



# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

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### CITATION of Administrative Rules

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

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

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

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

NOTE: In accordance with Iowa Code section 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 2013

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
24	Friday, May 10, 2013	May 29, 2013
25	Wednesday, May 22, 2013	June 12, 2013
26	Friday, June 7, 2013	June 26, 2013

**PLEASE NOTE:**

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, May 14, 2013, at 9:30 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

**DENTAL BOARD[650]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Delegation of expanded function duties to registered dental hygienists, 10.3(1) Notice **ARC 0722C** ..... 5/1/13
- Temporary permit for volunteer services, 13.3(3), 15.3(17) Notice **ARC 0724C** ..... 5/1/13
- Expanded function training approval, 20.15 Notice **ARC 0723C** ..... 5/1/13

**ECONOMIC DEVELOPMENT AUTHORITY[261]**

- Brownfield and grayfield redevelopment tax credits, 65.2, 65.3(3) Notice **ARC 0686C** ..... 4/17/13

**EDUCATIONAL EXAMINERS BOARD[282]**

EDUCATION DEPARTMENT[281]"umbrella"

- Out-of-state applicants who have attained national board certification, 13.3 Notice **ARC 0706C** ..... 5/1/13
- Teacher intern license for international teachers, 13.9 Filed **ARC 0698C** ..... 5/1/13
- Military exchange license, 13.17(4) Notice **ARC 0705C** ..... 5/1/13
- Coaching endorsement and authorization—concussion training, 13.28(29), 22.1 Notice **ARC 0696C** ..... 5/1/13
- Content specialist endorsement, 13.28(30) Notice **ARC 0700C** ..... 5/1/13
- Content and competencies for administrator Class B licensure, 18.9, 18.10 Notice **ARC 0703C** ..... 5/1/13
- Administrator Class E license, 18.12 Notice **ARC 0701C** ..... 5/1/13
- Renewal of administrator license, 19.7 Notice **ARC 0702C** ..... 5/1/13
- Renewal of school business official authorization, 22.3(7) Notice **ARC 0704C** ..... 5/1/13

**EDUCATION DEPARTMENT[281]**

- Community colleges—award requirements, career and technical program length, 21.2 Filed **ARC 0687C** ..... 4/17/13
- High school equivalency diploma, 32.1 to 32.6, 32.8 Filed **ARC 0688C** ..... 4/17/13
- Access to public benefits or insurance to pay for special education services, 41.154(4) Notice **ARC 0693C** ..... 4/17/13
- Standards for school administration manager programs, ch 82 Notice **ARC 0694C** ..... 4/17/13

**ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]**

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

- Transition to computer-based testing format, 1.2, 4.1(8), 5.1(8) Filed **ARC 0684C** ..... 4/17/13

**HUMAN SERVICES DEPARTMENT[441]**

- Decrease in average statewide cost of nursing facility services and charges for nursing facility care, 75.23(3), 75.24(3)"b"(1) Notice **ARC 0691C** ..... 4/17/13
- Update of average statewide charges for institutional care, 75.24(3)"b" Notice **ARC 0690C** ..... 4/17/13
- HCBS waiver services—standardization of units of service, service definitions, amendments to ch 78 Filed **ARC 0709C** ..... 5/1/13
- HCBS waiver services—standardization of billing codes, unit of service, service definitions, amendments to ch 78 Filed **ARC 0707C** ..... 5/1/13
- HCBS waiver services—reimbursement based on standard billing codes, unit of service, 79.1(2) Filed **ARC 0708C** ..... 5/1/13
- HCBS waiver and habilitation services—billing codes, unit of service, service rates, 79.1(2), 79.1(15), 79.1(24)"a" Filed **ARC 0710C** ..... 5/1/13
- Payment for primary care services furnished in 2013 or 2014, 79.1(2), 79.1(7)"c" Filed **ARC 0713C** ..... 5/1/13
- Maintenance of records by providers of service, 79.3 Filed **ARC 0711C** ..... 5/1/13
- Medical assistance program—reviews and audits, 79.4 Filed **ARC 0712C** ..... 5/1/13
- Nursing facilities—allowed supplementation for private room, 81.10(5)"e"(4) Filed **ARC 0714C** ..... 5/1/13
- National criminal history checks for registered child development homes, child care homes, and providers receiving child care assistance payments, 110.7(3), 170.4(3) Filed **ARC 0715C** ..... 5/1/13

**INSURANCE DIVISION[191]**

COMMERCE DEPARTMENT[181]"umbrella"

- Securities regulation, amendments to ch 50 Notice **ARC 0716C** ..... 5/1/13

**LABOR SERVICES DIVISION[875]**

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

- Federal occupational safety and health standards, 10.20, 26.1 Filed **ARC 0726C** ..... 5/1/13
- Conveyance safety program—50-percent rule, fees, amendments to ch 71 Filed **ARC 0685C** ..... 4/17/13

**MEDICINE BOARD[653]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Exemptions for physicians on full-time active duty, 8.4(1), 9.13(3), 11.1, 11.4(2) Notice **ARC 0697C** ..... 5/1/13  
 Physician supervision of physician assistants, 21.4(2) Notice **ARC 0692C**..... 4/17/13

**NATURAL RESOURCE COMMISSION[571]**

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Waterfowl refuges, 52.1(3) Notice **ARC 0720C**..... 5/1/13  
 Waterfowl and coot hunting seasons, 91.1, 91.3, 91.6 Notice **ARC 0721C**..... 5/1/13  
 Year-round pigeon season, 100.2(1) Notice **ARC 0719C**..... 5/1/13  
 Antlerless-deer-only license quotas, 106.6(6) Notice **ARC 0717C** ..... 5/1/13  
 River otters and bobcats—open areas, bag limits, season dates, reporting, 108.7 Notice **ARC 0718C** ..... 5/1/13

**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Cosmetology, 61.12, 61.13, 61.15 Notice of Termination **ARC 0725C** ..... 5/1/13

**SECRETARY OF STATE[721]**

Fee for notice of action involving small claims and nonresidents, 2.3 Notice **ARC 0729C** ..... 5/1/13  
 Voting systems, amendments to ch 22 Notice **ARC 0695C**..... 5/1/13  
 Registration of postsecondary schools, rescind ch 31 Notice **ARC 0728C**..... 5/1/13  
 Corporations—e-mail address required with online filing, 40.9 Notice **ARC 0730C**..... 5/1/13  
 Athlete agent registration, 42.1 to 42.3 Notice **ARC 0731C** ..... 5/1/13  
 Notarial acts, 43.1 to 43.6 Notice **ARC 0727C**..... 5/1/13

**SOIL CONSERVATION DIVISION[27]**

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"

Conservation practices revolving loan fund, 11.23(3), 11.27 Notice **ARC 0689C** ..... 4/17/13

**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

Representative Dave J. Jacoby  
 2308 Northridge Drive  
 Coralville, Iowa 52241

Senator Thomas Courtney  
 2609 Clearview  
 Burlington, Iowa 52601

Representative Rick Olson  
 3012 East 31st Court  
 Des Moines, Iowa 50317

Senator Wally Horn  
 101 Stoney Point Road, SW  
 Cedar Rapids, Iowa 52404

Representative Dawn Pettengill  
 P.O. Box A  
 Mt. Auburn, Iowa 52313

Senator Pam Jochum  
 2368 Jackson Street  
 Dubuque, Iowa 52001

Representative Jeff Smith  
 1006 Brooks North Lane  
 Okoboji, Iowa 51355

Senator Roby Smith  
 2036 East 48th Street  
 Davenport, Iowa 52807

Representative Guy Vander Linden  
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 Telephone (515)281-5211

**DENTAL BOARD[650]**

Delegation of expanded function duties to registered dental hygienists, 10.3(1) IAB 5/1/13 <b>ARC 0722C</b>	Suite D 400 SW 8th St. Des Moines, Iowa	June 5, 2013 4 p.m.
Temporary permit for volunteer services, 13.3(3), 15.3(17) IAB 5/1/13 <b>ARC 0724C</b>	Suite D 400 SW 8th St. Des Moines, Iowa	June 5, 2013 2 p.m.
Expanded function training approval, 20.15 IAB 5/1/13 <b>ARC 0723C</b>	Suite D 400 SW 8th St. Des Moines, Iowa	June 5, 2013 3 p.m.

**EDUCATIONAL EXAMINERS BOARD[282]**

Out-of-state applicants who have attained national board certification, 13.3 IAB 5/1/13 <b>ARC 0706C</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 22, 2013 1 p.m.
Military exchange license, 13.17(4) IAB 5/1/13 <b>ARC 0705C</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 22, 2013 1 p.m.
Coaching endorsement and authorization—concussion training, 13.28(29), 22.1 IAB 5/1/13 <b>ARC 0696C</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 22, 2013 1 p.m.
Content specialist endorsement, 13.28(30) IAB 5/1/13 <b>ARC 0700C</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 22, 2013 1 p.m.
Content and competencies for administrator Class B licensure, 18.9, 18.10 IAB 5/1/13 <b>ARC 0703C</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 22, 2013 1 p.m.
Administrator Class E license, 18.12 IAB 5/1/13 <b>ARC 0701C</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 22, 2013 1 p.m.
Renewal of administrator license, 19.7 IAB 5/1/13 <b>ARC 0702C</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 22, 2013 1 p.m.
Renewal of school business official authorization, 22.3(7) IAB 5/1/13 <b>ARC 0704C</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 22, 2013 1 p.m.

**EDUCATION DEPARTMENT[281]**

Access to public benefits or insurance to pay for special education services, 41.154(4) IAB 4/17/13 <b>ARC 0693C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	May 15, 2013 1 to 2 p.m.
	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	May 22, 2013 1 to 2 p.m.
Standards for school administration manager programs, ch 82 IAB 4/17/13 <b>ARC 0694C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	May 7, 2013 11 a.m. to 12 noon

**INSURANCE DIVISION[191]**

Securities regulation, amendments to ch 50 IAB 5/1/13 <b>ARC 0716C</b>	Lobby Conference Room 330 Maple St. Des Moines, Iowa	May 21, 2013 10 a.m.
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**MEDICINE BOARD[653]**

Exemptions for physicians on full-time active duty, 8.4(1), 9.13(3), 11.1, 11.4(2) IAB 5/1/13 <b>ARC 0697C</b>	Board Office, Suite C 400 SW 8th St. Des Moines, Iowa	May 21, 2013 11 a.m.
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Physician supervision of physician assistants, 21.4(2) IAB 4/17/13 <b>ARC 0692C</b>	Board Office, Suite C 400 SW 8th St. Des Moines, Iowa	May 14, 2013 1 p.m.
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**NATURAL RESOURCE COMMISSION[571]**

Waterfowl refuges, 52.1(3) IAB 5/1/13 <b>ARC 0720C</b>	Conference Room, Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	May 23, 2013 1 p.m.
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Waterfowl and coot hunting seasons, 91.1, 91.3, 91.6 IAB 5/1/13 <b>ARC 0721C</b>	Conference Room, Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	May 23, 2013 1 p.m.
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Year-round pigeon season, 100.2(1) IAB 5/1/13 <b>ARC 0719C</b>	Conference Room, Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	May 23, 2013 1 p.m.
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Antlerless-deer-only license quotas, 106.6(6) IAB 5/1/13 <b>ARC 0717C</b>	Auditorium, Second Floor Wallace State Office Bldg. Des Moines, Iowa	May 23, 2013 1 p.m.
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River otters and bobcats—open areas, bag limits, season dates, reporting, 108.7 IAB 5/1/13 <b>ARC 0718C</b>	Conference Room, Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	May 23, 2013 1 p.m.
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The following list will be updated as changes occur.

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

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

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

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ARC 0722C

**DENTAL BOARD[650]****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 Dental Board hereby gives Notice of Intended Action to amend Chapter 10, “General Requirements,” Iowa Administrative Code.

The proposed amendment would allow a dentist to delegate an expanded function duty to a licensed dental hygienist if the dental hygienist has completed Board-approved training pursuant to rule 650—20.15(153) in the specific expanded function that will be delegated. The expanded function duties are as listed in subrule 20.3(3).

Written comments about the proposed amendment will be accepted through June 5, 2013. Comments should be directed to Melanie Johnson, Executive Director, Iowa Dental Board, 400 SW 8th Street, Des Moines, Iowa 50309-4687, or by e-mail to [Melanie.Johnson@iowa.gov](mailto:Melanie.Johnson@iowa.gov).

A public hearing will be held on June 5, 2013, at 4 p.m. at the office of the Dental Board located at 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment. Any person who plans to attend the public hearing and who may have special requirements, such as those related to hearing or mobility impairments, should contact the Board office and advise of specific needs.

The proposed amendment was approved at the March 28, 2013, telephonic meeting of the Dental Board.

After analysis and review of this rule making, it has been determined that the amendment would have a positive impact on jobs. The ability to perform expanded function duties would provide dental hygienists with increased access to job opportunities in a competitive job market. The Board’s rules do not allow an individual to hold both a dental hygiene license and a dental assistant registration at the same time. This has resulted in an unintended consequence that restricts dental hygienists from performing expanded function duties even though they received expanded function training while they were registered dental assistants. Dental hygienists who had previously received expanded function training while they were registered dental assistants and dental hygienists who choose to receive such training after this amendment becomes effective would be able to perform expanded function duties. This amendment would allow dentists to delegate expanded function duties to dental hygienists with expanded function training. This training would have a positive impact on the ability of hygienists to find employment.

This amendment is intended to implement Iowa Code section 153.15.

The following amendment is proposed.

Amend subrule 10.3(1) as follows:

**10.3(1)** “Practice of dental hygiene” as defined in Iowa Code section 153.15 means the performance of the following educational, therapeutic, preventive and diagnostic dental hygiene procedures which are delegated by and under the supervision of a dentist licensed pursuant to Iowa Code chapter 153.

*a.* Educational. Assessing the need for, planning, implementing, and evaluating oral health education programs for individual patients and community groups; conducting workshops and in-service training sessions on dental health for nurses, school personnel, institutional staff, community groups and other agencies providing consultation and technical assistance for promotional, preventive and educational services.

*b.* Therapeutic. Identifying and evaluating factors which indicate the need for and performing (1) oral prophylaxis, which includes supragingival and subgingival debridement of plaque, and

## DENTAL BOARD[650](cont'd)

detection and removal of calculus with instruments or any other devices; (2) periodontal scaling and root planing; (3) removing and polishing hardened excess restorative material; (4) administering local anesthesia with the proper permit; (5) administering nitrous oxide inhalation analgesia in accordance with 650—subrules 29.6(4) and 29.6(5); (6) applying or administering medicaments prescribed by a dentist, including chemotherapeutic agents and medicaments or therapies for the treatment of periodontal disease and caries.

*c.* Preventive. Applying pit and fissure sealants and other medications or methods for caries and periodontal disease control; organizing and administering fluoride rinse or sealant programs.

*d.* Diagnostic. Reviewing medical and dental health histories; performing oral inspection; indexing dental and periodontal disease; making occlusal registrations for mounting study casts; testing pulp vitality; analyzing dietary surveys.

*e.* The following services may only be delegated by a dentist to a dental hygienist: administration of local anesthesia, placement of sealants, and the removal of any plaque, stain, calculus, or hard natural or synthetic material except by toothbrush, floss, or rubber cup coronal polish.

*f.* Expanded function duties performed by registered dental hygienist (RDH). A dentist may delegate an expanded function duty to a licensed dental hygienist if the dental hygienist has completed board-approved training pursuant to rule 650—20.15(153) in the specific expanded function that will be delegated. The supervising dentist and registered dental hygienist shall be responsible for maintaining in the office of practice documentation of board-approved training. A dentist may delegate to an RDH with expanded functions training the expanded function duties listed in 650—subrule 20.3(3).

**ARC 0724C****DENTAL BOARD[650]****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 Dental Board hereby gives Notice of Intended Action to amend Chapter 13, “Special Licenses,” and Chapter 15, “Fees,” Iowa Administrative Code.

The proposed amendments rescind the application fee for a temporary permit for volunteer services and reduce the amount of information required to apply for a permit for volunteer services.

These proposed amendments are in response to a petition for rule making filed by the Iowa Dental Association Foundation on October 23, 2012. The petitioner stated that the current application requirements make it more difficult to recruit out-of-state dentists to participate in the Foundation’s annual Iowa Mission of Mercy (IMOM) event which provides free dental services to low-income Iowans. The petitioner reported that in 2012 volunteer dentists and dental hygienists provided dental treatment at no cost to more than 1,389 low-income Iowans, with an estimated value of more than \$923,000.

Written comments about the proposed amendments will be accepted through June 5, 2013. Comments should be directed to Melanie Johnson, Executive Director, Iowa Dental Board, 400 SW 8th Street, Des Moines, Iowa 50309-4687, or by e-mail to [Melanie.Johnson@iowa.gov](mailto:Melanie.Johnson@iowa.gov).

A public hearing will be held on June 5, 2013, at 2 p.m. at the office of the Dental Board located at 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as those related to hearing or mobility impairments, should contact the Board office and advise of specific needs.

## DENTAL BOARD[650](cont'd)

These proposed amendments were approved at the March 28, 2013, telephonic meeting of the Dental Board.

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

These amendments are intended to implement Iowa Code section 153.19.

The following amendments are proposed.

ITEM 1. Amend subrule 13.3(3) as follows:

**13.3(3)** Eligibility for a temporary permit to provide volunteer services.

a. A temporary permit to provide volunteer services is intended for dentists and dental hygienists who will provide volunteer services at a free or nonprofit dental clinic and who will not receive compensation for dental services provided. A temporary permit issued under this subrule shall be valid only at the location specified on the permit, which shall be a free clinic or a dental clinic for a nonprofit organization, as described under Section 501(c)(3) of the Internal Revenue Code.

b. An application for a temporary permit shall be filed on the form, paper or electronic, provided by the board, ~~and must be completely answered, including required credentials and documents. To be eligible for a temporary permit to provide volunteer services, an applicant shall provide all of the following:~~ The application form will collect the name, address, and telephone number of the applicant, the location of the free clinic or dental clinic for a nonprofit organization, and the dates on which the volunteer services will be provided. The application form must be accompanied by each of the following:

~~(1) The nonrefundable application fee for a temporary permit to provide volunteer services as specified in 650 Chapter 15. A verification of license (or substantially similar document) from the appropriate licensing board of the applicant's home jurisdiction.~~

~~(2) A statement:~~

~~1. Confirming that the applicant possesses a valid certificate from a nationally recognized course in cardiopulmonary resuscitation (CPR) that included a "hands-on" clinical component;~~

~~2. Providing the expiration date of the CPR certificate; and~~

~~3. Acknowledging that the CPR certificate will be retained and made available to board office staff as part of routine auditing and monitoring.~~

~~(3) A statement disclosing and explaining any pending disciplinary actions, ~~investigations, complaints, malpractice claims, judgments, settlements,~~ or criminal charges against the applicant.~~

~~(4) Evidence that the applicant holds an active, permanent license in good standing to practice in at least one United States jurisdiction and that no formal disciplinary action is pending or has ever been taken.~~

~~(5) Evidence from the appropriate examining board from each jurisdiction in which the applicant has ever held a license. At least one license must be issued on the basis of clinical examination.~~

~~(6) A request for the temporary permit from those individuals or organizations seeking the applicant's services that establishes, to the board's satisfaction, the justification for the temporary permit, the dates the applicant's services are needed, and the location or locations where those services will be delivered.~~

~~(7) (4) A statement from the applicant seeking the temporary permit that the applicant shall practice only in a free dental clinic or dental clinic for a nonprofit organization and that the applicant shall not receive compensation directly or indirectly for providing dental services.~~

ITEM 2. Rescind and reserve subrule **15.3(17)**.

ARC 0723C

**DENTAL BOARD[650]****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 Dental Board hereby gives Notice of Intended Action to amend Chapter 20, “Dental Assistants,” Iowa Administrative Code.

The proposed amendment modifies the requirements for training in expanded functions if an applicant is from a state that does not require dental assistants to be registered. Registration is not required in all states, and currently the Board’s rule requires Dental Assisting National Board (DANB) certification or a minimum of two years of clinical experience as a registered dental assistant. Dental assistants who have more than two years of clinical experience but were not registered in another state must either wait two years after becoming registered in Iowa or another state or submit a rule waiver for approval to start expanded function training sooner. The proposed amendment would permit an applicant with at least two years of dental assisting experience in a state where registration is not required to be eligible for expanded function training.

Written comments about the proposed amendment will be accepted through June 5, 2013. Comments should be directed to Melanie Johnson, Executive Director, Iowa Dental Board, 400 SW 8th Street, Des Moines, Iowa 50309-4687, or by e-mail to [Melanie.Johnson@iowa.gov](mailto:Melanie.Johnson@iowa.gov).

A public hearing will be held on June 5, 2013, at 3 p.m. at the office of the Dental Board located at 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment. Any person who plans to attend the public hearing and who may have special requirements, such as those related to hearing or mobility impairments, should contact the Board office and advise of specific needs.

The proposed amendment was approved at the March 28, 2013, telephonic meeting of the Dental Board.

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

This amendment is intended to implement Iowa Code sections 153.38 and 153.39.

The following amendment is proposed.

Amend rule 650—20.15(153) as follows:

**650—20.15(153) Expanded function training approval.** Expanded function training shall be eligible for board approval if the training is offered through a program accredited by the Commission on Dental Accreditation of the American Dental Association or another program prior-approved by the board, which may include on-the-job training offered by a dentist licensed in Iowa. Training must consist of the following:

1. An initial assessment to determine the base entry level of all participants in the program. At a minimum, participants must ~~be~~ meet one of the following:

- Be currently certified by the Dental Assisting National Board, or
- ~~must have~~ Have two years of clinical dental assisting experience as a registered dental assistant, or
- Have two years of clinical dental assisting experience as a dental assistant in a state that does not require registration;

2. A didactic component;

3. A laboratory component, if necessary;

4. A clinical component, which may be obtained under the personal supervision of the participant’s supervising dentist while the participant is concurrently enrolled in the training program; and

DENTAL BOARD[650](cont'd)

5. A postcourse competency assessment at the conclusion of the training program.

**ARC 0706C****EDUCATIONAL EXAMINERS BOARD[282]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 13, “Issuance of Teacher Licenses and Endorsements,” Iowa Administrative Code.

This amendment would authorize a person who has attained National Board Certification to obtain an Iowa teaching license with the equivalent endorsement. The Board has received applications from individuals who have attained National Board Certification but are ineligible for an Iowa teaching license because they completed a program from an institution that is state-approved but not regionally accredited. The Board staff has reviewed the content areas for National Board Certification and has created an equivalency chart for the endorsement areas. This proposed amendment would honor the achievement of National Board Certification.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, May 24, 2013. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or sent by e-mail to [kim.cunningham@iowa.gov](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, May 22, 2013, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, at the above address, or at (515)281-5849, prior to the date of the public hearing.

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

This amendment is subject to waiver pursuant to 282—Chapter 6, “Waivers or Variances from Administrative Rules.”

After analysis and review of this rule making, there is no anticipated impact on jobs.

This amendment is intended to implement Iowa Code section 272.2(1)“a.”

The following amendment is proposed.

Amend rule 282—13.3(272) as follows:

**282—13.3(272) Applicants from non-Iowa institutions.**

**13.3(1) to 13.3(5)** No change.

**13.3(6)** Requirements for applicants whose preparation was completed through out-of-state teacher preparation programs and who have attained National Board Certification. An applicant who holds a valid license from another state and who has attained National Board Certification must:

a. Hold a baccalaureate degree with a minimum cumulative grade point average of 2.50 on a 4.0 scale from an accredited institution.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

- b. Provide a valid out-of-state teaching license based on a state-approved teacher preparation program.
- c. Provide a recommendation from a regionally accredited institution, a state department of education, or a state's standards board indicating the completion of a state-approved teacher preparation program.
- d. Provide an official institutional transcript(s).
- e. Meet the recency requirements listed in 13.10(3).
- f. Provide verification of successfully passing the Iowa-mandated assessment(s) by meeting the minimum score set by the Iowa department of education if the teacher preparation program was completed on or after January 1, 2013. If the teacher preparation program was completed prior to January 1, 2013, the applicant must provide verification of successfully passing the mandated assessment(s) in the state in which the applicant is currently licensed or pass the Iowa-mandated assessment(s) by meeting the minimum score set by the Iowa department of education.
- g. Provide valid, current National Board Certification. If through a transcript analysis the professional education core requirements set forth in 13.18(4) "a" to "m" and 13.18(5), the content endorsement requirements set forth in 282—13.26(272) to 282—13.28(272) and 282—14.2(272), and the Iowa requirements are not met, the applicant may be eligible for the equivalent Iowa endorsement areas, as designated by the Iowa board of educational examiners, based on the National Board Certification.

ARC 0705C

**EDUCATIONAL EXAMINERS BOARD[282]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1) "b." 5**

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 13, "Issuance of Teacher Licenses and Endorsements," Iowa Administrative Code.

The purpose of this amendment is to make it easier for military spouses and recent military veterans and their spouses to teach in the state of Iowa. Military spouses who are graduates of traditional teacher preparation programs may teach for three years if they obtain the proposed military exchange license. Recent veterans and their spouses who are graduates of traditional teacher preparation programs will receive one-year regional exchange licenses. Military spouses and recent veterans and their spouses who are graduates of nontraditional teacher preparation programs may receive substitute licenses, and the initial review for the portfolio review process will be completed by Board staff. Total fees for anyone applying under proposed subrule 13.17(4) will be \$85.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, May 24, 2013. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or sent by e-mail to [kim.cunningham@iowa.gov](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, May 22, 2013, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

at the public hearing may contact the Executive Director, Board of Educational Examiners, at the above address, or at (515)281-5849, prior to the date of the public hearing.

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

This amendment is subject to waiver pursuant to 282—Chapter 6, “Waivers or Variances from Administrative Rules.”

After analysis and review of this rule making, there is no anticipated impact on jobs.

This amendment is intended to implement Iowa Code section 272.2(1)“a.”

The following amendment is proposed.

Adopt the following **new** subrule 13.17(4):

**13.17(4) Military exchange license.**

*a. Spouses of active duty military applying under 13.3(2).* A three-year nonrenewable military exchange license may be issued to the applicant under the following conditions:

(1) The applicant has completed a traditional teacher preparation program at a regionally accredited and state-approved two- or four-year college.

(2) The applicant is the holder of a valid and current or an expired teaching license from another state.

(3) The applicant provides verification of the applicant’s connection to or the applicant’s spouse’s connection to the military by providing a copy of current military orders with either a marriage license or a copy of a military ID card for the applicant’s spouse.

(4) This license may be converted to a one-year regional exchange license upon application and payment of fees.

*b. Recent veterans (retired or discharged within the past five years as of the date of application) or their spouses applying under 13.3(2).* A five-year teaching license or a one-year exchange license may be issued to an eligible applicant. A veteran must provide a copy of the veteran’s DD 214. A spouse must provide a copy of the veteran spouse’s DD 214 and the couple’s marriage license.

*c. Spouses of active duty military, recent veterans or recent veterans’ spouses applying under 13.3(3).* An applicant who is not currently eligible for a teaching license will be issued a substitute license, and the initial review for the portfolio review process will be completed by board staff. An applicant must provide verification of connection to the military outlined in 13.17(4)“a”(3) or 13.17(4)“b.”

*d. Fees.* Fees for the background check, evaluation and license issued pursuant to 13.17(4) will be limited to the fee outlined in rule 282—12.1(272), paragraph “2.”

**ARC 0696C**

## **EDUCATIONAL EXAMINERS BOARD[282]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 13, “Issuance of Teacher Licenses and Endorsements,” and Chapter 22, “Authorizations,” Iowa Administrative Code.

Concerns have been raised regarding the increased number of concussions suffered by student athletes. Legislators have requested a change in the licensure rules for coaching in lieu of legislation requiring concussion training to be completed annually by coaches. These proposed amendments add

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

concussion training as an element in obtaining and renewing a coaching authorization. The proposed amendments also add concussion training as a requirement to add the coaching endorsement to a teaching license.

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, May 24, 2013. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or sent by e-mail to [kim.cunningham@iowa.gov](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, May 22, 2013, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, at the above address, or at (515)281-5849, prior to the date of the public hearing.

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

These amendments are subject to waiver pursuant to 282—Chapter 6, “Waivers or Variances from Administrative Rules.”

After analysis and review of this rule making, there is no anticipated impact on jobs.

These amendments are intended to implement Iowa Code sections 272.2(1)“a” and 272.31(4).

The following amendments are proposed.

