

**4.6(2) and 4.6(3)** No change.

This rule is intended to implement Iowa Code ~~section~~ sections 22.8 and 22.11.

ITEM 6. Rescind rule 761—4.9(22) and adopt the following **new** rule in lieu thereof:

**761—4.9(22) Confidential records.** This rule describes the types of departmental information or records that are confidential. This rule is not exhaustive. A citation of the legal authority for confidentiality follows each description. The following records shall be kept confidential. Records are listed by category, according to the legal basis for withholding them from public inspection.

Descriptions:

**4.9(1)** Records which are exempt from disclosure under Iowa Code section 22.7.

**4.9(2)** Records which constitute attorney work product, attorney-client communications, or are otherwise privileged. (Attorney work product is confidential under Iowa Code sections 22.7, 622.10 and 622.11, Iowa R. C. P. 1.503, Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Iowa Rules of Professional Conduct, and case law.)

**4.9(3)** Those portions of the department's staff manuals, instructions or other statements issued by the department which set forth criteria or guidelines to be used by its departmental staff in auditing, making inspections, settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when the disclosure of such statements would enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons who are in an adverse position to the department. (Iowa Code sections 17A.2 and 17A.3)

**4.9(4)** The detailed minutes and recordings of closed sessions of the commission. However, if a closed session regards a real estate purchase or sale, the minutes and recording shall be available for public inspection when the transaction discussed is completed. (Iowa Code section 21.5)

**4.9(5)** Vehicle accident reports submitted to the department by drivers and peace officers. (Iowa Code sections 321.266 and 321.271)

*a.* However, access shall be granted to those persons authorized by Iowa Code section 321.271.

*b.* Reserved.

**4.9(6)** Unless otherwise ordered by the court, all information filed with the court for the purpose of securing a warrant for an arrest including, but not limited to, a citation and affidavits, until such time as a peace officer has made the arrest and has made the officer's return on the warrant, or the defendant has made an initial appearance in court. (Iowa Code section 804.29)

*a.* However, the information in the record may be disseminated without court order during the course of official duties to the persons authorized in Iowa Code section 804.29.

*b.* Reserved.

**4.9(7)** All information filed with the court for the purpose of securing a warrant for a search, including, but not limited to, an application and affidavits, until such time as a peace officer has executed the warrant and has made return thereon. (Iowa Code section 808.13)

*a.* During the period of time that information is confidential, it shall be sealed by the court, and the information contained therein shall not be disseminated to any person other than a peace officer, magistrate or other court employee, in the course of official duties.

*b.* Reserved.

**4.9(8)** Information obtained by the department from the examining of reports, returns or records required to be filed or kept under the provisions of Iowa Code chapter 452A, except where disclosure is authorized by Iowa Code chapter 452A. (Iowa Code section 452A.63)

**4.9(9)** Sealed bids, until the time set for the public opening of bids, whereupon bids are unsealed and no longer confidential. (Iowa Code section 72.3)

**4.9(10)** Those records which, if disclosed, would diminish competition or would give an improper advantage to persons who are in an adverse position to the department. These records shall be kept confidential until the transaction to which they relate is consummated. However, if disclosure would

## TRANSPORTATION DEPARTMENT[761](cont'd)

reveal information which would hinder future competition, the records shall be kept confidential. (Iowa Code sections 17A.2, 17A.3, 22.7 and 313.10, Iowa Code chapter 553, and 761—Chapter 20)

*a.* Examples of records which could, in the proper circumstances, be determined to be within this category include, but are not limited to:

- (1) Detailed estimates of the cost of a proposed contract.
- (2) Economic analyses for determining pavement types.
- (3) Negotiations for a proposed contract.
- (4) Methodology for determining unfair bidding practices or bid rigging.
- (5) Price quotations solicited.
- (6) The value of points assigned to a bid rating formula prior to the time set for public opening of bids.
- (7) Laboratory testing reports of suppliers' products. These may also be trade secrets. The subject of the report has the right of access to it.

*b.* Reserved.

**4.9(11)** Audit reviews for determining equal employment opportunity contract compliance. (Iowa Code section 22.7 and 5 U.S.C. §§ 552 and 552a)

*a.* The subject of the audit review has the right of access to it.

*b.* Reserved.

**4.9(12)** All financial records and any information contained within them that are made available to the department, unless otherwise expressly permitted to be divulged by federal or state law. (Iowa Code sections 22.7 and 422.20 and 5 U.S.C. §§ 552 and 552a )

**4.9(13)** Personal information in any motor vehicle record, including personal information contained on electronic driver's license or nonoperator's identification card records that is provided by the licensee or card holder to the department for use by law enforcement, first responders, emergency medical service providers, and other medical personnel responding to or assisting with an emergency. (Iowa Code sections 22.7 and 321.11 and 18 U.S.C. § 2721 et seq.)

*a.* Information other than personal information contained on electronic driver's license or nonoperator's identification card records that is provided by the licensee or card holder to the department for use by law enforcement, first responders, emergency medical service providers, and other medical personnel responding to or assisting with an emergency may be disclosed only as provided in Iowa Code sections 321.11 and 321.11A, 18 U.S.C. § 2721 et seq., and 761—Chapters 415, 610 and 611.

*b.* The subject of the personal information has the right of access to the information.

**4.9(14)** A report received by the department from a physician licensed under Iowa Code chapter 148, an advanced registered nurse practitioner licensed under Iowa Code chapter 152 and licensed with the board of nursing, a physician assistant licensed under Iowa Code chapter 148C or an optometrist licensed under Iowa Code chapter 154 regarding a person who has been diagnosed as having a physical or mental condition which would render the person physically or mentally incompetent to operate a motor vehicle in a safe manner. (Iowa Code section 321.186)

**4.9(15)** Certain records regarding undercover driver's licenses issued to peace officers, as specified in 761—Chapter 625. (Iowa Code sections 22.7 and 321.189A)

*a.* The subject of the record and the head of the law enforcement agency employing the subject have the right of access to the record.

*b.* Reserved.

**4.9(16)** Records related to confidential plates issued for government vehicles. (Iowa Code section 321.19)

*a.* The head of the agency to which the vehicle is assigned has the right of access to the record.

*b.* Reserved.

**4.9(17)** Certified transcripts of labor payrolls (also known as certified payroll records) filed by contractors for federal-aid construction contracts, in accordance with the following paragraphs. (Iowa Code section 22.7, 5 U.S.C. §§ 552 and 552a, and 42 U.S.C. § 405)

*a.* The social security numbers in a certified payroll record are confidential. The record itself may be confidential if its release would give advantage to competitors and serve no public purpose.



## TRANSPORTATION DEPARTMENT[761](cont'd)

*b.* The prime contractor and subcontractor, if applicable, that filed the record have the right of access to it.

*c.* Certified payroll records shall be released to the U.S. Department of Labor and Federal Highway Administration during investigations.

*d.* The custodian may release a certified payroll record with social security numbers withheld to representatives of the Iowa Labor Management Work Preservation Fund.

*e.* The custodian may release a certified payroll record with social security numbers withheld to persons outside the department other than the persons listed in paragraphs 4.9(17) “*b*” to “*d*” according to the following procedure:

(1) The request for the record must be in writing.

(2) The custodian shall send a copy of the request by registered mail to the prime contractor. If the request is for subcontractor information, the custodian shall send copies of the request to both the subcontractor and prime contractor.

(3) The requested record shall not be released until 14 calendar days have expired from receipt of the request by the contractor(s) to give the contractor(s) an opportunity to seek an injunction.

**4.9(18)** Information concerning an open or pending railroad accident investigation conducted on behalf of or in conjunction with the Federal Railroad Administration or National Transportation Safety Board to the extent necessary to prevent denial of funds, services or essential information from the United States government. (Iowa Code section 22.9)

**4.9(19)** A geographic computer database, except upon terms and conditions acceptable to the department. (Iowa Code section 22.2)

**4.9(20)** Confidential information, as defined in Iowa Code section 86.45, filed with the workers’ compensation commissioner. (Iowa Code section 22.7)

**4.9(21)** An intelligence assessment and intelligence data under Iowa Code chapter 692, except where disclosure is required or authorized by the Iowa Code. (Iowa Code chapter 692 and Iowa Code section 22.7)

**4.9(22)** Information in a record that would permit the commission, subject to Iowa Code chapter 21, to hold a closed session pursuant to Iowa Code section 21.5 in order to avoid public disclosure of that information, until such time as final action is taken on the subject matter of that information or unless otherwise authorized by the Iowa Code. (Iowa Code section 22.7)

**4.9(23)** All other information or records that by law are or may be confidential.

This rule is intended to implement Iowa Code chapters 22, 553 and 692; Iowa Code sections 17A.2, 17A.3, 21.5, 72.3, 313.10, 321.11, 321.11A, 321.19, 321.186, 321.189A, 321.266, 321.271, 422.20, 452A.63, 622.10, 622.11, 804.29 and 808.13; 5 U.S.C. §§ 552 and 552a; 18 U.S.C. § 2721 et seq.; and 42 U.S.C. § 405.

## 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 JoAnn Johnson, Superintendent of Banking James M. Schipper, and Auditor of State Mary Mosiman have established today the following rates of interest for public obligations and special assessments. The usury rate for April is 4.00%.

#### 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

TREASURER OF STATE(cont'd)

comparable maturities. All Financial Institutions 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 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, 2015, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS		
7-31 days	.....	Minimum .05%
32-89 days	.....	Minimum .05%
90-179 days	.....	Minimum .05%
180-364 days	.....	Minimum .05%
One year to 397 days	.....	Minimum .05%
More than 397 days	.....	Minimum .10%

These are minimum rates only. All time deposits 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 1985C**

**ARCHITECTURAL EXAMINING BOARD[193B]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board amends Chapter 2, "Registration," and Chapter 3, "Continuing Education," Iowa Administrative Code.

The rules in Chapter 2 describe the process for registration and renewal of certificates of registration for individuals to be authorized to practice architecture in Iowa. The rules in Chapter 3 describe professional licensees' continuing education requirement as a condition of registration renewal. These amendments return the annual renewal and continuing education requirements to biennial requirements and adjust the fees accordingly.

In 2014, the Board adopted rules using the normal rule-making process to change from a biennial renewal period to an annual renewal period, to adjust the fees accordingly, and to provide for a transitional period. The rules were not controversial and were intended to bring Iowa in line with a national model. Historically, architects have renewed every other year when their registrations expired on June 30. Under the rules adopted in 2014, architects would have registered every year on a revised schedule in which registrations would expire on December 31. Unfortunately, the Board assumed the change would be technologically feasible but has now learned the change is cost prohibitive. In the course of attempting to update the licensing database for the spring renewal period, the Board was advised by the Office of the Chief Information Officer (OCIO) that the changes to the database could cost up to \$40,000 on the Board's licensing program. While it would be possible to reprogram the current database system, the cost is high, the staffing needs to accomplish the task are greater than anticipated, and it is uncertain whether the changes could be made in time for the beginning of the renewal cycle in mid-May 2015. The Board, along with the other boards in the Professional Licensing and Regulation Bureau of the Banking Division, has been consulting with the OCIO on acquiring a new database system. Thus, the timing for a large expense to update the current system is poor and would not be a wise use of state funds. The Board debated about how to address this unexpected challenge and concluded that the Board should revert back to the biennial renewal process using the same expiration dates as historically used. Once a new database is acquired and programmed to accommodate the proposed changes, the rules for an annual renewal period can be revived and readopted. In sum, the current technology does not match the rules adopted in 2014. Because renewals open on or about May 15, the amendments adopted in this rule making need to be effective upon filing so that the Board may notify registrants and proceed with the renewal period under the rules as amended herein.

These amendments were approved during the March 10, 2015, meeting of the Architectural Examining Board.

Pursuant to Iowa Code section 17A.4(3), the Board determined that notice and public participation are unnecessary because the amendments allow for reversion to a biennial renewal cycle before the annual renewal cycle was implemented, architects have not yet had to transition to the annual renewal cycle since 2015 was to be the first renewal cycle to begin the transition, and these amendments continue the many years of past practice of biennial renewal.

In compliance with Iowa Code section 17A.4(3), the Administrative Rules Review Committee at its April 10, 2015, meeting reviewed the Board's determination and the amendments and approved the Emergency adoption.

The Board finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing, as the amendments confer a benefit on architect registration holders as well as on the public, who will be able to access an online listing of currently registered architects.

There is no fiscal impact.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

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

These amendments are intended to implement Iowa Code sections 544A.10 and 272C.2.

## ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

These amendments became effective April 10, 2015.

The following amendments are adopted.

ITEM 1. Amend subrule 2.5(1) as follows:

**2.5(1) *Active status.*** Certificates of registration expire ~~annually~~ biennially on December 31 June 30. In order to maintain authorization to practice in Iowa, a registrant is required to renew the certificate of registration prior to the expiration date. A registrant who fails to renew by the expiration date is not authorized to practice architecture in Iowa until the certificate is reinstated as provided in rule 193B—2.6(544A,17A).

a. A registrant whose last name begins with the letter A through K shall renew in even-numbered years, and a registrant whose last name begins with the letter L through Z shall renew in odd-numbered years.

~~a.~~ b. It is the policy of the board to send to each registrant a notice of the pending expiration date at the registrant's last-known address approximately one month prior to the date the certificate of registration is scheduled to expire. The notice, when provided, may be by e-mail communication or in the quarterly newsletter. Failure to receive this notice does not relieve the registrant of the responsibility to timely renew the certificate and pay the renewal fee. A registrant should contact the board office if the registrant does not receive a renewal notice prior to the date of expiration.

~~b.~~ c. Upon the board's receipt of a timely and sufficient renewal application as provided in 193—subrule 7.40(3), the board's administrator shall issue a new certificate of registration reflecting the next expiration date, unless grounds exist for denial of the application. However, the board will accept an otherwise sufficient renewal application that is untimely if the board receives the application and late fee within 30 days of the date of expiration.