ITEM 1. Amend subrule 13.28(29) as follows:

**13.28(29) Athletic coach.** K-12. An applicant for the coaching endorsement must hold a teacher’s license with one of the teaching endorsements.

*a. Authorization.* The holder of this endorsement may serve as a head coach or an assistant coach in kindergarten and grades one through twelve.

*b. Program requirements.*

(1) One semester hour college or university course in the structure and function of the human body in relation to physical activity, and

(2) One semester hour college or university course in human growth and development of children and youth as related to physical activity, and

(3) Two semester hour college or university course in athletic conditioning, care and prevention of injuries and first aid as related to physical activity, and

(4) One semester hour college or university course in the theory of coaching interscholastic athletics, and

(5) Successful completion of the concussion training approved by the Iowa High School Athletic Association or Iowa Girls High School Athletic Union.

ITEM 2. Amend rule 282—22.1(272) as follows:

**282—22.1(272) Coaching authorization.** A coaching authorization allows an individual to coach any sport in a middle school, junior high school, or high school.

**22.1(1) Application process.** Any person interested in the coaching authorization shall submit records of credit to the board of educational examiners for an evaluation in terms of the required courses or contact hours. Application materials are available from the office of the board of educational examiners, online at <http://www.boee.iowa.gov/>, or from institutions or agencies offering approved courses or contact hours.

**22.1(2) Requirements.** Applicants for the coaching authorization shall have completed the following requirements:

*a. Credit hours.* Applicants must complete credit hours in the following areas:

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

(1) Successful completion of 1 semester credit hour or 10 contact hours in a course relating to knowledge and understanding of the structure and function of the human body in relation to physical activity.

(2) Successful completion of 1 semester credit hour or 10 contact hours in a course relating to knowledge and understanding of human growth and development of children and youth in relation to physical activity.

(3) Successful completion of 2 semester credit hours or 20 contact hours in a course relating to knowledge and understanding of the prevention and care of athletic injuries and medical and safety problems relating to physical activity.

(4) Successful completion of 1 semester credit hour or 10 contact hours relating to knowledge and understanding of the techniques and theory of coaching interscholastic athletics.

(5) Beginning on or after July 1, 2000, each applicant for an initial coaching authorization shall have successfully completed 1 semester credit hour or 15 contact hours in a course relating to the theory of coaching which must include at least 5 contact hours relating to the knowledge and understanding of professional ethics and legal responsibilities of coaches.

(6) Successful completion of the concussion training approved by the Iowa High School Athletic Association or Iowa Girls High School Athletic Union.

*b. Minimum age.* Applicants must have attained a minimum age of 18 years.

*c. Iowa division of criminal investigation background check.* Applicants must have successfully completed an Iowa division of criminal investigation background check. The background check fee will be assessed to the applicant.

*d. National criminal history background check.* Applicants must have successfully completed a national criminal history background check. The background check fee will be assessed to the applicant.

**22.1(3) Validity.** The coaching authorization shall be valid for five years, ~~and it shall expire five years from the date of issuance.~~

**22.1(4) Renewal.** The authorization may be renewed upon application and verification of successful completion of:

*a. Renewal activities.* Applicants for renewal of a coaching authorization must:

~~(1) In addition to the child and dependent adult abuse training listed below, applicants for renewal must~~ Successfully complete four five planned renewal activities/courses related to athletic coaching approved in accordance with guidelines approved by the board of educational examiners. Additionally, each applicant for the renewal of a coaching authorization shall have completed one renewal activity/course relating to the knowledge and understanding of professional ethics and legal responsibilities of coaches.

~~(2) A one-year extension of the holder's coaching authorization will be issued if all requirements for the renewal of the coaching authorization have not been met. This extension is not renewable. The fee for this extension is found in 282—Chapter 12.~~

(2) Annually complete the concussion training approved by the Iowa High School Athletic Association or the Iowa Girls High School Athletic Union. Completion of the concussion training may be waived if the applicant is not serving as a coach. Attendance at the annual concussion training may be used for a maximum of one planned activity/course required in 22.1(4)“a”(1).

~~*b. (3) Child* Complete child and dependent adult abuse training. Every renewal applicant must submit documentation of completion of the child and dependent adult abuse training approved by the state abuse education review panel. This certification may be used for a maximum of one planned activity/course required in 22.1(4)“a”(1). A waiver of this requirement may apply under the following conditions with appropriate documentation of any of the following: if~~

~~(1) A person is engaged in active duty in the military service of this state or of the United States.~~

~~(2) The application of this requirement would impose an undue hardship on the person for whom the waiver is requested.~~

~~(3) A person is practicing a licensed profession outside this state.~~

~~(4) A person is otherwise subject to circumstances that would preclude the person from satisfying the approved child and dependent adult abuse training in this state.~~

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

~~(5) The person has previously renewed a license or another authorization issued by the board of educational examiners and, at that time, reported the completion, within the past five years, of child and dependent adult abuse training approved by the state abuse education review panel.~~

b. A one-year extension of the applicant's coaching authorization may be issued if all requirements for the renewal of the coaching authorization have not been met. The applicant must complete the concussion training approved by the Iowa High School Athletic Association or the Iowa Girls High School Athletic Union before serving as a coach. The one-year extension is not renewable. The fee for this extension is found in 282—Chapter 12.

**22.1(5) *Revocation and suspension.*** Criteria of professional practice and rules of the board of educational examiners shall be applicable to the holders of the coaching authorization. An ethics complaint may be filed if a practitioner begins coaching a sport without current concussion training.

**22.1(6) *Approval of courses.*** Each institution of higher education, private college or university, merged area school or area education agency wishing to offer the semester credit or contact hours for the coaching authorization must submit course descriptions for each offering to the board of educational examiners for approval. After initial approval, any changes by agencies or institutions in course offerings shall be filed with the board of educational examiners.

**ARC 0700C**

**EDUCATIONAL EXAMINERS BOARD[282]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”0**

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 13, “Issuance of Teacher Licenses and Endorsements,” Iowa Administrative Code.

The education reform discussion addresses instructional coaches and master teachers of content. The only endorsement offered by the Board of Educational Examiners for specialists is a reading specialist endorsement. Thus a content specialist endorsement is being proposed so that an applicant may obtain an endorsement in a specific content area in which the applicant has completed coursework, professional development, and professional experience.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, May 24, 2013. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or sent by e-mail to [kim.cunningham@iowa.gov](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, May 22, 2013, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, at the above address, or at (515)281-5849, prior to the date of the public hearing.

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

This amendment is subject to waiver pursuant to 282—Chapter 6, “Waivers or Variances from Administrative Rules.”

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

After analysis and review of this rule making, there is no anticipated impact on jobs.

This amendment is intended to implement Iowa Code section 272.2(1)“a.”

The following amendment is proposed.

Adopt the following **new** subrule 13.28(30):

**13.28(30) Content specialist endorsement.** The applicant must have met the requirements for the standard license and a teaching endorsement.

*a. Authorization.* The holder of this endorsement is authorized to serve as a content specialist in kindergarten and grades one through twelve in the specific content listed on the authorization.

*b. Requirements.*

(1) Hold a master’s degree in the content area or complete 30 semester hours of college course work in the content area.

(2) Complete 15 semester hours of credit in professional development in three or more of the following areas:

1. Using research-based content teaching strategies;
2. Integrating appropriate technology into the learning experiences for the specific content;
3. Engaging the learner in the content through knowledge of learner needs and interests;
4. Using reflective thinking to solve problems in the content area;
5. Making data-driven decisions in the content area;
6. Utilizing project-based learning in the content area;
7. Developing critical thinking skills in the content area;
8. Forming partnerships to collaborate with content experts within the community;
9. Relating content with other content areas;
10. Facilitating content learning in large and small teams;
11. Implementing response to intervention (RTI) to close achievement gaps in the content area.

(3) Complete an internship, externship, and professional experience for a minimum of 90 contact hours in the content area.

**ARC 0703C**

**EDUCATIONAL EXAMINERS BOARD[282]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 18, “Issuance of Administrator Licenses and Endorsements,” Iowa Administrative Code.

These amendments would align Class B licensure rules with the desired Board practice of combining content and competencies under one description. Content and competencies are not separated within college courses and should not be separated in the Board’s administrative rules.

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, May 24, 2013. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or sent by e-mail to [kim.cunningham@iowa.gov](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, May 22, 2013, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, at the above address, or at (515)281-5849, prior to the date of the public hearing.

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

These amendments are subject to waiver pursuant to 282—Chapter 6, “Waivers or Variances from Administrative Rules.”

After analysis and review of this rule making, there is no anticipated impact on jobs.

These amendments are intended to implement Iowa Code section 272.2(1)“a.”

The following amendments are proposed.

ITEM 1. Amend rule 282—18.9(272) as follows:

**282—18.9(272) Area and grade levels of administrator endorsements.**

**18.9(1) PK-12 principal and PK-12 supervisor of special education.**

*a. Authorization.* The holder of this endorsement is authorized to serve as a principal of programs serving children from birth through grade twelve, a supervisor of instructional special education programs for children from birth to the age of 21, and a supervisor of support for special education programs for children from birth to the age of 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8).

*b. Program requirements.*

(1) Degree—master’s.

(2) Content: Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements.

1. Knowledge of early childhood, elementary, early adolescent and secondary level administration, supervision, and evaluation.

2. Knowledge and skill related to early childhood, elementary, early adolescent and secondary level curriculum development.

3. Knowledge of child growth and development from birth through adolescence and developmentally appropriate strategies and practices of early childhood, elementary, and adolescence, to include an observation practicum.

4. Knowledge of family support systems, factors which place families at risk, child care issues, and home-school community relationships and interactions designed to promote parent education, family involvement, and interagency collaboration.

5. Knowledge of school law and legislative and public policy issues affecting children and families.

6. Completion of evaluator training component.

7. Knowledge of current issues in special education administration.

8. Planned field experiences in elementary and secondary school administration, including special education administration.

~~(3)~~ 9. Competencies: Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements. A school administrator is an educational leader who promotes the success of all students by accomplishing the following competencies.

~~1.~~ 1. Facilitates the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community.

~~2.~~ 2. Advocates, nurtures, and sustains a school culture and instructional program conducive to student learning and staff professional growth.

~~3.~~ 3. Ensures management of the organization, operations, and resources for a safe, efficient, and effective learning environment.

~~4.~~ 4. Collaborates with families and community members, responds to diverse community interests and needs, and mobilizes community resources.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

- ~~5.~~ • Acts with integrity, fairness, and in an ethical manner.
- ~~6.~~ • Understands, responds to, and influences the larger political, social, economic, legal, and cultural context.

*c. Other.*

(1) The applicant must have had three years of teaching experience at the early childhood through grade twelve level.

(2) Graduates from out-of-state institutions who are seeking initial Iowa licensure and the PK-12 principal and PK-12 supervisor of special education endorsement must meet the requirements for the standard license in addition to the experience requirements.

**18.9(2) PK-8 principal—out-of-state applicants.** This endorsement is only for applicants from out-of-state institutions.

*a. Authorization.* The holder of this endorsement is authorized to serve as a principal of programs serving children from birth through grade eight.

*b. Program requirements.*

(1) Degree—master's.

(2) Content: Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements.

1. Knowledge of early childhood, elementary, and early adolescent level administration, supervision, and evaluation.

2. Knowledge and skill related to early childhood, elementary, and early adolescent level curriculum development.

3. Knowledge of child growth and development from birth through early adolescence and developmentally appropriate strategies and practices of early childhood, elementary, and early adolescence, to include an observation practicum.

4. Knowledge of family support systems, factors which place families at risk, child care issues, and home-school community relationships and interactions designed to promote parent education, family involvement, and interagency collaboration.

5. Knowledge of school law and legislative and public policy issues affecting children and families.

6. Planned field experiences in early childhood and elementary or early adolescent school administration.

7. Completion of evaluator training component.

~~(3)~~ 8. Competencies: Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements. A school administrator is an educational leader who promotes the success of all students by accomplishing the following competencies.

~~1.~~ • Facilitates the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community.

~~2.~~ • Advocates, nurtures, and sustains a school culture and instructional program conducive to student learning and staff professional growth.

~~3.~~ • Ensures management of the organization, operations, and resources for a safe, efficient, and effective learning environment.

~~4.~~ • Collaborates with families and community members, responds to diverse community interests and needs, and mobilizes community resources.

~~5.~~ • Acts with integrity, fairness, and in an ethical manner.

~~6.~~ • Understands, responds to, and influences the larger political, social, economic, legal, and cultural context.

*c. Other.* The applicant must have had three years of teaching experience at the early childhood through grade eight level.

**18.9(3) 5-12 principal—out-of-state applicants.** This endorsement is only for applicants from out-of-state institutions.

*a. Authorization.* The holder of this endorsement is authorized to serve as a principal in grades five through twelve.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

*b. Program requirements.*

- (1) Degree—master's.
- (2) Content: Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements.
  1. Knowledge of early adolescent and secondary level administration, supervision, and evaluation.
  2. Knowledge and skill related to early adolescent and secondary level curriculum development.
  3. Knowledge of human growth and development from early adolescence through early adulthood, to include an observation practicum.
  4. Knowledge of family support systems, factors which place families at risk, and home-school community relationships and interactions designed to promote parent education, family involvement, and interagency collaboration.
  5. Knowledge of school law and legislative and public policy issues affecting children and families.
  6. Planned field experiences in early adolescence or secondary school administration.
  7. Completion of evaluator training component.
- ~~(3)~~ 8. Competencies: Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements. A school administrator is an educational leader who promotes the success of all students by accomplishing the following competencies.
  - ~~1.~~ 1. Facilitates the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community.
  - ~~2.~~ 2. Advocates, nurtures, and sustains a school culture and instructional program conducive to student learning and staff professional growth.
  - ~~3.~~ 3. Ensures management of the organization, operations, and resources for a safe, efficient, and effective learning environment.
  - ~~4.~~ 4. Collaborates with families and community members, responds to diverse community interests and needs, and mobilizes community resources.
  - ~~5.~~ 5. Acts with integrity, fairness, and in an ethical manner.
  - ~~6.~~ 6. Understands, responds to, and influences the larger political, social, economic, legal, and cultural context.
- c. Other.* The applicant must have had three years of teaching experience at the secondary level (5-12).

ITEM 2. Amend rule 282—18.10(272) as follows:

**282—18.10(272) Superintendent/AEA administrator.**

**18.10(1) Authorization.** The holder of this endorsement is authorized to serve as a superintendent from the prekindergarten level through grade twelve or as an AEA administrator. NOTE: This authorization does not permit general teaching, school service, or administration at any level except that level or area for which the practitioner holds the specific endorsement(s).

**18.10(2) Program requirements.**

- a.* Degree—specialist (or its equivalent: A master's degree plus at least 30 semester hours of planned graduate study in administration beyond the master's degree).
- b.* Content. Through completion of a sequence of courses and experiences which may have been part of, or in addition to, the degree requirements, the administrator has knowledge and understanding of:
  - (1) Models, theories, and practices that provide the basis for leading educational systems toward improving student performance.
  - (2) Federal, state and local fiscal policies related to education.
  - (3) Human resources management, including recruitment, personnel assistance and development, evaluation and negotiations.
  - (4) Current legal issues in general and special education.
  - (5) Noninstructional support services management including but not limited to transportation, nutrition and facilities.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

~~e.~~ (6) Practicum in PK-12 school administration. In the coursework and the practicum, the administrator facilitates processes and engages in activities for:

(1) 1. Developing a shared vision of learning through articulation, implementation, and stewardship.

(2) 2. Advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional growth.

(3) 3. Ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment.

(4) 4. Collaborating with school staff, families, community members and boards of directors; responding to diverse community interests and needs; and mobilizing community resources.

(5) 5. Acting with integrity, fairness, and in an ethical manner.

(6) 6. Understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

**18.10(3)** No change.

**ARC 0701C****EDUCATIONAL EXAMINERS BOARD[282]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 18, “Issuance of Administrator Licenses and Endorsements,” Iowa Administrative Code.

Proposed rule 282—18.12(272) adds a Class E license (extension option) to Chapter 18 for Administrator Exchange, Class B, and Class A licenses. This license was inadvertently omitted from the administrator licensing rules when the teacher and administrator rules were separated into different chapters.

Any interested person may make written comments or suggestions on the proposed rule before 4 p.m. on Friday, May 24, 2013. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or sent by e-mail to [kim.cunningham@iowa.gov](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, May 22, 2013, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rule. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, at the above address, or at (515)281-5849, prior to the date of the public hearing.

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

This rule is subject to waiver pursuant to 282—Chapter 6, “Waivers or Variances from Administrative Rules.”

After analysis and review of this rule making, there is no anticipated impact on jobs.

This rule is intended to implement Iowa Code section 272.2(1)“a.”

The following amendment is proposed.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Adopt the following **new** rule 282—18.12(272):

**282—18.12(272) Specific requirements for a Class E license.** A nonrenewable Class E license valid for one year may be issued to an individual as follows.

**18.12(1) Expired license.** Based on an expired Class A, Class B, or administrator exchange license, the holder of the expired license shall be eligible to receive a Class E license upon application and submission of all required materials.

**18.12(2) Application.** The application process will require transcripts of coursework completed during the term of the expired license, a program of study indicating the coursework necessary to obtain full licensure, and registration for coursework to be completed during the term of the Class E license. The Class E license will be denied if the applicant has not completed any coursework during the term of the Class A, Class B, or administrator exchange license unless extenuating circumstances are verified.

**ARC 0702C**

**EDUCATIONAL EXAMINERS BOARD[282]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 19, “Evaluator Endorsement and License,” Iowa Administrative Code.

This amendment is necessary to align the Board’s administrative rules with Iowa Code section 284.10(4), which states that the Board shall require evaluator training certification as a condition of issuing or renewing an administrator license.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, May 24, 2013. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or sent by e-mail to [kim.cunningham@iowa.gov](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, May 22, 2013, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, at the above address, or at (515)281-5849, prior to the date of the public hearing.

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

This amendment is not subject to waiver.

After analysis and review of this rule making, there is no anticipated impact on jobs.

This amendment is intended to implement Iowa Code section 284.10(4).

The following amendment is proposed.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Amend rule 282—19.7(272) as follows:

**282—19.7(272) Renewal of administrator licenses.**

**19.7(1)** Each applicant for renewal of an administrator license shall have completed the evaluator endorsement requirements. ~~A waiver of this requirement may apply if a person submits appropriate documentation of either of the following:~~

- ~~a. A person is engaged in active duty in the military service of this state or of the United States.~~
- ~~b. A person is practicing as a licensed professional educator outside this state.~~

**19.7(2)** Extension of an administrator license:

- a. May be granted to an applicant who has not completed the new evaluator renewal training course before the expiration date on the applicant's license; and
- b. May be granted for a one-year period.

**ARC 0704C****EDUCATIONAL EXAMINERS BOARD[282]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 22, “Authorizations,” Iowa Administrative Code.

The Iowa Association of School Business Officials has recommended that the rule regarding School Business Official authorization renewal requirements be revised to require renewal credits to be earned during the term of the license instead of one credit per year of the license term.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, May 24, 2013. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or sent by e-mail to [kim.cunningham@iowa.gov](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, May 22, 2013, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, at the above address, or at (515)281-5849, prior to the date of the public hearing.

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

This amendment is subject to waiver pursuant to 282—Chapter 6, “Waivers or Variances from Administrative Rules.”

After analysis and review of this rule making, there is no anticipated impact on jobs.

This amendment is intended to implement Iowa Code section 272.31.

The following amendment is proposed.

Amend subrule 22.3(7) as follows:

**22.3(7) Renewal.** The authorization may be renewed upon application and verification of successful completion of:

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

*a.* Renewal activities.

(1) In addition to the child and dependent adult abuse mandatory reporter training listed below, the applicant for renewal must complete 4 semester hours of credit or the equivalent contact hours (1 semester hour is equivalent to 15 contact hours) within the three years, with a minimum of 1 semester hour or its equivalent completed in each year of the authorization -year licensure period.

(2) Failure to complete requirements for renewal ~~in each calendar year~~ will require a petition for waiver from the board. ~~The applicant must petition the board for waiver of the annual requirement.~~

*b.* No change.**ARC 0716C****INSURANCE DIVISION[191]****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 502.605, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 50, “Regulation of Securities Offerings and Those Who Engage in the Securities Business,” Iowa Administrative Code.

The rules in Chapter 50 prescribe the terms and conditions under which broker-dealers, investment advisers and securities offerings operate. The proposed amendments do the following:

Item 1 amends rule 191—50.1(502) to add two definitions that are used in the amendments that follow.

Item 2 amends rule 191—50.2(502) to eliminate billing the salary costs as part of an audit fee and to update the deposit to use the commerce revolving fund.

Item 3 amends subrules 50.12(1) and 50.12(2) to provide for automatic acceptance of Financial Industry Regulatory Authority (FINRA) examinations.

Item 4 rescinds paragraph 50.16(1)“c,” the current suitability requirement, and adopts a new paragraph that sets forth suitability and know-your-customer requirements that parallel recent FINRA rule updates.

Item 5 amends subrule 50.16(2) by adding new paragraph “k,” whose language applicable to persons in the securities business mirrors the Division’s language for insurance producers to restrict the use of undue influence.

Item 6 amends subrule 50.31(1) to require the filing of the Uniform Application for Investment Adviser Registration (Form ADV) Part 2 electronically with the Investment Advisory Registration Depository (IARD) instead of on paper with the administrator.

Item 7 rescinds subrule 50.34(2) and adopts a new subrule to recognize that Form ADV Part 2 is now filed electronically with IARD.

Item 8 rescinds rule 191—50.36(502) and adopts a new brochure delivery rule for investment advisers that is based on a North American Securities Administrators Association (NASAA) model.

Item 9 amends rule 191—50.38(502) regarding prohibited conduct in providing investment advice to update the rule by adding recent NASAA model amendments and by relocating three paragraphs from this rule to new rule 191—50.46(502).

Items 10 to 13 rescind subrules 50.39(1) and 50.39(2) and adopt new subrules in lieu thereof; renumber subrule 50.39(3) as 50.39(4); adopt new subrule 50.39(3) to update investment adviser custody requirements by adding recent NASAA model amendments regarding custody to make the rule more consistent with United States Securities and Exchange Commission (SEC) rules; and amend renumbered subrule 50.39(4) to revise and adopt definitions.

Item 14 amends rule 191—50.40(502) regarding investment adviser minimum financial requirements by adopting recent NASAA model amendments.

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

Item 15 amends rule 191—50.41(502) regarding investment adviser bonding requirements by adopting recent NASAA model amendments.

Items 16 to 19 amend rule 191—50.42(502) regarding investment adviser record-keeping requirements to incorporate recent NASAA model amendments.

Item 20 amends rule 191—50.43(502) regarding investment adviser financial reporting requirements by adopting recent NASAA model amendments.

Item 21 adds new rule 191—50.45(502) to create an exemption for investment advisers of private funds, based on a NASAA model that coordinates with recent SEC rule making.

Item 22 adds new rule 191—50.46(502) that specifies the contents of an investment advisory contract based on a NASAA model.

Item 23 amends subrule 50.53(7) by correcting an internal reference.

Item 24 renumbers rule 191—50.54(502) as rule 191—50.55(502).

Item 25 adds new rule 191—50.54(502) to adopt the state model for denial, suspension or revocation of agent or investment adviser representative registration for failure to pay state debt.

Item 26 amends rule 191—50.66(502) to update certain NASAA guidelines that are used in the review of direct participation programs and equity offerings.

Item 27 amends subrule 50.87(1) by clarifying the authorization date for filers.

Item 28 amends subrule 50.88(2) by excluding the value of a primary residence when net worth for accredited investors is calculated.

Item 29 adds new rule 191—50.89(502) designating certain securities manuals for purposes of an exemption.

Any interested person may make written comments on the proposed amendments to Chapter 50 on or before May 21, 2013. Written comments may be sent to Craig Goettsch, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be submitted electronically to [craig.goettsch@iid.iowa.gov](mailto:craig.goettsch@iid.iowa.gov) or via facsimile to (515)281-3059.

A public hearing will be held on May 21, 2013, at 10 a.m. in the Lobby Conference Room of the Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine remarks to the subject of the proposed amendments.

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

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

These amendments are intended to implement Iowa Code chapter 502.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **191—50.1(502)**:

“*Form ADV-E*” means the Certificate of Accounting of Client Securities and Funds in the Possession or Custody of an Investment Adviser.

“*PCAOB*” means the Public Company Accounting Oversight Board.

ITEM 2. Amend rule 191—50.2(502) as follows:

**191—50.2(502) Cost of audit or inspection.**

**50.2(1)** A broker-dealer or investment adviser may be assessed ~~the greater of a flat fee of \$100 or the actual and necessary costs of salaries, travel, lodging, and meals~~ other expenses directly attributable to an audit or inspection made pursuant to Iowa Code section 502.411(4). The assessment of costs of ~~salaries, travel, lodging, and meals~~ other expenses, if any, shall be determined in accordance with the department of administrative services (DAS) state accounting enterprise Accounting Policy and Procedures Manual in effect at the time of the audit or inspection.

**50.2(2)** If costs are assessed under subrule 50.2(1), the administrator may, upon completion of the examination, or at such regular intervals prior to completion as the administrator determines, prepare an

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account of the costs incurred in performing and preparing the report of the examination which shall be charged to and paid by the broker-dealer or investment adviser examined.

~~50.2(2)~~ **50.2(3)** The administrator shall notify the broker-dealer or investment adviser of the expenses attributable to the audit or inspection as soon as practicable.

~~50.2(3)~~ **50.2(4)** Assessments collected by the administrator pursuant to this rule shall be remitted to the state treasury paid to the administrator and shall be deposited as provided in Iowa Code section 505.7.

This rule is intended to implement Iowa Code section 502.411(4).

ITEM 3. Amend subrules 50.12(1) and 50.12(2) as follows:

**50.12(1)** Agent registration.

~~a. An Every~~ applicant for registration as an Iowa-registered agent of a FINRA or non-FINRA member broker-dealer shall agent of a broker-dealer shall:

~~(1) Pass one of the following FINRA examinations: Series 1, 2, 6, 7, 11, 17, 22, 24, 26, 39, 40, 52, 53, or 62. In the event that an applicant for registration as an agent has received a waiver by FINRA of a FINRA examination otherwise required by this paragraph, the FINRA waiver will be accepted in lieu of the examination requirement;~~

~~(2) a. Pass the FINRA Series 63 or Series 66 examination Uniform Securities Agent State Law Examination (Series 63) or the Uniform Combined State Law Examination (Series 66);~~

b. Pass the appropriate qualifying examination administered by the Financial Industry National Regulatory Authority (FINRA). In the event that an applicant for registration as an agent has received a waiver by FINRA of a FINRA examination otherwise required by this paragraph, the FINRA waiver will be accepted in lieu of the examination requirement;

~~(3) c. File an accurate and complete Form U-4 with CRD; and~~

~~(4) d. Pay a \$40 filing fee to FINRA if applying for registration as an agent of a FINRA member broker-dealer, or to the administrator if applying for registration as an agent of a non-FINRA member broker-dealer.~~

~~b.—An applicant may file with the administrator a written request for waiver of the examination requirement contained in paragraph “a” pursuant to rule 191—4.21(17A), et seq. A waiver will be considered for an applicant with ten years of continuous experience in the securities industry. A waiver of the Series 63 examination will not be granted.~~

~~50.12(2) No application for an agent registration shall be considered for approval until all requirements of subrule 50.12(1), as applicable, are met. In the administrator’s discretion, an applicant may be required to provide additional information regarding any aspect of the application. The application shall be considered incomplete until any such additional information is provided. Any individual who is out of the business of effecting transactions in securities for less than two years from the date of filing an application and who has previously passed an examination required in subrule 50.12(1) shall not be required to retake the examination to be eligible to be relicensed upon application.~~

ITEM 4. Rescind paragraph **50.16(1)“c”** and adopt the following new paragraph in lieu thereof:

c. Suitability:

(1) Failing to use reasonable diligence, in regard to the opening and maintenance of every account, to know and retain the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer;

(2) Recommending a transaction or investment strategy involving a security or securities without a reasonable basis to believe that the transaction or investment strategy is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer’s investment profile. A customer’s investment profile includes, but is not limited to, the customer’s age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the broker-dealer or agent in connection with such recommendation;

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

ITEM 5. Amend subrule 50.16(2) as follows:

**50.16(2)** Dishonest or unethical practices by an agent in the securities business as prohibited pursuant to Iowa Code section 502.412(4) “m” include, but are not limited to, the following:

- a. to g. No change.
- h. Evading or otherwise negating the requirements of paragraph 50.16(2) “a,” “f” or “g” by terminating the customer relationship for the purpose of soliciting or accepting a loan or gift or being named as a beneficiary, executor or trustee in a will or trust that the agent is otherwise not permitted to solicit or accept. An agent is not in violation of this paragraph if the agent has made a bona fide termination of the customer relationship and conducted no securities-related business or other business for a period of three years with the customer; ~~and~~
- i. Engaging in conduct specified in subrule 50.16(1), paragraphs “b” to “f,” “i,” “j,” “n” to “q,” “u,” and “w” to “aa-”<sub>2</sub>;
- j. Engaging in conduct deemed dishonest or unethical in rule 191—50.54(502); ~~and~~
- k. Employing any method or tactic which uses undue pressure, force, fright, or threat, whether explicit or implied, to solicit the purchase or sale of securities, or committing any act which shows that the agent has exerted undue influence over a person.