~~c.~~ d. If grounds exist to deny a timely and sufficient application to renew, the board shall send written notification to the applicant by restricted certified mail, return receipt requested. Grounds may exist to deny an application to renew if, for instance, the registrant failed to satisfy the continuing education as required as a condition for registration. If the basis for denial is pending disciplinary action or disciplinary investigation which is reasonably expected to culminate in disciplinary action, the board shall proceed as provided in 193—Chapter 7. If the basis for denial is not related to a pending or imminent disciplinary action, the applicant may contest the board's decision as provided in 193—subrule 7.40(1).

~~d.~~ e. When a registrant appears to be in violation of mandatory continuing education requirements, the board may, in lieu of proceeding to a contested case hearing on the denial of a renewal application as provided in rule 193—7.40(546,272C), offer a registrant the opportunity to sign a consent order. While the terms of the consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty between \$50 and \$250, depending on the severity of the violation; establish deadlines for compliance; and require that the registrant complete hours equal to double the deficiency in addition to the required hours; and may impose additional educational requirements on the registrant. Any additional hours completed in compliance with the consent order cannot again be claimed at the next renewal. The board will address subsequent offenses on a case-by-case basis. A registrant is free to accept or reject the offer. If the offer of settlement is accepted, the registrant will be issued a renewed certificate of registration and will be subject to disciplinary action if the terms of the consent order are not complied with. If the offer of settlement is rejected, the matter will be set for hearing, if timely requested by the applicant pursuant to 193—subrule 7.40(1).

~~e.~~ f. The board may notify a registrant whose certificate of registration has expired. The failure of the board to provide this courtesy notification or the failure of the registrant to receive the notification shall not extend the date of expiration.

~~f.~~ g. A registrant who continues to practice architecture in Iowa after the registration has expired shall be subject to disciplinary action. Such unauthorized activity may also be grounds to deny a registrant's application for reinstatement.

## ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

ITEM 2. Amend rule 193B—2.6(544A,17A) as follows:

**193B—2.6(544A,17A) Reinstatement of lapsed certificate of registration to active status.** An individual may reinstate a lapsed certificate of registration to active status as follows:

**2.6(1)** If the individual's registration has been lapsed for up to ~~12~~ 24 months, the individual may reinstate the registration by selecting either Option 1 or Option 2 as follows:

*a. Option 1.* The individual shall:

- (1) Pay the reinstatement fee of \$25 per month of expired registration;
- (2) Pay the current renewal fee;
- (3) Provide a written statement outlining the professional activities of the applicant during the period of nonregistration. The statement shall include a list of all projects with which the applicant had involvement and shall explain the service provided by the applicant; and
- (4) Submit documented evidence of completion of 12 continuing education hours for each year or portion of a year of expired registration in compliance with requirements in 193B—Chapter 3 in addition to the ~~12~~ 24 hours which should have been reported on the ~~December 31~~ June 30 renewal date on which the applicant failed to renew. The continuing education hours used for reinstatement may not be used again at the next renewal. Out-of-state residents may submit a statement from their resident state's licensing board as documented evidence of compliance with their resident state's mandatory continuing education requirements during the period of nonregistration. The statement shall bear the seal of the licensing board. Out-of-state residents whose resident state has no mandatory continuing education shall comply with the documented evidence requirements outlined in this subrule.

*b. Option 2.* The individual shall:

- (1) File a new application for registration as prescribed in rules 193B—2.2(544A,17A) and 193B—2.3(544A,17A), particularly subrules 2.2(1) and 2.3(3); and
- (2) Provide a written statement outlining the professional activities of the applicant during the period of nonregistration. The statement shall include a list of all projects with which the applicant had involvement and shall explain the service provided by the applicant.

**2.6(2)** If an individual's registration has been lapsed for more than ~~12~~ 24 months, the individual may reinstate the registration by selecting either Option 1 or Option 2 as follows:

*a. Option 1.* The individual shall:

- (1) Pay the reinstatement fee of \$25 per month of expired registration, up to a maximum of ~~\$300~~ \$750;
- (2) Pay the current renewal fee;
- (3) Provide a written statement outlining the professional activities of the applicant during the period of nonregistration. The statement shall include a list of all projects with which the applicant had involvement and shall explain the service provided by the applicant; and
- (4) Submit documented evidence of completion of 12 continuing education hours for each year or portion of a year of expired registration in compliance with requirements in 193B—Chapter 3 up to a maximum of 24 ~~48~~ continuing education hours. The continuing education hours used for reinstatement may not be used again at the next renewal. Out-of-state residents may submit a statement from their resident state's licensing board as documented evidence of compliance with their resident state's mandatory continuing education requirements during the period of nonregistration. The statement shall bear the seal of the licensing board. Out-of-state residents whose resident state has no mandatory continuing education shall comply with the documented evidence requirements outlined in this subrule.

*b. Option 2.* The individual shall:

- (1) File a new application for registration as prescribed in rules 193B—2.2(544A,17A) and 193B—2.3(544A,17A), particularly subrules 2.2(1) and 2.3(3); and
- (2) Provide a written statement outlining the professional activities of the applicant during the period of nonregistration. The statement shall include a list of all projects with which the applicant had involvement and shall explain the service provided by the applicant.

## ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

ITEM 3. Amend rule 193B—2.7(544A,17A) as follows:

**193B—2.7(544A,17A) Reinstatement of lapsed certificate of registration to inactive status.** An individual may reinstate a lapsed certificate of registration to inactive status as follows:

1. Pay the reinstatement fee of \$25 per month of expired registration up to a maximum of ~~\$300~~ \$750;
2. Pay the current renewal fee;
3. Provide a written statement in which the applicant affirms that the applicant has not engaged in any of the practices in Iowa that are listed in Iowa Code section 544A.16 during the period of lapsed registration.

ITEM 4. Amend rule 193B—2.8(544A) as follows:

**193B—2.8(544A) Reinstatement from inactive status or retired status to active status.**

**2.8(1)** An individual may reinstate an inactive registration or retired registration to active registration as follows:

*a.* Pay the current active registration fee. If reinstating to active status at a date that is less than ~~six~~ 12 months from the next ~~annual~~ biennial renewal date, one-half of the current active registration fee shall be paid.

*b.* Submit documented evidence of completion of ~~12~~ 24 continuing education hours in compliance with requirements in 193B—Chapter 3. The hours used to reinstate to active status cannot again be used to renew.

(1) At the first biennial renewal date of July 1 that is less than 12 months from the date of the filing of the application to restore the certificate of registration to active status, the person shall not be required to report continuing education hours.

(2) At the first biennial renewal date of July 1 that is more than 12 months, but less than 24 months, from the date of the filing of the application to restore the certificate of registration to active status, the person shall report 12 hours of previously unreported continuing education hours.

**2.8(2)** An individual shall not be allowed to reinstate to inactive status from retired status.

ITEM 5. Amend rule 193B—2.11(544A,17A) as follows:

**193B—2.11(544A,17A) Fee schedule.** Under the authority provided in Iowa Code chapter 544A, the following fees are hereby adopted:

Examination fees:

Fees for examination subjects shall be paid directly to the testing service selected by NCARB

Initial registration fee	\$ 50
(plus \$5 per month until renewal)	
Reciprocal application and registration fee	<del>\$100</del> <u>\$200</u>
<del>Annual</del> <u>Biennial</u> renewal fee	<del>\$100</del> <u>\$200</u>
<del>Annual</del> <u>Biennial</u> renewal fee (inactive)	<del>\$50</del> <u>\$100</u>
Retired status	None
Reinstatement of lapsed individual registration (per month)	\$ 25
Duplicate wall certificate fee	\$ 50
Late renewal fee	\$ 25

(for renewals postmarked on or after ~~January~~ July 1 and before ~~January~~ July 30)

## ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

ITEM 6. Rescind and reserve rule **193B—2.12(544A,272C)**.

ITEM 7. Amend rule 193B—3.3(544A,272C) as follows:

**193B—3.3(544A,272C) Basic requirements.**

**3.3(1)** To renew registration, an architect must, in addition to meeting all other requirements, complete a minimum of ~~12~~ 24 CEHs ~~for each calendar-year~~ 24-month period since the architect's last renewal of initial registration or be exempt from these continuing education requirements as provided in rule 193B—3.5(544A,272C). Failure to comply with these requirements may result in nonrenewal of the architect's registration.

**3.3(2)** All ~~12~~ 24 CEHs must be completed in health, safety, and welfare subjects acquired in structured educational activities. CEHs may be acquired at any location. Excess CEHs cannot be credited to ~~a future calendar-year~~ the next renewal.

**3.3(3)** An architect shall complete and submit forms as required by the board certifying that the architect has completed the required CEHs. Forms may be audited by the board for verification of compliance with these requirements. Documentation of reported CEHs shall be maintained by the architect for two years after the period for which the form was submitted. If the board disallows any CEHs, the architect shall have 60 days from notice of such disallowance to either provide further evidence of having completed the CEHs disallowed or remedy the disallowance by completing the required number of CEHs (provided that such CEHs shall not again be used for the next ~~calendar-year renewal~~). If the board finds, after proper notice and hearing, that the architect willfully disregarded these requirements or falsified documentation of required CEHs, the architect may be subject to disciplinary action.

**3.3(4)** An architect who holds registration in Iowa for less than 12 months from the date of initial registration shall not be required to report CEHs at the first registration renewal. An architect who holds registration in Iowa for more than 12 months, but less than 23 months from the date of initial registration, shall be required to report 12 CEHs earned in the preceding 12 months at the first registration renewal.

ITEM 8. Amend subrule 3.5(1) as follows:

**3.5(1)** As provided in Iowa Code section 272C.2(4), a registered architect shall be deemed to have complied with the continuing education requirements set forth in this chapter if the architect attests in the required affidavit that for not less than ~~ten months of the preceding one-year~~ 21 months of the preceding two-year period of registration, the architect:

- a.* Has served honorably on active duty in the military service; or
- b.* Is a resident of another state or district having a continuing education requirement for registration as an architect and has complied with all requirements of that state or district for practice therein; or
- c.* Is a government employee working as an architect and assigned to duty outside the United States.

ITEM 9. Rescind and reserve rule **193B—3.6(544A,272C)**.

[Filed Emergency 4/10/15, effective 4/10/15]

[Published 4/29/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/29/15.

## ARC 1976C

## HUMAN SERVICES DEPARTMENT[441]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

These amendments are in accordance with a new request for proposal (RFP) for Iowa Medicaid's Non-Emergency Medical Transportation (NEMT) program. These amendments eliminate the two-business-day advance notice requirement for mileage reimbursement trips. These amendments also define a time frame within which a member or transportation provider may submit a claim to the broker for mileage reimbursement.

In the recent past, there has been a shift in NEMT trips classified as mileage reimbursement, from 73 percent of all NEMT trips as measured from October to December 2010 to only 46 percent of NEMT trips as measured from January to March 2013. This shift means the majority of the current trips are provider rides, which are more costly. By eliminating the two-business-day advance notice for members who require only mileage reimbursement, the Department is anticipating a greater incentive for members to drive themselves and thus reduce program costs.

Most states with a brokerage require members to submit claims within 60 to 120 days from the date of service. Rules in Chapter 80 address medical and remedial care providers' submission of claims for services rendered. These amendments adopt new provisions for members' submission of claims.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1901C** on March 4, 2015. The Department received no comments during the public comment period. These amendments are identical to those published under Notice of Intended Action.

The Council of Human Services adopted these amendments on April 8, 2015.

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

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

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

These amendments will become effective July 1, 2015.

The following amendments are adopted.

ITEM 1. Amend paragraph **78.13(3)"a"** as follows:

*a. Member request.* When a member needs nonemergency transportation to receive medical care provided by the Iowa Medicaid program, the member must contact the broker with as much advance notice as possible, but not more than 30 days' advance notice.

(1) Generally, ~~the member~~ members who require a ride from a transportation provider scheduled by the broker must contact the broker at least two business days in advance of the member's appointment to schedule the transportation. For purposes of calculating the two-business-day notice obligation, the advance notice includes the day of the medical appointment but not the day of the telephone call.

(2) If the member's nonemergency transportation ~~needs make~~ need for a ride from a transportation provider scheduled by the broker makes the provision of two business days' notice impossible because of the member's urgent transportation need, the member must provide as much advance notice as is possible before the transportation need so that the broker can appropriately schedule the most economical form of transportation for the member. Urgent transportation needs for a ride from a transportation provider scheduled by the broker are limited to unscheduled episodic situations in which there is no immediate threat to life or limb but which require that the broker schedule transportation with less than two business days' notice. Examples of urgent trips include, but are not limited to:

1. Postsurgical or medical follow-up care specified by a health care provider;
2. Unexpected preoperative appointments;
3. Hospital discharges;
4. Appointments for new medical conditions or tests; and



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

5. Dialysis.

(3) The two-business-day advance notice obligation does not apply when the member requests only mileage reimbursement. To be eligible for mileage reimbursement:

1. The member must notify the broker no later than the day of the trip;
2. The transportation must be provided by a driver with a valid driver's license and insurance coverage on the vehicle at the time of the transport; and
3. The other requirements of rule 441—78.13(249A) must be met.

ITEM 2. Adopt the following **new** paragraph **78.13(3)“i”**:

*i. Member claim submission.* Members must submit claims and supporting documentation to the broker within 120 days of the date of service. The broker shall deny member claims submitted more than 120 days from the date of service.

[Filed 4/8/15, effective 7/1/15]

[Published 4/29/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/29/15.

**ARC 1977C**

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

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4 and 2013 Iowa Acts, chapter 140 (Senate File 452), section 12, the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

Pursuant to subrule 79.1(15), providers of home- and community-based services (HCBS) must complete a financial cost report for certain HCBS services annually. The fiscal year cost reports cover the 12 months of July through June, and the cost reports must be submitted to the Department by September 30 each year. The cost report accounts for all direct service and indirect administrative costs that have been incurred by a provider over the previous 12 months of service delivery, and the allowable costs in the report are used to establish future reimbursement rates. Staff training costs have historically been considered an indirect administrative expense for cost-reporting purposes. And for Medicaid rate-setting purposes, indirect administrative costs are limited pursuant to 79.1(15)“b”(3) to 20 percent of other costs. This amendment provides that, to the extent funding is appropriated, the reasonable costs of staff training will be treated as direct costs, rather than as indirect administrative costs subject to the 20 percent limit. 2013 Iowa Acts, chapter 140 (Senate File 452), section 12, provides as follows:

“The department of human services shall adopt rules pursuant to chapter 17A to provide that reasonable costs of staff training incurred by providers of home and community-based services under the medical assistance program are reimbursable as direct costs. Such reimbursement shall include reimbursement of the reasonable costs associated with the learning management system utilized under the college of direct support training program.”

Since 2011, the Department has been funding the College of Direct Support training program referenced in the 2013 legislation. Due to that funding, the College of Direct Support has been free to providers and has reduced training costs. Nonetheless, the provider community has estimated that training expenses are 1 to 2 percent of other expenses. And providers have also indicated that other indirect administrative costs equal or exceed the 20 percent limit. Based on that information, the Department estimates that treating the reasonable costs of staff training as direct costs would increase provider reimbursement by \$3.4 to \$6.8 million annually (state share \$1.5 to \$3.0 million). In 2013, the Legislature appropriated \$300,000 for that purpose for the six months of January through June of 2014. See 2013 Iowa Acts, chapter 138 (Senate File 446), section 12(24). But that is just 40 percent of the state share for the minimum estimated six-month cost (\$750,000). Further, the Iowa Association of Community Providers (IACP), which represents HCBS providers, objected to the implementation of a change in how costs are allocated in the middle of a cost-reporting period, which would have required

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

providers to submit two cost reports for that period. Rather, the IACP requested that any change to cost reporting be postponed until July 1, 2014. Due to the inadequate appropriation and the timing concerns, the Department postponed any change until July 1, 2014.

However, the Department's appropriation for the state fiscal year beginning July 1, 2014, did not include any additional funds for treatment of staff training costs as direct costs. Therefore, the Department had not taken any action to amend the rules as directed by 2013 Iowa Acts, chapter 140 (Senate File 452), section 12, though the Department has continued to fund the College of Direct Support, thus reducing providers' staff training costs.

On October 6, 2014, the Department received a petition for rule making to implement 2013 Iowa Acts, chapter 140 (Senate File 452), section 12. The Department believes that the Legislature needs to address the extent to which staff training costs should be treated as direct costs, in light of the College of Direct Support, and provide appropriate funding. Therefore, pursuant to the petition for rule making, the Department proposed an amendment providing for treatment of the reasonable costs of staff training as direct costs to the extent funding is specifically appropriated for that purpose.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1818C** on January 7, 2015.

The Department received comments from 18 respondents regarding this amendment. All of the comments from the respondents were in opposition to the proposed amendment as written in the Notice of Intended Action. The respondents stated that staff training is crucial to ensure the provision of high-quality services to individuals. In addition, the respondents stated that the legislation was a clear directive for the Department to write rules to allow providers to include staff training as a direct expense and to date has not been implemented. Respondents stated that the proposed amendment did not follow the intent of legislation as it was approved in 2013 Iowa Acts, chapter 140 (Senate File 452), section 12.

Respondents also stated that the Department treats training as an indirect expense in the HCBS waiver programs, which is inconsistent with how the Department has developed rates and paid for training costs with other Medicaid providers. Finally, the respondents asked that proposed language found in the amendment, specifically the words "to the extent that funding is specifically appropriated by the legislature for this purpose for a state fiscal year," be removed.

The Department has revised the proposed amendment as a direct result of the comments received during the public comment period. The Department agrees with the respondents that the treatment of staff training as a direct care cost was intended to be limited to direct care staff. Subparagraph 79.1(15)"b"(9) now reads as follows:

"(9) The reasonable costs of direct care staff training shall be treated as direct care costs, rather than as indirect administrative costs."

This amendment was adopted by the Council on Human Services on April 8, 2015.

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

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

This amendment is intended to implement Iowa Code section 249A.4 and 2013 Iowa Acts, chapter 140 (Senate File 452), section 12.

This amendment will become effective July 1, 2015.

The following amendment is adopted.

Adopt the following **new** subparagraph **79.1(15)"b"(9)**:

(9) The reasonable costs of direct care staff training shall be treated as direct care costs, rather than as indirect administrative costs.

[Filed 4/8/15, effective 7/1/15]

[Published 4/29/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/29/15.

## ARC 1978C

## HUMAN SERVICES DEPARTMENT[441]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 170, "Child Care Services," Iowa Administrative Code.

This amendment revises the Child Care Assistance (CCA) fee chart based on the new federal poverty levels. The annual poverty level increase will allow families that have received raises to maintain eligibility for child care assistance without paying increased fees.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1900C** on March 4, 2015. The Department received no comments during the public comment period. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on April 8, 2015.

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

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

This amendment is intended to implement Iowa Code section 234.6.

This amendment will become effective July 1, 2015.

The following amendment is adopted.

Amend subparagraph **170.4(2)“a”(1)** as follows:

(1) The fee schedule shown in the following table is effective for eligibility determinations made on or after July 1, ~~2014~~ 2015:

Level	Monthly Income According to Family Size										Unit Fee Based on Number of Children in Care		
	1	2	3	4	5	6	7	8	9	10	1	2	3 or more
A	\$924	\$1,245	\$1,568	\$1,889	\$2,210	\$2,532	\$2,853	\$3,174	\$3,496	\$3,817	\$0.00	\$0.00	\$0.00
	\$932	\$1,262	\$1,591	\$1,920	\$2,250	\$2,579	\$2,908	\$3,238	\$3,567	\$3,896			
B	\$973	\$1,311	\$1,650	\$1,988	\$2,326	\$2,665	\$3,003	\$3,341	\$3,680	\$4,018	\$0.20	\$0.45	\$0.70
	\$981	\$1,328	\$1,675	\$2,021	\$2,368	\$2,715	\$3,061	\$3,408	\$3,755	\$4,101			
C	\$1,000	\$1,348	\$1,696	\$2,044	\$2,391	\$2,740	\$3,087	\$3,435	\$3,783	\$4,131	\$0.45	\$0.70	\$0.95
	\$1,008	\$1,365	\$1,722	\$2,078	\$2,434	\$2,791	\$3,147	\$3,503	\$3,860	\$4,216			
D	\$1,027	\$1,384	\$1,742	\$2,099	\$2,456	\$2,814	\$3,171	\$3,528	\$3,886	\$4,243	\$0.70	\$0.95	\$1.20
	\$1,036	\$1,402	\$1,769	\$2,134	\$2,501	\$2,867	\$3,232	\$3,599	\$3,965	\$4,331			
E	\$1,056	\$1,423	\$1,791	\$2,158	\$2,525	\$2,893	\$3,260	\$3,627	\$3,995	\$4,362	\$0.95	\$1.20	\$1.45
	\$1,065	\$1,442	\$1,818	\$2,194	\$2,571	\$2,947	\$3,323	\$3,700	\$4,076	\$4,452			
F	\$1,085	\$1,462	\$1,840	\$2,217	\$2,594	\$2,972	\$3,349	\$3,726	\$4,104	\$4,481	\$1.20	\$1.45	\$1.70
	\$1,094	\$1,481	\$1,868	\$2,254	\$2,641	\$3,028	\$3,413	\$3,800	\$4,187	\$4,573			
G	\$1,115	\$1,503	\$1,891	\$2,279	\$2,666	\$3,055	\$3,443	\$3,830	\$4,219	\$4,606	\$1.45	\$1.70	\$1.95
	\$1,125	\$1,522	\$1,920	\$2,317	\$2,715	\$3,112	\$3,509	\$3,907	\$4,305	\$4,701			
H	\$1,146	\$1,544	\$1,943	\$2,341	\$2,739	\$3,138	\$3,536	\$3,934	\$4,334	\$4,732	\$1.70	\$1.95	\$2.20
	\$1,155	\$1,564	\$1,972	\$2,380	\$2,789	\$3,197	\$3,605	\$4,013	\$4,422	\$4,829			
I	\$1,178	\$1,587	\$1,997	\$2,407	\$2,816	\$3,226	\$3,635	\$4,044	\$4,455	\$4,864	\$1.95	\$2.20	\$2.45
	\$1,188	\$1,608	\$2,028	\$2,447	\$2,867	\$3,287	\$3,706	\$4,126	\$4,546	\$4,964			
J	\$1,210	\$1,630	\$2,052	\$2,472	\$2,892	\$3,314	\$3,734	\$4,155	\$4,576	\$4,996	\$2.20	\$2.45	\$2.70
	\$1,220	\$1,651	\$2,083	\$2,513	\$2,945	\$3,376	\$3,806	\$4,238	\$4,669	\$5,100			
K	\$1,244	\$1,676	\$2,109	\$2,541	\$2,973	\$3,407	\$3,839	\$4,271	\$4,704	\$5,136	\$2.45	\$2.70	\$2.95
	\$1,254	\$1,698	\$2,141	\$2,584	\$3,027	\$3,471	\$3,913	\$4,357	\$4,800	\$5,243			
L	\$1,278	\$1,722	\$2,167	\$2,611	\$3,054	\$3,500	\$3,943	\$4,387	\$4,832	\$5,276	\$2.70	\$2.95	\$3.20
	\$1,288	\$1,744	\$2,200	\$2,654	\$3,110	\$3,565	\$4,020	\$4,475	\$4,931	\$5,385			
M	\$1,313	\$1,770	\$2,227	\$2,684	\$3,140	\$3,598	\$4,054	\$4,510	\$4,968	\$5,424	\$2.95	\$3.20	\$3.45
	\$1,324	\$1,793	\$2,261	\$2,728	\$3,197	\$3,665	\$4,132	\$4,601	\$5,069	\$5,536			