ITEM 6. Amend subrule 50.31(1) as follows:

**50.31(1)** *Investment adviser applications—required filings.* The application for initial registration as an investment adviser shall be made by:

- a. Filing Form ADV ~~Part I~~ Parts 1 and 2 with IARD; ~~and~~
- b. Remitting the \$100 filing fee to IARD pursuant to Iowa Code section 502.410(3); ~~and~~
- c. ~~Filing Form ADV Part II with the administrator.~~

ITEM 7. Rescind subrule 50.34(2) and adopt the following **new** subrule in lieu thereof:

**50.34(2)** *Form ADV Part 2.* The administrator may:

- a. Accept a copy of Part 2 of Form ADV as filed electronically with IARD; or
- b. Deem Part 2 of Form ADV filed if a federal covered investment adviser provides, within five days of a request, Part 2 of Form ADV to the administrator. Because the administrator deems Part 2 of Form ADV to be filed, a federal covered investment adviser is not required to submit Part 2 of Form ADV to the administrator unless specifically requested to do so.

ITEM 8. Rescind rule 191—50.36(502) and adopt the following **new** rule in lieu thereof:

**191—50.36(502) Investment adviser brochure.**

**50.36(1)** *General requirements.*

a. Unless otherwise provided in this rule, an investment adviser registered or required to be registered pursuant to Section 403 of the Act shall furnish each advisory client and prospective advisory client with:

- (1) A brochure which may be a copy of Part 2A of its Form ADV or written documents containing the information required by Part 2A of Form ADV;
  - (2) A copy of its Part 2B brochure supplement for each individual:
    - 1. Providing investment advice and having direct contact with clients in this state; or
    - 2. Exercising discretion over assets of clients in this state, even if no direct contact is involved;
  - (3) A copy of its Part 2A Appendix 1 wrap fee brochure if the investment adviser sponsors or participates in a wrap fee account;
  - (4) A summary of material changes, which may be included in Form ADV Part 2 or given as a separate document; and
  - (5) Such other information as the administrator may require.
- b. The brochure must comply with the language, organizational format and filing requirements specified in the Instructions to Form ADV Part 2.
- c. Notwithstanding the SEC’s Instructions for Part 2A of Form ADV, fee changes constitute material changes requiring an update to all parts of Form ADV.

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**50.36(2) Delivery.**

*a. Initial delivery.* An investment adviser, except as provided in paragraph 50.36(2)“c,” shall deliver the Part 2A brochure and any brochure supplements required by rule 191—50.36(502) to a prospective advisory client:

(1) Not less than 48 hours before an investment adviser enters into any advisory contract with such client or prospective client; or

(2) At the time an advisory client enters into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

*b. Annual delivery.* An investment adviser, except as provided in paragraph 50.36(2)“c,” must:

(1) Deliver within 120 days of the end of its fiscal year a free, updated brochure and related brochure supplements which include or are accompanied by a summary of material changes; or

(2) Deliver a summary of material changes that includes an offer to provide a copy of the updated brochures and supplements and information on how the client may obtain a copy of the brochures and supplements, provided that advisers are not required to deliver a summary of material changes if no material changes have taken place since the last summary and brochure delivery.

*c. Exceptions to delivery.* Delivery of the brochure and related brochure supplements required by paragraphs 50.36(2)“a” and “b” need not be made to:

(1) Clients who receive only impersonal advice and who pay less than \$500 in fees per year; or

(2) An investment company registered under the Investment Company Act of 1940; or

(3) A business development company as defined in the Investment Company Act of 1940 and whose advisory contract meets the requirements of Section 15c of that Act.

*d. Electronic delivery.* Delivery of the brochure and related supplements may be made electronically if the investment adviser:

(1) In the case of an initial delivery to a potential client, obtains verification that readable copies of the brochure and supplements were received by the client;

(2) In the case of other than initial deliveries, obtains each client’s prior consent to provide the brochure and supplements electronically;

(3) Prepares the electronically delivered brochure and supplements in the format prescribed in subrule 50.36(1) and Instructions to Form ADV Part 2;

(4) Delivers the brochure and supplements in a format that can be retained by the client in either electronic or paper form; or

(5) Establishes procedures to supervise personnel transmitting the brochure and supplements and to prevent violations of this rule.

**50.36(3) Other disclosures.** Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this rule.

**50.36(4) Definitions.** For the purpose of this rule:

*a. “Contract for impersonal advisory services”* means any contract relating solely to the provision of investment advisory services:

(1) By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

(2) Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(3) Any combination of the foregoing services.

*b. “Entering into,”* in reference to an advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

This rule is intended to implement Iowa Code section 502.411(7).

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ITEM 9. Amend rule 191—50.38(502) as follows:

**191—50.38(502) Dishonest or unethical business practices of investment advisers and investment adviser representatives, or fraudulent or deceptive conduct by federal covered investment advisers. Prohibited conduct in providing investment advice.**

**50.38(1)** An investment adviser, an investment adviser representative, or a federal covered investment adviser ~~has is~~ a fiduciary and has a duty to act primarily for the benefit of its clients. ~~The federal statutory and regulatory provisions referenced in this rule apply to investment advisers and federal covered investment advisers, to the extent permitted by the NSMIA. This rule~~ Rule 191—50.38(502) applies to federal covered investment advisers to the extent that the alleged conduct is fraudulent, deceptive, or as otherwise prohibited permitted by the NSMIA.

**50.38(1) A** ~~While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser, an investment adviser representative, or a federal covered investment adviser and its clients and the circumstances of each case, an investment adviser, an investment adviser representative, or a federal covered investment adviser shall not engage in dishonest or unethical business practices or prohibited~~ fraudulent, and deceptive, or manipulative conduct including, but not limited to:

*a.* Recommending to a client to whom supervisory, management, or consulting investment advisory services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser, investment adviser representative, or federal covered investment adviser;

*b.* Exercising any discretionary power authority in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to discretionary authority, unless the discretionary power authority relates solely to the price at which, or the time when, an order for a definite amount of a specified security shall be executed, or both;

*c.* Inducing trading in a client's account trading that is excessive in size or frequency compared to the financial resources, investment objectives, and character of the account;

*d.* Placing an order to purchase or sell a security for a client account without authority to do so;

*e.* Placing an order to purchase or sell a security for a client account upon instruction of a third party without first obtaining a written third-party trading authorization from the client;

*f.* Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;

*g.* Loaning money or securities to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;

*h.* Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative, or federal covered investment adviser or any employee, or affiliated persons of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;

*i.* Providing a report or recommendation to any advisory client prepared by someone other than the investment adviser, investment adviser representative, or federal covered investment adviser without disclosing that fact. This prohibition does not apply when the investment adviser, investment adviser representative, or federal covered investment adviser uses published research reports or statistical analyses to render advice or when an investment adviser, investment adviser representative, or federal covered investment adviser orders such a report in the normal course of providing service;

*j.* Charging a client an unreasonable advisory fee;

*k.* Failing to disclose to clients in writing before any advice is rendered any material conflict of interest regarding the investment adviser, investment adviser representative, or federal covered

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investment adviser or any of its employees, or affiliated persons which could reasonably be expected to impair the rendering of unbiased and objective advice including, but not limited to:

(1) Compensation arrangements connected with investment advisory services to clients which are in addition to compensation from such clients for such services; and

(2) Charging a client an investment advisory fee for rendering advice when a ~~commission~~ compensation for ~~executing~~ effecting securities transactions pursuant to such advice will be received by the investment adviser, investment adviser representative, or federal covered investment adviser or its employees or affiliated persons;

l. While acting as principal for its own advisory account, knowingly selling any security to or purchase any security from a client, or while acting as broker-dealer for a person other than the client, knowingly effecting any sale or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which it is acting and obtaining the consent of the client to the transaction.

(1) The prohibitions of paragraph 50.38(1) "l" shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction.

(2) The prohibitions of paragraph 50.38(1) "l" shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer acts solely as an investment adviser:

1. By means of publicly distributed written materials or publicly made oral statements;

2. By means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts;

3. Through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or

4. Any combination of the foregoing services.

(3) Publicly distributed written materials or publicly made oral statements shall disclose that, if the purchaser of the advisory communication uses the investment adviser's services in connection with the sale or purchase of a security which is a subject of the communication, the investment adviser may act as principal for its own account or as agent for another person. Compliance by the investment adviser with the foregoing disclosure requirement shall not relieve the investment adviser of any other disclosure obligations under the Act.

(4) Definitions for purposes of rule 191—50.38(502):

1. "Publicly distributed written materials" means written materials which are distributed to 35 or more persons who pay for those materials.

2. "Publicly made oral statements" means oral statements made simultaneously to 35 or more persons who pay for access to those statements.

m. The prohibitions of rule 191—50.38(502) shall not apply to an investment adviser effecting an agency cross transaction for an advisory client provided the following conditions are met:

(1) The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client;

(2) Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;

(3) At or before the completion of each agency cross transaction, the investment adviser or any other person relying on paragraph 50.38(1) "m" sends the client a written confirmation. The written confirmation shall include:

1. A statement of the nature of the transaction;

2. The date the transaction took place;

3. An offer to furnish, upon request, the time when the transaction took place; and

4. The source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction. In the case of a purchase, if the investment adviser was not participating in a distribution, or, in the case of a sale, if the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has been receiving or

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will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written request;

(4) At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on paragraph 50.38(1) "m" sends each client a written disclosure statement identifying:

1. The total number of agency cross transactions for the client during the period since the date of the last such statement or summary; and

2. The total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during the period;

(5) Each written disclosure and confirmation required by paragraph 50.38(1) "m" must include a conspicuous statement indicating that the client may revoke the written consent required under subparagraph 50.38(1) "m"(1) at any time by providing written notice to the investment adviser;

(6) No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser;

(7) "Agency cross transaction for an advisory client," for purposes of paragraph 50.38(1) "m," means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. When acting in such capacity, such person is required to be registered as a broker-dealer in this state unless excluded from the definition;

(8) Nothing in paragraph 50.38(1) "m" shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling the duty with respect to the best price and execution for the particular transaction for the client, nor shall paragraph 50.38(1) "m" relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the Act;

~~*l. n.* Guaranteeing a client that a specific result will be achieved (gain or no loss) as a result of the investment adviser's services with advice rendered;~~

~~*o.* Making, in the solicitation of clients, any untrue statement of a material fact, or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which they are made, not misleading;~~

~~*m. p.* Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless disclosed with the client's consent;~~

~~*n. q.* Taking any action, directly or indirectly, regarding securities or funds in which any client has any beneficial interest when the investment adviser is has custody or possession of such securities or funds and when the action of the investment adviser or investment adviser representative is subject to and in violation of the custody requirements provided by rule 191—50.39(502);~~

~~*o.* Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses:~~

~~(1) The services to be provided;~~

~~(2) The term of the contract;~~

~~(3) The advisory fee;~~

~~(4) The formula for computing the fee;~~

~~(5) The amount of prepaid fee to be returned in the event of contract termination or nonperformance;~~

~~(6) Whether the contract grants discretionary power to the investment adviser; and~~

~~(7) That no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract;~~

~~*p. r.* Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of Section 204A of the Investment Advisers Act of 1940;~~

~~*q.* Entering into, extending, or renewing any advisory contract in violation of Section 205 of the Investment Advisers Act of 1940. This provision applies to all advisers and investment adviser~~

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

~~representatives registered or required to be registered under this Act, notwithstanding whether such adviser or investment adviser representative would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940;~~

~~r. Providing in an advisory contract any condition, stipulation, or provisions which purport to bind any person to waive compliance with any provision of this Act or of the Investment Advisers Act of 1940 or any other practice contrary to Iowa Code section 502.509(12) or Section 215 of the Investment Advisers Act of 1940;~~

~~s. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative, or unethical in violation of Section 206(4) of the Investment Advisers Act of 1940, regardless of whether the investment adviser or investment adviser representative is not registered or required to be registered pursuant to Section 203 of the Investment Advisers Act of 1940;~~

~~t. Engaging in conduct or any act, indirectly or through or by any other person, which is unlawful for such person to do directly under the provisions of this Act, its implementing rules, or order of the administrator;~~

~~u. Failing to disclose or providing incomplete disclosure to a client regarding any securities-related activities, or engaging in deceptive practices;~~

~~v. Soliciting or accepting a gift, directly or indirectly, from an unrelated customer that in the aggregate exceeds \$250 in a calendar year. A gift accepted by an immediate family member from an unrelated client shall be included in the aggregate limit. An investment adviser shall not solicit or accept from a client a gift transferred through a relative or third party to the investment adviser's benefit that would have the effect of evading this paragraph;~~

~~w. Soliciting or accepting being named as a beneficiary, executor, or trustee in a will or trust of an unrelated customer; and~~

~~x. Evading or otherwise negating the requirements of paragraph 50.38(1) "f," "g," "v," or "w" by terminating the customer relationship for the purpose of soliciting or accepting a loan or gift or being named as a beneficiary, executor or trustee in a will or trust that the agent is otherwise not permitted to solicit or accept. An investment adviser or investment adviser representative will not be in violation of this rule if the investment adviser or investment adviser representative has made a bona fide termination of the client relationship and conducted no securities-related business or other business for a period of three years with the client;~~

~~y. Engaging in conduct deemed dishonest or unethical in rule 191—50.54(502); and~~

~~z. Employing any method or tactic which uses undue pressure, force, fright, or threat, whether explicit or implied, in connection with providing investment advice, or committing any act which shows that an investment adviser or investment adviser representative has exerted undue influence over a client.~~

~~50.38(2) Except as otherwise provided in subrule 50.38(3), it shall constitute a dishonest or unethical practice within the meaning of Iowa Code section 502.412(4) "m" for any An investment adviser, or investment adviser representative, or federal covered investment adviser shall not, directly or indirectly, to use publish, circulate, or distribute any advertisement that does any one of the following:~~

~~a. Refers to any testimonial of any kind concerning the investment adviser, or investment adviser representative, or federal covered investment adviser or concerning any advice, analysis, report, or other service rendered by such investment adviser, or investment adviser representative, or federal covered investment adviser.~~

~~b. Refers to past specific recommendations of the investment adviser, or investment adviser representative, or federal covered investment adviser that were or would have been profitable to any person, except that an investment adviser, or investment adviser representative, or federal covered investment adviser may furnish or offer to furnish a list of all recommendations made by the investment adviser, or investment adviser representative, or federal covered investment adviser within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:~~

~~(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each such security.~~

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(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list.

c. Represents that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to the use of any graph, chart, formula or device.

d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation.

e. Represents that the administrator has approved any advertisement.

f. Contains any untrue statement of a material fact, or any statement that is otherwise false or misleading.

**50.38(3)** With respect to federal ~~investment~~ covered investment advisers, the provisions of ~~this rule~~ subrule 50.38(2) apply only to the extent permitted by Section 203A of the Investment Advisers Act of 1940.

**50.38(4)** For the purposes of ~~this rule~~ subrule 50.38(2), the term "advertisement" shall include any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

a. Any analysis, report, or publication concerning securities.

b. Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

c. Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

d. Any other investment advisory service with regard to securities.

This rule is intended to implement Iowa Code section ~~502.412(4)~~ "m." 502.502(2).

ITEM 10. Rescind subrules 50.39(1) and 50.39(2) and adopt the following **new** subrules in lieu thereof:

**50.39(1)** *Safekeeping required.* It is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business for an investment adviser, registered or required to be registered, to have custody of client funds or securities unless the following conditions are met:

a. *Notice to administrator.* The investment adviser notifies the administrator promptly in writing that the investment adviser has or may have custody. Such notification is required to be given on Form ADV.

b. *Qualified custodian.* A qualified custodian maintains those funds and securities:

(1) In a separate account for each client under that client's name; or

(2) In accounts that contain only the investment adviser's clients' funds and securities, under the investment adviser's name as agent or trustee for the clients, or, in the case of a pooled investment vehicle that the investment adviser manages, in the name of the pooled investment vehicle.

c. *Notice to clients.* If an investment adviser opens an account with a qualified custodian on its client's behalf, under the client's name, under the name of the investment adviser as agent, or under the name of a pooled investment vehicle, the investment adviser must notify the client in writing of the qualified custodian's name and address and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information. If the investment adviser sends account statements to a client to whom the investment adviser is required to provide this notice, the investment adviser must include in the notification provided to that client and in any subsequent account statement the investment adviser sends that client a statement urging the client to compare the account statements from the custodian with those from the investment adviser.

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*d. Account statements.* The investment adviser has a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which the qualified custodian maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period.

*e. Special rule for limited partnerships and limited liability companies.* If the investment adviser or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle):

(1) The account statements required under paragraph 50.39(1) “d” must be sent to each limited partner (or member or other beneficial owner); and

(2) The investment adviser must:

1. Enter into a written agreement with an independent party who is obliged to act in the best interest of the limited partners, members, or other beneficial owners to review all fees, expenses and capital withdrawals from the pooled accounts; and

2. Send all invoices or receipts to the independent party, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the independent party can:

- Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and

- Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.

*f. Independent verification.* The client funds and securities of which the investment adviser has custody are verified by actual examination at least once during each calendar year, by an independent certified public accountant (CPA), pursuant to a written agreement between the investment adviser and the independent CPA, at a time that is chosen by the independent CPA without prior notice or announcement to the investment adviser and that is irregular from year to year. The written agreement must provide for the first examination to occur within six months of execution of the written agreement, except that, if the investment adviser maintains client funds or securities pursuant to rule 191—50.38(502) as a qualified custodian, the agreement must provide for the first examination to occur no later than six months after the investment adviser obtains the internal control report. The written agreement must require the independent CPA to:

(1) File a certificate on Form ADV-E with the administrator within 120 days of the time chosen by the independent CPA in paragraph 50.39(1) “f,” stating that the independent CPA has examined the funds and securities and describing the nature and extent of the examination;

(2) Notify the administrator within one business day of the finding of any material discrepancies during the course of the examination, by means of a facsimile transmission or electronic mail, followed by first-class mail, directed to the attention of the administrator; and

(3) File within four business days of the resignation or dismissal from, or other termination of, the engagement, or removing itself or being removed from consideration for being reappointed, Form ADV-E accompanied by a statement that includes:

1. The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent CPA; and

2. An explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

*g. Investment advisers acting as qualified custodians.* If the investment adviser maintains, or if the investment adviser has custody because a related person maintains, client funds or securities pursuant to rule 191—50.39(502) as a qualified custodian in connection with advisory services the investment adviser provides to clients:

(1) The independent CPA that the investment adviser retains to perform the independent verification required by paragraph 50.39(1) “f” must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and

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(2) The investment adviser must obtain, or receive from its related person, within six months of execution of the written agreement and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent CPA.

1. The internal control report must include an opinion of an independent CPA as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the investment adviser or a related person on behalf of the investment adviser's clients, during the year;

2. The independent CPA must verify that the funds and securities are reconciled to a custodian other than the investment adviser or the investment adviser's related person; and

3. The independent CPA must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules.

*h. Independent representatives.* A client may designate an independent representative to receive, on the client's behalf, notices and account statements as required under paragraphs 50.39(1) "c" and "d."

**50.39(2) Exceptions.**

*a. Shares of mutual funds.* With respect to shares of an open-end company as defined in Section 5(a)(1) of the Investment Company Act of 1940 ("mutual fund"), the investment adviser may use the mutual fund transfer agent in lieu of a qualified custodian for purposes of complying with subrule 50.39(1).

*b. Certain privately offered securities.*

(1) The investment adviser is not required to comply with paragraph 50.39(1) "b" with respect to securities that are:

1. Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

2. Uncertificated and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and

3. Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(2) Notwithstanding subparagraph 50.39(2) "b"(1), the provisions of paragraph 50.39(2) "b" are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in paragraph 50.39(2) "d," and the investment adviser notifies the administrator in writing that the investment adviser intends to provide audited financial statements, as described in this subparagraph. Such notification is required to be provided on Form ADV.

*c. Fee deduction.* Notwithstanding paragraph 50.39(1) "f," an investment adviser is not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if all of the following conditions are met:

(1) The investment adviser has custody of the funds and securities solely as a consequence of its authority to make withdrawals from client accounts to pay its advisory fee;

(2) The investment adviser has written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

(3) Each time a fee is directly deducted from a client account, the investment adviser concurrently:

1. Sends the independent party designated pursuant to subparagraph 50.39(1) "e"(2) an invoice or statement of the amount of the fee to be deducted from the client's account; and

2. Sends the client an invoice or statement itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management on which the fee is based, and the time period covered by the fee; and

(4) The investment adviser notifies the administrator in writing that the investment adviser intends to use the safeguards provided in paragraph 50.39(2) "c." Such notification is required to be given on Form ADV.

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

*d. Limited partnerships subject to annual audit.* An investment adviser is not required to comply with paragraphs 50.39(1) “c” and “d” and shall be deemed to have complied with paragraph 50.39(1) “f” with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) if each of the following conditions are met:

(1) The adviser sends to all limited partners (or members or other beneficial owners), at least quarterly, a statement showing:

1. The total amount of all additions to and withdrawals from the fund as a whole as well as the opening and closing value of the fund at the end of the quarter based on the custodian’s records;

2. A listing of all long and short positions on the closing date of the statement in accordance with the Financial Accounting Standards Board, Rule ASC 946-210-50; and

3. The total amount of additions to and withdrawals from the fund by the investor as well as the total value of the investor’s interest in the fund at the end of the quarter;

(2) At least annually the fund is subject to an audit and distributes the fund’s audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the administrator within 120 days of the end of the fund’s fiscal year;

(3) The audit is performed by an independent CPA that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules;

(4) Upon liquidation, the adviser distributes the fund’s final audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the administrator promptly after the completion of such audit;

(5) The written agreement with the independent CPA must require the independent CPA, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, to notify the administrator within four business days accompanied by a statement that includes:

1. The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent CPA; and

2. An explanation of any problems relating to audit scope or procedure that contributed to such resignation, dismissal, removal, or other termination;

(6) The investment adviser must also notify the administrator in writing that the investment adviser intends to employ the use of the statement delivery and audit safeguards described in paragraph 50.39(2) “d.” Such notification is required to be given on Form ADV.

*e. Registered investment companies.* The investment adviser is not required to comply with rule 191—50.39(502) with respect to the account of an investment company registered under the Investment Company Act of 1940.

ITEM 11. Renumber subrule **50.39(3)** as **50.39(4)**.

ITEM 12. Adopt the following **new** subrule 50.39(3):

**50.39(3) Delivery to related persons.** Sending an account statement under paragraph 50.39(1) “e” or distributing audited financial statements under paragraph 50.39(2) “d” shall not satisfy the requirements of rule 191—50.39(502) if such account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are related persons of the investment adviser.

ITEM 13. Amend renumbered subrule 50.39(4) as follows:

**50.39(4) Definitions.** For the purposes of this rule:

*a. “Control” means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise. Control includes the following:*

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(1) Each of the investment adviser's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the investment adviser;

(2) A person is presumed to control a corporation if the person:

1. Directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or

2. Has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities;

(3) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership;

(4) A person is presumed to control a limited liability company if the person:

1. Directly or indirectly has the right to vote 25 percent or more of a class of the interests of the limited liability company;

2. Has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the limited liability company; or

3. Is an elected manager of the limited liability company; or

(5) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

a. *b.* "Custody" means holding, directly or indirectly, client funds or securities, having any authority to obtain possession of client funds or securities, or having the ability to appropriate client funds or securities. The investment adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients. "Custody" includes:

(1) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in no case later than within three business days following inadvertent receipt of receiving them and the investment adviser maintains the records required under paragraph 50.42(1) "v";

(2) Receipt of checks drawn by clients and made payable to unrelated third parties, the record of which is maintained by the investment adviser in compliance with paragraph 50.42(1) "v" unless forwarded to the third party within 24 hours of receipt;

(3) (2) Any arrangement including, but not limited to, a general power of attorney pursuant to which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction; and

(4) (3) Any capacity including, but not limited to, general partner of a limited partnership, managing member of a limited liability company, a comparable position for another type of pooled investment vehicle, or trustee of a trust that gives the investment adviser or a person supervised by the investment adviser legal ownership of or access to client funds or securities.

(4) Receipt of checks drawn by clients and made payable to third parties will not meet the definition of custody if forwarded to the third party within three business days of receipt and the investment adviser maintains the records required under paragraph 50.42(1) "v."

c. "Independent certified public accountant" means a certified public accountant that meets the standards of independence described in Rule 2-01(b) and (c) of Regulation S-X (17 CFR 210.2-01(b) and (c)).

b. *d.* "Independent representative" means a person who:

(1) Acts as agent for an advisory client including, in the case of a pooled investment vehicle, limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle, and who is by law or contract required to act in the best interest of the advisory client or the limited partners or members, or other beneficial owners;

(2) Does not control, is not controlled by, and is not under common control with the investment adviser; and

(3) Does not have and has not had within the past two years a material business relationship with the investment adviser.

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*e. e.* “*Qualified custodian*” means the following independent institutions or entities that are not affiliated with the investment adviser by any direct or indirect common control and have not had a material business relationship with the investment adviser in the previous two years:

(1) A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;

(2) A ~~registered~~ broker-dealer registered in Iowa and with the SEC holding client assets in customer accounts;

(3) A registered futures commission merchant registered pursuant to Section 4(f)(a) of the Commodity Exchange Act that is holding client funds and security futures or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon in customer accounts; and

(4) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients’ assets in customer accounts segregated from its proprietary assets.

*f.* “*Related person*” means any person, directly or indirectly, controlling or controlled by the investment adviser, and any person that is under common control with the investment adviser.

ITEM 14. Amend rule 191—50.40(502) as follows:

**191—50.40(502) Minimum financial requirements for investment advisers.**

**50.40(1)** An investment adviser registered or required to be registered under the Act that has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000 except:

*a.* An investment adviser that has custody solely due to direct fee deduction and that is also in compliance with the applicable safekeeping requirements of paragraph ~~50.39(1)“d”~~ 50.39(2)“c” and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the net worth requirements of this rule; and

*b.* An investment adviser having custody solely due to advising pooled investment vehicles and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)“e” or ~~50.39(2)“e”~~ 50.39(2)“d” and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the net worth requirements of this rule;

*c.* ~~An investment adviser having custody solely due to meeting the definition of custody as defined by subparagraph 50.39(3)“a”(3) and that is in compliance with the applicable safekeeping requirements of rule 191—50.39(502) is not required to comply with the net worth requirements of this rule;~~

*d.* ~~An investment adviser having custody solely by meeting the definition of custody as defined by subparagraph 50.39(3)“a”(4) and that is in compliance with the safekeeping requirements of rule 191—50.39(502) is not required to comply with the net worth requirements of this rule; and~~

*e.* ~~An investment adviser having custody solely due to serving as a trustee and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)“f” and the record-keeping requirements of subrule 50.42(4) is not required to comply with the net worth requirements of this rule.~~

**50.40(2)** An investment adviser registered or required to be registered pursuant to the Act that has discretionary authority over client funds or securities but does not have ~~minimum net worth requirements due to the custody exceptions of subrule 50.40(1)~~ custody of client funds or securities shall maintain a minimum net worth of \$10,000 at all times.

**50.40(3)** An investment adviser registered or required to be registered pursuant to the Act ~~that accepts payment of more than \$500 from a client six or more months in advance of providing services~~ shall maintain a positive net worth at all times.

**50.40(4) to 50.40(6)** No change.

**50.40(7)** For purposes of this rule:

*a.* “Net worth” means an excess of assets over liabilities calculated in accordance with generally accepted accounting principles. The calculation of assets shall not include the following: prepaid expenses (except those prepaid expenses classified as assets under generally accepted accounting principles); deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, and all other assets of intangible nature; in

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the case of an individual, home(s), home furnishings, automobile(s), or any other personal items not readily marketable; in the case of a corporation, advances or loans to stockholders or officers; and in the case of a partnership, advances or loans to partners.