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

Level	Monthly Income According to Family Size										Unit Fee Based on Number of Children in Care		
	1	2	3	4	5	6	7	8	9	10	1	2	3 or more
N	<u>\$1,349</u> <u>\$1,360</u>	<u>\$1,818</u> <u>\$1,842</u>	<u>\$2,288</u> <u>\$2,323</u>	<u>\$2,757</u> <u>\$2,803</u>	<u>\$3,225</u> <u>\$3,284</u>	<u>\$3,696</u> <u>\$3,765</u>	<u>\$4,164</u> <u>\$4,245</u>	<u>\$4,633</u> <u>\$4,726</u>	<u>\$5,103</u> <u>\$5,207</u>	<u>\$5,572</u> <u>\$5,687</u>	\$3.20	\$3.45	\$3.70
O	<u>\$1,387</u> <u>\$1,398</u>	<u>\$1,869</u> <u>\$1,893</u>	<u>\$2,352</u> <u>\$2,388</u>	<u>\$2,834</u> <u>\$2,881</u>	<u>\$3,316</u> <u>\$3,376</u>	<u>\$3,799</u> <u>\$3,870</u>	<u>\$4,281</u> <u>\$4,364</u>	<u>\$4,763</u> <u>\$4,858</u>	<u>\$5,246</u> <u>\$5,353</u>	<u>\$5,728</u> <u>\$5,846</u>	\$3.45	\$3.70	\$3.95
P	<u>\$1,425</u> <u>\$1,437</u>	<u>\$1,920</u> <u>\$1,945</u>	<u>\$2,416</u> <u>\$2,453</u>	<u>\$2,911</u> <u>\$2,959</u>	<u>\$3,406</u> <u>\$3,468</u>	<u>\$3,903</u> <u>\$3,976</u>	<u>\$4,397</u> <u>\$4,482</u>	<u>\$4,892</u> <u>\$4,991</u>	<u>\$5,389</u> <u>\$5,499</u>	<u>\$5,884</u> <u>\$6,005</u>	\$3.70	\$3.95	\$4.20
Q	<u>\$1,465</u> <u>\$1,477</u>	<u>\$1,974</u> <u>\$1,999</u>	<u>\$2,484</u> <u>\$2,521</u>	<u>\$2,993</u> <u>\$3,042</u>	<u>\$3,501</u> <u>\$3,565</u>	<u>\$4,012</u> <u>\$4,087</u>	<u>\$4,521</u> <u>\$4,608</u>	<u>\$5,029</u> <u>\$5,130</u>	<u>\$5,540</u> <u>\$5,653</u>	<u>\$6,049</u> <u>\$6,173</u>	\$3.95	\$4.20	\$4.45
R	<u>\$1,505</u> <u>\$1,517</u>	<u>\$2,027</u> <u>\$2,054</u>	<u>\$2,551</u> <u>\$2,590</u>	<u>\$3,074</u> <u>\$3,125</u>	<u>\$3,597</u> <u>\$3,662</u>	<u>\$4,121</u> <u>\$4,198</u>	<u>\$4,644</u> <u>\$4,733</u>	<u>\$5,166</u> <u>\$5,270</u>	<u>\$5,691</u> <u>\$5,807</u>	<u>\$6,213</u> <u>\$6,342</u>	\$4.20	\$4.45	\$4.70
S	<u>\$1,547</u> <u>\$1,559</u>	<u>\$2,084</u> <u>\$2,111</u>	<u>\$2,623</u> <u>\$2,663</u>	<u>\$3,160</u> <u>\$3,213</u>	<u>\$3,698</u> <u>\$3,764</u>	<u>\$4,236</u> <u>\$4,316</u>	<u>\$4,774</u> <u>\$4,866</u>	<u>\$5,311</u> <u>\$5,418</u>	<u>\$5,850</u> <u>\$5,969</u>	<u>\$6,387</u> <u>\$6,519</u>	\$4.45	\$4.70	\$4.95
T	<u>\$1,589</u> <u>\$1,602</u>	<u>\$2,141</u> <u>\$2,169</u>	<u>\$2,694</u> <u>\$2,735</u>	<u>\$3,246</u> <u>\$3,300</u>	<u>\$3,798</u> <u>\$3,867</u>	<u>\$4,352</u> <u>\$4,433</u>	<u>\$4,904</u> <u>\$4,998</u>	<u>\$5,456</u> <u>\$5,565</u>	<u>\$6,009</u> <u>\$6,132</u>	<u>\$6,561</u> <u>\$6,697</u>	\$4.70	\$4.95	\$5.20
U	<u>\$1,633</u> <u>\$1,647</u>	<u>\$2,201</u> <u>\$2,229</u>	<u>\$2,770</u> <u>\$2,812</u>	<u>\$3,337</u> <u>\$3,393</u>	<u>\$3,905</u> <u>\$3,975</u>	<u>\$4,474</u> <u>\$4,558</u>	<u>\$5,041</u> <u>\$5,138</u>	<u>\$5,608</u> <u>\$5,721</u>	<u>\$6,178</u> <u>\$6,303</u>	<u>\$6,745</u> <u>\$6,884</u>	\$4.95	\$5.20	\$5.45
V	<u>\$1,678</u> <u>\$1,692</u>	<u>\$2,261</u> <u>\$2,290</u>	<u>\$2,845</u> <u>\$2,888</u>	<u>\$3,428</u> <u>\$3,485</u>	<u>\$4,011</u> <u>\$4,083</u>	<u>\$4,596</u> <u>\$4,682</u>	<u>\$5,178</u> <u>\$5,278</u>	<u>\$5,761</u> <u>\$5,877</u>	<u>\$6,346</u> <u>\$6,475</u>	<u>\$6,929</u> <u>\$7,072</u>	\$5.20	\$5.45	\$5.70
W	<u>\$1,725</u> <u>\$1,739</u>	<u>\$2,324</u> <u>\$2,354</u>	<u>\$2,925</u> <u>\$2,969</u>	<u>\$3,524</u> <u>\$3,583</u>	<u>\$4,123</u> <u>\$4,198</u>	<u>\$4,724</u> <u>\$4,813</u>	<u>\$5,323</u> <u>\$5,426</u>	<u>\$5,923</u> <u>\$6,041</u>	<u>\$6,523</u> <u>\$6,656</u>	<u>\$7,123</u> <u>\$7,270</u>	\$5.45	\$5.70	\$5.95
X	<u>\$1,772</u> <u>\$1,786</u>	<u>\$2,387</u> <u>\$2,418</u>	<u>\$3,005</u> <u>\$3,050</u>	<u>\$3,620</u> <u>\$3,680</u>	<u>\$4,236</u> <u>\$4,312</u>	<u>\$4,853</u> <u>\$4,944</u>	<u>\$5,468</u> <u>\$5,574</u>	<u>\$6,084</u> <u>\$6,206</u>	<u>\$6,701</u> <u>\$6,838</u>	<u>\$7,317</u> <u>\$7,468</u>	\$5.70	\$5.95	\$6.20
Y	<u>\$1,821</u> <u>\$1,836</u>	<u>\$2,454</u> <u>\$2,486</u>	<u>\$3,089</u> <u>\$3,136</u>	<u>\$3,721</u> <u>\$3,783</u>	<u>\$4,354</u> <u>\$4,433</u>	<u>\$4,989</u> <u>\$5,082</u>	<u>\$5,621</u> <u>\$5,730</u>	<u>\$6,254</u> <u>\$6,380</u>	<u>\$6,889</u> <u>\$7,029</u>	<u>\$7,522</u> <u>\$7,677</u>	\$5.95	\$6.20	\$6.45
Z	<u>\$1,871</u> <u>\$1,886</u>	<u>\$2,521</u> <u>\$2,554</u>	<u>\$3,173</u> <u>\$3,221</u>	<u>\$3,823</u> <u>\$3,886</u>	<u>\$4,473</u> <u>\$4,554</u>	<u>\$5,125</u> <u>\$5,221</u>	<u>\$5,775</u> <u>\$5,886</u>	<u>\$6,425</u> <u>\$6,553</u>	<u>\$7,076</u> <u>\$7,221</u>	<u>\$7,726</u> <u>\$7,886</u>	\$6.20	\$6.45	\$6.70
AA	<u>\$1,923</u> <u>\$1,939</u>	<u>\$2,592</u> <u>\$2,625</u>	<u>\$3,262</u> <u>\$3,311</u>	<u>\$3,930</u> <u>\$3,995</u>	<u>\$4,598</u> <u>\$4,681</u>	<u>\$5,268</u> <u>\$5,367</u>	<u>\$5,936</u> <u>\$6,051</u>	<u>\$6,604</u> <u>\$6,737</u>	<u>\$7,275</u> <u>\$7,423</u>	<u>\$7,943</u> <u>\$8,107</u>	\$6.45	\$6.70	\$6.95
BB	<u>\$1,976</u> <u>\$1,992</u>	<u>\$2,662</u> <u>\$2,697</u>	<u>\$3,351</u> <u>\$3,401</u>	<u>\$4,037</u> <u>\$4,104</u>	<u>\$4,723</u> <u>\$4,809</u>	<u>\$5,412</u> <u>\$5,513</u>	<u>\$6,098</u> <u>\$6,216</u>	<u>\$6,784</u> <u>\$6,920</u>	<u>\$7,473</u> <u>\$7,625</u>	<u>\$8,159</u> <u>\$8,328</u>	\$6.70	\$6.95	\$7.20

[Filed 4/8/15, effective 7/1/15]

[Published 4/29/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/29/15.

ARC 1975C

## INSURANCE DIVISION[191]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 523A.809, the Insurance Division (the Division) hereby amends Chapter 100, "General Provisions," Chapter 101, "Trust Deposits and Trust Funds," Chapter 102, "Warehoused Merchandise," Chapter 103, "Licensing of Preneed Sellers and Sales Agents," Chapter 104, "Continuing Education for Sales Agents," and Chapter 105, "Standards of Conduct and Prohibited Practices," and rescinds Chapter 106, "Disciplinary Procedures," Iowa Administrative Code.

The chapters implement and administer Iowa Code chapter 523A, which regulates the sale of cemetery merchandise, funeral merchandise, and funeral services. These amendments update cross references and other information and add a new rule 191—103.9(523A) to allow for suspension of a sales agent license for failure to pay state debt, pursuant to Iowa Code chapter 272D. Chapter 106 is rescinded, and the provisions are incorporated into Chapter 105.

## INSURANCE DIVISION[191](cont'd)

These amendments were published under Notice of Intended Action in the March 4, 2015, Iowa Administrative Bulletin as **ARC 1888C**.

A public hearing was held on March 24, 2015, at the offices of the Iowa Insurance Division, Two Ruan Center, Fourth Floor, 601 Locust Street, Des Moines, Iowa. Interested persons had the opportunity to make written suggestions or comments on the proposed amendments through March 24, 2015. No comments were received. These amendments are identical to those published under Notice of Intended Action. Persons operating as preneed sellers and sales agents in Iowa must be in compliance with these amendments beginning June 3, 2015.

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

These amendments are intended to implement Iowa Code chapter 523A.

These amendments will become effective June 3, 2015.

The following amendments are adopted.

ITEM 1. Amend rule 191—100.1(523A) as follows:

**191—100.1(523A) Purpose.** This chapter and 191—Chapters 101 through ~~406~~ 105 are promulgated to implement and administer the provisions of Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559 [2007 Iowa Code Supplement chapter 523A], and 2008 Iowa Acts, Senate File 2349 and House File 2555~~, which regulate the sale of cemetery merchandise, funeral merchandise, funeral services and any combination of those items. The provisions of this chapter also apply to 191—Chapters 101 through ~~406~~ 105.

ITEM 2. Amend rule 191—100.2(523A), introductory paragraph, as follows:

**191—100.2(523A) Definitions.** For purposes of 191—Chapters 100 through ~~406~~ 105, the definitions in Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555~~, are incorporated by reference. In addition, the following definitions shall apply:

ITEM 3. Amend the following definitions in rule **191—100.2(523A)**:

“*Commissioner’s Web site*” means the Web site of the Iowa insurance division, ~~www.iid.state.ia.us~~ www.iid.iowa.gov.

“*Continuing education*” means planned, organized learning acts designed to maintain, improve, or expand a licensee’s knowledge and skills to maintain and improve compliance with 191—Chapters 100 through ~~406~~ 105 and Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555~~, and to maintain and improve the safety and welfare of the public.

ITEM 4. Amend rule 191—100.3(523A) as follows:

**191—100.3(523A) Contact and correspondence.**

**100.3(1) Contact information.** All mailed complaints, inquiries and correspondence shall be sent to Securities and Regulated Industries Bureau, Iowa Insurance Division, ~~340 Maple Street, Des Moines, Iowa 50319-0066~~ 601 Locust, Two Ruan Center, Fourth Floor, Des Moines, Iowa 50309-3738. Telephone inquiries may be made at (877)955-1212. E-mail correspondence may be made through the commissioner’s Web site: ~~www.iid.state.ia.us~~.

**100.3(2) Complaints, inquiries and correspondence.** The commissioner may receive and process any complaint made regarding cemetery merchandise, funeral merchandise, funeral services or any combination of those items, or regarding a sales agent or a preneed seller that alleges certain acts or practices which may constitute one or more violations of the provisions of 191—Chapters 100 to ~~406~~ 105 or of Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, or 2008 Iowa Acts, Senate File 2349 and House File 2555~~. Where appropriate, the commissioner may refer complaints, in whole or in part, to other agencies. Any member of the public or the industry, or any federal, state, or local official, may make and file a complaint with the commissioner. Complaints ~~may be~~ received from sources outside the state of Iowa ~~and shall be processed by the commissioner~~ in the same manner as those originating in Iowa. If required by the commissioner, complaints shall be made on forms prescribed and provided by the commissioner.

## INSURANCE DIVISION[191](cont'd)

**100.3(3)** No change.

ITEM 5. Amend subrule 100.4(1) as follows:

**100.4(1)** *Manner of payment.* Fees required by 191—Chapters 100 through ~~106~~ 105 may be paid by check, credit card, or electronically, if available, or as directed by the commissioner.

ITEM 6. Amend **191—Chapter 100**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.~~

ITEM 7. Amend rule 191—101.1(523A) as follows:

**191—101.1(523A) Trust income withdrawals.** ~~Trust~~ To the extent permitted by Iowa Code section 523A.201(8) and the provisions of this chapter, trust income may be withdrawn on purchase agreements executed on or after July 1, 2007, 1987 as set forth in this chapter, by any preneed seller that is a limited liability corporation that was formed in 2002 for the purpose of purchasing a cemetery from a foreign entity reorganizing under bankruptcy, if the corporation is comprised of six establishments all located within the same county.

ITEM 8. Amend subrule 101.7(1), introductory paragraph, as follows:

**101.7(1)** Pursuant to Iowa Code ~~Supplement~~ sections 523A.201(8) and 523A.602(2)“b”(1), the commissioner sets the following inflation adjustment factors for the years listed for the purposes of calculating the amount of interest or income earned on amounts deposited in trust that must remain trust funds as an adjustment for inflation or to adjust the purchase price of merchandise and services in order to calculate the amount of a cancellation refund.

ITEM 9. Amend subrule 101.7(2) as follows:

**101.7(2)** ~~The inflation adjustment factors for~~ For years 2008 and later will be set by the commissioner and posted on the commissioner's Web site, the approved inflation factor adjustment shall be the consumer price index for all urban consumers (CPI-U) issued by the U.S. Department of Labor's Bureau of Labor Statistics.

ITEM 10. Amend rule 191—101.8(523A) as follows:

**191—101.8(523A) Cancellation refunds.** The requirement set forth in Iowa Code ~~Supplement~~ section 523A.602(2)“b”(1) applies to any purchase agreement executed on or after July 1, 2001.

ITEM 11. Amend **191—Chapter 101**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.~~

ITEM 12. Amend subrule 102.1(2) as follows:

**102.1(2)** *Approval of storage facilities by commissioner.* If a preneed seller receives approval in writing from the commissioner, the trust requirements of Iowa Code ~~Supplement~~ sections 523A.201 and 523A.202 do not apply; either to payments for outer burial containers made of either polystyrene or polypropylene or to cemetery merchandise delivered to the purchaser or stored in an independent third-party storage facility not owned or controlled by the preneed seller.

ITEM 13. Amend **191—Chapter 102**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.~~

ITEM 14. Amend rule 191—103.1(523A) as follows:

**191—103.1(523A) Requirement for a preneed seller license or a sales agent license.**

**103.1(1)** No person may sell or offer to sell cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, in Iowa if the sale of the merchandise or services is subject to Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555,~~ unless the person holds an active license.

## INSURANCE DIVISION[191](cont'd)

**103.1(2)** No person may agree to perform any term of an agreement, whether or not pursuant to a written purchase agreement, to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, in Iowa if the sale of the merchandise or services is subject to Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555,~~ unless the person holds an active license.

**103.1(3)** At the time a purchase agreement is entered into, a person may not accept any payment or funding, including the assignment of ownership of or proceeds from an insurance policy or annuity, related to the purchase of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, in Iowa if the sale of the merchandise or services is subject to Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555,~~ unless the person holds an active license. This rule does not prevent payments to an unlicensed person upon the person's delivery of cemetery merchandise, funeral merchandise or funeral services after the death of a beneficiary, including the payment of the proceeds of an insurance policy or annuity at the time of death of the insured listed on the insurance policy or annuity.

ITEM 15. Amend rule 191—103.2(523A) as follows:

**191—103.2(523A) Application and licensing of preneed seller or sales agent.**

**103.2(1)** *Preneed seller application.* A person that desires to be licensed as a preneed seller must satisfy the following requirements:

*a. and b.* No change.

*c.* Submit a signed waiver allowing the commissioner to request and obtain criminal history data information, pursuant to Iowa Code Supplement section 523A.501(3) ~~as amended by 2008 Iowa Acts, Senate File 2349, section 5, and House File 2555, section 47,~~ for each owner and manager of the applicant, including, but not limited to, for each sole proprietor, partner, director, officer, managing partner, member, or shareholder with 10 percent or more of the stock who has the ability to control or direct control of trust funds under Iowa Code chapter 523A, as determined by the commissioner;

*d.* Provide a financial history, if requested by the commissioner, pursuant to Iowa Code Supplement section 523A.501(4) ~~as amended by 2008 Iowa Acts, Senate File 2349, section 6, and House File 2555, section 48,~~ for each owner and manager of the applicant, including, but not limited to, for each sole proprietor, partner, director, officer, managing partner, member, or shareholder with 10 percent or more of the stock;

*e. to g.* No change.

**103.2(2)** *Sales agent application.* An individual ~~that who~~ desires to be licensed as a sales agent pursuant to Iowa Code Supplement section 523A.502 ~~as amended by 2008 Iowa Acts, Senate File 2349, section 7, and House File 2555, sections 49 and 50,~~ must satisfy the following requirements:

*a. to c.* No change.

*d.* Submit a signed waiver allowing the commissioner to request and obtain criminal history data information, pursuant to Iowa Code Supplement section 523A.501(3) ~~as amended by 2008 Iowa Acts, Senate File 2349, section 5, and House File 2555, section 47;~~

*e. and f.* No change.

**103.2(3)** No change.

**103.2(4)** *Approval or denial of applications.*

*a.* No change.

*b.* The commissioner may require any documents reasonably necessary to verify the information contained in the application or to verify that the individual making application has the character and competency required to receive a license. The commissioner also may request fingerprints and reimbursement of costs for investigating a criminal history, pursuant to Iowa Code Supplement section 523A.501(3) ~~as amended by 2008 Iowa Acts, Senate File 2349, section 5, and House File 2555, section 47.~~

*c.* The commissioner shall conduct the criminal history data request and other investigations pursuant to Iowa Code Supplement section 523A.502(4) ~~as amended by 2008 Iowa Acts, House File 2555, section 49.~~ The commissioner's investigation of criminal history data and financial history shall

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be limited to persons who have the ability to control or direct control of trust funds under Iowa Code chapter 523A, as determined by the commissioner.

*d.* In order to determine whether to approve or deny an application for license, the commissioner shall review all information that is submitted with the application, submitted at the commissioner's request, obtained through criminal history investigation, and obtained through the financial history review, pursuant to Iowa Code ~~Supplement~~ sections 523A.501(3) and 523A.502(4) ~~as amended by 2008 Iowa Acts, House File 2555, sections 47 and 49, respectively.~~

*e. and f.* No change.

ITEM 16. Amend subrules 103.4(3) and 103.4(5) as follows:

**103.4(3) *Renewal application form.*** An application to renew a preneed seller's license or a sales agent's license shall be submitted on a form required by the commissioner, as directed on the commissioner's Web site, and a renewal applicant shall comply with all instructions on the commissioner's Web site. In addition:

*a. and b.* No change.

**103.4(5) *Failure to file annual statement.*** A sales agent license shall not be renewed if the sales agent did not comply with the requirement to file an annual report, as set forth in 191—paragraph ~~406.2(3) “a”~~ 105.12(3) “a” and Iowa Code ~~Supplement~~ section 523A.502A.

ITEM 17. Amend subrules 103.6(4) and 103.6(6) as follows:

**103.6(4)** 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 deems desirable, which may include one or more of the types of disciplinary sanctions provided by 191—Chapter ~~406~~, 105 or Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, or 2008 Iowa Acts, Senate File 2349 and House File 2555.~~ The order shall be a public record, available to the public, and may be disseminated in accordance with Iowa Code chapter 22.

**103.6(6)** A license may be voluntarily forfeited in lieu of compliance with an order of the commissioner 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 191—Chapter ~~406~~, 105 or Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, or 2008 Iowa Acts, Senate File 2349 and House File 2555.~~

ITEM 18. Adopt the following new rule 191—103.9(523A):

**191—103.9(523A) Suspension for failure to pay state debt.**

**103.9(1)** The commissioner shall deny the issuance or renewal of a sales agent license upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures in Iowa Code chapter 272D. In addition to the procedures set forth in Iowa Code chapter 272D, this rule shall apply.

**103.9(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 Iowa Code chapter 272D, the commissioner shall issue a notice to the sales agent that the sales agent's pending application for licensure, pending request for renewal, or current sales agent license will be suspended 60 days after the date of the notice. Notice shall be sent to the sales agent'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 sales agent may accept service personally or through authorized counsel.

**103.9(3)** The notice shall contain the following items:

*a.* A statement that the commissioner intends to suspend the sales agent's application, request for renewal or current sales agent license in 60 days;

*b.* A statement that the sales agent must contact the centralized collection unit of the department of revenue to schedule a conference or to otherwise obtain a withdrawal of the certificate of noncompliance;



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c. A statement that the sales agent's application, request for renewal or current sales agent license will be suspended or denied if the commissioner does not receive a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue within 60 days of the issuance of notice under this rule; or, if the current sales agent license is on suspension, a statement that the sales agent's current sales agent license will be revoked;

d. A statement that the sales agent does not have a right to a hearing before the commissioner, but that the sales agent may file an application for a hearing in district court pursuant to Iowa Code section 272D.9;

e. A statement that the filing of an application with the district court will stay the proceedings of the commissioner; and

f. A copy of the certificate of noncompliance.

**103.9(4)** Sales agents shall keep the commissioner informed of all court actions and all actions taken by the centralized collection unit of the department of revenue, and sales agents shall provide to the commissioner, within seven days of filing or issuance, copies of all applications filed with the district court pursuant to all court orders entered in such actions and copies of all withdrawals of certificates of noncompliance by the centralized collection unit of the department of revenue.

**103.9(5)** The effective date of revocation or suspension of a sales agent license shall be 60 days following service of the notice upon the applicant or sales agent.

**103.9(6)** In the event an applicant or licensed sales agent timely files a district court action following service of a notice by the commissioner, 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 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 sales agent 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.

**103.9(7)** If the commissioner does not receive a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the sales agent's application, request for renewal or current sales agent license 60 days after the notice is issued.

**103.9(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 sales agent shall be notified that the proceedings have been halted. If the sales agent's license has already been suspended, the license shall be reinstated if the sales agent is otherwise in compliance with this chapter. All fees required for license renewal or license reinstatement must be paid by the sales agent, and all continuing education requirements must be met before a sales agent license will be renewed or reinstated after a license suspension or revocation pursuant to Iowa Code chapter 272D.

**103.9(9)** The commissioner shall notify the sales agent in writing through regular first-class mail, or such other means as the commissioner deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a sales agent license, and shall similarly notify the sales agent when the sales agent license is reinstated following the commissioner's receipt of a withdrawal of the certificate of noncompliance.

**103.9(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 sales agents subject to enforcement under Iowa Code chapter 272D.

ITEM 19. Amend **191—Chapter 103**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.~~

ITEM 20. Amend rule 191—104.1(523A) as follows:

**191—104.1(523A) Continuing education requirements.** For each license term, each licensed sales agent shall be required to complete a minimum of eight credits of continuing education approved by

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the commissioner. At least two credits, to be known as the ethics and legal requirements continuing education requirement, must cover subjects relating to business ethics, the legal requirements of Iowa Code chapter 523A, 191—Chapters 100 through ~~406~~ 105, and other relevant federal and state laws and rules, such as the Federal Trade Commission Funeral Rule (16 CFR Part 453).

ITEM 21. Amend **191—Chapter 104**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.~~

ITEM 22. Amend **191—Chapter 105**, title, as follows:

**STANDARDS OF CONDUCT AND<sub>2</sub> PROHIBITED PRACTICES,  
AND DISCIPLINARY PROCEDURES**

ITEM 23. Amend subrule 105.3(2) as follows:

**105.3(2)** *Deposit records to be kept by preneed sellers.* If purchase payments made to a preneed seller are commingled and deposited with funds not related to a purchase agreement subject to Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555,~~ or if deposits involve more than one purchase agreement, the preneed seller shall retain a detailed summary of each deposit. This information shall be maintained and shall be available for inspection by the commissioner for a minimum of four years after the deposit.

ITEM 24. Amend rule 191—105.4(523A) as follows:

**191—105.4(523A) Annual reports.**

**105.4(1)** *Annual reports by preneed sellers.* A licensed preneed seller shall file a completed annual report form with the commissioner on or before April 1 each year. The form and instructions may be obtained through the commissioner's Web site. The report shall include a list of contracts sold during the year covered by the report, including the date of each contract, the total purchase price, the name of the purchaser, the name of the beneficiary and, for each contract sold after July 1, 2007, the number assigned to the contract. Along with submitting the report, the preneed seller shall submit a filing fee, as set forth in Iowa Code ~~Supplement~~ section 523A.204.

**105.4(2)** *Annual reports by sales agents.* A licensed sales agent shall file a completed annual report form with the commissioner on or before April 1 each year, pursuant to Iowa Code ~~Supplement~~ section 523A.502A. The form and instructions may be obtained through the commissioner's Web site. The report shall include the following:

*a. and b. No change.*

**105.4(3)** *Failure to file timely.* If a preneed seller or sales agent fails to file an annual report as required by this subrule on or before the date the annual report is due, the penalties of ~~191—subrule 406.2(3)~~ 105.12(3) shall apply. Additional sanctions pursuant to rule ~~191—105.6(523A)~~ and ~~191—Chapter 406~~ 105 also may be imposed.

ITEM 25. Amend rule 191—105.5(523A) as follows:

**191—105.5(523A) Fidelity bond or insurance.** A preneed seller shall obtain and maintain a fidelity bond or similar insurance in an amount not less than \$50,000 to protect against the loss of purchaser payments not placed in trust, as required by Iowa Code ~~Supplement~~ section 523A.201(5) unless the preneed seller only uses the trusting alternatives set forth in Iowa Code ~~Supplement~~ ~~section~~ sections 523A.401 as amended by 2008 Iowa Acts, House File 2555, section 44; Iowa Code ~~Supplement~~ section 523A.402 as amended by 2008 Iowa Acts, House File 2555, section 45; Iowa Code section 523A.403; Iowa Code ~~Supplement~~ section 523A.404; and Iowa Code ~~Supplement~~ section ~~to~~ 523A.405 as amended by 2008 Iowa Acts, Senate File 2349, section 4, and House File 2555, section 46, or unless the preneed seller deposits 100 percent of each payment into a trust fund. This requirement may be satisfied by a cash deposit held and administered in trust for the benefit and protection of purchasers and beneficiaries in this state, pursuant to a trust agreement filed with and acceptable to the commissioner.

## INSURANCE DIVISION[191](cont'd)

ITEM 26. Amend rule 191—105.6(523A) as follows:

**191—105.6(523A) Grounds for discipline.** The commissioner may impose sanctions as set forth in ~~191—Chapter 106~~ 105 if the commissioner finds that a licensee or that an owner, partner, member, director, shareholder or manager of a licensed business entity has violated or failed to comply with Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, 2008 Iowa Acts, Senate File 2349 and House File 2555~~, or any associated rules or implementing orders, including but not limited to the following acts or practices:

**105.6(1) and 105.6(2)** No change.

**105.6(3) *Fraudulent or deceptive practices.*** Engaging in any act or practice that violates Iowa Code section 523A.701<sub>2</sub> or 523A.702; or ~~Iowa Code Supplement section 523A.703~~, whether or not actual harm or injury occurs, including but not limited to:

*a. to c.* No change.

**105.6(4) *Insolvency or financial condition.*** Being or becoming insolvent or of unsound financial condition, the determination of which shall be based on but not limited to the following factors:

*a. to f.* No change.

*g.* Any other act, practice or omission that provides a reasonable basis to question the ability of the licensee or license applicant to comply with the requirements of Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555~~, and related regulations.

**105.6(5) *Unethical, harmful or detrimental conduct.*** Engaging in any act or practice which may be harmful or detrimental to the public, whether or not actual harm or injury occurs, while engaged in activities regulated by Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555~~, or materially related to such activity, including but not limited to:

*a. to d.* No change.

**105.6(6) *Failure to maintain records.*** Failure to maintain records as required by Iowa Code chapter 523A and ~~2007 Iowa Acts, Senate File 559~~, or any associated rules or orders.

**105.6(7) *Failure to cooperate with an examination or investigation.*** Failure to submit to an examination, failure to comply with a reasonable written request of an examiner, or failure to cooperate with an investigation conducted by the commissioner as required by Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, 2008 Iowa Acts, Senate File 2349 and House File 2555~~, or any associated rules or orders.

**105.6(8) to 105.6(10)** No change.

**105.6(11) *Improper sale or transfer of purchase agreements.*** Selling or transferring purchase agreements as part of the sale of a business or the assets of a business, if an audit expressing the auditor's opinion of the adequacy of funding related to the purchase agreements to be sold or transferred has not been performed by a certified public accountant and filed with the commissioner, as required by Iowa Code ~~Supplement~~ section 523A.207.

**105.6(12) *Sales prohibited by order.*** The applicant or licensee has been named in an order issued pursuant to Iowa Code ~~Supplement~~ section 523A.807(3) ~~as amended by 2008 Iowa Acts, House File 2555, section 52.~~

**105.6(13) to 105.6(15)** No change.

**105.6(16) *Failure to maintain fidelity bond or similar insurance.*** A preneed seller's failure to maintain a fidelity bond or similar insurance as required by rule 191—105.5(523A) and Iowa Code ~~Supplement~~ section 523A.201(5).

**105.6(17) *Responsibility for sales activities of others.*** A preneed seller's consent or acquiescence to violation of 191—Chapters 100 through 106, 105 or Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, or 2008 Iowa Acts, Senate File 2349 and House File 2555~~, by any person acting on the preneed seller's behalf.