*b.* “Custody” means the same as defined in paragraph 50.39(3)“*a.*” 50.39(4)“*b.*”

*c.* No change.

This rule is intended to implement Iowa Code section 502.411(1).

ITEM 15. Amend rule 191—50.41(502) as follows:

**191—50.41(502) Bonding requirements for investment advisers.**

**50.41(1)** Every investment adviser registered or required to be registered under the Act:

*a.* having Having custody of or discretionary authority over client funds or securities shall be bonded in an amount determined by the administrator based upon the number of clients and the total assets under management of the investment adviser ~~except;~~ and

~~*a.*—An investment adviser that has custody solely due to direct fee deduction and that is also in compliance with the applicable safekeeping requirements of paragraph 50.39(1)“*d.*” and the record-keeping requirements of rule 191—50.42(502) is not required to comply with bonding requirements of this rule;~~

~~*b.* An investment adviser that has Having custody of or discretionary authority over client funds or securities ~~that~~ when the investment adviser does not meet the minimum net worth standard provisions of subrules 50.40(1) and 50.40(2) must be bonded in the amount of the net worth deficiency rounded up to the nearest \$5,000;~~

~~*e.*—An investment adviser having custody solely due to advising pooled investment vehicles and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)“*e.*” and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the bonding requirements of this rule;~~

~~*d.*—An investment adviser having custody solely due to meeting the definition of “custody” as defined by subparagraph 50.39(3)“*a.*”(3) and that is in compliance with the applicable safekeeping requirements of rule 191—50.39(502) is not required to comply with the bonding requirements of this rule;~~

~~*e.*—An investment adviser having custody solely by meeting the definition of “custody” as defined by subparagraph 50.39(3)“*a.*”(4) and that is in compliance with the safekeeping requirements of rule 191—50.39(502) is not required to comply with the bonding requirements of this rule;~~

~~*f.*—An investment adviser having custody solely due to serving as a trustee and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)“*f.*” and the record-keeping requirements of subrule 50.42(4) is not required to comply with the bonding requirements of this rule.~~

**50.41(2)** and **50.41(3)** No change.

**50.41(4)** For purposes of this rule, “custody” means the same as defined in paragraph 50.39(3)“*a.*” 50.39(4)“*b.*”

This rule is intended to implement Iowa Code section 502.411(5).

ITEM 16. Amend subrules 50.42(1) to 50.42(3) as follows:

**50.42(1)** An investment adviser registered or required to be registered pursuant to the Act shall make and keep true, accurate and current the following books, ledgers and records:

*a.* to *d.* No change.

*e.* All invoices, bills, or statements ~~of expenses or debts~~, or copies of those documents, relating to the investment adviser’s business as an investment adviser regardless of whether the expense or debt is paid or unpaid.

*f.* All trial balances, financial statements ~~prepared in accordance with generally accepted accounting principles~~, and internal audit working papers relating to the investment adviser’s business as an investment adviser. For the purposes of this paragraph, “financial statements” means a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement, and a net worth computation, if applicable, as required by subrule 50.40(7).

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g. to k. No change.

l. Transactions involving beneficial ownership.

(1) A record of every transaction in a security in which the investment adviser or any advisory representative of the investment adviser has or by reason of any transaction acquires a direct or indirect beneficial ownership, except the following:

1. ~~transactions~~ Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

2. ~~transactions~~ Transactions in securities which are direct obligations of the United States.

(1) (2) The required record shall state, at a minimum, the title and amount of the security involved, the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition), the price at which the transaction was effected, and the name of the bank or broker-dealer with or through which the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction must be recorded no later than ten days after the end of the calendar quarter in which the transaction was effected. An investment adviser shall not be in violation of this paragraph because of a failure to record securities transactions of an advisory representative if the investment adviser establishes that the investment adviser instituted adequate procedures and used reasonable diligence to promptly obtain reports of all transactions required by this paragraph to be recorded.

(2) ~~For purposes of this paragraph, the following definitions shall apply:~~

~~“Advisory representative” means any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with the employee’s duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:~~

1. ~~Any person in a control relationship to the investment adviser;~~
2. ~~Any affiliated person of a controlling person; and~~
3. ~~Any affiliated person of an affiliated person.~~

~~“Control” means the power to exercise a controlling influence over the management or policies of a company, unless such power results solely from an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.~~

m. Notwithstanding the provisions of paragraph 50.42(1)“l,” when the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

(1) No change.

(2) Transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved, the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition), the price at which it was effected, and the name of the broker-dealer or bank with or through which the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected. An investment adviser shall not be deemed to have violated the provisions of this subparagraph because of a failure to record securities transactions of an advisory representative if the investment adviser establishes that the investment adviser instituted adequate procedures and used reasonable diligence to promptly obtain reports of all transactions required

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to be recorded. ~~The terms “advisory representative” and “control” shall mean the same as defined in paragraph “l.”~~

*n.* to *s.* No change.

*t.* A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization pertaining to the investment adviser or ~~any its investment adviser representative representatives~~, as defined by ~~paragraph 50.42(1)“l,”~~ subrule 50.42(11), including but not limited to all applications, amendments, renewal filings, and correspondence.

*u.* No change.

*v.* For each transaction in which the investment adviser inadvertently held or obtained the client's securities or funds and returned them to the client within three business days of receipt or forwarded a ~~third party check drawn by a client and made payable to a third party~~ within ~~24 hours~~ three business days of receipt, a ledger or list of all funds or securities held or obtained with the following information:

(1) to (10) No change.

*w.* ~~For each security exempted from the custody rules by paragraph 50.39(2)“b”~~ If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving a public offering that comply with the exception from custody in paragraph 50.39(2)“b,” the adviser shall keep:

(1) and (2) No change.

**50.42(2)** In addition to the retention requirements of subrule 50.42(1), an investment adviser having custody of client funds or securities, as defined by paragraph ~~50.39(3)“a,”~~ 50.39(3)“b,” shall retain the following records:

*a.* Copies of all documents executed by each client, including but not limited to a limited power of attorney, pursuant to which the investment adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian;

*b.* to *h.* No change.

**50.42(3)** An investment adviser deemed, ~~pursuant to paragraph 50.39(2)“e,”~~ to have custody of client securities or funds because the investment adviser advises a pooled investment vehicle shall, in addition to any other applicable record retention requirements, keep the following records:

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

ITEM 17. Rescind subrule **50.42(4)**.

ITEM 18. Renumber subrules **50.42(5)** to **50.42(12)** as **50.42(4)** to **50.42(11)**.

ITEM 19. Amend renumbered subrule 50.42(5) as follows:

**50.42(5)** Records required to be retained pursuant to rule 191—50.42(502) shall be kept as follows:

*a.* Except as provided in paragraphs ~~50.42(6)“b” to “e,”~~ 50.42(1)“k” and “p,” all records required to be made under subrules 50.42(1) to 50.42(3) and paragraph 50.42(4)“a” shall be maintained and preserved in a readily accessible location for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, with no less than the first two years being kept in the principal office of the investment adviser.

*b.* to *d.* No change.

*e.* Notwithstanding other record preservation requirements of rule 191—50.42(502), an investment adviser that has rendered or renders investment advisory services shall maintain at all times the following records at the investment adviser's business location at all times from which the customer or client is being provided or has been provided investment advisory services during the applicable retention period:

(1) and (2) No change.

ITEM 20. Amend rule 191—50.43(502) as follows:

**191—50.43(502) Financial reporting requirements for investment advisers.**

**50.43(1)** Every registered investment adviser that has custody of client funds or securities or requires payment of advisory fees six months or more in advance and in excess of \$500 per client shall file with

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the administrator an audited balance sheet as of the end of the investment adviser's fiscal year, ~~except~~  
Each balance sheet filed pursuant to this rule must be:

a. Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;

b. Audited by an independent certified public accountant; and

c. Accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare the opinion, the basis of included securities, and any other explanations required for clarity.

~~a. An investment adviser that has custody solely due to direct fee deduction and that is also in compliance with the applicable safekeeping requirements of paragraph 50.39(1)"d" and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the financial reporting requirements of this rule;~~

~~b. An investment adviser that has custody solely due to advising pooled investment vehicles and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)"e" or 50.39(2)"e" and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the financial reporting requirements of this rule; and~~

~~c. An investment adviser that has custody solely due to serving as a trustee and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)"f" and the record-keeping requirements of subrule 50.42(4) is not required to comply with the financial reporting requirements of this rule.~~

**50.43(2)** Every registered investment adviser that has discretionary authority over, but not custody of, client funds or securities shall file with the administrator a balance sheet, which need not be audited, but which must be prepared in accordance with generally accepted accounting principles or such other basis of accounting acceptable to the administrator and represented by the investment adviser or the person who prepared the statement as true and accurate, as of the end of the investment adviser's fiscal year.

~~**50.43(3)** Each balance sheet filed pursuant to this rule must be:~~

~~a. Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;~~

~~b. Audited by an independent certified public accountant; and~~

~~c. Accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare the audit, the basis of included securities, and any other explanations required for clarity.~~

~~**50.43(4)** **50.43(3)** The financial statements required by this rule shall be filed with the administrator within 90 days following the end of the investment adviser's fiscal year.~~

~~**50.43(5)** **50.43(4)** Every investment adviser that has its principal place of business in a state other than this state shall file only such reports as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's financial reporting requirements.~~

~~This rule is intended to implement Iowa Code section 502.411(2).~~

ITEM 21. Adopt the following new rule 191—50.45(502):

**191—50.45(502) Registration exemption for investment advisers to private funds.**

**50.45(1) Definitions.** For purposes of this rule, the following definitions shall apply:

"3(c)(1) fund" means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under Section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c)(1).

"Private fund adviser" means an investment adviser who provides advice solely to one or more qualifying private funds.

"Qualifying private fund" means a private fund that meets the definition of a qualifying private fund in SEC Rule 203(m)-1, 17 CFR § 275.203(m)-1.

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

“*Value of primary residence*” means the fair market value of a person’s primary residence, less the amount of debt secured by the property up to its fair market value.

“*Venture capital fund*” means a private fund that meets the definition of a venture capital fund in SEC Rule 203(l)-1, 17 CFR § 275.203(l)-1.

**50.45(2) Exemption for private fund advisers.** Subject to the additional requirements of subrule 50.45(3), a private fund adviser shall be exempt from the registration requirements of Iowa Code section 502.403 if the private fund adviser satisfies each of the following conditions:

a. Neither the private fund adviser nor any of its advisory affiliates are subject to a disqualification as described in Rule 262 of SEC Regulation A, 17 CFR § 230.262;

b. The private fund adviser files with the state each report and amendment thereto that an exempt reporting adviser is required to file with the SEC pursuant to SEC Rule 204-4, 17 CFR § 275.204-4;

c. The private fund adviser pays any applicable fees.

**50.45(3) Additional requirements for private fund advisers to certain 3(c)(1) funds.** In order to qualify for the exemption described in subrule 50.45(2), a private fund adviser who advises at least one 3(c)(1) fund that is not a venture capital fund shall, in addition to satisfying each of the conditions specified in paragraph 50.45(3)“b,” comply with the following requirements:

a. The private fund adviser shall advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person’s net worth, would each meet the definition of a qualified client in SEC Rule 205-3, 17 CFR § 275.205-3, at the time the securities are purchased from the issuer.

b. At the time of purchase, the private fund adviser shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:

(1) All services, if any, to be provided to individual beneficial owners;

(2) All duties, if any, the private fund adviser owes to the beneficial owners; and

(3) Any other material information affecting the rights or responsibilities of the beneficial owners.

c. The private fund adviser shall obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.

**50.45(4) Federal covered investment advisers.** If a private fund adviser is registered with the SEC, the adviser shall not be eligible for this exemption and shall comply with the state notice filing requirements applicable to federal covered investment advisers.

**50.45(5) Investment adviser representatives.** A person is exempt from the registration requirements if the person is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to rule 191—50.45(502) and does not otherwise act as an investment adviser representative.

**50.45(6) Electronic filing.** The report filings described in paragraph 50.45(2)“b” shall be made electronically through the IARD. A report shall be deemed filed when the report and the fee required are filed and accepted by the IARD on the state’s behalf.

**50.45(7) Transition.** An investment adviser that becomes ineligible for the exemption provided by rule 191—50.45(502) must comply with all applicable laws and rules requiring registration or notice filing within 90 days from the date the investment adviser’s eligibility for this exemption ceases.

**50.45(8) Grandfathering for investment advisers to 3(c)(1) funds with nonqualified clients.** An investment adviser to a 3(c)(1) fund (other than a venture capital fund) that has one or more beneficial owners who are not qualified clients as described in paragraph 50.45(3)“a” is eligible for the exemption contained in subrule 50.45(2) if the following conditions are satisfied:

a. The subject fund existed prior to [the effective date of this rule];

b. As of [the effective date of this rule], the subject fund ceases to accept beneficial owners who are not qualified clients, as described in paragraph 50.45(3)“a”;

c. The investment adviser discloses in writing the information described in paragraph 50.45(3)“b” to all beneficial owners of the fund; and

INSURANCE DIVISION[191](cont'd)

*d.* As of [the effective date of this rule], the investment adviser delivers audited financial statements as required by paragraph 50.43(3)“c.”

This rule is intended to implement Iowa Code section 502.403.

ITEM 22. Adopt the following new rule 191—50.46(502):

**191—50.46(502) Contents of investment advisory contract.** The provisions of this rule shall apply to federal covered investment advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996.

**50.46(1)** It is unlawful for any investment adviser, investment adviser representative, or federal covered investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:

*a.* The services to be provided, the term of the contract, the investment advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of termination or nonperformance of the contract, and any grant of discretionary power to the investment adviser, investment adviser representative, or federal covered investment adviser;

*b.* That no direct or indirect assignment or transfer of the contract may be made by the investment adviser, investment adviser representative, or federal covered investment adviser without the consent of the client or other party to the contract;

*c.* That the investment adviser, investment adviser representative, or federal covered investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

*d.* That the investment adviser, investment adviser representative, or federal covered investment adviser, if a partnership, shall notify the client or other party to the investment contract of any change in the membership of the partnership within a reasonable time after the change.

**50.46(2)** It is unlawful for any investment adviser, investment adviser representative, or federal covered investment adviser to:

*a.* Include in an advisory contract any condition, stipulation, or provisions binding any person to waive compliance with any provision of this Act or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940; or

*b.* Enter into, extend or renew any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers and investment adviser representatives registered or required to be registered under this Act, notwithstanding whether such adviser or representative would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940.

**50.46(3)** Notwithstanding paragraph 50.46(1)“c,” an investment adviser may enter into, extend or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if the conditions in paragraphs 50.46(3)“a” to “d” are met.

*a.* The client entering into the contract must be:

(1) A natural person or a company that, immediately after entering into the contract, has at least \$750,000 under the management of the investment adviser; or

(2) A person that the investment adviser and its investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or a company whose net worth, at the time the contract is entered into, exceeds \$1,500,000. The net worth of a natural person may include assets held jointly with that person’s spouse.

*b.* The compensation paid to the investment adviser with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:

(1) In the case of securities for which market quotations are readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 (definition of “current net asset value” for use in computing periodically the current price of redeemable security), the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period;

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

(2) In the case of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, the formula must include:

1. The realized capital losses of securities over the period; and
2. If the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and

(3) The formula must provide that any compensation paid to the investment adviser under paragraph 50.46(3) "b" is based on the gains less the losses (computed in accordance with subparagraphs 50.46(3) "b"(1) and (2)) in the client's account for a period of not less than one year.

c. Before entering into the advisory contract and in addition to the requirements of Form ADV, the investment adviser must disclose in writing to the client or the client's independent agent all material information concerning the proposed advisory arrangement, including the following:

(1) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

(2) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

(3) The periods which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

(4) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and

(5) When the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, how the securities will be valued and the extent to which the valuation will be independently determined.

d. The investment adviser (and any investment adviser representative) that enters into the contract must reasonably believe, immediately before entering into the contract, that the contract represents an arm's length arrangement between the parties and that the client (or in the case of a client which is a company as defined in paragraph 50.46(6) "d," the person representing the company), alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a partner, director, officer or an employee of the company or of the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in paragraph 50.46(6) "c."

**50.46(4)** Any person entering into or performing an investment advisory contract under rule 191—50.46(502) is not relieved of any obligations under rule 191—50.38(502) or any other applicable provision of the Act or any rule or order thereunder.

**50.46(5)** Nothing in rule 191—50.46(502) shall relieve a client's independent agent from any obligation to the client under applicable law.

**50.46(6)** The following definitions apply for purposes of rule 191—50.46(502):

a. "*Affiliate*" shall have the same definition as in Section 2(a)(3) of the Investment Company Act of 1940.

b. "*Assignment*," as used in paragraph 50.46(1) "b," includes, but is not limited to, any transaction or event that results in any change to the individuals or entities with the power, directly or indirectly, to direct the management or policies of, or to vote more than 50 percent of any class of voting securities of, the investment adviser or federal covered investment adviser as compared to the individuals or entities that had such power as of the date when the contract was first entered into, extended or renewed.

c. "*Client's independent agent*" means any person who agrees to act as an investment advisory client's agent in connection with the contract. "Client's independent agent" does not include:

- (1) The investment adviser relying on rule 191—50.46(502);
- (2) An affiliated person of the investment adviser or an affiliated person of an affiliated person of the investment adviser including an investment adviser representative;
- (3) An interested person of the investment adviser;

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

(4) A person who receives, directly or indirectly, any compensation in connection with the contract from the investment adviser, an affiliated person of the investment adviser, an affiliated person of an affiliated person of the investment adviser or an interested person of the investment adviser; or

(5) A person with any material relationship between the person (or an affiliated person of that person) and the investment adviser (or an affiliated person of the investment adviser) that exists, or has existed at any time during the past two years.

*d. "Company"* means a corporation, partnership, association, joint stock company, trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under Title 11 of the United States Code, or similar official or any liquidating agent for any of the foregoing, in the liquidating agent's capacity as such. "Company" shall not include:

(1) A company required to be registered under the Investment Company Act of 1940 but which is not so registered;

(2) A private investment company is an entity which would be defined as an investment company under Section 3(a) of the Investment Company Act of 1940 but for the exception from that definition provided by Section 3(c)(1) of that Act;

(3) An investment company registered under the Investment Company Act of 1940; or

(4) A business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, unless each of the equity owners of any such company, other than the investment adviser entering into the contract, is a natural person or a company within the meaning of "company."

*e. "Interested person"* means:

(1) Any member of the immediate family of any natural person who is an affiliated person of the investment adviser;

(2) Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment adviser or by a controlling person of the investment adviser if that beneficial or legal interest exceeds:

1. One-tenth of one percent of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser; or

2. Five percent of the total assets of the person seeking to act as the client's independent agent; or

(3) Any person or partner or employee of any person who has acted as legal counsel for the investment adviser within the past two years.

ITEM 23. Amend subrule 50.53(7) as follows:

**50.53(7)** Notwithstanding any statutory confidentiality provision, the administrator may share information with the CSRU college student aid commission for the sole purpose of identifying applicants or registrants subject to enforcement pursuant to Iowa Code section 261.126.

ITEM 24. Renumber rule **191—50.54(502)** as **191—50.55(502)**.

ITEM 25. Adopt the following new rule 191—50.54(272D):

**191—50.54(272D) Denial, suspension or revocation of agent or investment adviser representative registration for failure to pay state debt.**

**50.54(1)** Upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue (CCU), the administrator shall issue a notice to a securities agent or investment adviser representative applicant or registrant that any pending application for registration will be denied or any current registration will be suspended or revoked 60 days after the date of the notice. The notice shall be served by restricted certified mail, return receipt requested, or by personal service as provided by the Iowa Rules of Civil Procedure, unless the applicant or registrant accepts service personally or through authorized counsel.

**50.54(2)** The administrator shall provide the applicant or registrant with a copy of the certificate of noncompliance and shall provide a notice advising the applicant that:

*a.* The administrator intends to deny an application or to suspend or revoke a registration due to receipt of a certificate of noncompliance from the CCU;

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

b. The applicant or registrant must contact the CCU to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance;

c. Unless the CCU furnishes a withdrawal of a certificate of noncompliance to the administrator within 60 days of issuance of the notice, the application shall be denied or the registration shall be suspended or revoked;

d. The applicant or registrant does not have a right to a hearing before the administrator, but may file an application for hearing in district court pursuant to Iowa Code section 272D.9; and

e. The filing of an application for hearing with the district court will stay the proceedings of the division.

**50.54(3)** The filing of an application for hearing with the district court under Iowa Code section 272D.9 automatically stays action of the administrator until the administrator is notified of the resolution of the application.

**50.54(4)** If the administrator does not receive a withdrawal of the certificate of noncompliance from the CCU or a notice that an application for district court hearing has been filed, the administrator shall deny, suspend or revoke the application or registration 60 days after the notice prescribed in subrule 50.54(2) is issued.

**50.54(5)** Upon receiving a withdrawal of the certificate of noncompliance from the CCU, the administrator shall immediately halt action to deny an application or suspend or revoke a registration. The applicant or registrant shall be notified that action has been halted. If the application has already been denied or if a registration has already been suspended or revoked, the applicant or former registrant shall reapply for registration. The application shall be granted if the individual is otherwise in compliance with applicable laws, rules, regulations and orders.

**50.54(6)** All application fees must be paid by the applicant before a registration will be issued after the administrator has denied, suspended, or revoked a registration pursuant to Iowa Code chapter 272D.

**50.54(7)** Notwithstanding any statutory confidentiality provision, the administrator may share information with the CCU for the sole purpose of identifying applicants or registrants subject to enforcement pursuant to Iowa Code chapter 272D.

This rule is intended to implement Iowa Code chapter 272D.

ITEM 26. Amend rule 191—50.66(502) as follows:

**191—50.66(502) NASAA guidelines and statements of policy.**

**50.66(1)** No change.

**50.66(2)** *Registration of oil and gas programs.* All oil and gas programs filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Oil and Gas Programs, which were initially adopted by the NASAA membership on September 22, 1976, as amended on October 12, 1977; October 31, 1979; April 23, 1983; July 1, 1984; September 3, 1987; September 14, 1989; October 24, 1991; ~~and~~ May 7, 2007; and May 6, 2012; and published in CCH NASAA Reports at paragraph 2621.

**50.66(3)** and **50.66(4)** No change.

**50.66(5)** *Registration of commodity pool programs.* All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Commodity Pool Programs as adopted by the NASAA membership on September 21, 1983, effective January 1, 1984, amended August 30, 1990, amended May 7, 2007, amended May 6, 2012, and published in CCH NASAA Reports at paragraph 1201.

**50.66(6)** *Registration of equipment programs.* All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Equipment Programs as adopted by the NASAA membership on November 20, 1986, effective January 1, 1987, amended April 22, 1988, October 24, 1991, ~~and~~ May 7, 2007, and May 6, 2012, and published in CCH NASAA Reports at paragraph 1601.

**50.66(7)** to **50.66(9)** No change.

INSURANCE DIVISION[191](cont'd)

**50.66(10) *Corporate securities definitions.*** For securities registration purposes, the administrator adopts the various definitions set out in the NASAA Statement of Policy Regarding Corporate Securities Definitions as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and March 31, 2008, and published in CCH NASAA Reports at paragraph 3812.

**50.66(11) *Impoundment of proceeds.*** When an impoundment of proceeds is necessary, it shall substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding the Impoundment of Proceeds as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and March 31, 2008, and published in CCH NASAA Reports at paragraph 2151.

**50.66(12) *Loans and other material affiliated transactions.*** When there have been or will be loans or other material affiliated transactions, the transactions shall substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Loans and Other Material Affiliated Transactions as amended by the NASAA membership on April 27, 1997, and March 31, 2008, and published in CCH NASAA Reports at paragraph 374.

**50.66(13) *Options and warrants.*** The issuance of options and warrants may be allowed by the administrator if the issuance is in substantial compliance, as determined by the administrator, with the NASAA Statement of Policy Regarding Options and Warrants as ~~amended~~ adopted by the NASAA membership on November 17, 1997, and as amended September 28, 1999, and as amended March 31, 2008, and published in CCH NASAA Reports at paragraph 2801.

**50.66(14) *Preferred stock.*** A public offering of preferred stock may be allowed by the administrator if the offering substantially complies, as determined by the administrator, with the NASAA Statement of Policy Regarding Preferred Stock as ~~amended~~ adopted by the NASAA membership on April 27, 1997, and as amended March 31, 2008, and published in CCH NASAA Reports at paragraph 3001.

**50.66(15) *Promotional shares.*** The registration of a security may include promotional shares if it substantially complies, as determined by the administrator, with the NASAA Statement of Policy Regarding Promotional Shares as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and March 31, 2008, and published in CCH NASAA Reports at paragraph 3201.

**50.66(16)** No change.

**50.66(17) *Unsound financial condition.*** An issuer may be deemed to be in an unsound financial condition if it substantially meets, as determined by the administrator, the conditions provided within the NASAA Statement of Policy Regarding Unsound Financial Condition as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and March 31, 2008, and published in CCH NASAA Reports at paragraph 3821.

**50.66(18) *Use of proceeds.*** The registration of a security may be disallowed if it does not substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Specificity in Use of Proceeds as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and March 31, 2008, and published in CCH NASAA Reports at paragraph 3831.

**50.66(19) *Registration of asset-backed securities.*** All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Asset-Backed Securities as adopted by the NASAA membership on October 25, 1995, amended May 7, 2007, and May 6, 2012, and published in CCH NASAA Reports at paragraph 501.

This rule is intended to implement Iowa Code sections 502.305(6) and 502.306(1).

ITEM 27. Amend subrule 50.87(1) as follows:

**50.87(1)** Church extension funds or similar organizations making continuous offerings shall be exempt pursuant to Iowa Code section 502.201(7) "b" provided the issuer:

a. to d. No change.

INSURANCE DIVISION[191](cont'd)

e. Unless disallowed by the administrator within 15 days after the applicant has filed the items required by paragraphs 50.87(1)“a” to “d,” is authorized beginning 15 days after the filing is received to sell pursuant to the exemption;

e. f. After authorization, may sell securities for a period of 12 months; and

f. g. Upon the expiration of the 12-month period in paragraph “e,” 50.87(1)“f,” files a renewal application that complies with the requirements of this subrule.

ITEM 28. Amend subrule 50.88(2) as follows:

**50.88(2)** Any natural person whose individual net worth, or joint net worth with that person’s spouse, at the time of the purchase exceeds \$1 million, excluding the value of the primary residence of the natural person.

ITEM 29. Adopt the following new rule 191—50.89(502):

**191—50.89(502) Designated securities manuals.** Nationally recognized securities manuals for purposes of Iowa Code section 502.202(2)“d” include Mergent’s Manuals, S & P Capital IQ Standard Corporation Descriptions, Fitch Investment Services, and Best’s Insurance Reports, Life-Health.

This rule is intended to implement Iowa Code section 502.202(2)“d.”

**ARC 0697C**

## **MEDICINE BOARD[653]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 147.10, 148.2, and 272C.2, the Board of Medicine hereby proposes to amend Chapter 8, “Fees,” Chapter 9, “Permanent Physician Licensure,” and Chapter 11, “Continuing Education and Training Requirements,” Iowa Administrative Code.

Chapter 8 defines application and licensure fees for physicians, Chapter 9 defines requirements for permanent physician licensure, and Chapter 11 establishes the continuing education and training requirements for physicians. The proposed amendments to these chapters provide for an exemption to the permanent licensure renewal fee and the continuing education requirements for physicians on full-time active duty in the U.S. armed forces, reserves or national guard.

The Board approved this Notice of Intended Action during a regularly scheduled meeting on March 8, 2013.

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on May 21, 2013. Such written materials should be sent to Mark Bowden, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by e-mail to [mark.bowden@iowa.gov](mailto:mark.bowden@iowa.gov).

There will be a public hearing on May 21, 2013, at 11 a.m. in the Board office, at which time persons may present their views either orally or in writing. The Board office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

After analysis and review of this rule making, it has been determined that the amendments could have a positive impact on jobs. By exempting the permanent licensure renewal fee for physicians in active military service, this relief could help a physician establish or maintain a practice in an Iowa community once the physician is finished with active military service. The Board will continue to work with stakeholders to maximize any positive impact these amendments may have on job creation.