ITEM 27. Amend subrule 105.7(1) as follows:

**105.7(1) *License required.*** No person shall advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or

## INSURANCE DIVISION[191](cont'd)

delivery may be more than 100 days following the initial payment of the account unless the person either:

*a.* Holds an active preneed seller license issued by the commissioner pursuant to Iowa Code Supplement section 523A.501 as amended by 2008 Iowa Acts, Senate File 2349, sections 5 and 6, and House File 2555, section 48; or

*b.* Holds an active sales agent license issued by the commissioner pursuant to Iowa Code Supplement section 523A.502 as amended by 2008 Iowa Acts, Senate File 2349, section 7, and House File 2555, sections 49 and 50, and the person is an appointed sales agent of a person holding a preneed seller license issued by the commissioner pursuant to Iowa Code Supplement section 523A.501 as amended by 2008 Iowa Acts, Senate File 2349, sections 5 and 6, and House File 2555, section 48.

ITEM 28. Reserve rules **191—105.8** to **191—105.10**.

ITEM 29. Adopt the following new rules 191—105.11(523A) to 191—105.13(17A,523A):

**191—105.11(523A) Investigations.** The commissioner is authorized by Iowa Code sections 17A.13(1) and 523A.803 to conduct such investigations as the commissioner deems necessary to determine whether any person has violated or is about to violate Iowa Code chapter 523A. The commissioner is authorized to issue and enforce subpoenas to compel testimony and to compel the production of books and records, as more fully described in Iowa Code section 523A.803. Upon the commissioner's determination that probable cause exists to commence a disciplinary proceeding, the procedures contained in 191—Chapter 3 shall apply.

**191—105.12(17A,523A) Penalties.** Persons violating Iowa Code chapter 523A or rules adopted or orders issued pursuant thereto may be subject to one or more of the following penalties.

**105.12(1) Criminal penalties.** A person who willfully violates Iowa Code section 523A.501(1), concerning the requirement for a preneed seller license, or Iowa Code section 523A.502(1), concerning the requirement for a sales agent license, is guilty of a Class D felony. Licensed and unlicensed persons who violate other provisions of Iowa Code chapter 523A and rules adopted or orders issued pursuant thereto including, but not limited to, a failure to properly place trust funds into trust, pursuant to Iowa Code section 523A.201, 523A.202, 523A.404 or 523A.405, are subject to prosecution for crimes including, but not limited to, fraudulent practice under Iowa Code section 523A.703, theft under Iowa Code chapter 714, or ongoing criminal conduct under Iowa Code chapter 706A. 191—Chapters 100 through 105 do not limit the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

**105.12(2) Consumer fraud Act.** A violation by a licensed or unlicensed person of Iowa Code chapter 523A or 191—Chapters 100 through 105, or an order issued pursuant to those chapters, is a violation of the Iowa consumer fraud Act, Iowa Code sections 714.16 and 714.16A.

**105.12(3) Administrative sanctions.**

*a.* Pursuant to Iowa Code sections 523A.204(4) and 523A.502A, the failure of a licensee to timely file an annual report shall result in an administrative penalty of \$500. The license is suspended on the date the annual report was due until the overdue report is filed and the administrative penalty paid. The licensee is not authorized to solicit or execute any purchase agreement under Iowa Code chapter 523A until the license has been reinstated.

*b.* If the commissioner issues or renews a license and subsequently determines that payment for the license or renewal was returned by a bank without payment to the commissioner, or that the credit card company does not approve or cancels or refuses amounts charged to the credit card, the license shall be immediately suspended until the payments are made and any fees or penalties charged by the commissioner are paid, at which time the license may be reinstated at the request of the applicant.

*c.* If the commissioner issues or renews a sales agent license and subsequently determines that the sales agent is not appointed by a preneed seller, the license shall be immediately suspended until the sales agent obtains such an appointment and provides satisfactory evidence to the commissioner of the appointment, at which time the license may be reinstated at the request of the sales agent.

## INSURANCE DIVISION[191](cont'd)

*d.* The commissioner may impose the following disciplinary sanctions, alone or in combination, against a licensee or as a condition of licensure of an applicant for an initial or renewal license:

- (1) Issue a warning letter or a letter of reprimand.
- (2) Require additional education or training.
- (3) Order mediation pursuant to Iowa Code section 523A.804.
- (4) Issue a cease and desist order pursuant to Iowa Code section 523A.805 or 523A.807.
- (5) Require certain specified procedures or methods of operation.
- (6) Order the payment of consumer restitution.
- (7) Place a licensee on probationary status with or without the imposition of reasonable conditions to control or monitor conduct, such as periodic reports.
- (8) Refuse to issue or renew a license.
- (9) Suspend a license for an indefinite or specific period of time.
- (10) Revoke a license.
- (11) Accept the voluntary surrender of a license.
- (12) Impose costs associated with the commissioner's investigation and enforcement activities.
- (13) Impose civil penalties pursuant to Iowa Code section 523A.807.
- (14) Impose any other sanction allowed by law, as the commissioner deems appropriate.

*e.* A person with an inactive, expired, or suspended license is subject to disciplinary action, injunctive action, criminal sanctions and any other available legal remedies in the event of any violation of Iowa Code chapter 523A, or any rules adopted or orders issued pursuant thereto.

*f.* In addition, or as an alternative to the administrative process described in this chapter, the commissioner may take action as described in Iowa Code chapter 523A, including but not limited to seeking an injunction in district court, referring the matter for criminal prosecution, entering into a consent agreement, issuing an informal cautionary letter, referring the matter to the attorney general, or referring the matter to a licensing entity with regulatory authority and jurisdiction over the unlicensed person, such as the mortuary science board established under Iowa Code chapter 156.

*g.* The following factors may be considered by the commissioner in determining the nature and severity of the disciplinary sanction to be imposed:

- (1) The facts of the particular violation, such as the circumstances leading to the violation, the severity of the violation, and the clarity of the issues, laws and rules involved;
- (2) Evidence that the violation is not an isolated event and is part of a widespread practice;
- (3) Evidence that the acts or practices were willful and intentional;
- (4) The economic benefits gained by the licensee or applicant as a result of the violation;
- (5) Evidence that the violation occurred while the licensee was on probation or had an inactive or suspended license;
- (6) The number of prior warning letters or reprimand letters;
- (7) The number of complaints;
- (8) The number of prior violations, especially evidence of repetitive violations of a like kind;
- (9) The seriousness of prior complaints or violations;
- (10) The length of time since the violation occurred;
- (11) Whether the violation involved an element of deception;
- (12) Whether the actions violated a prior order of the commissioner, court order, cease and desist agreement, consent order, or similar document;
- (13) Whether the person acted in bad faith;
- (14) The extent to which the licensee or applicant cooperated with the commissioner;
- (15) Evidence of reform or remedial action;
- (16) The amount of restitution paid or to be paid;
- (17) The risk of harm created by the acts or practices involved in the violation;
- (18) The public interest in ensuring competency and a high standard of ethical and professional conduct by licensees;
- (19) The public interest in protecting consumers and preventing the acts or practices involved in the violation;

INSURANCE DIVISION[191](cont'd)

(20) Whether the penalty will act as a substantial deterrent and reduce the likelihood of future violations; and

(21) Any other extenuating facts or other countervailing considerations.

**191—105.13(17A,523A) Administrative procedures.**

**105.13(1)** Notice of sanctions. If the commissioner finds cause to impose a sanction against a person pursuant to Iowa Code chapter 523A or subrule 105.12(3), the commissioner shall provide notice to the person. Delivery of the notice shall be accomplished in the manner set out in 191—paragraphs 3.5(1) “a” and “b.” The notice shall include the following:

- a. A statement of the legal authority and jurisdiction under which the order would be issued;
- b. Reference to the particular sections of the statutes and rules involved;
- c. A short, plain statement of the alleged unlawful practices;
- d. The dollar amount of the proposed civil penalty and the nature of the intended order to require compliance with Iowa Code chapter 523A, including any required restitution;
- e. Notice of the unlicensed person’s right to a hearing and the time frame in which hearing must be requested; and
- f. The address to which written request for hearing must be made.

**105.13(2)** Requesting a hearing regarding sanctions imposed. If the commissioner imposes any administrative sanctions against a person pursuant to Iowa Code chapter 523A or subrule 105.12(3), the person may request a hearing pursuant to 191—Chapter 3 within 30 days of receipt of the notice. Applicable procedures of this chapter, of 191—Chapter 3, and of Iowa Code chapter 17A shall apply. A failure to timely request a hearing shall constitute a failure to exhaust administrative remedies. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal delivery to the commissioner’s office.

**105.13(3)** If a request for hearing is not timely made, the commissioner may issue an order imposing the administrative penalty and requiring compliance with Iowa Code chapter 523A, as described in the notice. The order may be served in the same manner as the notice of intent to impose administrative penalty, and may additionally be provided in a manner reasonably calculated to provide actual notice.

**105.13(4)** If a request for hearing is timely made, the commissioner shall issue a notice of hearing, following the procedures applicable to a contested case in 191—Chapter 3. Hearings are open to the public.

**105.13(5)** A person may waive the right to hearing and all attendant rights and enter into a consent order imposing an administrative penalty and requiring compliance with Iowa Code chapter 523A at any stage of the proceeding upon mutual consent of the commissioner.

**105.13(6)** The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22.

**105.13(7)** A person aggrieved by the commissioner’s issuance of an administrative order, including an order imposing a civil penalty, may seek judicial review in accordance with Iowa Code section 17A.19.

ITEM 30. Amend **191—Chapter 105**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter~~ chapters 17A, 22, and 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.~~

ITEM 31. Rescind and reserve **191—Chapter 106**.

[Filed 4/8/15, effective 6/3/15]

[Published 4/29/15]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/29/15.

## ARC 1971C

## LABOR SERVICES DIVISION[875]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board hereby amends Chapter 71, "Administration of the Conveyance Safety Program," Chapter 72, "Conveyances Installed On or After January 1, 1975," and Chapter 73, "Conveyances Installed Prior to January 1, 1975," Iowa Administrative Code.

Iowa Code subsection 89A.13(7) requires that every three years the Elevator Safety Board conduct a comprehensive review of existing rules, regulations, and standards. These amendments stem from that process.

These amendments make technical changes; remove obsolete language; reduce two fees and increase one fee to better reflect actual costs; and amend rules to conform to statutory authority and current practice. The rule for handicapped restricted use elevators that was inadvertently removed from Chapter 72 in 2000 is restored. The inspection schedule for construction elevators is set at a three-month interval to coincide with the inspection schedule recommended by the American Society for Mechanical Engineers.

The purposes of these amendments are to protect the health and safety of the public, make the rules more clear, align the language with statutory authority and current practice, and implement legislative intent.

Notice of Intended Action was published in the February 4, 2015, Iowa Administrative Bulletin as **ARC 1849C**. No public comment was received on the proposed amendments. These amendments are identical to the amendments published under Notice of Intended Action.

No variance procedures are included in this rule making. Applicable variance procedures are set forth in 875—Chapter 66.

After analysis and review of this rule making, no adverse impact on jobs is expected.

These amendments are intended to implement Iowa Code chapter 89A.

These amendments shall become effective on June 3, 2015.

The following amendments are adopted.

ITEM 1. Amend subparagraph **71.11(2)"a"(1)** as follows:

(1) Each construction elevator and CPH shall be inspected at intervals not to exceed three months. All other periodic conveyance inspections by state inspectors shall be conducted annually unless the labor commissioner determines resources do not allow annual inspections. If the labor commissioner determines quarterly inspections of construction elevators and CPHs and annual inspections of other state-inspected conveyances are not feasible due to insufficient resources, the labor commissioner shall determine the inspection schedule.

ITEM 2. Amend paragraph **71.11(3)"a"** as follows:

a. The labor commissioner's designee shall inspect altered conveyances, construction elevators, CPHs, previously dormant conveyances being returned to service, wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A), relocated conveyances, and new conveyances.

ITEM 3. Rescind and reserve rule **875—71.13(89A)**.

ITEM 4. Amend paragraph **71.16(2)"a"** as follows:

a. ~~Hydraulic elevator: \$100~~ Construction elevator: \$200.

ITEM 5. Reletter paragraphs **71.16(2)"e"** to **"j"** as **71.16(2)"g"** to **"l."**

ITEM 6. Adopt the following new paragraphs **71.16(2)"e"** and **"f"**:

e. Handicapped restricted use elevator: \$100.

f. Other hydraulic elevator: \$100.

## LABOR SERVICES DIVISION[875](cont'd)

ITEM 7. Amend subrule 71.16(4) as follows:

**71.16(4) Alteration permits.**

a. The fee for any elevator alteration permit ~~except a CPH extension~~ shall be \$500 and shall cover the initial print review, alteration permit, and initial inspection.

b. The fee for each CPH extension shall be \$150. The total fee required for all planned CPH extensions shall be submitted with the installation permit application pursuant to subrule 71.5(3).

c. The fee for an alteration permit shall be \$500 if the only alteration is the addition or replacement of an escalator skirt brush.

~~e.~~ d. For all other conveyances, the fees for new installations shall apply to alterations.

ITEM 8. Amend subrule 72.1(8), introductory paragraph, as follows:

**72.1(8)** For installations ~~on or after~~ between July 19, 2012, and January 30, 2014:

ITEM 9. Adopt the following new rule 875—72.27(89A):

**875—72.27(89A) Handicapped restricted use elevators.** All handicapped restricted use elevators must meet ANSI A17.1 (1981), Part V. Additionally, the elevators shall comply with the following limitations:

1. The elevator shall be used only by a maximum of one disabled person and one attendant at a time. Where a disabled person cannot operate the elevator in a manner which will ensure access to all operating controls and safety features, an attendant shall accompany the disabled person.

2. The elevator shall be key-operated and shall not be capable of being called by buttons or switches but may be called by a key operator.

3. Keys to operate the elevator shall be in the control of the disabled person, the attendant or persons in positions of responsibility at the location.

4. A list shall be maintained at the location indicating the persons holding keys for the operation of the elevator.

5. Each landing and the elevator car shall be posted to indicate that the elevator is only for the use of disabled persons.

6. The travel distance of the elevator shall not exceed 50 feet.

ITEM 10. Amend subrule 73.7(10) as follows:

**73.7(10)** All electrical equipment ~~in the machine room~~ pertaining to the elevator shall be grounded and shall conform to ANSI C1-1975 (NFPA 70-1975).

ITEM 11. Amend rule 875—73.21(89A), introductory paragraph, as follows:

**875—73.21(89A) Handicapped restricted use elevators.** All handicapped restricted use elevators must meet ANSI A17.1 (1981), Part V. ~~Permits will be reissued only for locations where other elevators do not exist and where the absence of the elevator would deprive a known group of physically disabled individuals use of the building.~~ Additionally, the elevators shall comply with the following limitations:

[Filed 3/30/15, effective 6/3/15]

[Published 4/29/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/29/15.

**ARC 1972C**

**LABOR SERVICES DIVISION[875]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board (Board) hereby amends Chapter 71, "Administration of the Conveyance Safety Program," Chapter 72, "Conveyances Installed On or After January 1, 1975," and Chapter 73, "Conveyances Installed Prior to January 1, 1975," Iowa Administrative Code.



## LABOR SERVICES DIVISION[875](cont'd)

In March 2014, an elevator industry trade publication published a detailed study about children being trapped and seriously injured due to hazardous elevator doors. The study also described weaknesses in the applicable codes. The Board assigned a subcommittee to study the issue, and these amendments are the result. The entrapment risk occurs primarily in elevators built to the residential elevator code, and elevators built to the residential code are not allowed in buildings under the Board's jurisdiction. However, for a number of years Iowa law allowed residential elevators to be installed in public buildings. It is estimated that there are about 200 residential elevators operating in public buildings in Iowa. These amendments require that safety devices be installed in these elevators to prevent child entrapment.

The purposes of these amendments are to protect the health and safety of the public and implement legislative intent.

Notice of Intended Action was published in the February 4, 2015, Iowa Administrative Bulletin as **ARC 1853C**. One national elevator industry association commented on the proposed amendments. The comments were in support of preventing injuries caused by residential elevator doors but encouraged the use of other solutions, which are more costly. The Board considered the suggestions but opted to proceed with light curtains as proposed in the Notice of Intended Action.

Since publication of the Notice of Intended Action, the Board added an amendment to subrule 71.16(14) (see Item 1). Installation of the light curtains required by these rules requires that an alteration permit be issued in advance. The fee for an alteration permit on an elevator is \$500. In furtherance of the Board's goal of minimizing the compliance costs, the amendment to subrule 71.16(14) provides a narrow exemption from the alteration permit fee for projects undertaken solely to comply with these amendments.

No variance procedures are included in this rule making. Applicable variance procedures are set forth in 875—Chapter 66.

After analysis and review of this rule making, an impact on jobs may occur. However, these rules are intended to prevent a specific hazard to children, with a minimum of expense.

These amendments are intended to implement Iowa Code chapter 89A.

These amendments shall become effective on June 3, 2015.

The following amendments are adopted.

ITEM 1. Amend subrule 71.16(14) as follows:

**71.16(14) Fee waiver.**

*a.* When a state inspector combines in one visit two different types of inspection on a single conveyance, the commissioner may waive the lesser of the fees.

*b.* The fee for an alteration permit shall be waived by the commissioner if the only alterations covered by the permit application are required by rule 875—72.26(89A) or 875—73.27(89A). The fee waiver set forth in this paragraph does not eliminate the requirement to pay for an acceptance inspection or for an operating permit.

ITEM 2. Adopt the following **new** rule 875—72.26(89A):

**875—72.26(89A) Child safety guards.** Unless the car door on a passenger elevator consists of a solid panel, the following criteria shall be met:

**72.26(1)** A multipoint light curtain shall be installed between the car door and the edge of the car platform.

**72.26(2)** A second multipoint light curtain shall be installed at the hoistway opening of each floor where a gap of more than 5 inches exists between the car light curtain and the hoistway door.

**72.26(3)** Each light curtain required by this rule must deactivate the elevator if the light curtain does not function or if the light curtain is obstructed by an object larger than a 4-inch ball.

ITEM 3. Adopt the following **new** rule 875—73.27(89A):

**875—73.27(89A) Child safety guards.** Unless the car door on a passenger elevator consists of a solid panel, the following criteria shall be met:

LABOR SERVICES DIVISION[875](cont'd)

**73.27(1)** A multipoint light curtain shall be installed between the car door and the edge of the car platform.

**73.27(2)** A second multipoint light curtain shall be installed at the hoistway opening of each floor where a gap of more than 5 inches exists between the car light curtain and the hoistway door.

**73.27(3)** Each light curtain required by this rule must deactivate the elevator if the light curtain does not function or if the light curtain is obstructed by an object larger than a 4-inch ball.

[Filed 3/30/15, effective 6/3/15]

[Published 4/29/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/29/15.

## **ARC 1983C**

### **MEDICINE BOARD[653]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Medicine hereby amends Chapter 13, "Standards of Practice and Principles of Medical Ethics," Iowa Administrative Code.

This rule establishes the standards of practice for physicians who use telemedicine, which is the practice of medicine using electronic communication, information technology or other means of interaction between a licensee in one location and a patient in another location with or without an intervening health care provider.

The Board approved the Notice of Intended Action for this rule making during a regularly scheduled meeting on October 3, 2014. The Notice was published in the Iowa Administrative Bulletin on December 10, 2014, as **ARC 1769C**. A public hearing on **ARC 1769C** was held on January 15, 2015.

Five comments were received at the hearing, and 18 written comments were received. The Board received written comments from Rebecca J. Hafner-Fogarty, M.D., Zipnosis; Timothy G. Abrahamson, M.D., Greater Des Moines Dermatology; Susan Koehler, Iowa Board of Physician Assistants; Sara Allen, Iowa Hospital Association; David Erickson, M.D., Avera Health; Thomas G. Seaman, Teladoc; Karla Fultz McHenry, Fultz McHenry Consulting; Clare M. Kelly, Iowa Medical Society; Jonathan D. Linkous, American Telemedicine Association; Laurie Clair, Iowa Physician Assistant Society; Dale F. Andres, D.O., Mercy Health Network; Andrew Zinkel, M.D., HealthPartners; Kate Walton, UnityPoint Health; Gretchen Borchelt, National Women's Law Center; Ted Stopulos, Iowa Health Care Association and Iowa Center for Assisted Living; Craig Sieverding, Davis Brown Law Firm; Leah J. McWilliams, Iowa Osteopathic Medical Association; and Planned Parenthood of the Heartland. Comments were made at the hearing by Ken Croken, Genesis Health System; Dennis Tibben, Iowa Medical Society; Mike Falkstrom, Planned Parenthood of the Heartland; Dale Andres, D.O., Mercy Health Network; and Stephanie Cooper, Mercy Physician Services.

The Board continued a public discussion of **ARC 1769C** at a regularly scheduled meeting on February 6, 2015, at which time it was determined to accept public comments until March 20, 2015.

Several revisions were made to proposed rule 653—13.11(147,148,272C) based on comments received between October 3, 2014, and March 20, 2015:

In subrule 13.11(1), the definition of "asynchronous store-and-forward transmission" was added and, in the definition of "telemedicine," the adjective "asynchronous" was added to the phrase "store-and-forward transmission." The definition of "telemedicine" was enhanced to recognize that telemedicine includes store-and-forward technologies, remote monitoring, and real-time interactive services, including teleradiology and telepathology.

In subrule 13.11(2), language was changed to acknowledge that some nationally recognized medical specialty organizations have established comprehensive telemedicine practice guidelines that address the clinical and technological aspects of telemedicine.

In subrule 13.11(3), a citation to 653—subrule 9.2(2) was added to identify the exceptions to Iowa licensure.

## MEDICINE BOARD[653](cont'd)

In subrule 13.11(7), changes were made to clarify that a physician-patient relationship can be established under some circumstances involving a telemedicine encounter with a patient.

Subrule 13.11(8) notes that generally a licensee shall perform an in-person medical interview and physical examination for each patient but also recognizes that the in-person interview and in-person physical examination may not be necessary if the technology utilized in a telemedicine encounter is sufficient to establish an informed diagnosis. This subrule was revised to define characteristics of an appropriate Internet questionnaire to collect information on a patient's medical history and current health issues.

In subrule 13.11(9) as revised, the licensee will not be required to personally assess the qualifications of each nonphysician health care provider, but the licensee must ensure that systems are in place to make certain that a nonphysician health care provider is qualified and appropriately trained.

In subrule 13.11(16), the adjective "asynchronous" was added to the phrase "store-and-forward technologies."

In subrule 13.11(17), the phrase "if these differ from an in-person encounter" was added in paragraph "e" pertaining to the requirement to disclose fees for medical services provided via telemedicine.

In subrule 13.11(19), language was added to acknowledge that there may be state and federal laws that govern the financial interests of licensees who practice medicine by using telemedicine.

In subrule 13.11(20), language was revised to reflect that the standard of care may not require a licensee to personally interview and examine a patient prior to the provision of care in certain circumstances, including both in the use of telemedicine and in in-person encounters with a patient.

In subrule 13.11(21) as revised, it is recognized that without a valid physician-patient relationship, or outside of circumstances described in subrule 13.11(20), the prescribing of any prescription medications, not limited to controlled substances, based solely on an Internet request, an Internet questionnaire or a telephonic evaluation is prohibited.

Subrule 13.11(22) clarifies that nothing in rule 653—13.11(147,148,272C) shall be interpreted to contradict or supersede the requirements established in rule 653—13.10(147,148,272C).

At a regularly scheduled meeting on April 3, 2015, the Board voted to adopt this rule with the above-listed changes.

After analysis and review of this rule making, it has been determined that this rule could have a positive impact on jobs in Iowa. The new rule will facilitate the practice of medicine at more locations within the state.

This rule is intended to implement Iowa Code chapters 147, 148 and 272C.

This rule will become effective on June 3, 2015.

The following amendment is adopted.

Adopt the following **new** rule 653—13.11(147,148,272C):

**653—13.11(147,148,272C) Standards of practice—telemedicine.** This rule establishes standards of practice for the practice of medicine using telemedicine.

1. The board recognizes that technological advances have made it possible for licensees in one location to provide medical care to patients in another location with or without an intervening health care provider.

2. Telemedicine is a useful tool that, if applied appropriately, can provide important benefits to patients, including increased access to health care, expanded utilization of specialty expertise, rapid availability of patient records, and potential cost savings.

3. The board advises that licensees using telemedicine will be held to the same standards of care and professional ethics as licensees using traditional in-person medical care.

4. Failure to conform to the appropriate standards of care or professional ethics while using telemedicine may subject the licensee to potential discipline by the board.

**13.11(1) Definitions.** As used in this rule:

*"Asynchronous store-and-forward transmission"* means the collection of a patient's relevant health information and the subsequent transmission of the data from an originating site to a health care provider at a distant site without the presence of the patient.

## MEDICINE BOARD[653](cont'd)

*“Board”* means the Iowa board of medicine.

*“In-person encounter”* means that the physician and the patient are in the physical presence of each other and are in the same physical location during the physician-patient encounter.

*“Licensee”* means a medical physician or osteopathic physician licensed by the board.

*“Telemedicine”* means the practice of medicine using electronic audio-visual communications and information technologies or other means, including interactive audio with asynchronous store-and-forward transmission, between a licensee in one location and a patient in another location with or without an intervening health care provider. Telemedicine includes asynchronous store-and-forward technologies, remote monitoring, and real-time interactive services, including teleradiology and telepathology. Telemedicine shall not include the provision of medical services only through an audio-only telephone, e-mail messages, facsimile transmissions, or U.S. mail or other parcel service, or any combination thereof.

*“Telemedicine technologies”* means technologies and devices enabling secure electronic communications and information exchanges between a licensee in one location and a patient in another location with or without an intervening health care provider.

**13.11(2) Practice guidelines.** A licensee who uses telemedicine shall utilize evidence-based telemedicine practice guidelines and standards of practice, to the degree they are available, to ensure patient safety, quality of care, and positive outcomes. The board acknowledges that some nationally recognized medical specialty organizations have established comprehensive telemedicine practice guidelines that address the clinical and technological aspects of telemedicine for many medical specialties.

**13.11(3) Iowa medical license required.** A physician who uses telemedicine in the diagnosis and treatment of a patient located in Iowa shall hold an active Iowa medical license consistent with state and federal laws. Nothing in this rule shall be construed to supersede the exceptions to licensure contained in 653—subrule 9.2(2).

**13.11(4) Standards of care and professional ethics.** A licensee who uses telemedicine shall be held to the same standards of care and professional ethics as a licensee using traditional in-person encounters with patients. Failure to conform to the appropriate standards of care or professional ethics while using telemedicine may be a violation of the laws and rules governing the practice of medicine and may subject the licensee to potential discipline by the board.

**13.11(5) Scope of practice.** A licensee who uses telemedicine shall ensure that the services provided are consistent with the licensee’s scope of practice, including the licensee’s education, training, experience, ability, licensure, and certification.

**13.11(6) Identification of patient and physician.** A licensee who uses telemedicine shall verify the identity of the patient and ensure that the patient has the ability to verify the identity, licensure status, certification, and credentials of all health care providers who provide telemedicine services prior to the provision of care.

**13.11(7) Physician-patient relationship.**

*a.* A licensee who uses telemedicine shall establish a valid physician-patient relationship with the person who receives telemedicine services. The physician-patient relationship begins when:

- (1) The person with a health-related matter seeks assistance from a licensee;
- (2) The licensee agrees to undertake diagnosis and treatment of the person; and
- (3) The person agrees to be treated by the licensee whether or not there has been an in-person encounter between the physician and the person.