These amendments are intended to implement Iowa Code chapters 147, 148, and 272C.

The following amendments are proposed.

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

ITEM 1. Amend paragraph **8.4(1)“c”** as follows:

*c.* Renewal of an active license to practice;

(1) \$550 if renewal is made via paper application or \$450 if renewal is made via on-line application, per biennial period or a prorated portion thereof if the current license was issued for a period of less than 24 months.

(2) There is no renewal fee due for a physician who was on active duty in the U.S. armed forces, reserves or national guard during the renewal period. “Active duty” means full-time training or active service in the U.S. armed forces, reserves or national guard. A physician who fails to renew before the expiration of the license shall be charged a penalty fee as set forth in 8.4(1)“d.”

ITEM 2. Amend paragraph **9.13(3)“a”** as follows:

*a.* Renewal fee.

(1) The renewal fee is \$550 if the renewal is made via paper application or \$450 if the renewal is made via on-line application, per biennial period or a prorated portion thereof if the current license was issued for a period of less than 24 months.

(2) There is no renewal fee due for a physician who was on active duty in the U.S. armed forces, reserves or national guard during the renewal period. “Active duty” means full-time training or active service in the U.S. armed forces, reserves or national guard. A physician who fails to renew before the expiration of the license shall be charged a penalty fee as set forth in 653—paragraph 8.4(1)“d.”

ITEM 3. Adopt the following **new** definition of “Active duty” in rule **653—11.1(272C)**:

*“Active duty”* means full-time training or active service in the U.S. armed forces, reserves or national guard.

ITEM 4. Amend subparagraph **11.4(2)“a”(1)** as follows:

(1) Periods that the licensee served honorably on active duty in the ~~military~~ U.S. armed forces, reserves or national guard;

**ARC 0720C**

## **NATURAL RESOURCE COMMISSION[571]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 455A.5(6), 481A.5, 481A.6, and 481A.39, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 52, “Wildlife Refuges,” Iowa Administrative Code.

Chapter 52 contains the regulations for establishing wildlife refuges for the purpose of preserving biological balance and for promoting sound wildlife management. Hunting is not permitted in refuges so as to create a de facto safe zone for the wildlife. The proposed amendment removes two areas that are no longer needed as waterfowl refuges because there are enough refuges in the general area without them. The high number of refuges in the area prevented any one of them from being as effective as planned. The areas being delisted are Three Mile Lake in Union County and Lake Sugema in Van Buren County. Importantly, the two areas being removed will remain public lands open for recreation, including hunting.

In addition, the proposed amendment adds a new waterfowl refuge known as Union Hills in Cerro Gordo County. This new refuge is needed to encourage the growth of waterfowl in this area of the state of Iowa. This area is already state land currently under Department management. It is being redesignated from a wildlife management area to a waterfowl refuge.

NATURAL RESOURCE COMMISSION[571](cont'd)

Any interested person may make written suggestions or comments on the proposed amendment on or before May 23, 2013. Written comments may be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; by e-mail at [wildlife@dnr.iowa.gov](mailto:wildlife@dnr.iowa.gov); or by fax at (515)281-6794. Persons who wish to convey their comments orally may contact the Department's Wildlife Bureau by telephone at (515)281-5034 or by visiting the fourth floor of the Wallace State Office Building during regular business hours.

There will be a public hearing on May 23, 2013, at 1 p.m. in the Conference Room, Fourth Floor, Wallace State Office Building, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. Participants will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

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

The amendment will have a positive effect on jobs by increasing opportunities for waterfowl hunting and viewing in Union, Cerro Gordo, and Van Buren Counties. Since waterfowl hunters frequently travel the entire state to enjoy different locations and zone-specific dates, the waterfowl hunting opportunities created in these specific counties will be enjoyed by hunters statewide. Waterfowl hunting benefits local economies and associated jobs, through equipment retailers, guide services, transportation services, and restaurants.

This amendment is intended to implement Iowa Code sections 455A.5(6), 481A.5, 481A.6, and 481A.39.

The following amendment is proposed.

Amend subrule 52.1(3) as follows:

**52.1(3) *Waterfowl refuges.*** The following areas under the jurisdiction of the department of natural resources are established as waterfowl refuges where posted. It shall be unlawful to hunt ducks and geese on the following areas, where posted, at any time during the year. It shall be unlawful to trespass in any manner on the following areas, where posted, during the dates posted, both dates inclusive, except that department personnel, law enforcement officials, and other persons specifically authorized by the department of natural resources may enter the area at any time in performance of their duties, and hunters, under the supervision of department staff, may enter the area when specifically authorized by the department of natural resources.

Area	County
Lake Icaria . . . . .	Adams
Pool Slough Wildlife Area . . . . .	Allamakee
Rathbun Area . . . . .	Appanoose, Lucas, Wayne
Sedan Bottoms . . . . .	Appanoose
Sweet Marsh . . . . .	Bremer
Big Marsh . . . . .	Butler
<u>Union Hills</u> . . . . .	<u>Cerro Gordo</u>
Ventura Marsh . . . . .	Cerro Gordo
Round Lake . . . . .	Clay
Jemmerson Slough Complex . . . . .	Dickinson
Forney Lake . . . . .	Fremont
Riverton Area . . . . .	Fremont
Dunbar Slough . . . . .	Greene
Bays Branch . . . . .	Guthrie
Crystal Hills . . . . .	Hancock
Eagle Flats . . . . .	Hancock
Eagle Lake . . . . .	Hancock
Green Island Area . . . . .	Jackson
Muskrat Slough . . . . .	Jones

NATURAL RESOURCE COMMISSION[571](cont'd)

Red Rock Area . . . . .	Marion, Polk, Warren
Badger Lake . . . . .	Monona
Chichaqua Area . . . . .	Polk
McCausland . . . . .	Scott
Princeton Area . . . . .	Scott
Otter Creek Marsh . . . . .	Tama
Three Mile Lake . . . . .	Union
Lake Sugema . . . . .	Van Buren
Rice Lake Area . . . . .	Winnebago
Snyder Bend Lake . . . . .	Woodbury
Elk Creek Marsh . . . . .	Worth

**ARC 0721C**

**NATURAL RESOURCE COMMISSION[571]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 481A.38, 481A.39, 481A.48, and 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 91, “Waterfowl and Coot Hunting Seasons,” Iowa Administrative Code.

This chapter contains the regulations for hunting waterfowl and coot and includes season dates, bag limits, possession limits, shooting hours, and areas open to hunting. The proposed amendments adjust the season dates to comply with United States Fish and Wildlife Service regulations and to ensure the seasons open on weekends. The proposed amendments also remove the bag limit on light geese during the conservation order season as studies indicate the population can withstand it, and doing so increases hunter opportunity. Light geese include white and blue-phase lesser snow geese and Ross’ geese.

Any interested person may make written suggestions or comments on the proposed amendments on or before May 23, 2013. Written comments may be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; by e-mail at [wildlife@dnr.iowa.gov](mailto:wildlife@dnr.iowa.gov); or by fax at (515)281-6794. Persons who wish to convey their comments orally may contact the Wildlife Bureau by telephone at (515)281-5034 or by visiting the fourth floor of the Wallace State Office Building during regular business hours.

There will be a public hearing on May 23, 2013, at 1 p.m. in the Conference Room, Fourth Floor, Wallace State Office Building, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. Participants will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

After analysis and review of this rule making, no impact on jobs has been found since most changes are simply due to shifts in calendar dates. The change in the bag limit for light geese during the conservation order is not expected to affect license sales or hunter interest.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, and 481A.48. The following amendments are proposed.

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

ITEM 1. Amend subrules 91.1(2) to 91.1(4) as follows:

**91.1(2) *Season dates - north zone.*** For all ducks: September ~~22~~ 21 through September ~~26~~ 25 and October ~~13~~ 12 through December ~~6~~ 5.

**91.1(3) *Season dates - south zone.*** For all ducks: September ~~22~~ 21 through September ~~26~~ 25 and October ~~20~~ 19 through December ~~13~~ 12.

**91.1(4) *Season dates - Missouri River zone.*** For all ducks: September ~~22~~ 21 through September ~~26~~ 25 and October ~~27~~ 26 through December ~~20~~ 19.

ITEM 2. Amend subrules 91.3(2) to 91.3(4) as follows:

**91.3(2) *Season dates - north zone.*** Canada geese and brant: September ~~29~~ 28 through January ~~4~~ 3, ~~2013~~ 2014. White-fronted geese: September ~~29~~ 28 through December ~~11~~ 10. Light geese (white and blue-phase snow geese and Ross' geese): September ~~29~~ 28 through January ~~13~~ 12, ~~2013~~ 2014.

**91.3(3) *Season dates - south zone.*** Canada geese and brant: October ~~6~~ 5 through January ~~11~~ 10, ~~2013~~ 2014. White-fronted geese: October ~~6~~ 5 through December ~~18~~ 17. Light geese (white and blue-phase snow geese and Ross' geese): October ~~6~~ 5 through January ~~18~~ 17, ~~2013~~ 2014.

**91.3(4) *Season dates - Missouri River zone.*** Canada geese and brant: October ~~13~~ 12 through January ~~18~~ 17, ~~2013~~ 2014. White-fronted geese: October ~~13~~ 12 through December ~~25~~ 24. Light geese (white and blue-phase snow geese and Ross' geese): October ~~13~~ 12 through January ~~18~~ 17, ~~2013~~ 2014.

ITEM 3. Amend subrules 91.3(8) to 91.3(11) as follows:

**91.3(8) *Light goose conservation order season.*** Only light geese (white and blue-phase snow geese and Ross' geese) may be taken under a conservation order from the U.S. Fish and Wildlife Service from January ~~19~~ 18, ~~2013~~ 2014, through April 15, ~~2013~~ 2014.

a. *Zone boundaries.* Statewide.

b. *Shooting hours.* One-half hour before sunrise to one-half hour after sunset.

c. *Bag limit.* ~~Bag limit is 20 light geese.~~ No bag limit.

d. *Possession limit.* No possession limit.

e. *Other regulations.* Methods of take approved by the U.S. Fish and Wildlife Service for hunting light geese during the conservation order season shall be permitted.

**91.3(9) *Cedar Rapids/Iowa City goose hunting zone.***

a. *Season dates.* September ~~1~~ 7 through September ~~9~~ 15.

b. to d. No change.

**91.3(10) *Des Moines goose hunting zone.***

a. *Season dates.* September ~~1~~ 7 through September ~~9~~ 15.

b. to d. No change.

**91.3(11) *Cedar Falls/Waterloo goose hunting zone.***

a. *Season dates.* September ~~1~~ 7 through September ~~9~~ 15.

b. to d. No change.

ITEM 4. Amend rule 571—91.6(481A) as follows:

**571—91.6(481A) Youth waterfowl hunt.** A special youth waterfowl hunt will be held on October ~~6 and 7, 2012~~, 5 and 6 in the north duck hunting zone, ~~and October 13 and 14, 2012~~, 12 and 13 in the south duck hunting zone, ~~and October 20 and 21, 2012~~, 19 and 20 in the Missouri River duck hunting zone. Youth hunters must be residents of Iowa as defined in Iowa Code section 483A.1A and less than 16 years old. Each youth hunter must be accompanied by an adult 18 years old or older. The youth hunter does not need to have a hunting license or stamps. The adult must have a valid hunting license and habitat stamp if normally required to have them to hunt and a state waterfowl stamp. Only the youth hunter may shoot ducks and coots. The adult may hunt for any other game birds for which the season is open. The daily bag and possession limits are the same as for the regular waterfowl season, as defined in rule 571—91.1(481A). All other hunting regulations in effect for the regular waterfowl season apply to the youth hunt.

**ARC 0719C****NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 481A.38, 481A.39, 481A.48, and 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 100, “Crow and Pigeon Regulations,” Iowa Administrative Code.

Chapter 100 contains the regulations for hunting crows and pigeons. The proposed amendment allows pigeons to be taken year round as studies show the population can withstand this change. The practical effect of the proposed amendment is that dove hunters will be able to shoot a pigeon while hunting doves. Currently, pigeons cannot be shot with a firearm, the weapon of choice for hunting doves, during the majority of the dove season. Dove season is from September 1 through October 9, and pigeons can only be shot with a firearm beginning October 1.

Any interested person may make written suggestions or comments on the proposed amendment on or before May 23, 2013. Written comments may be directed to Bureau Chief, Wildlife Bureau, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; by e-mail at [wildlife@dnr.iowa.gov](mailto:wildlife@dnr.iowa.gov); or by fax at (515)281-6794. Persons who wish to convey their comments orally may contact the Wildlife Bureau by telephone at (515)281-5034 or by visiting the fourth floor of the Wallace State Office Building during regular business hours.

There will be a public hearing on May 23, 2013, at 1 p.m. in the Conference Room, Fourth Floor, Wallace State Office Building, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. Participants will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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

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

This amendment is intended to implement Iowa Code sections 481A.38, 481A.39, and 481A.48.

The following amendment is proposed.

Amend subrule 100.2(1) as follows:

**100.2(1)** Pigeon season. There is a continuous open season for the taking of pigeons ~~except the season for taking pigeons with firearms shall be October 1 to March 31. However, within 100 yards of buildings and bridges pigeons may be taken with firearms the year around.~~ No bag or possession limit. Entire state open.

**ARC 0717C****NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 455A.5(6), 481A.38, 481A.39, 481A.48(1), 483A.8, 483A.8B, 483A.8C, 483A.24, and 483A.24B, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 106, “Deer Hunting by Residents,” Iowa Administrative Code.

Chapter 106 sets regulations for deer hunting by residents and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of take, and transportation and reporting requirements.

The proposed amendment reduces antlerless deer quota numbers in six counties in the Nishnabotna Wildlife Unit. This quota reduction is designed to stabilize deer numbers in those counties whose deer population has been reduced to levels that were agreed to in 2009 by the Deer Study Advisory Group (DSAG). The DSAG was created to review, analyze, and make recommendations on issues relating to the state’s deer population.

Any interested person may make written suggestions or comments on the proposed amendment on or before May 23, 2013. Written comments may be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; by e-mail at [wildlife@dnr.iowa.gov](mailto:wildlife@dnr.iowa.gov); or by fax at (515)281-6794. Persons who wish to convey their comments orally may contact the Wildlife Bureau at (515)281-5034 or by visiting the fourth floor of the Wallace State Office Building during regular business hours.

There will be a public hearing on May 23, 2013, at 1 p.m. in the Auditorium, Second Floor, Wallace State Office Building, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. Participants will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

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

The proposed amendment will have a neutral impact on jobs in the state. Even though the Commission is proposing a license reduction, there should not be a noticeable change in deer hunting. The proposed new quotas are designed to keep deer numbers stable and result in similar license sales overall. Thus, the private sector job impact should remain status quo even with this rule making. The following types of jobs are positively impacted by deer hunting generally (and should see no noticeable change due to this rule making): hunting equipment retailers (weapons, ammunition, clothing, chairs, stands, binoculars, and other supporting equipment); field guides and outfitters; taxidermists; and restaurants, hotels, and gas stations for hunters traveling around the state.

This amendment is intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48(1), 483A.8, 483A.8B, 483A.8C, 483A.24, and 483A.24B.

The following amendment is proposed.

Amend subrule 106.6(6) as follows:

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

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

County	Quota	County	Quota	County	Quota
Adair	2400	Floyd	0	Monona	2500
Adams	1950	Franklin	0	Monroe	3000
Allamakee	4500	Fremont	<del>1500</del> <u>600</u>	Montgomery	<del>1300</del> <u>1050</u>
Appanoose	3300	Greene	150	Muscatine	1175
Audubon	100	Grundy	0	O'Brien	0
Benton	650	Guthrie	3300	Osceola	0
Black Hawk	0	Hamilton	100	Page	<del>1800</del> <u>950</u>
Boone	650	Hancock	0	Palo Alto	0
Bremer	1000	Hardin	200	Plymouth	100
Buchanan	250	Harrison	2500	Pocahontas	0
Buena Vista	0	Henry	1025	Polk	1500
Butler	0	Howard	350	Pottawattamie	<del>2100</del> <u>1300</u>
Calhoun	0	Humboldt	0	Poweshiek	500
Carroll	100	Ida	0	Ringgold	2600
Cass	<del>1300</del> <u>550</u>	Iowa	775	Sac	0
Cedar	1025	Jackson	1250	Scott	500
Cerro Gordo	0	Jasper	1700	Shelby	400
Cherokee	0	Jefferson	2150	Sioux	0
Chickasaw	450	Johnson	1400	Story	500
Clarke	2500	Jones	975	Tama	500
Clay	0	Keokuk	1900	Taylor	2650
Clayton	3200	Kossuth	0	Union	2100
Clinton	825	Lee	1400	Van Buren	5400
Crawford	300	Linn	1300	Wapello	2150
Dallas	2700	Louisa	850	Warren	4200
Davis	3600	Lucas	2800	Washington	2250
Decatur	2800	Lyon	0	Wayne	3000
Delaware	975	Madison	4000	Webster	100
Des Moines	900	Mahaska	1350	Winnebago	0
Dickinson	0	Marion	2250	Winneshiek	3500
Dubuque	1375	Marshall	500	Woodbury	2500
Emmet	0	Mills	<del>1350</del> <u>950</u>	Worth	0
Fayette	1650	Mitchell	0	Wright	0

**ARC 0718C****NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 481A.6, 481A.38, 481A.39, 481A.87, 481A.90, and 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 108, “Mink, Muskrat, Raccoon, Badger, Opossum, Weasel, Striped Skunk, Fox (Red and Gray), Beaver, Coyote, River Otter, Bobcat, Gray (Timber) Wolf and Spotted Skunk Seasons,” Iowa Administrative Code.

Chapter 108 sets the season dates, bag limits, possession limits and areas open to the hunting or trapping of furbearers. The proposed amendments add six counties to the open area for bobcats and remove the statewide quotas for bobcats and river otters. These amendments allow the season for river otters and bobcats to run concurrently with the other furbearer seasons. Since there will no longer be a quota, the 24-hour reporting requirement will no longer be needed. However, federal regulations require that a CITES tag must still be obtained for each bobcat and river otter harvested. These amendments reduce the number of river otters a fur harvester may take during the season from three to two to prevent the taking of too many river otters in any one area. Populations of these furbearers are at a level that will sustain this additional level of harvest and allow Iowa’s hunters and trappers additional opportunities without negatively impacting these populations.

Any interested person may make written suggestions or comments on the proposed amendments on or before May 23, 2013. Written comments may be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; by e-mail at [wildlife@dnr.iowa.gov](mailto:wildlife@dnr.iowa.gov); or by fax at (515)281-6794. Persons who wish to convey their comments orally may contact the Wildlife Bureau at (515)281-5034 or by visiting the fourth floor of the Wallace State Office Building during regular business hours.

There will be a public hearing on May 23, 2013, at 1 p.m. in the Conference Room, Fourth Floor, Wallace State Office Building, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. Participants will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

The proposed amendments are expected to have a positive impact on jobs by increasing overall trapping activity. By the elimination of statewide quotas, trappers will be able to actually take bobcats and river otters each season. In the past, the quotas filled up quickly, and many trappers who had purchased licenses were not actually able to take a bobcat or river otter because the statewide quota was filled, even if their personal season limit was not yet met. Eliminating these quotas is consistent with sound wildlife management principles and allows fur harvesters more flexibility. For example, trappers will be able to take furbearers later in the season when their pelts are more valuable. In addition, six additional counties have been added for the trapping of bobcats. This will increase trapping activities in these counties. This likely means increased business for the private sector in the following areas: sale of hunting and trapping gear and other related equipment and taxidermy work. It could also lead to increased business for restaurants, hotels, and gas stations as people move around the state participating in the sport.

These amendments are intended to implement Iowa Code sections 481A.6, 481A.38, 481A.39, 481A.87, and 481A.90.

The following amendments are proposed.

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

ITEM 1. Amend subrule 108.7(2) as follows:

**108.7(2) *Open area.*** River otters may be taken statewide. Bobcats may be taken in the following counties: Adair, Adams, Appanoose, Audubon, Cass, Clarke, Crawford, Dallas, Davis, Decatur, Des Moines, Fremont, Guthrie, Harrison, Henry, Iowa, Jefferson, Keokuk, Lee, Louisa, Lucas, Madison, Mahaska, Marion, Mills, Monona, Monroe, Montgomery, Muscatine, Page, Pottawattamie, Poweshiek, Ringgold, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, and Woodbury.

ITEM 2. Amend subrule 108.7(3) as follows:

**108.7(3) *Quotas and seasonal Seasonal bag limit.***

*a. Seasonal bag limit.* The seasonal bag limit is ~~3~~ 2 river otters and 1 bobcat per person.

*b. Quotas.* The quota for the number of river otters that may be taken is 850 statewide. The quota for the number of bobcats that may be taken is 450 in the open area. The season shall end for river otters when the number of river otters trapped, as determined by the harvest reporting system, reaches the quota. The season shall end for bobcats when the number of bobcats taken, as determined by the harvest reporting system, reaches the quota. Trappers shall be allowed a grace period that ends on midnight of the day after the quota is reached to clear their traps of river otters or bobcats. River otters or bobcats found in traps during the grace period may be kept even though the quota is exceeded provided that the trapper has not reached the trapper's personal bag limit. River otters or bobcats trapped after the grace period or in excess of the seasonal bag limit must be turned over to the department; the trapper shall not be penalized.

ITEM 3. Amend subrule 108.7(4) as follows:

**108.7(4) *Season dates.*** The season for taking river otters and bobcats opens on the first Saturday in November and closes when the quota has been reached, as explained in this rule, or on January 31 of the following year, whichever occurs first.

ITEM 4. Amend subrule 108.7(5) as follows:

**108.7(5) *Reporting requirements.***

*a.* Anyone, including a landowner or tenant not required to have a fur harvester license, who takes a river otter or bobcat must report the harvest to a DNR conservation officer or designated DNR employee within 24 hours. The fur harvester must and arrange to receive a CITES tag from the officer or designated DNR employee within seven days of the time the harvest is reported. The river otter or bobcat shall be skinned and the carcass its lower jaw or skull turned over to the DNR conservation officer or designated DNR employee at the time the CITES tag is issued. If the specimen is to be kept whole for taxidermy purposes, a cut shall be made by the trapper between the gum line and eye so the CITES tag can be attached to the skin. It shall be the responsibility of the taxidermist to have the carcass turned over to a DNR conservation officer or designated DNR employee once that animal has been skinned for taxidermy purposes.

*b.* Upon receiving a telephone report that a river otter or bobcat has been legally taken, the conservation officer or DNR employee will call the department's harvest reporting system. The number of river otters and bobcats taken will be updated daily, and a message will be recorded on the department's telephone system. The number taken will be available 24 hours a day. Fur harvesters may check the message daily to determine when the season closes and when the grace period begins and ends. The department will use all practical means to publicize these dates.

**ARC 0725C**

**PROFESSIONAL LICENSURE DIVISION[645]**

**Notice of Termination**

Pursuant to the authority of Iowa Code section 147.76, the Board of Cosmetology Arts and Sciences terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on October 31, 2012, as **ARC 0437C**, amending Chapter 61, "Licensure of Salons and Schools of Cosmetology Arts and Sciences," Iowa Administrative Code.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

The Notice proposed to amend Chapter 61 to include new rules for schools of cosmetology that teach a single-discipline curriculum and to prescribe minimum physical and equipment requirements.

The Board of Cosmetology Arts and Sciences conceded to the request by the Iowa Cosmetology School Association to terminate **ARC 0437C** for further consideration.

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

**ARC 0729C**

**SECRETARY OF STATE[721]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 631.4, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 2, “Rules of Practice,” Iowa Administrative Code.

Iowa Code section 631.4 directs the Secretary of State to accept notice of an action involving small claims and nonresidents. The practice for the past several years has been to assess a fee of \$10 to offset the costs associated with accepting and delivering notice. This is the same fee charged for other similar filings. The proposed amendment reflects what has been the policy for years.

Any interested person may make written comments on the proposed amendment on or before May 21, 2013. Written comments should be directed to Charlie Smithson, Legal Counsel, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319. Comments may be sent by fax to (515)242-5953 or by e-mail to [Charlie.Smithson@sos.iowa.gov](mailto:Charlie.Smithson@sos.iowa.gov).

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

This amendment is intended to implement Iowa Code section 631.4.

The following amendment is proposed.

Amend rule 721—2.3(17A) as follows:

**721—2.3(17A 631) Payment for services.** The secretary of state may approve accounts to be used for the payment of services provided by the secretary of state. A user of a service provided by the secretary of state may make payment for the service by authorizing a charge to be made upon an account held by the user.

**2.3(1) to 2.3(6)** No change.

**2.3(7)** The secretary of state shall assess a fee of \$10 for the receipt of a document filed under Iowa Code section 631.4(1)“d.”

**ARC 0695C**

**SECRETARY OF STATE[721]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 47.1 and 17A.3, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 22, “Voting Systems,” Iowa Administrative Code.

## SECRETARY OF STATE[721](cont'd)

These amendments are necessary due to the certification by the Board of Examiners for Voting Systems of two new voting systems for use in the state of Iowa. Chapter 22 does not contain any standards for use of these systems, and counties may be in the process of proceeding with purchases of the newly certified systems. Iowa Code section 52.5, subsection 4, requires administrative rules to be adopted governing the development of vote counting programs and all procedures used in actual counting of votes by means of the new systems before they can be used in an actual election.

Any interested person may make written suggestions or comments on the proposed amendments on or before May 21, 2013. Written suggestions or comments should be directed to Sarah Reisetter, Director of Elections, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State's office by telephone at (515)281-0145 or in person at the Secretary of State's office on the first floor of the Lucas State Office Building.

Requests for a public hearing must be received by May 21, 2013.

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

These amendments are intended to implement Iowa Code chapters 39 through 53.

The following amendments are proposed.

ITEM 1. Amend rule **721—22.1(52)**, definition of "Automatic tabulating equipment," as follows:  
*"Automatic tabulating equipment"* means ~~apparatus~~ apparatuses that are utilized to ascertain the manner in which optical scan ballots have been marked by voters or by electronic ballot marking devices and to count the votes marked on the ballots.

ITEM 2. Adopt the following new definitions in rule **721—22.1(52)**:  
*"Memory storage device"* means a small, removable device containing data files of the election definition programmed for use in voting equipment for each election.  
*"Voting equipment malfunction"* means a problem with the voting equipment that renders the equipment inoperable for a period of time when it has been deployed for use during an election. "Voting equipment malfunction" does not include interruptions of equipment operations due to routine error messages as referred to in subrule 22.261(5), 22.262(6) or 22.266(5).

ITEM 3. Adopt the following new paragraph **22.42(1)"e"**:  
 e. Mark at least one valid vote for each candidate and question on the ballot using the ImageCast Evolution or ImageCast Precinct with audio and printer (if applicable). The ballots marked by one of these units may be used as part of the systematic or straight party test deck (if applicable).

ITEM 4. Amend paragraph **22.42(4)"a,"** introductory paragraph, as follows:  
 a. *Election Systems & Software ~~and~~, Unisyn OpenElect and Dominion Democracy Suite—* overvote and blank ballot test. For an overvote and blank ballot test, the commissioner shall:

ITEM 5. Adopt the following new paragraph **22.50(2)"c"**:  
 c. Hardened operating system. For security purposes, users of Election Systems & Software, Unity 3.4.0.1 and Democracy Suite 4.6 shall harden the operating system on the computer on which the election management system is housed according to the specifications of the vendor and the recommendations of the county information technology department (if any).

ITEM 6. Amend rule 721—22.51(52) as follows:

**721—22.51(52) Memory ~~cards~~ storage devices.** ~~A memory card is a small, removable device containing data files of the election definition programmed for use in voting equipment for each election.~~ For all voting equipment, the following security measures for memory storage devices are required:

**22.51(1) Serial number.** Each memory ~~card~~ storage device shall have a serial number printed on a readily visible label. The label shall include the name of the county.

**22.51(2) Inventory.** Memory ~~cards~~ storage devices owned by the county and retained in the custody of the county commissioner shall be maintained under perpetual inventory, with a record of inventory

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activity. The commissioner shall maintain a similar record of relevant actions if the memory cards storage devices are acquired from a vendor for each election. The record of inventory activity shall reflect:

- a. The date each memory card storage device was acquired;
- b. Each use of each memory card storage device in an election;
- c. Each maintenance activity to a memory card storage device, such as changing the battery;
- d. Any problems or errors detected while using the memory card storage device during its life;
- e. Records of the disposal of any memory cards storage devices at the end of their useful life or upon return to the vendor for maintenance or warranty claims.

**22.51(3) Custody.**

a. In counties where the commissioner has the necessary software and equipment to program the memory cards storage devices locally, the commissioner shall maintain a memory card storage device log for each election as required in subrule 22.51(4) during the period when the memory cards storage devices are removed from storage, prepared for an election, and until they are sealed into a voting device. Only county employees and precinct election officials, as applicable, authorized by the county's security policy shall be permitted to handle the memory cards storage devices. No one individual should be alone with the unsecured memory cards storage devices at any time. If a person who is not authorized by the security policy to have access to the memory cards storage devices transports them to another location, such as a warehouse, the memory cards storage devices shall be enclosed in a transport container with a tamper-evident seal.

b. In counties where the commissioner purchases programming services from a vendor, the memory cards storage devices shall be shipped to and from the vendor by a shipping service that employs tracking numbers. The memory cards storage devices shall be enclosed in a package sealed with a numbered, tamper-evident seal. Programmed memory cards storage devices shall be shipped in a package sealed with a numbered, tamper-evident seal from the vendor to the commissioner. If the seal is not intact upon arrival, the commissioner shall immediately contact the vendor for replacement memory cards storage devices. Only county employees authorized by the county's security policy (and precinct election officials, as applicable) shall be permitted to handle the memory cards storage devices. No one individual should be alone with the unsecured memory cards storage devices at any time.

**22.51(4) Memory card storage device log.** For each election, the commissioner shall create a log to record the serial numbers of each memory card storage device, the voting device equipment into which the memory card storage device was installed, the serial number of the seal, the ballot style and the precinct to which the machine equipment is assigned. The log shall be in substantially the same form as Form A or Form B, as applicable:





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Shipped by: \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_ Time: \_\_\_:\_\_\_ a.m./p.m.  
 Print name Signature

Shipped to: \_\_\_\_\_ Shipped via: \_\_\_\_\_  
 \_\_\_\_\_ Tracking number: \_\_\_\_\_  
 \_\_\_\_\_

**Instructions to vendor:**

**Check in each card storage device number on the enclosed chain of custody record when unpacking cards storage devices.**

By: \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_ Time: \_\_\_:\_\_\_ a.m./p.m.  
 Print name Signature

- If memory cards storage devices are removed from this inventory for any reason, make a notation of which card(s) storage device(s) on the Memory Card Storage Device Record.
- Replacement card(s) storage device(s) if issued should be added to the bottom of the Memory Card Storage Device Record as a new card storage device. A serial number will be assigned later by the receiving county.

Shipped via: \_\_\_\_\_ Date: \_\_\_\_\_ Tracking number: \_\_\_\_\_

**Received by County Election Department** on Date: \_\_\_/\_\_\_/\_\_\_

Was the package sealed? \_\_\_\_\_ Was the seal intact? \_\_\_\_\_ Notes: \_\_\_\_\_

Keep the memory cards storage devices in secure storage after they are received and until they are installed in the voting equipment.

**22.51(5) Preparation and installation.** When memory cards storage devices are installed, they shall be sealed immediately into the machine using a numbered, tamper-evident seal. Appropriate log entries shall be completed.

**22.51(6) Replacing seals or memory cards storage devices.** If a seal is accidentally broken or a memory card storage device is replaced for any reason, the issuance of a new seal and the entry into the log shall be witnessed by more than one person. The facts of the incident and the names of the individuals who detected and resolved it shall be recorded.

**22.51(7) Opening the polls.** Immediately before the polls open on election day, the precinct election officials shall turn on the voting equipment and print the report showing that all counters are set at zero.

**22.51(8) Verification log.** The commissioner shall provide to each precinct a precinct verification log with the ballot record and receipt. The verification log shall provide places for precinct election officials to record or check the following information before the polls open and again before leaving the polling place at the end of the day:

- Seal numbers from the voting equipment; and
- Condition of seals on ballot containers.

**22.51(9) Election day.**

*a.* Before the polls are opened, the precinct election officials shall verify the required information in the verification log and sign the log.

*b.* After the polls are closed, the precinct election officials shall verify the required information in the verification log and sign the log before leaving the polling place.

*c.* If the precinct election officials remove the memory cards storage devices from the voting equipment, the officials shall first print the results report from the voting equipment.

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**22.51(10) Return of memory cards storage devices.** If the precinct election officials remove the memory cards storage devices from the voting equipment on election night, they shall return to the commissioner the memory cards storage devices and the seals used to secure them in a sealed envelope or other container. All officials of the precinct shall witness the statement on the envelope or other container. The label on the envelope or other container shall be in substantially the following form:

**Memory Cards Storage Devices**

Election Date: \_\_\_\_\_

Precinct: \_\_\_\_\_

This envelope contains Memory Cards Storage Devices and memory card storage device access seals from this precinct.

Machine Number	Memory Card Storage Device #	Memory Card Storage Device Seal #

[Signatures of all precinct election officials shall be included on the label.]

**22.51(11) Storage.** If the memory cards storage devices are returned inside the voting equipment to the commissioner, the machine serial numbers and the seal numbers shall be verified against the verification log described in subrule 22.51(8). When the memory cards storage devices are removed, their serial numbers shall also be verified against the verification log returned by the precinct’s election officials. The memory card storage device audit log shall be retained for the time period required by Iowa Code section 50.19.

**22.51(12) Results verified.** Before the conclusion of the canvass of votes, the individual results reports from the precincts, as signed by the precinct election officials at the polls on election night, shall be compared to the election results compiled for the canvass (either manually or electronically) to verify that transmitted and accumulated totals match the results witnessed by the election officials. Any discrepancies in these totals shall be reconciled before the supervisors conclude the canvass.

**22.51(13) Retention of programmed memory cards storage devices.** The election information on all memory cards storage devices used for an election shall be retained on the memory cards storage devices until after the time to file requests for recounts and election contests has passed. If a contest is pending, the memory cards storage devices shall be retained until the contest is resolved. Before the memory cards storage devices are permanently erased, the commissioner shall print the memory card storage device audit log from each card storage device.

**22.51(14) Retention of program information.** The commissioner shall retain all instructions and other written records of the process for programming the memory cards storage devices and the memory card storage device audit logs for the period required by Iowa Code section 50.19. The contents of memory cards storage devices and other electronic records of the election process shall be collected and retained in an electronic or other medium and stored with the other election records for the time period required by Iowa Code section 50.19.

ITEM 7. Rescind rule 721—22.261(52) and adopt the following **new** rule in lieu thereof:

**721—22.261(52) Election Systems & Software Voting Systems—preparation and use in elections.**

**22.261(1) Security.** The commissioner shall have a written security plan for the voting system. Access to equipment, programs and passwords shall be limited to those persons authorized in writing by the commissioner. The security plan shall be reviewed at least annually.

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- a. Passwords used at the polling places on election day shall be changed for each election.
- b. The control key for the precinct automatic tabulators shall be in the possession of the precinct chairperson on election day.

**22.261(2) Precinct automatic tabulator configuration choices.** The following settings are mandatory for all elections.

a. *Ballot control.* In an official election, the commissioner shall not program the precinct automatic tabulators for unconditional acceptance of all ballots, shall not divert blank ballots to the write-in bin, and shall always accept undervoted ballots. The system shall be programmed to query the voter in each of the following situations:

- (1) Overvoted ballot.
- (2) Blank ballot.
- (3) Unreadable ballot.

b. *Unit control.* The commissioner shall not select automatic transmission of election results by modem. The precinct officials must print the official results at the polling place before transmitting them.

c. *Reports.* The following are required reports:

- (1) Opening the polls. Print the Zero Certification report.
- (2) Closing the polls. Print the poll report before transmitting the election results by modem.

The poll report is the official record of the votes cast in the precinct on election day. The following certification text shall appear at the end of the poll report:

We, the undersigned precinct election officials of this precinct, hereby attest that this tape shows the results of all ballots cast and counted by the Optical Scan tabulation device at this election.

[print lines for each of the officials to sign]

Precinct Election Officials

Date: \_\_\_\_\_

Time: \_\_\_\_\_

d. *Reopen polls.* The commissioner shall enable the option to reopen the polls, but protect it against unauthorized use. If it is necessary to reopen the polls, the chairperson of the precinct board shall contact the commissioner for the password.

e. *Ballot images.* The commissioner shall disable the option to store ballot images as ballots are scanned by the precinct automatic tabulators.

**22.261(3) Central count automatic tabulator configuration choices.** The following settings are mandatory for all elections in which the M650 or DS850 is used.

a. *Ballot control.* In an official election, the commissioner shall program the central count automatic tabulator to accept overvoted ballots and undervoted ballots. The commissioner shall program the central count automatic tabulator to sort blank ballots and unreadable ballots as required by Iowa Code section 52.37. Ballots with write-in votes may be sorted for further review by the absentee and special voters precinct board at the commissioner's discretion.

b. *Reports.* The following are required reports:

(1) Opening the polls. Before ballots are tabulated in the central count automatic tabulator, a Zero Certification report shall be printed.

(2) Closing the polls. After all ballots are tabulated by the central count automatic tabulator, a poll report shall be printed. The poll report is the official record of ballots tabulated in the absentee precinct. The following certification text shall appear at the end of the poll report:

We, the undersigned precinct election officials of this precinct, hereby attest that this tape shows the results of all ballots cast and counted by the Optical Scan tabulation device at this election.

[print lines for each of the officials to sign]

Precinct Election Officials

Date: \_\_\_\_\_

Time: \_\_\_\_\_

c. *Reopen polls.* The commissioner shall enable the option to reopen the polls, but protect it against unauthorized use.

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*d. Ballot images.* The commissioner shall disable the option to store ballot images as ballots are scanned.

**22.261(4) Ballot printing.**

*a. Format.* The office title, instructions about the maximum number of choices the voter can make for the office, the candidate names and all write-in lines associated with each office on the ballot shall be printed in a single column on the same side of the ballot. When describing the maximum number of choices the voter can make for the office, the following description for each office shall be used: "Vote for no more than xx." Do not include "vote for" language for public measures or judges. All text and the "yes" and "no" choices for each public measure and for each individual judge on a ballot shall be printed in a single column on the same side of the ballot. No office or public measure on any ballot shall be divided to appear in more than one column or on more than one page of a ballot.

*b. Instructions for voters.* The following instructions shall be printed on ballots:

(1) Voting mark. "To vote, fill in the oval next to your choice."

(2) Straight party voting. "To vote for all candidates from a single party, fill in the oval in front of the party name. Not all parties have nominated candidates for all offices. Marking a straight party vote does not include votes for nonpartisan offices, judges or questions."

(3) Public measures. "Notice to voters. To vote to approve any question on this ballot, fill in the oval in front of the word 'Yes'. To vote against a question, fill in the oval in front of the word 'No'."

**22.261(5) System error messages.** At the discretion of the commissioner, precinct election officials may be provided with a list of routine error messages, including messages that relate to paper jams, which do not rise to the level of voting equipment malfunctions and the appropriate responses. The officials may be instructed to contact the commissioner or the commissioner's designee on election day for all other messages or routine errors for which appropriate responses have not been provided by the commissioner.

**22.261(6) Record retention.** The precinct automatic tabulating equipment uses thermal printers. The maximum anticipated life span of the results from each automatic tabulator is only five years. In order to preserve the permanent record of the precinct results required by Iowa Code section 50.19, the commissioner shall print a copy of the results of each precinct on permanent paper and store these copies with the tally lists from precincts where the precinct automatic tabulators were used.

ITEM 8. Adopt the following **new** subrule 22.262(6):

**22.262(6) System error messages.** At the discretion of the commissioner, precinct election officials may be provided with a list of routine error messages, including messages that relate to paper jams, which do not rise to the level of voting equipment malfunctions and the appropriate responses. The officials may be instructed to contact the commissioner or the commissioner's designee on election day for all other messages or routine errors for which appropriate responses have not been provided by the commissioner.

ITEM 9. Adopt the following **new** subrule 22.264(6):

**22.264(6) Record retention.** The OVO unit uses a thermal printer. The maximum anticipated life span of the results from each OVO unit is only five years. In order to preserve the permanent record of the precinct results required by Iowa Code section 50.19, the commissioner shall print a copy of the results of each precinct on permanent paper and store these copies with the tally lists from precincts where the OVO unit was used.

ITEM 10. Adopt the following **new** rule 721—22.266(52):

**721—22.266(52) Dominion Democracy Suite Voting Systems—preparation and use in elections.**

**22.266(1) Security.** The commissioner shall have a written security plan for the voting system. Access to equipment, programs and passwords shall be limited to those persons authorized in writing by the commissioner. The security plan shall be reviewed at least annually.

*a.* Passwords used at the polling places on election day shall be changed for each election.

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*b.* For each election, the precinct chairperson shall be responsible for the custody and security of the keys for the voting equipment and the ballot boxes and the security of the voting system on election day.

**22.266(2) Precinct automatic tabulator configuration choices.** The following selections are mandatory for all elections.

*a. Access, messaging and tabulating selections.* The Machine Behavioral Settings shall be configured as follows:

(1) The option to allow voters to review ballot selections detected by the precinct automatic tabulator shall be disabled.

(2) Results for each precinct automatic tabulator shall be consolidated by precinct and shall not be reported by split within a precinct.

(3) The option to store ballot images as ballots are scanned by the precinct automatic tabulators shall be disabled.

(4) The automatic tabulators shall be configured to report write-in votes when the oval is darkened, regardless of whether there is text written on the corresponding write-in line.

*b. Ballot acceptance.* In an official election, the commissioner shall not program the precinct automatic tabulators for unconditional acceptance of all ballots and shall program the automatic tabulators to accept undervoted ballots. The automatic tabulators shall also be programmed to query the voter in each of the following situations:

(1) Overvoted ballot.

(2) Blank ballot.

(3) Unreadable ballot.

(4) Ambiguous marks. Ambiguous marks shall be defined as those marks where 5 to 24 percent of the voting target is darkened.

*c. Reports.* The following are required reports:

(1) Opening the polls. Print a zero vote totals report.

(2) Closing the polls. The poll report is the official record of the votes cast in the precinct on election day.

(3) Certification text. Substantially the following text shall appear at the end of the poll report:

We, the undersigned precinct election officials of this precinct, hereby attest that this tape shows the results of all ballots cast and counted on this tabulating device at this election.

(Include signature lines for each of the officials to sign.)

**22.266(3) Central count automatic tabulator configuration choices.** The following settings are mandatory for all elections in which the ImageCast Central automatic tabulator is used.

*a. Ballot control.* In an official election, the commissioner shall program the central count automatic tabulator to accept overvoted ballots and undervoted ballots. The commissioner shall program the central count automatic tabulator to sort or notify the user when blank ballots, unreadable ballots and ballots with write-in votes are detected so such ballots can be separated for further review by the absentee and special voters precinct board as required by Iowa Code section 52.37.

*b. Reports.* The following are required reports:

(1) Opening the polls. Before ballots are tabulated in the central count automatic tabulator, a Zero Certification report shall be printed.

(2) Closing the polls. After all ballots are tabulated by the central count automatic tabulator, a poll report shall be printed. The poll report is the official record of ballots tabulated in the absentee precinct. The following certification text shall appear at the end of the poll report:

We, the undersigned precinct election officials of this precinct, hereby attest that this tape shows the results of all ballots cast and counted by the Optical Scan tabulation device at this election.

[print lines for each of the officials to sign]

Precinct Election Officials

Date: \_\_\_\_\_

Time: \_\_\_\_\_

## SECRETARY OF STATE[721](cont'd)

*c. Reopen polls.* The commissioner shall enable this option, but protect it against unauthorized use.

**22.266(4) Ballot layout.** Although the Dominion Democracy Suite voting system software includes choices for variations in ballot layout, all ballots shall be prepared according to the requirements of Iowa Code sections 43.26 through 43.29 and 49.30 through 49.48.

*a. Format.* The office title, instructions about the maximum number of choices the voter can make for the office, the candidate names and all write-in lines associated with each office on the ballot shall be printed in a single column on the same side of the ballot. When describing the maximum number of choices the voter can make for the office, the following description for each office shall be used: "Vote for no more than xx." Do not include "vote for" language for public measures or judges. All text and the "yes" and "no" choices for each public measure and for each individual judge on a ballot shall be printed in a single column on the same side of the ballot. No office or public measure on any ballot shall be divided to appear in more than one column or on more than one page of a ballot. For all elections, the voting target shall be printed on the left side of each choice on the ballot.

*b. Instructions for voters.* The ballots shall contain instructions for voters, including:

- (1) How to mark the ballot;
- (2) Straight party voting instructions in general elections as required by Iowa Code section 49.37;
- (3) Where to find the judicial ballot (if any); and
- (4) Constitutional amendment (if any) as required by Iowa Code section 49.48 and notices to voters on ballots with public measures (if any) as required by Iowa Code section 49.47.

**22.266(5) System error messages.** At the discretion of the commissioner, precinct election officials may be provided with a list of routine error messages, including messages that relate to paper jams, which do not rise to the level of voting equipment malfunctions and the appropriate responses. The officials may be instructed to contact the commissioner or the commissioner's designee on election day for all other messages or routine errors for which appropriate responses have not been provided by the commissioner.

**22.266(6) Preelection testing of automatic tabulators.** Each ImageCast Evolution or ImageCast Precinct with or without audio and printer unit shall be tested pursuant to the provisions of Iowa Code section 52.30 and rule 721—22.42(52). At the commissioner's discretion, additional logic and accuracy tests may be conducted.

**22.266(7) Audio ballot preparation.** Each candidate shall have an opportunity to provide a record of the proper pronunciation of the candidate's name. The same voice shall be used for recording the entire ballot, including instructions, office titles, candidate names and the full text of all public measures.

**22.266(8) Preelection testing of accessible components.** The accessible components of each ImageCast Evolution or ImageCast Precinct with audio and printer unit shall be tested before each election in which the unit will be used. The commissioner must use the ImageCast Evolution or ImageCast Precinct with audio and printer unit to prepare some ballots for the test decks as required by paragraph 22.42(1) "e." In addition, the commissioner shall verify that:

*a.* The vote response fields on the screen align with the candidate names or choices on the ImageCast Evolution.

*b.* All contests and candidates appear on the screen for each precinct on the ImageCast Evolution.

*c.* All contests and candidates are included in the audio ballot for each precinct on the ImageCast Evolution or ImageCast Precinct with audio and printer unit.

*d.* All voting positions in each race can be selected, then deselected, using the touchscreen on the ImageCast Evolution and the keypad on the ImageCast Evolution or ImageCast Precinct with audio and printer unit.

*e.* Selections on the printed ballots accurately reflect the voter's choices.

*f.* Overvote and undervote functions are programmed correctly.

*g.* The write-in function for each office is working correctly. All letters in the alphabet must be tested.

**22.266(9) Touchscreen and printer testing.** The commissioner may provide for printer and touchscreen testing after delivery of the ImageCast Evolution or ImageCast Precinct with audio and

SECRETARY OF STATE[721](cont'd)

printer unit to the polling place. If touchscreen testing is performed at the polling place, the delivery staff shall complete the testing before the polls open on election day. Staff shall keep a log for each unit and record the machine serial number, precinct name or number, nature of the test, date and time of the test and name of the person performing the test.

**22.266(10) Table or voting booth.** A table or voting booth shall be available to a voter using the ImageCast Precinct with audio and printer unit. A chair shall be provided for voters using the ImageCast Evolution keypad and headphones components. Any table or voting booth used shall meet the following requirements:

- a. Clearance shall be at least 27 inches high, 30 inches wide, and 26 inches deep.
- b. The top of the table shall be from 28 inches to 34 inches above the floor.

**22.266(11) Privacy.** The commissioner shall instruct the precinct election officials to position the ImageCast Precinct with audio and printer unit to provide maximum privacy and access to voters.

**22.266(12) Abandoned ballots.** If a voter or a precinct election official discovers that a voter has left the voter's ballot at the ImageCast Precinct with audio and printer unit, the two precinct election officials designated to assist voters shall enclose the ballot in a secrecy folder and immediately deposit the ballot in the tabulating device.

**22.266(13) Ballot stock.** Each precinct in which an ImageCast Precinct with audio and printer unit is being used shall be equipped with ballot stock for the printer. The ballot stock shall be kept in a secure place throughout election day. Precinct election officials shall be instructed as to appropriate methods for securing the ballot stock and shall only place a sheet of ballot stock in the printer when an audio ballot is authorized on the unit.

**22.266(14) Record retention.** The ImageCast Evolution, ImageCast Precinct and ImageCast Precinct with audio and printer unit use thermal printers. The maximum anticipated life span of the results from each unit is only five years. In order to preserve the permanent record of the precinct results required by Iowa Code section 50.19, the commissioner shall print a copy of the results of each precinct on permanent paper and store these copies with the tally lists from precincts where the units were used.

**ARC 0728C**

## SECRETARY OF STATE[721]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 9.4, the Secretary of State hereby gives Notice of Intended Action to rescind Chapter 31, “Registration of Postsecondary Schools,” Iowa Administrative Code.

Chapter 31 provides that the Secretary of State shall collect a registration fee for each postsecondary school registration filing pursuant to Iowa Code section 261.2(7). However, this statute has since been amended so that the Secretary of State no longer collects this fee. The proposed amendment rescinds Chapter 31 as the rules are no longer applicable.

Any interested person may make written comments on the proposed amendment on or before May 21, 2013. Written comments should be directed to Charlie Smithson, Legal Counsel, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319. Comments may be sent by fax to (515)242-5953 or by e-mail to [Charlie.Smithson@sos.iowa.gov](mailto:Charlie.Smithson@sos.iowa.gov).

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

This amendment is intended to implement Iowa Code sections 9.4 and 261.2.

The following amendment is proposed.

SECRETARY OF STATE[721](cont'd)

Rescind and reserve **721—Chapter 31.****ARC 0730C****SECRETARY OF STATE[721]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 488.206, 489.205, and 504.111, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 40, “Corporations,” Iowa Administrative Code.

Current rule 721—40.9(490) requires that a registered agent filing online provide an e-mail address for purposes of receiving communications from the Secretary of State. The rule provides that the e-mail addresses are not public records. The practice of the Secretary of State has been to require all registered agents to provide an e-mail address. The proposed amendment requires the registered agent of any business organization that files with the Secretary of State to provide an e-mail address.

Any interested person may make written comments on the proposed amendment on or before May 21, 2013. Written comments should be directed to Charlie Smithson, Legal Counsel, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319. Comments may be sent by fax to (515)242-5953 or by e-mail to [Charlie.Smithson@sos.iowa.gov](mailto:Charlie.Smithson@sos.iowa.gov).

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

This amendment is intended to implement Iowa Code sections 488.206, 489.205, and 504.111.

The following amendment is proposed.

Amend rule 721—40.9(490), introductory paragraph, as follows:

**721—40.9(488,489,490,504) Online filing requirements.** The following requirements apply to the electronic filing of documents and the certification of electronic documents. This rule applies to documents filed in conjunction with the filing requirements in Iowa Code chapters 488, 489, 490, and 504.

**ARC 0731C****SECRETARY OF STATE[721]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 9A.109, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 42, “Athlete Agent Registration,” Iowa Administrative Code.

Chapter 42 implements Iowa Code chapter 9A, the Uniform Athlete Agents Act. Iowa Code chapter 9A includes the direction to the Secretary of State to receive registrations of an athlete agent and to assess a fee for doing so. The fee assessed for several years has been for a different amount than was

SECRETARY OF STATE[721](cont'd)

stated in the rule. The proposed amendments reflect what has been the policy for years. The proposed amendments also rescind two rules that are no longer applicable in implementing Iowa Code chapter 9A.

Any interested person may make written comments on the proposed amendments on or before May 21, 2013. Written comments should be directed to Charlie Smithson, Legal Counsel, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319. Comments may be sent by fax to (515)242-5953 or by e-mail to [Charlie.Smithson@sos.iowa.gov](mailto:Charlie.Smithson@sos.iowa.gov).

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

These amendments are intended to implement Iowa Code chapter 9A.

The following amendments are proposed.

ITEM 1. Amend rule 721—42.1(9A,17A) as follows:

**721—42.1(9A,17A) Fees.** The fee for the initial application for certificate of registration as an athlete agent is \$300 500. The fee for a renewal application for certificate of registration is \$150 500.

ITEM 2. Rescind and reserve rules **721—42.2(9A,17A)** and **721—42.3(9A,17A)**.

**ARC 0727C**

## SECRETARY OF STATE[721]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 9B.27, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 43, “Notarial Acts,” Iowa Administrative Code.

The proposed amendment implements the rule makings required under new Iowa Code chapter 9B dealing with notarial acts by notarial officers and notaries public. The statutes governing notarial acts were previously set out in Iowa Code chapter 9E. This is the first of additional rule makings to implement Iowa Code chapter 9B.

Any interested person may make written comments on the proposed amendments on or before May 21, 2013. Written comments should be directed to Charlie Smithson, Legal Counsel, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319. Comments may be sent by fax to (515)242-5953 or by e-mail to [Charlie.Smithson@sos.iowa.gov](mailto:Charlie.Smithson@sos.iowa.gov).

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

These amendments are intended to implement Iowa Code chapter 9B.

The following amendments are proposed.

ITEM 1. Amend rule 721—43.1(9E) as follows:

**721—43.1(9E 9B) Certificate of notarial acts.** A notarial act shall be evidenced by a certificate signed and dated by a notarial officer, be executed contemporaneously with the performance of the notarial act for which the certificate applies, and not be completed until the notarial act has been performed. The certificate shall include ~~identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer (for example, notary public, judge, clerk of court) and shall include the official stamp or seal of office~~ all of the information required by Iowa Code section 9B.15(1). A certificate of a notarial act is sufficient if it ~~substantially meets the requirements of this rule, or other applicable law~~ meets the requirements set out in Iowa Code section 9B.15(3). ~~The form of the certificate may consist of:~~

1. ~~The short form set forth in rule 721—43.2(9E);~~
2. ~~A form otherwise prescribed by the law of this state;~~

SECRETARY OF STATE[721](cont'd)

~~3.—A form prescribed by laws or regulations applicable in the place in which the notarial act was performed; or~~

~~4.—Any description of the actions of the notarial officer sufficient to meet the requirements of the designated notarial act.~~

~~By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determination required by Iowa Code section 9E.9.~~

ITEM 2. Rescind rule 721—43.2(9E) and adopt the following new rule in lieu thereof:

**721—43.2(9B) Short form certificates.** Short form certificates of notarial acts may be used provided the certificates comply with the provisions of Iowa Code sections 9B.15 and 9B.16. For purposes of this rule, a “record” and an “instrument” have the same meaning and effect.

ITEM 3. Rescind rule 721—43.3(9E) and adopt the following new rule in lieu thereof:

**721—43.3(9B) Conflict of interest.** A notarial officer shall not perform a notarial act that creates a conflict of interest as prohibited in Iowa Code section 9B.4(2). For purposes of this rule, a direct financial benefit does not exist when the notarial officer is compensated on an individual loan commission basis or as provided in Iowa Code section 9B.26(2).

ITEM 4. Rescind rule 721—43.4(9E) and adopt the following new rule in lieu thereof:

**721—43.4(9B) Commission as notary public.** An individual applying to the secretary of state for a commission as a notary public shall comply with the requirements and qualifications of Iowa Code section 9B.21. The applicant shall complete and file with the secretary of state an Application for Appointment as Notary Public. The affirmation section on an Application for Appointment as Notary Public shall constitute an executed oath of office as required by Iowa Code section 9B.21(3).

ITEM 5. Rescind and reserve rule **721—43.5(9E)**.

ITEM 6. Rescind rule 721—43.6(9E) and adopt the following new rule in lieu thereof:

**721—43.6(9B) Sanctions.** The secretary of state may impose any of the sanctions set out in Iowa Code section 9B.23 including issuing a letter of reprimand as a condition on a commission as a notary public.

**43.6(1) Complaint.** A person alleging misconduct by a notary public shall complete and file a Statement of Complaint with the secretary of state. The secretary of state may also initiate investigations without the filing of a complaint if information is provided to the secretary of state that a notary public has allegedly engaged in conduct prohibited in Iowa Code section 9B.23. A copy of the complaint or a notice of investigation shall be sent to the notary public.

**43.6(2) Investigation.** The secretary of state shall conduct an investigation to determine if the conduct alleged occurred and if sanctions should be imposed. Upon completion of an investigation, the secretary of state shall dismiss the matter, issue a letter of reprimand as a condition on commission, or set the matter for hearing as a contested case proceeding. A dismissal or issuance of a letter of reprimand as a condition on commission is deemed final agency action for purposes of judicial review under Iowa Code section 17A.19.