*b.* A valid physician-patient relationship may be established by:

- (1) In-person encounter. Through an in-person medical interview and physical examination where the standard of care would require an in-person encounter;
- (2) Consultation with another licensee. Through consultation with another licensee (or other health care provider) who has an established relationship with the patient and who agrees to participate in, or supervise, the patient’s care; or

## MEDICINE BOARD[653](cont'd)

(3) Telemedicine encounter. Through telemedicine, if the standard of care does not require an in-person encounter, and in accordance with evidence-based standards of practice and telemedicine practice guidelines that address the clinical and technological aspects of telemedicine.

**13.11(8) *Medical history and physical examination.*** Generally, a licensee shall perform an in-person medical interview and physical examination for each patient. However, the medical interview and physical examination may not be in-person if the technology utilized in a telemedicine encounter is sufficient to establish an informed diagnosis as though the medical interview and physical examination had been performed in-person. Prior to providing treatment, including issuing prescriptions, electronically or otherwise, a licensee who uses telemedicine shall interview the patient to collect the relevant medical history and perform a physical examination, when medically necessary, sufficient for the diagnosis and treatment of the patient. An Internet questionnaire that is a static set of questions provided to the patient, to which the patient responds with a static set of answers, in contrast to an adaptive, interactive and responsive online interview, does not constitute an acceptable medical interview and physical examination for the provision of treatment, including issuance of prescriptions, electronically or otherwise, by a licensee.

**13.11(9) *Nonphysician health care providers.*** If a licensee who uses telemedicine relies upon or delegates the provision of telemedicine services to a nonphysician health care provider, the licensee shall:

*a.* Ensure that systems are in place to ensure that the nonphysician health care provider is qualified and trained to provide that service within the scope of the nonphysician health care provider's practice;

*b.* Ensure that the licensee is available in person or electronically to consult with the nonphysician health care provider, particularly in the case of injury or an emergency.

**13.11(10) *Informed consent.*** A licensee who uses telemedicine shall ensure that the patient provides appropriate informed consent for the medical services provided, including consent for the use of telemedicine to diagnose and treat the patient, and that such informed consent is timely documented in the patient's medical record.

**13.11(11) *Coordination of care.*** A licensee who uses telemedicine shall, when medically appropriate, identify the medical home or treating physician(s) for the patient, when available, where in-person services can be delivered in coordination with the telemedicine services. The licensee shall provide a copy of the medical record to the patient's medical home or treating physician(s).

**13.11(12) *Follow-up care.*** A licensee who uses telemedicine shall have access to, or adequate knowledge of, the nature and availability of local medical resources to provide appropriate follow-up care to the patient following a telemedicine encounter.

**13.11(13) *Emergency services.*** A licensee who uses telemedicine shall refer a patient to an acute care facility or an emergency department when referral is necessary for the safety of the patient or in the case of an emergency.

**13.11(14) *Medical records.*** A licensee who uses telemedicine shall ensure that complete, accurate and timely medical records are maintained for the patient when appropriate, including all patient-related electronic communications, records of past care, physician-patient communications, laboratory and test results, evaluations and consultations, prescriptions, and instructions obtained or produced in connection with the use of telemedicine technologies. The licensee shall note in the patient's record when telemedicine is used to provide diagnosis and treatment. The licensee shall ensure that the patient or another licensee designated by the patient has timely access to all information obtained during the telemedicine encounter. The licensee shall ensure that the patient receives, upon request, a summary of each telemedicine encounter in a timely manner.

**13.11(15) *Privacy and security.*** A licensee who uses telemedicine shall ensure that all telemedicine encounters comply with the privacy and security measures of the Health Insurance Portability and Accountability Act to ensure that all patient communications and records are secure and remain confidential.

*a.* Written protocols shall be established that address the following:

- (1) Privacy;
- (2) Health care personnel who will process messages;

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- (3) Hours of operation;
- (4) Types of transactions that will be permitted electronically;
- (5) Required patient information to be included in the communication, including patient name, identification number and type of transaction;
- (6) Archiving and retrieval; and
- (7) Quality oversight mechanisms.

b. The written protocols should be periodically evaluated for currency and should be maintained in an accessible and readily available manner for review. The written protocols shall include sufficient privacy and security measures to ensure the confidentiality and integrity of patient-identifiable information, including password protection, encryption or other reliable authentication techniques.

**13.11(16) *Technology and equipment.*** The board recognizes that three broad categories of telemedicine technologies currently exist, including asynchronous store-and-forward technologies, remote monitoring, and real-time interactive services. While some telemedicine programs are multispecialty in nature, others are tailored to specific diseases and medical specialties. The technology and equipment utilized for telemedicine shall comply with the following requirements:

a. The technology and equipment utilized in the provision of telemedicine services must comply with all relevant safety laws, rules, regulations, and codes for technology and technical safety for devices that interact with patients or are integral to diagnostic capabilities;

b. The technology and equipment utilized in the provision of telemedicine services must be of sufficient quality, size, resolution and clarity such that the licensee can safely and effectively provide the telemedicine services; and

c. The technology and equipment utilized in the provision of telemedicine services must be compliant with the Health Insurance Portability and Accountability Act.

**13.11(17) *Disclosure and functionality of telemedicine services.*** A licensee who uses telemedicine shall ensure that the following information is clearly disclosed to the patient:

- a. Types of services provided;
- b. Contact information for the licensee;
- c. Identity, licensure, certification, credentials, and qualifications of all health care providers who are providing the telemedicine services;
- d. Limitations in the drugs and services that can be provided via telemedicine;
- e. Fees for services, cost-sharing responsibilities, and how payment is to be made, if these differ from an in-person encounter;
- f. Financial interests, other than fees charged, in any information, products, or services provided by the licensee(s);
- g. Appropriate uses and limitations of the technologies, including in emergency situations;
- h. Uses of and response times for e-mails, electronic messages and other communications transmitted via telemedicine technologies;
- i. To whom patient health information may be disclosed and for what purpose;
- j. Rights of patients with respect to patient health information; and
- k. Information collected and passive tracking mechanisms utilized.

**13.11(18) *Patient access and feedback.*** A licensee who uses telemedicine shall ensure that the patient has easy access to a mechanism for the following purposes:

- a. To access, supplement and amend patient-provided personal health information;
- b. To provide feedback regarding the quality of the telemedicine services provided; and
- c. To register complaints. The mechanism shall include information regarding the filing of complaints with the board.

**13.11(19) *Financial interests.*** Advertising or promotion of goods or products from which the licensee(s) receives direct remuneration, benefit or incentives (other than the fees for the medical services) is prohibited to the extent that such activities are prohibited by state or federal law. Notwithstanding such prohibition, Internet services may provide links to general health information sites to enhance education; however, the licensee(s) should not benefit financially from providing such links or from the services or products marketed by such links. When providing links to other sites,

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licensees should be aware of the implied endorsement of the information, services or products offered from such sites. The maintenance of a preferred relationship with any pharmacy is prohibited. Licensees shall not transmit prescriptions to a specific pharmacy, or recommend a pharmacy, in exchange for any type of consideration or benefit from the pharmacy.

**13.11(20)** *Circumstances where the standard of care may not require a licensee to personally interview or examine a patient.* Under the following circumstances, whether or not such circumstances involve the use of telemedicine, a licensee may treat a patient who has not been personally interviewed, examined and diagnosed by the licensee:

- a. Situations in which the licensee prescribes medications on a short-term basis for a new patient and has scheduled or is in the process of scheduling an appointment to personally examine the patient;
- b. For institutional settings, including writing initial admission orders for a newly hospitalized patient;
- c. Call situations in which a licensee is taking call for another licensee who has an established physician-patient relationship with the patient;
- d. Cross-coverage situations in which a licensee is taking call for another licensee who has an established physician-patient relationship with the patient;
- e. Situations in which the patient has been examined in person by an advanced registered nurse practitioner or a physician assistant or other licensed practitioner with whom the licensee has a supervisory or collaborative relationship;
- f. Emergency situations in which the life or health of the patient is in imminent danger;
- g. Emergency situations that constitute an immediate threat to the public health including, but not limited to, empiric treatment or prophylaxis to prevent or control an infectious disease outbreak;
- h. Situations in which the licensee has diagnosed a sexually transmitted disease in a patient and the licensee prescribes or dispenses antibiotics to the patient's named sexual partner(s) for the treatment of the sexually transmitted disease as recommended by the U.S. Centers for Disease Control and Prevention; and
- i. For licensed or certified nursing facilities, residential care facilities, intermediate care facilities, assisted living facilities and hospice settings.

**13.11(21)** *Prescribing based solely on an Internet request, Internet questionnaire or a telephonic evaluation—prohibited.* Prescribing to a patient based solely on an Internet request or Internet questionnaire (i.e., a static questionnaire provided to a patient, to which the patient responds with a static set of answers, in contrast to an adaptive, interactive and responsive online interview) is prohibited. Absent a valid physician-patient relationship, a licensee's prescribing to a patient based solely on a telephonic evaluation is prohibited, with the exception of the circumstances described in subrule 13.11(20).

**13.11(22)** *Medical abortion.* Nothing in this rule shall be interpreted to contradict or supersede the requirements established in rule 653—13.10(147,148,272C).

This rule is intended to implement Iowa Code chapters 147, 148 and 272C.

[Filed 4/10/15, effective 6/3/15]

[Published 4/29/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/29/15.

**ARC 1984C**

**VETERINARY MEDICINE BOARD[811]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 169.5, the Board of Veterinary Medicine hereby amends Chapter 1, "Description of Organization and Definitions," Chapter 6, "Application for Veterinary Licensure," Chapter 8, "Auxiliary Personnel," and Chapter 11, "Continuing Education," Iowa Administrative Code.

## VETERINARY MEDICINE BOARD[811](cont'd)

These amendments allow the Board of Veterinary Medicine to waive state fees and continuing education requirements upon request for an individual who has been on active military duty during the 12 months preceding the request. These amendments also provide a waiver for the spouse of the person who has been on active military duty during the 12 months preceding the request.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 10, 2014, as **ARC 1756C**. No comments were received from the public. In a nonsubstantive change from the Notice, references to 2014 Iowa Acts, chapter 1116, section 34, have been changed to Iowa Code section 272C.4 to reflect incorporation of the legislation in the 2015 Iowa Code.

After analysis and review of this rule making, these amendments may have a positive impact on jobs by helping recruit veterans to the state.

These amendments are intended to implement Iowa Code section 272C.4.

These amendments will become effective June 3, 2015.

The following amendments are adopted.

ITEM 1. Adopt the following new definition in rule **811—1.4(17A,169)**:

*“Qualifying military service personnel”* means a person, or the spouse of that person, who is currently or who has been during the past 12 months on federal active duty, state active duty, or national guard duty and has provided sufficient documentation to the board concerning the service and, if applicable, marriage.

ITEM 2. Amend rule 811—6.2(169) as follows:

**811—6.2(169) Fee schedule for veterinarians.** The following fees shall be collected by the board and shall not be refunded except by board action in unusual instances such as documented illness of the applicant, death of the applicant, inability of the applicant to comply with the rules of the board, or withdrawal of an examination application provided withdrawal is received in writing 45 days prior to the examination date. However, the state fees may be waived for qualifying military service personnel upon request. Examination fees shall be nontransferable from one examination to another.

The fee for the NAVLE, which is utilized by the board as a part of the licensure process, shall be the fee charged that year by NBVME, plus an administrative fee payable to the board.

Based on the board’s anticipated financial requirements, the following fees are hereby adopted:

License—application fee . . . . .	\$50
<del>NBVME</del> NAVLE examination fee . . . . .	set by <del>NAVLE</del> NBVME
Board administrative fee for NAVLE. . . . .	\$25
State veterinary examination fee . . . . .	set by board
State veterinary administration fee . . . . .	set by board
Triennial license . . . . .	\$60
Late renewal penalty . . . . .	\$100
License by endorsement—application fee . . . . .	\$50
Reactivation fee for lapsed or inactive license . . . . .	\$100
Reinstatement fee . . . . .	\$100
Duplicate license . . . . .	\$15
Temporary permit . . . . .	\$35
Temporary permit application fee . . . . .	\$15
Official licensure verification . . . . .	\$15
Charge for insufficient funds or returned checks . . . . .	\$25
Senior student certificate . . . . .	\$0

This rule is intended to implement Iowa Code ~~section~~ sections 169.5 and 169.12.



## VETERINARY MEDICINE BOARD[811](cont'd)

ITEM 3. Amend rule 811—8.3(169) as follows:

**811—8.3(169) Examination.** An application fee of \$25 shall accompany the application to take the examination; and both must be received by the board at least 60 days before the examination. An additional fee shall be submitted for the national board written examination as provided by the professional examination service, when utilized by the board as part of their examination process, which shall be the fees charged for the examination by the professional examination service plus \$10 for the costs of administration. Examinations shall be given annually in June at a site to be designated by the board at least 30 days before the date of the examination. The fee may be waived for qualifying military service personnel upon request.

This rule is intended to implement Iowa Code sections 169.5(8), 169.9<sub>2</sub> and 169.12 and 272C.4.

ITEM 4. Adopt the following new subrule 8.10(5):

**8.10(5)** The board may waive continuing education requirements for qualifying military service personnel upon request.

ITEM 5. Amend **811—Chapter 8**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 17A.3, 169.4, 169.5, 169.9<sub>2</sub> and 169.20 and 272C.4.

ITEM 6. Adopt the following new subrule 11.1(5):

**11.1(5)** The board may waive continuing education requirements for qualifying military service personnel upon request.

[Filed 4/10/15, effective 6/3/15]

[Published 4/29/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/29/15.

AGENCY	RULE	DELAY
Professional Licensure Division[645]	327.4(2) [IAB 3/18/15, <b>ARC 1909C</b> ]	Effective date of April 22, 2015, delayed until the adjournment of the 2016 General Assembly by the Administrative Rules Review Committee at a special meeting held April 20, 2015. [Pursuant to §17A.8(9)]