**43.6(3) Hearing.** If a hearing is set, it shall be conducted as a contested case proceeding in accordance with Iowa Code chapter 17A and administrative rules in 721—Chapter 3. A final decision by the secretary of state is subject to judicial review as provided in Iowa Code section 17A.19.

ITEM 7. Amend **721—Chapter 43**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter ~~9E~~ 9B.

## USURY

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

## USURY(cont'd)

May 1, 2012 — May 31, 2012	4.25%
June 1, 2012 — June 30, 2012	4.00%
July 1, 2012 — July 31, 2012	3.75%
August 1, 2012 — August 31, 2012	3.50%
September 1, 2012 — September 30, 2012	3.50%
October 1, 2012 — October 31, 2012	3.75%
November 1, 2012 — November 30, 2012	3.75%
December 1, 2012 — December 31, 2012	3.75%
January 1, 2013 — January 31, 2013	3.75%
February 1, 2013 — February 28, 2013	3.75%
March 1, 2013 — March 31, 2013	4.00%
April 1, 2013 — April 30, 2013	4.00%
May 1, 2013 — May 31, 2013	4.00%

## ARC 0698C

## EDUCATIONAL EXAMINERS BOARD[282]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 13, "Issuance of Teacher Licenses and Endorsements," Iowa Administrative Code.

Representatives from the University of Northern Iowa presented information to the Board of Educational Examiners at the November Board meeting requesting an option for international teachers to complete a modified teacher intern program in order to obtain licensure. This amendment authorizes the international teachers to complete the teacher intern course requirements while teaching in the international school.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0614C** on February 20, 2013. No one attended the public hearing, and no public comments were received. The amendment is identical to that published under Notice.

After analysis and review of this rule making, there is no anticipated impact on jobs.

This amendment is intended to implement Iowa Code section 272.2(1)"a."

This amendment will become effective June 5, 2013.

The following amendment is adopted.

Adopt the following **new** subrules 13.9(9) and 13.9(10):

**13.9(9)** *Requirements to obtain a teacher intern license if teaching in an international school.* A teacher intern candidate shall:

- a. Hold a baccalaureate degree from an accredited institution.
- b. Meet the requirements of at least one of the board's secondary (5-12) teaching endorsements listed in rule 282—13.28(272).
- c. Successfully complete the teacher intern program requirements listed in 13.9(4) "a"(1) to (7), 13.9(4) "b" and 13.9(4) "c"(1) to (6) through a four-year college or university and approved by the state board of education.

**13.9(10)** *Requirements to convert the teacher intern license to the initial license if teaching in an international school.* An initial license shall be issued upon application provided that the teacher intern has met all of the following requirements:

- a. Successful completion of the coursework and competencies in the teacher intern program approved by the state board of education.
- b. Verification that the teacher intern served successfully for a minimum of 160 days.

[Filed 4/9/13, effective 6/5/13]

[Published 5/1/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/13.

## ARC 0709C

## 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 change billing codes used by Iowa Medicaid Enterprise (IME) from atypical, state-created codes to nationally recognized codes. These amendments also provide standardization of service definitions amongst the home- and community-based services (HCBS) waivers. Finally, these amendments clarify the wording of some service definitions.

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

Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), no state Medicaid department can use atypical billing codes. (See 45 CFR 162.1000 and 162.1002.) Most of the codes used to bill waiver services to the IME are atypical and therefore need to be changed to standardized healthcare common procedure coding system (HCPCS) or current procedural terminology (CPT) codes. Those standardized codes have different unit descriptions from the unit descriptions currently contained in Chapter 78. For example, the atypical billing code unit definition is one hour; the new conversion code has a unit definition of 15 minutes.

The standardization and clarification of service definitions provides continuity amongst the waiver programs and clearer definition of the service for the member, provider, and state. The description of each waiver service is the same for all waiver programs, unless a waiver has a very specific exception.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin as **ARC 0589C** on February 6, 2013. That Notice was a companion to the Notice of Intended Action to amend Chapter 79 that was published as **ARC 0588C** on the same date (see Adopted and Filed **ARC 0710C** herein). Together, those Notices were the second set of changes to the unit time and rate definitions for home- and community-based services (HCBS) waiver and habilitation services. The first set was published in the Iowa Administrative Bulletin as **ARC 0567C** and **ARC 0568C** on January 23, 2013 (see Adopted and Filed **ARC 0707C** and **ARC 0708C** herein).

The Department received four responses from interested parties.

The first respondent was concerned that if the 15-minute billing rate is based on four hours of service time (16 15-minute increments), providers will be forced to bill for the entire service time of four hours, to equal the rates currently available for half days. The respondent summarized the comment by stating that the documentation requirements for day habilitation are at best cumbersome, and there is no current method for providers to bill for documentation time. The respondent believes that these amendments could potentially increase the cost of services of all providers.

The Department response is that documentation of service delivery is not, and has never been, a Medicaid billable activity. Documentation has always been considered as part of the overhead incurred by a provider that is not directly billable to or reimbursable by the Department. Providers that are billing Medicaid for the time to document services are at risk of recoupment of paid funds.

The Centers for Medicare and Medicaid Services (CMS) mandate regarding atypical billing codes was that each state Medicaid program is required to use only nationally standardized billing codes. For most of the codes used in HCBS services, the only nationally standardized code available for use is defined as 15 minutes. The nationally standardized codes list does not offer half-day units for day habilitation or prevocational services. The IME does not have the authority to alter the time frame definition of a standardized code. Therefore, in order to comply with the CMS mandate, the IME needed to eliminate these two time frames from those services.

Each provider is responsible to understand and implement the documentation standard rules as found in the Iowa Administrative Code, 441—79.3(249A). In addition, the IME outreach team has provided at least 8 documentation standards training sessions per year since 2008, and in many years the number of sessions rose to 16 per year. This training has been posted on the IME Web site each year. All Medicaid providers have been invited and encouraged to attend these sessions so they could better understand the billing codes and the requirements for documentation. Rule 441—79.3(249A) has its foundation in federal and state requirements for each provider to substantiate the service provided such that the state can ensure that the service was provided in accordance with the service description and that the payment for that service is in accordance with federal requirements.

The second respondent expressed similar concerns as the first respondent. This respondent requested that the Department redefine the proposed definitions of the units of service for a full day to be 4.01 hours to 8 hours per day. The current rules define 4 to 8 hours as a full day. If a member determines that the member needs and wants full days of service, the provider will still have to plan for days the member does not receive full days because of a medical appointment or some other appointment or issue. In this case, a number of hourly units for prevocational services and 15-minute units for day habilitation services will have to be planned for to take into account data available on attendance. The problem then becomes if a member does not get 4.25 hours of service to bill a full day, then the provider has

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

to bill the hourly or 15-minute units of service instead. The provider, in this case, will get shorted on reimbursement when compared to the current rules. The provider plans staffing based on the wants and needs of members. Providers cannot just send staff home if members do not come for services, leave early, or do not get a full day in when a full day was planned. Providers cannot afford a cut in service reimbursements. This change makes an already complicated system more complicated. It would seem that CMS is not requiring the units of service for a full day to be written as the Department has proposed in the new rules, and sometimes rules have unintended negative consequences.

The Department response is that the definitions of half-day, full-day, and extended-day services have been adopted for all waiver services that offer these time frames. The case stated in the comment about the provider planning to provide service but the member is not available for the service was the same before as it is under these amendments. Situations will always exist where the provider has made plans for the member, but the member is not available and, therefore, no staff is needed or billable. The intention of these amendments is to limit the amount of money paid by the IME when no service is provided.

IME staff devised the service time frames to more closely align IME payments with service provision. Currently, a provider could provide service for only one hour, but charge a rate to the IME based upon four hours of service. Under the adopted amendments, if the member receives only one hour of service, then the IME pays for one hour of service. In addition, the existing rules have overlapping times, but with the adoption of these amendments, there is no question as to whether four hours is billed as a half day or a full day.

The time frames were derived using the 15-minute rounding rules. The rounding rules state that for a 15-minute unit of service, 7 or fewer minutes are rounded down to a zero unit, and 8 to 14 minutes are rounded up to a full billing unit. Over time, providers should be rounding down as often as rounding up. Carrying the rounding rules over to the longer time frames lends a consistency to the reasoning behind the rounding of service time.

In regard to service planning, each provider and case manager will need to more closely plan for each member. Each member's plan may be comprised of any combination of the time frame options (15 minutes, half day, full day, or extended day). Also, at the end of the month, the provider may contact the case manager to alter the service plan to match actual service provision, if applicable. The purpose of the waiver is to provide services to meet the needs of the member in the most efficient manner.

The third respondent also requested that the Department redefine the proposed definitions of the units of service for a full day to be 4.01 to 8 hours per day for intellectual disability and brain injury waiver prevocational services and the intellectual disability day habilitation service.

The Department response is that the time frames for units of service were derived using the 15-minute rounding rules. The rounding rules state that for a 15-minute unit of service, 7 or fewer minutes are rounded down to a zero unit, and 8 to 14 minutes are rounded up to a full billing unit. Over time, providers should be rounding down as often as rounding up. Carrying the rounding rules over to the longer time frames lends a consistency to reasoning behind the rounding of service time.

The fourth respondent's concerns were nearly identical to those of the first respondent, and the Department's comments on those concerns are identical. This respondent raised one additional question about whether rules will be written to specify the maximum number of service units a month. Currently, Informational Letter 1164 specifies no more than 31 units a month. Of course the units of allowable services per month will have to be reviewed and changed since half days of service are going away.

The Department's response to the additional query by the respondent is that the informational letter refers only to half-day and full-day units. These amendments indicate that a member can have 15-minute or hourly units (depending upon the service) and daily units. The limit to the number of full-day units billable per month will continue to be limited as described in the informational letter. The number of 15-minute or hourly units is already included in these amendments.

No changes were made to these amendments as a result of the comments received by the Department during the comment period. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on April 10, 2013.

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

These amendments do not provide for waivers in specified situations because CMS has not indicated that any state can be exempt from the guidelines relating to atypical billing codes. The Department does not see any reason why any provider type would be exempt from adherence to CMS guidelines. 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, 2013.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 78] is being omitted. These amendments are identical to those published under Notice as **ARC 0589C**, IAB 2/6/13.

[Filed 4/10/13, effective 7/1/13]

[Published 5/1/13]

[For replacement pages for IAC, see IAC Supplement 5/1/13.]

**ARC 0707C**

**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.

The purpose of these amendments is to change billing codes in accordance with guidance from the Centers for Medicare and Medicaid Services (CMS) and the Health Insurance Portability and Accountability Act (HIPAA), which states that no state Medicaid department can use atypical billing codes. Most of the codes used to bill waiver services to the Iowa Medicaid Enterprise (IME) are atypical and therefore need to be changed to standardized health care procedure coding system (HCPCS) or current procedural terminology (CPT) codes. Those standardized codes have different unit descriptions than those currently contained in Chapter 78. For example, the atypical billing code unit definition is one hour; the new conversion code has a unit definition of 15 minutes.

These amendments also standardize service definitions. The standardization of service definitions was undertaken in order to provide continuity amongst the waiver programs. The description of each waiver service will now be the same for all waiver programs, unless a waiver has a very specific exception.

New subrules 78.37(15) and 78.37(19) are necessary to redefine services available through assisted living facilities.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0567C** on January 23, 2013. The Notice was a companion to the Notice of Intended Action to amend Chapter 79 that was published as **ARC 0568C** on the same date (see Adopted and Filed **ARC 0708C** herein).

The Department received four responses from interested parties.

The first respondent was concerned about how the amendments would impact CHORE services and how the services will be paid for in the future.

The Department response is that the CHORE service is available only under the elderly waiver; under no other waiver does Medicaid pay for yard work or minor home repairs for waiver members. Members under the other waivers are fully responsible for funding their own yard and home maintenance. Services available through any waiver are not, and never were, intended to pay for 100 percent of the needs of every waiver member. While the CHORE service does help support elders in remaining in their own homes, it has come to the Department's attention that there are abuses in the use of this service, such as removal of trees from rental properties and excessive monthly raking and stick removal. This tightening of the rules helps ensure that the Iowa Medicaid Enterprise (IME) is paying for necessary services,

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

without paying for unnecessary services. No changes to the amendments were made as the result of this comment.

The second respondent requested that the Department redefine the proposed definitions of the units of service to the following: a half day (1.01 to 4 hours per day), a full day (4.01 to 8 hours per day), and an extended day (8.01 to 12 hours per day). The current rules define 1 to 4 hours as a half day, 4 to 8 hours as a full day, and 8 to 12 hours as an extended day. The reason stated for this request was a concern that the provider could experience loss of service revenue under the proposed amendments.

The Department's response is that the definitions of half-day, full-day, and extended-day services have been adopted for all waiver services that offer these time frames. The intention of these amendments is to limit the amount of money paid by the IME when no service is provided. In regard to service planning, each provider and case manager will need to more closely plan for each member. Each member's plan may be comprised of any combination of the time frame options (15 minutes, half day, full day, or extended day). Also, at the end of the month, the provider may contact the case manager to alter the service plan to match actual service provision, if applicable. The purpose of the waiver is to provide services to meet the needs of the member in the most efficient manner. No changes to the amendments were made as the result of this comment.

The third respondent shared a concern that whenever the unit of service time is reduced, there is more overhead to track and more data to maintain, which is the reason why a day of service is less expensive than two half days, two half days are less expensive than six hours, and six hours are less expensive than 24 quarter hours. This is not something that providers can get around. It is a law of economics that is played out in the real world in many different situations. It is recognized even in the proposed rule making in the prevocational services provision where the daily rate is \$49.18 and the hourly rate is \$13.47. Using a six-hour-day assumption, the hourly cost for prevocational services would be \$8.20 per hour. In actuality, the cost is \$13.47, which is more than 64 percent higher. Given the premise that four 15-minute units will take more clock time to provide and cost more to document than one consecutive hour of time, the respondent suggested adding 20 percent to 30 percent to the 15-minute rates that were calculated from hourly rates. As an alternative, there could be a time study to determine a fair rate for providers and a rate that recognizes the need for cost neutrality inside of the state budget.

The Department response is that the CMS mandate requires that each state Medicaid program use only nationally standardized billing codes. For most of the codes used in HCBS services, the only nationally standardized code available for use is defined as 15 minutes. The IME does not have the authority to alter the time frame definition of a standardized code.

The direction from CMS is clear in regard to the use of shorter time frames: the service definition time should be more narrowly defined in order to more closely match the time of service provision to the time paid by Medicaid. Previously, if a service was defined as an hour, any portion of that hour (no matter how small or large) was billed as an hour. So if a provider gave 13 minutes of service, then a full hour was paid. Under the new code definitions, if 13 minutes was provided then only 15 minutes is paid.

Each provider is already responsible for tracking the start and end times of service provision as required by rule 441—79.3(249A). Adherence to these amendments does not require that a provider watch the clock continuously during the time of service provision, but to be aware of when service started and stopped. The IME is not requiring more documentation for these new code definitions as some assume. As always, the documentation created for the service should substantiate the entire time span of that service. There is no need to document each 15 minutes separately; nor has any such need been communicated by the IME to any provider that has asked for clarification. One documentation narrative has been, and will continue to be, used for each episode of service provision. No changes to the amendments were made as the result of this comment.

The fourth respondent shared three comments. The first comment was that these amendments would put the burden on the member to begin paying one-half of travel expenses that were previously allowed. The Department's response is that there will be no additional burden on the member because the IME will still pay for necessary transportation. If the member needs transportation both to and from a site, then the IME would pay for two one-way trips for that day. But if the member only needs transportation one way, then the IME is not paying the additional cost for a round trip that does not occur. Before, the

HUMAN SERVICES DEPARTMENT[441](cont'd)

IME paid for a round trip even if the member needed transportation only one way. This rule making more closely aligns the IME payment with the amount of service provided.

The second comment from this respondent was a concern that these amendments would conflict with subrule 78.37(11), which allows reimbursement per “one mile” or “per one way trip.” The Department response is that subrule 78.37(15) speaks to covered consumer-directed attendant care (CDAC) services whereas subrule 78.37(11) speaks to the coverage under the transportation service. These are two distinctly different services under the elderly waiver. The member may have both services in the member’s service plan, but one trip cannot be paid by both CDAC and the transportation service. The actual costs of transportation (gas, mileage, depreciation) have never been covered under CDAC because CDAC is a hands-on service. But CDAC does cover the time spent by the CDAC provider to transport a member (see 78.37(15)“(12) in Item 15 regarding coverage of transportation under CDAC). While the arrangement of the rule regarding CDAC is altered in this rule making, there is no actual change in benefit to the member. These amendments add a provision to more clearly define those services that are excluded as CDAC to clear up confusion that has occurred in the past.

The final comment from this respondent was a concern that these amendments would require a provider that provides 7 or fewer minutes of service to round to 0 minutes, which would mean that the provider is providing services without any reimbursement. The Department’s response is that the IME has chosen to use the rounding rule to more closely align IME payment to the actual time of service provision. Without the rounding rule, the IME pays the provider for 15 minutes when as little as 1 minute of service occurred, i.e., the provider is paid for up to 14 minutes of service that did not occur. Under these amendments, both the IME and the provider share in financial responsibility for the service. If the service is less than 8 minutes, then the provider is responsible. If the service is 8 or more minutes, then the IME pays for a full 15 minutes.

The direction from CMS is clear in regard to the use of shorter time frames: the service definition time should be more narrowly defined in order to more closely match the time of service provision to the time paid by Medicaid. Previously, if a service was defined as an hour, any portion of that hour (no matter how small or large) was billed as an hour. So if a provider gave 13 minutes of service, then a full hour was paid. Under the new code definitions, if 13 minutes was provided then only 15 minutes is paid. No changes to the amendments were made as the result of these comments.

These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on April 10, 2013.

These amendments do not provide for waivers in specified situations because CMS has not indicated that any state can be exempt from the guidelines described in this preamble. The Department does not see any reason why any provider type would be exempt from adherence to CMS guidelines. 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, 2013.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 78] is being omitted. These amendments are identical to those published under Notice as **ARC 0567C**, IAB 1/23/13.

[Filed 4/10/13, effective 7/1/13]

[Published 5/1/13]

[For replacement pages for IAC, see IAC Supplement 5/1/13.]

**ARC 0708C****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

This amendment changes the unit time and rate definition for a portion of the home- and community-based services (HCBS) waiver services.

Pursuant to direction from the Centers for Medicare and Medicaid Services (CMS) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), no state Medicaid department can use atypical billing codes. Most of the codes used to bill waiver services to the Iowa Medicaid Enterprise (IME) are atypical and therefore need to be changed to standardized healthcare common procedure coding system (HCPCS) or current procedural terminology (CPT) codes. Those standardized codes have different unit descriptions than those currently used by the IME. The changes to subrule 79.1(2) cause the rates of reimbursement to match the unit definitions of the services. For example, the rate of reimbursement for a service that is now defined as 15 minutes will be expressed as a 15-minute rate instead of as an hourly rate.

This amendment increases rates to meet minimum wage guidelines for senior companion services from \$6.59 to \$7.25 per hour.

This amendment also implements changes needed to align reimbursement with new billing code definitions caused by atypical conversion. Existing unit rates were mathematically adjusted to match the new unit rate (i.e., an hourly rate was divided by 4 to create a 15-minute rate).

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0568C** on January 23, 2013. The Notice was a companion to the Notice of Intended Action to amend Chapter 78 that was published as **ARC 0567C** on the same date (see Adopted and Filed **ARC 0707C** herein).

The Department received two responses from interested parties.

The first respondent shared a concern that whenever the unit of service time is reduced, there is more overhead to track and more data to maintain, which is the reason why a day of service is less expensive than two half days, two half days are less expensive than six hours, and six hours are less expensive than 24 quarter hours. Using the six-hour-day assumption, the hourly cost for prevocational services would be \$8.20 per hour. In actuality, the cost is \$13.47, which is more than 64 percent higher. Given the premise that four 15-minute units will take more clock time to provide and cost more to document than one consecutive hour of time, the respondent suggested adding 20 percent to 30 percent to the 15-minute rates calculated from hourly rates.

The Department's response is that the mandate from CMS was that each state Medicaid program is required to use only nationally standardized billing codes. For most of the codes used in HCBS services, the only nationally standardized code available for use is defined as 15 minutes. The IME does not have the authority to alter the time frame definition of a standardized code.

The direction from CMS is clear in regard to the use of shorter time frames: The service definition time should be more narrowly defined in order to more closely match the time of service provision to the time paid by Medicaid. Previously, if a service was defined as an hour, any portion of that hour (no matter how small or large) was billed as an hour. So if a provider gave 13 minutes of service, then a full hour was paid. Under the new code definitions, if 13 minutes of service was provided, then only 15 minutes is paid.

Each provider is already responsible for tracking the start and end times of service provision as required by rule 441—79.3(249A). Adherence to the adopted amendment does not require that a provider watch the clock continuously during the time of service provision, but to be aware of when service started and stopped. The IME is not requiring more documentation for these new code definitions as some assume. The documentation created for the service should substantiate the entire time span of that service. There is no need to document each 15 minutes separately; nor has

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

any such need been communicated by the IME to any provider that has asked for clarification. One documentation narrative has been, and will continue to be, used for each episode of service provision. No changes to the amendment were made as the result of this comment.

The second respondent stated that the \$5.15 reimbursement per unit of service (15 minutes) is low; considering that the elderly waiver cap is \$1,300 per month, the 15-minute unit of service reimbursement should be in the \$5.90 range.

The Department's response is that all consumer-directed attendant care (CDAC) services are moving to a 15-minute unit of service; this includes individual, agency and assisted living. Assisted living CDAC service is undergoing a major revision, from one unit for a maximum of \$1,139 per month to a 15-minute unit of service, with a corresponding 15-minute rate. The adopted amendment sets the maximum payment rate for assisted living CDAC providers to be equal to that of agency CDAC providers, which is \$5.15 per 15-minute unit. Agency CDAC providers currently provide an hourly unit of service for a maximum payment of \$20.60 per hour; this is the same as \$5.15 per 15-minute unit. CDAC services are the same regardless of what type of CDAC provider supplies the services; therefore it is consistent that agency and assisted living CDAC providers be paid at the same unit rate. No changes to the amendment were made as the result of this comment.

This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on April 10, 2013.

This amendment does not provide for waivers in specified situations because CMS has not indicated that any state can be exempt from the guidelines described herein. The Department does not see any reason why any provider type would be exempt from adherence to CMS guidelines. 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.

This amendment will become effective July 1, 2013.

The following amendment is adopted.

Amend subrule **79.1(2)**, provider category "HCBS waiver service providers," paragraphs "1," "4," "7," "11," "12," "14" to "16," "22" and "29," as follows:

Provider category	Basis of reimbursement	Upper limit
1. Adult day care	Fee schedule	<del>For</del> Effective 7/1/13, for AIDS/HIV, brain injury, elderly, and ill and handicapped waivers <del>effective 1/1/13</del> : Provider's rate in effect 6/30/12 plus 2%, <u>converted to a 15-minute, half-day, full-day, or extended-day rate.</u> If no 6/30/12 rate: Veterans Administration contract rate or <u>\$1.41 per 15-minute unit, \$22.56 per half day, \$44.91 per full day, or \$67.35 per extended day</u> if no Veterans Administration contract.

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

Provider category	Basis of reimbursement	Upper limit
		<p><del>For</del> Effective 7/1/13, for intellectual disability waiver: County contract rate or, effective 1/1/13 in the absence of a contract rate, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute, half-day, full-day, or extended-day rate. If no 6/30/12 rate, \$1.88 per 15-minute unit, \$30.06 per half day, \$60.00 per full day, or \$76.50 per extended day.</p>
4. Homemakers	Fee schedule	<p>Effective <del>1/1/13</del> 7/1/13, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$20.21 per hour</del> \$5.05 per 15-minute unit.</p>
7. Chore service	Fee schedule	<p>Effective <del>1/1/13</del> 7/1/13, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$7.86 per half hour</del> \$3.93 per 15-minute unit.</p>
11. Transportation	Fee schedule	<p>Effective <del>1/1/13</del> 7/1/13: County contract rate or, in the absence of a contract rate, provider's rate in effect 6/30/12 plus 2%, converted to a mile or one-way trip unit rate.</p>
12. Nutritional counseling	Fee schedule	<p>Effective <del>1/1/13</del> 7/1/13 for non-county contract: Provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: \$8.42 per 15-minute unit.</p>
14. Senior companion	Fee schedule	<p>Effective <del>1/1/13</del> 7/1/13 for non-county contract: Provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$6.72 per hour</del> \$1.82 per 15-minute unit.</p>
15. Consumer-directed attendant care provided by:		
Agency (other than an elderly waiver assisted living program)	Fee agreed upon by member and provider	<p>Effective <del>1/1/13</del> 7/1/13, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$20.60 per hour</del> \$5.15 per 15-minute unit, not to exceed \$119.05 per day.</p>

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Provider category	Basis of reimbursement	Upper limit
Assisted living program (for elderly waiver only)	Fee agreed upon by member and provider	Effective <del>4/1/13</del> 7/1/13, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$1,139.34 per calendar month. When prorated per day for a partial month, \$37.44 per day \$5.15 per 15-minute unit, not to exceed \$119.05 per day.</del>
Individual	Fee agreed upon by member and provider	Effective <del>4/1/13</del> 7/1/13, <del>\$13.74 per hour \$3.44 per 15-minute unit, not to exceed \$80.13 per day.</del>
16. Counseling		
Individual:	Fee schedule	Effective <del>4/1/13</del> 7/1/13, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: \$11.01 per 15-minute unit.
Group:	Fee schedule	Effective <del>4/1/13</del> 7/1/13, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$44.00 per hour \$11.00 per 15-minute unit. Rate is divided by six, or, if the number of persons who comprise the group exceeds six, the actual number of persons who comprise the group.</del>
22. Family counseling and training	Fee schedule	Effective <del>4/1/13</del> 7/1/13, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$44.00 per hour \$11.00 per 15-minute unit.</del>
29. In-home family therapy	Fee schedule	Effective <del>4/1/13</del> 7/1/13, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$95.50 per hour \$23.88 per 15-minute unit.</del>

[Filed 4/10/13, effective 7/1/13]

[Published 5/1/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/13.

**ARC 0710C****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments are needed to align reimbursement with new billing code definitions caused by conversion of atypical, state-created codes to nationally recognized codes. Current unit rates have been

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

mathematically adjusted to match the new unit rate (i.e., an hourly rate was divided by 4 to create a 15-minute rate). In addition, these amendments increase rates to equalize service rates across programs (i.e., prevocational habilitation from \$9.91 to \$13.47 per hour). Finally, these amendments change the basis of reimbursement for respite from a retrospectively limited prospective rate to a fee schedule.

The Department has adopted these amendments pursuant to direction from the Centers for Medicare and Medicaid Services (CMS) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which states that no state Medicaid department can use atypical billing codes. Most of the codes used to bill waiver services to the Iowa Medicaid Enterprise (IME) are atypical and therefore need to be changed to standardized healthcare common procedure coding system (HCPCS) or current procedural terminology (CPT) codes. Those standardized codes have different unit descriptions from the unit descriptions currently used by the IME. These amendments to rule 441—79.1(249A) cause the rates of reimbursement to match the unit definitions of the services. For example, the rate of reimbursement for a service that is now defined as 15 minutes will be expressed as a 15-minute rate instead of as an hourly rate.

The Department has determined that moving the retrospectively limited prospective rates for respite to a fee schedule will increase standardization within the service since many respite providers are already paid by fee schedule.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin as **ARC 0588C** on February 6, 2013. That Notice was a companion to the Notice of Intended Action to amend Chapter 78 that was published as **ARC 0589C** on the same date (see Adopted and Filed **ARC 0709C** herein). Together, those Notices were the second set of changes to the unit time and rate definitions for home- and community-based services (HCBS) waiver and habilitation services. The first set was published in the Iowa Administrative Bulletin as **ARC 0567C** and **ARC 0568C** on January 23, 2013 (see Adopted and Filed **ARC 0707C** and **ARC 0708C** herein).

The Department received six responses from interested parties on the proposed amendments.

All six of the respondents expressed concern about how the units of service specifically relating to half-day, full-day, and extended-day rates would impact the respondents' individual situations. They requested that the Department redefine the definition of a full day of service to be 4.01 to 8 hours per day instead of the 4.25 to 8 hours proposed by the Department. If a member determines that the member needs and wants full days of service, the provider will still have to plan for days when the member does not receive full days because of a medical appointment or some other appointment or issue. In this case, a number of hourly units for prevocational and 15-minute units for day habilitation will have to be planned for to take into account data available on attendance. The problem then becomes if a member does not get 4.25 hours of service to bill a full day, then the provider has to bill the hourly unit of service or 15-minute unit of service instead. The provider in this case will get shorted on reimbursement when compared to the current rules. The provider plans staffing based on the wants and needs of members. Providers cannot just send staff home if members do not come for services, leave early, or do not get a full day in when it is planned. Providers cannot afford a cut in service reimbursements. This change makes an already complicated system more complicated.

The Department's response to the comments is that the definitions of half-day, full-day, and extended-day services have been adopted for all waiver services that offer these time frames. Situations will always exist where the provider has made plans for the member, but the member is not available and, therefore, no staff is needed or billable. The intention of these amendments is to limit the amount of money paid by the IME when no service is provided.

IME staff devised the service time frames to more closely align IME payments with service provision. Currently, a provider could provide service for only one hour, but charge a rate to the IME based upon four hours of service. Under the adopted amendments, if the member receives only one hour of service, then the IME pays for one hour of service. In addition, the existing rules have overlapping times, but with the adoption of these amendments, there is no question as to whether four hours is billed as a half day or a full day.

The time frames were derived using the 15-minute rounding rules. The rounding rules state that for a 15-minute unit of service, 7 or fewer minutes of service are rounded down to a zero unit, and 8 to 14

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

minutes of service are rounded up to a full billing unit. Over time, providers should be rounding down as often as rounding up. Carrying the rounding rules over to the longer time frames lends a consistency to the reasoning behind the rounding of service time.

In regard to service planning, each provider and case manager will need to more closely plan for each member. Each member's plan may be comprised of any combination of the time frame options (15 minutes, half day, full day, or extended day). Also, at the end of the month, the provider may contact the case manager to alter the service plan to match actual service provision, if applicable. The purpose of the waiver is to provide services to meet the needs of the member in the most efficient manner.

The only additional comment from a respondent was a question about whether rules will be written to specify the maximum number of service units a month. Currently, Informational Letter 1164 specifies no more than 31 units a month. Of course the units of allowable services per month will have to be reviewed and changed since half days of service are going away.

The Department's response to the additional query by the respondent is that the informational letter refers only to half-day and full-day units. These amendments indicate that a member can have 15-minute or hourly units (depending upon the service) and daily units. The limit to the number of full-day units billable per month will continue to be limited as described in the informational letter. The number of 15-minute or hourly units is already included in these amendments.

No changes were made to these amendments as the result of comments received by the Department during the comment period. However, a technical correction has been made. An existing cross reference that was inadvertently omitted from the Notice has been incorporated in the supported community living provider category under paragraph "24" in Item 1.

The Council on Human Services adopted these amendments on April 10, 2013.

These amendments do not provide for waivers in specified situations because CMS has not indicated that any state can be exempt from the guidelines relating to atypical billing codes. 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, 2013.

The following amendments are adopted.

ITEM 1. Amend subrule **79.1(2)**, provider category "HCBS waiver service providers," paragraphs "6," "18," "19," "23," "24," "26" and "28," as follows:

Provider category	Basis of reimbursement	Upper limit
6. Respite care when provided by:		
Home health agency:		
Specialized respite	Cost-based rate for nursing services provided by a home health agency	Effective <del>4/1/13</del> 7/1/13, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: Lesser of maximum Medicare rate in effect 11/30/09 plus 2%, converted to a 15-minute rate, or maximum Medicaid rate in effect 6/30/12 plus 2%, converted to an hourly a 15-minute rate, not to exceed \$302.88 per day.

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

Provider category	Basis of reimbursement	Upper limit
Basic individual respite	Cost-based rate for home health aide services provided by a home health agency	Effective <del>4/1/13</del> <u>7/1/13</u> , provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: Lesser of maximum Medicare rate in effect 11/30/09 plus 2%, converted to a 15-minute rate, or maximum Medicaid rate in effect 6/30/12 plus 2%, converted to an hourly a 15-minute rate, not to exceed \$302.88 per day.
Group respite	<del>Retrospectively limited prospective rates. See 79.1(15) Fee schedule</del>	Effective <del>4/1/13</del> <u>7/1/13</u> , provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$13.38 per hour</del> <u>\$3.35 per 15-minute unit</u> , not to exceed \$302.88 per day.
Home care agency: Specialized respite	<del>Retrospectively limited prospective rates. See 79.1(15) Fee schedule</del>	Effective <del>4/1/13</del> <u>7/1/13</u> , provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$34.43 per hour</del> <u>\$8.61 per 15-minute unit</u> , not to exceed \$302.88 per day.
Basic individual respite	<del>Retrospectively limited prospective rates. See 79.1(15) Fee schedule</del>	Effective <del>4/1/13</del> <u>7/1/13</u> , provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$18.37 per hour</del> <u>\$4.59 per 15-minute unit</u> , not to exceed \$302.88 per day.
Group respite	<del>Retrospectively limited prospective rates. See 79.1(15) Fee schedule</del>	Effective <del>4/1/13</del> <u>7/1/13</u> , provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$13.38 per hour</del> <u>\$3.35 per 15-minute unit</u> , not to exceed \$302.88 per day.
Nonfacility care: Specialized respite	<del>Retrospectively limited prospective rates. See 79.1(15) Fee schedule</del>	Effective <del>4/1/13</del> <u>7/1/13</u> , provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$34.43 per hour</del> <u>\$8.61 per 15-minute unit</u> , not to exceed \$302.88 per day.
Basic individual respite	<del>Retrospectively limited prospective rates. See 79.1(15) Fee schedule</del>	Effective <del>4/1/13</del> <u>7/1/13</u> , provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$18.37 per hour</del> <u>\$4.59 per 15-minute unit</u> , not to exceed \$302.88 per day.

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

Provider category	Basis of reimbursement	Upper limit
Group respite	<del>Retrospectively limited prospective rates. See 79.1(15) Fee schedule</del>	Effective <del>4/1/13</del> 7/1/13, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$13.38 per hour</del> \$3.35 per 15-minute unit, not to exceed \$302.88 per day.
Facility care:		
Hospital or nursing facility providing skilled care	Fee schedule	Effective <del>4/1/13</del> 7/1/13, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$13.38 per hour</del> \$3.35 per 15-minute unit, not to exceed the facility's daily Medicaid rate for skilled nursing level of care.
Nursing facility	Fee schedule	Effective <del>4/1/13</del> 7/1/13, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$13.38 per hour</del> \$3.35 per 15-minute unit, not to exceed the facility's daily Medicaid rate.
Camps	<del>Retrospectively limited prospective rates. See 79.1(15) Fee schedule</del>	Effective <del>4/1/13</del> 7/1/13, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$13.38 per hour</del> \$3.35 per 15-minute unit, not to exceed \$302.88 per day.
Adult day care	Fee schedule	Effective <del>4/1/13</del> 7/1/13, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$13.38 per hour</del> \$3.35 per 15-minute unit, not to exceed rate for regular adult day care services.
Intermediate care facility for persons with an intellectual disability	Fee schedule	Effective <del>4/1/13</del> 7/1/13, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$13.38 per hour</del> \$3.35 per 15-minute unit, not to exceed the facility's daily Medicaid rate.
Residential care facilities for persons with an intellectual disability	Fee schedule	Effective <del>4/1/13</del> 7/1/13, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$13.38 per hour</del> \$3.35 per 15-minute unit, not to exceed contractual daily rate.

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

Provider category	Basis of reimbursement	Upper limit
Foster group care	Fee schedule	Effective <del>4/1/13</del> 7/1/13, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$13.38 per hour</del> <u>\$3.35 per 15-minute unit</u> , not to exceed daily rate for child welfare services.
Child care facilities	Fee schedule	Effective <del>4/1/13</del> 7/1/13, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$13.38 per hour</del> <u>\$3.35 per 15-minute unit</u> , not to exceed contractual daily rate.
18. Supported community living	Retrospectively limited prospective rates. See 79.1(15)	<del>Effective 4/1/13</del> For intellectual disability and brain injury waiver effective 7/1/13: <del>\$35.68 per hour</del> <u>\$8.92 per 15-minute unit</u> , not to exceed the maximum daily ICF/ID rate per day in effect 6/30/12 plus 2%.
19. Supported employment:		
Activities to obtain a job:		
Job development	Fee schedule	Effective 1/1/13, provider's rate in effect 6/30/12 plus 2%. If no 6/30/12 rate: \$927.18 per unit (job placement). Maximum of two units per 12 months.
Employer development	Fee schedule	Effective 1/1/13, provider's rate in effect 6/30/12 plus 2%. If no 6/30/12 rate: \$927.18 per unit (job placement). Maximum of two units per 12 months.
Enhanced job search	Retrospectively limited prospective rates. See 79.1(15)	Effective <del>4/1/13</del> 7/1/13: <del>\$35.68 per hour</del> <u>\$8.92 per 15-minute unit</u> . Maximum of <del>26 hours</del> <u>104 units</u> per 12 months.
Supports to maintain employment	Retrospectively limited prospective rates. See 79.1(15)	Effective <del>4/1/13</del> 7/1/13: <del>\$35.68 per hour</del> <u>\$8.92 per 15-minute unit</u> for all activities other than personal care and services in an enclave setting. <del>\$20.21 per hour</del> <u>\$5.05 per 15-minute unit</u> for personal care. <del>\$6.31 per hour</del> <u>\$1.58 per 15-minute unit</u> for services in an enclave setting. \$2,941.38 per month for total service. Maximum of <del>40</del> <u>160</u> units per week.
23. Prevocational services	Fee schedule	County contract rate or, in absence of a contract rate, effective <del>4/1/13</del> 7/1/13: Lesser of provider's rate in effect 6/30/12 plus 2%, \$49.18 per day, <del>\$24.59 per half day</del> , or \$13.47 per hour.

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Provider category	Basis of reimbursement	Upper limit
24. Interim medical monitoring and treatment:		
Home health agency (provided by home health aide)	Cost-based rate for home health aide services provided by a home health agency	Effective <del>4/1/13</del> 7/1/13: Lesser of maximum Medicare rate in effect 11/30/09 plus 2%, converted to a 15-minute rate, or maximum Medicaid rate in effect 6/30/12 plus 2%, converted to <del>an hourly a</del> <u>15-minute rate.</u>
Home health agency (provided by nurse)	Cost-based rate for nursing services provided by a home health agency	Effective <del>4/1/13</del> 7/1/13: Lesser of maximum Medicare rate in effect 11/30/09 plus 2%, converted to a 15-minute rate, or maximum Medicaid rate in effect 6/30/12 plus 2%, converted to <del>an hourly a</del> <u>15-minute rate.</u>
Child development home or center	Fee schedule	Effective <del>4/1/13</del> 7/1/13, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$13.38 per hour</del> <u>\$3.35 per 15-minute unit.</u>
Supported community living provider	Retrospectively limited prospective rate. See 79.1(15)	Effective <del>4/1/13</del> 7/1/13, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$35.68 per hour</del> <u>\$8.92 per 15-minute unit, not to exceed the maximum ICF/ID rate per day in effect 6/30/12 plus 2%.</u>
26. Day habilitation	Fee schedule	Effective <del>4/1/13</del> 7/1/13: County contract rate converted to a 15-minute or daily rate or, in the absence of a contract rate, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute or daily rate. If no 6/30/12 rate: <del>\$13.47 per hour, \$3.37 per 15-minute unit</del> <u>\$32.79 per half-day, or \$65.58 per day.</u>
28. Family and community support services	Retrospectively limited prospective rates. See 79.1(15)	Effective <del>4/1/13</del> 7/1/13, provider's rate in effect 6/30/12 plus 2%, converted to a 15-minute rate. If no 6/30/12 rate: <del>\$35.68 per hour</del> <u>\$8.92 per 15-minute unit.</u>

ITEM 2. Amend subrule **79.1(2)**, provider category "Home- and community-based habilitation services," paragraphs "2" to "5," as follows:

Provider category	Basis of reimbursement	Upper limit
2. Home-based habilitation	Retrospective cost-related. See 79.1(24)	Effective 7/1/13: <del>\$46.70 per hour</del> <u>\$11.68 per 15-minute unit, not to exceed \$6,083 per month, or \$200 per day.</u>

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

Provider category	Basis of reimbursement	Upper limit
3. Day habilitation	Retrospective cost-related. See 79.1(24)	Effective 7/1/13: <del>\$13.21 per hour</del> , \$3.30 per 15-minute unit <del>\$32.15 per half day</del> , or \$64.29 per day.
4. Prevocational habilitation	Retrospective cost-related. See 79.1(24)	Effective 7/1/13: <del>\$9.91</del> \$13.47 per hour, <del>\$24.11 per half day</del> , or \$48.22 per day.
5. Supported employment:		
Activities to obtain a job:		
Job development	Fee schedule	\$909 per unit (job placement). Maximum of two units per 12 months.
Employer development	Fee schedule	\$909 per unit (job placement). Maximum of two units per 12 months.
Enhanced job search	Retrospective cost-related. See 79.1(24)	Effective 7/1/13: Maximum of <del>\$34.98 per hour</del> \$8.75 per 15-minute unit and <del>26 hours</del> 104 units per 12 months.
Supports to maintain employment	Retrospective cost-related. See 79.1(24)	Effective 7/1/13: <del>\$6.19 per hour</del> \$1.55 per 15-minute unit for services in an enclave setting; <del>\$19.81 per hour</del> \$4.95 per 15-minute unit for personal care; and <del>\$34.98 per hour</del> \$8.75 per 15-minute unit for all other services. Total not to exceed \$2,883.71 per month. Maximum of 40 <u>160</u> units per week.

ITEM 3. Amend subrule 79.1(15) as follows:

**79.1(15) HCBS retrospectively limited prospective rates.** This methodology applies to reimbursement for HCBS supported community living; HCBS family and community support services; HCBS supported employment enhanced job search activities; and HCBS interim medical monitoring and treatment when provided by an HCBS-certified supported community agency; ~~HCBS respite when provided by nonfacility providers, camps, home care agencies, or providers of residential-based supported community living; and HCBS group respite provided by home health agencies.~~

a. and b. No change.

c. *Prospective rates for new providers other than respite.*

(1) to (3) No change.

d. *Prospective rates for established providers other than respite.*

(1) to (5) No change.

e. ~~*Prospective rates for respite.* Prospective rates for respite shall be agreed upon between the consumer, interdisciplinary team and the provider up to the maximum, subject to retrospective adjustment as provided in paragraph "f."~~

f. and g. No change.

ITEM 4. Amend paragraph 79.1(24)"a" as follows:

a. *Units of service.*

(1) No change.

(2) A unit of home-based habilitation is ~~one hour (for up to 7 hours per day)~~ a 15-minute unit (for up to 31 units per day) or one day (for 8 or more hours per day), based on the average hours of

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

service provided during a 24-hour period as an average over a calendar month. Reimbursement for ~~hourly~~ services shall not exceed the upper limit for daily home-based habilitation services set in 79.1(2).

1. The daily unit of service shall be used when a member receives services for 8 or more hours provided during a 24-hour period as an average over a calendar month. The ~~hourly~~ 15-minute unit shall be used when the member receives services for ~~1 to 7 hours~~ 1 to 31 15-minute units provided during a 24-hour period as an average over a calendar month.

2. No change.

(3) A unit of day habilitation is ~~an hour, a half-day (1 to 4 hours),~~ 15 minutes (up to 16 units per day) or a full day (4 ~~4.25~~ to 8 hours).

(4) A unit of prevocational habilitation is ~~an hour, a half-day (1 to 4 hours),~~ (for up to 4 units per day) or a full day (4 ~~4.25~~ to 8 hours).

(5) A unit of supported employment habilitation for activities to obtain a job is:

1. One job placement for job development and employer development.

2. ~~One hour~~ A 15-minute unit for enhanced job search.

(6) A unit of supported employment habilitation supports to maintain employment is ~~one hour~~ a 15-minute unit.

[Filed 4/10/13, effective 7/1/13]

[Published 5/1/13]

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**ARC 0713C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services adopts amendments to Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

The Health Care and Education Reconciliation Act of 2010 (HCERA), Section 1202 (Public Law 111-152) (42 U.S.C. § 1396a(a)(13)(C)), requires that state Medicaid programs increase payments to primary care specialties specified under Section 1202 of the Act. In particular, HCERA identifies the following specialty designations: "family medicine," "general internal medicine," and "pediatric medicine." The payment requirement specifies that reimbursement must be "... at a rate not less than 100 percent of the payment under Part B of title XVIII [Medicare]." Section 1202 of the Act also specifies the types of services that fall under this requirement. Those services include: (1) services designated as "evaluation and management" under the healthcare common procedure coding system (HCPCS), as of December 31, 2009 (and subsequently modified), which are current procedural terminology (CPT) codes in the ("evaluation and management") range 99201-99499; and (2) services related to immunization administration, billed with current CPT codes 90460, 90461, 90471, 90472, 90473 and 90474.

Section 1202 of the Act also requires that these same changes be made for Medicaid managed care plans. In that regard, such changes are being effectuated by contract amendments with the current (and only) medical managed care plan administered by Meridian Health Plan. Beyond Meridian, there are no other managed care plans that would be affected. Because these changes are being addressed via contract amendment, there are no changes being made to managed care rules under 441—Chapter 88.

Section 1202 of the Act specifies that these increased payments are only to be in effect for calendar years 2013 and 2014.

Final regulations promulgated by the Centers for Medicare and Medicaid Services (CMS) allow for two criteria to identify the applicable practitioners meeting the requirements of Section 1202 of the Act:

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1. The first method is board certification by the national specialty boards applicable to each specified group (i.e., the American Board of Medical Specialties (ABMS), the American Board of Physician Specialties (ABPS) or the American Osteopathic Association (AOA)).

2. The second method is claims history of at least 60 percent of a given practitioner's Medicaid claims attributable to the primary care services (i.e., procedure codes) specified under Section 1202 of the Act. Providers must certify that they meet one or both of these criteria.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin as **ARC 0584C** on February 6, 2013. The amendments were also Adopted and Filed Emergency and published as **ARC 0585C** on the same date. The Adopted and Filed Emergency amendments became effective January 1, 2013.

On January 9, 2013, after the amendments were Adopted and Filed Emergency, CMS issued additional guidance on this Affordable Care Act provision. In its guidance, CMS recommends allowing eligible providers that attest by April 1, 2013, to receive the payment for services rendered on and after January 1, 2013. Eligible providers that attest after April 1, 2013, will receive the payment for services rendered on and after their attestation date. In Item 2, subparagraph (3) of new paragraph 79.1(7)“c” has been changed to reflect the recent guidance from CMS.

The Council on Human Services adopted these amendments on April 10, 2013.

These amendments do not provide for waivers in specified situations because the amendments confer a benefit of increased payment to identified primary care providers specified under Section 1202 of the Act. Requests for 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, there is a potential for positive impact on private sector jobs. According to CMS, “the overall benefit of this rule is the expected increase in provider participation [in Medicaid] by primary care physicians resulting in better access to primary and preventive health services by Medicaid beneficiaries.” 77 Federal Regulation 66670 (Nov. 6, 2012). On that basis, there will be a positive impact on private sector jobs and employment opportunities for primary care physicians and associated personnel.

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

These amendments will become effective July 1, 2013, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule **79.1(2)**, provider category “Physicians (doctors of medicine or osteopathy),” as follows:

Provider category	Basis of reimbursement	Upper limit
Physicians (doctors of medicine or osteopathy)	Fee schedule. See 79.1(7)“a”	Fee schedule in effect 11/30/09 less 5%.
Anesthesia services	Fee schedule	Fee schedule in effect 11/30/09 less 5%.
Physician-administered drugs	Fee schedule	Fee schedule in effect 6/30/12 less 2%.
<u>Qualified primary care services furnished in 2013 or 2014</u>	<u>See 79.1(7)“c”</u>	<u>Rate provided by 79.1(7)“c”</u>

ITEM 2. Adopt the following **new** paragraph **79.1(7)“c”**:

*c. Payment for primary care services furnished in 2013 or 2014.* To the extent required by 42 U.S.C. § 1396a(a)(13)(C), primary care services furnished in calendar years 2013 or 2014 by a qualified primary care physician or under the supervision of a qualified primary care physician shall be paid as provided pursuant to this paragraph (79.1(7)“c”).

(1) Primary care services eligible for payment pursuant to this paragraph (79.1(7)“c”) include:

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

1. Evaluation and management (E & M) services covered by Iowa Medicaid and designated in the healthcare common procedure coding system (HCPCS) as codes 99201 through 99499, or their successor codes; and

2. Vaccine administration services covered by Iowa Medicaid and designated in the healthcare common procedure coding system (HCPCS) as codes 90460, 90461, 90471, 90472, 90473 and 90474, or their successor codes.

(2) For purposes of this paragraph (79.1(7)“c”), a qualified primary care physician is a physician who:

1. Is certified by the American Board of Medical Specialties (ABMS), the American Board of Physician Specialties (ABPS) or the American Osteopathic Association (AOA) with a specialty designation of family medicine, general internal medicine, or pediatric medicine or with a subspecialty designation recognized by the certifying organization as a subspecialty of family medicine, general internal medicine, or pediatric medicine; or

2. Has furnished primary care services eligible for payment pursuant to this paragraph (79.1(7)“c”) equal to at least 60 percent of the Iowa Medicaid services for which the qualified primary care physician has submitted claims during the most recently completed calendar year or, for newly eligible physicians, the prior month (excluding claims not paid and claims for which Medicare is the primary payer).

(3) For payment to be made under this paragraph (79.1(7)“c”), the qualified primary care physician must have certified that the physician is a qualified primary care physician by submitting Form 470-5138, Iowa Medicaid Primary Care Physician Certification and Attestation for Primary Care Rate Increase, prior to the date of service or by April 1, 2013, for services rendered January 1, 2013, through April 1, 2013.

(4) Primary care services eligible for payment pursuant to this rule shall be paid at the greater of:

1. The otherwise applicable Iowa Medicaid rate;
2. The applicable rate under Medicare Part B, in effect for services rendered on the first day of the calendar year;

3. The rate that would be applicable under Medicare Part B, in effect for services rendered on the first day of the calendar year, if the conversion factor under 42 U.S.C. § 1395w-4(d) were the conversion factor for 2009; or

4. If there is no applicable rate under Medicare Part B, the rate specified in a fee schedule established and announced by the federal Centers for Medicare and Medicaid Services, pursuant to 42 CFR § 447.405(A)(1).

(5) Notwithstanding the foregoing provisions of this paragraph (79.1(7)“c”), payment for the administration of vaccines provided under the vaccines for children program in calendar years 2013 or 2014 shall be limited to the lesser of:

1. The regional maximum administration fee under the vaccines for children program; or
2. The applicable Medicare fee schedule rate for HCPCS code 90460 (or, if higher, the Medicare fee schedule rate for HCPCS code 90460 that would apply if the conversion factor under 42 U.S.C. § 1395w-4(d) were the conversion factor for 2009).

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**ARC 0711C****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

This amendment clarifies when a medical assistance provider will not or cannot provide records to support services billed to the medical assistance program. In the course of administrative law hearings, the administrative law judges have determined that "may" indicates that the Department cannot recover medical assistance payments when a provider will not or cannot provide records to support services billed to the medical assistance program.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0570C** on January 23, 2013.

The Department received one comment from an interested party.

The respondent objected to this amendment as it is seen as ill-defined, overly broad, lacking in due process, and resulting in an unjust remedy. The respondent does not debate the importance of maintaining records as directed by the rule or the importance of producing records in support of a claim for services. This rule, however, addresses any request for production of records and proposes as a remedy complete denial of payment for medical services legitimately provided, payment that can range considerably in amounts.

The respondent stated that production of records raises innumerable issues for providers of services bound by many laws and regulations. Each request must be reviewed and answered consistent with the request and laws and regulations applicable to that request. Legitimate production disputes do arise. Too, sometimes requests for production are unreasonable in time and scope; while a provider might release what the provider believes is either responsive and/or consistent with law, the Department may disagree. The Medicaid program cannot avoid its obligations to pay for health care services provided because of a legitimate dispute regarding record production.

The respondent also stated that the proposed mandate does not define "timely" and, as such, gives the Department full authority to arbitrarily set time frames for production, resulting in a denial of payment or automatic reduction of payments through recoupment processes if the arbitrary and potentially unreasonable time frames are not met. The proposed mandate provides no notice or opportunity to be heard regarding the dispute and the Department's denial or recoupment due to a lack of record production. The proposed mandate provides no standard; rather any lack of production—whether reasonable or unreasonable, whether clear or unclear, whether delivered to the correct address or wrong address, whether sent but not received, whether consistent with law or not—results under this proposed mandate in a denial of payment for services provided regardless of the nature of the services or the payment amount.

The respondent believes that the Department now has authority to deny a claim, not solely due to lack of record production, but due to inadequate documentation supporting the legitimacy of the claim. The proposed amendment anticipates an automatic administrative process that may be ill-supported and unjust.

The Department's response is that this amendment effects a one-word change that makes clear the Iowa Medicaid Enterprise (IME) is required under the rules to collect overpayments when there are no records to support the services. There are no other changes to the rule (e.g., "timely" has always been a requirement in rule). The remainder of the records review processes in Chapter 79 still apply (e.g., 30 days to respond to the request, an additional 15-day period on request, etc.). An exception to policy for the records submission time frame can be requested for hard cases.

Under federal law, the IME is required to collect identified overpayments. The IME could be subject to False Claims Act liability to the federal government and others if overpayments were not collected by the IME. This amendment is intended to clarify current practice and is not intended to effect any

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change in current practice. No changes have been made to this amendment as the result of the comments provided.

This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on April 10, 2013.

This amendment does not provide for waivers in specified situations because all Medicaid providers are subject to the same requirements to keep records to support services billed to Medicaid and provide the records when requested. 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.

This amendment will become effective July 1, 2013.

The following amendment is adopted.

Amend rule 441—79.3(249A), introductory paragraph, as follows:

**441—79.3(249A) Maintenance of records by providers of service.** A provider of a service that is charged to the medical assistance program shall maintain complete and legible records as required in this rule. Failure to maintain records or failure to make records available to the department or to its authorized representative timely upon request ~~may~~ shall result in claim denial or recoupment.

[Filed 4/10/13, effective 7/1/13]

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**ARC 0712C**

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

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments add and revise language to clarify the Department's rules regarding reviews and audits in the medical assistance program. The amendments make the rules consistent with the "good cause" language in the Iowa Rules of Civil Procedure by using "good cause" language for exceptions.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0569C** on January 23, 2013.

The Department received two comments from interested parties.

Both respondents shared similar concerns that the proposed amendments would strip providers of their right to fairly and effectively defend themselves in an appeal. In addition, the respondents believed that the amendments would disallow home- and community-based service (HCBS) providers the opportunity to defend themselves when information from the auditors has not been conveyed completely or when it does not provide all the details necessary to validate the overpayment, thus requiring an interaction with the Audit Unit to determine that all records and information have been provided.

The Department reviewed the comments and responds that the intent of the portion of the amendments to which the comments referred was only to address those providers that refuse to submit requested records as required under subrule 79.4(3). The intent of the rule change is not to subvert a provider's rights to due process. The Iowa Medicaid Enterprise (IME) has experienced instances where providers are unresponsive to requests for records. The provider will file an appeal and months later appear at the appeal hearing with the records that should have been submitted when requested. In one case, the administrative law judge required the IME to review the records provided at the hearing, which then diminishes the requirement for providers to provide the records when requested as defined under subrule

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

79.4(3), results in wasted resources, and invites fraud by means of intentional delay of the process to afford the provider more time to manufacture the records.

One change from the Notice has been made. In collaboration with one of the respondents, the Department revised the underscored language in subrule 79.4(7) in Item 3 to clarify the intent and to ensure that there are no due process violations for providers.

The Council on Human Services adopted these amendments on April 10, 2013.

These amendments do not provide for waivers in specified situations because all Medicaid providers are subject to the same requirements. 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, 2013.

The following amendments are adopted.

ITEM 1. Amend paragraph **79.4(3)“b”** as follows:

*b.* Extension of time limit for submission.

(1) The department may grant an extension to the required submission date of up to 15 calendar days upon written request from the provider or the provider's designee. The request must:

1. Establish good cause for the delay in submitting the records; and
2. Be received by the department before the date the records are due to be submitted.

~~(2) Under exceptional circumstances, a provider may request one additional 15-calendar-day extension. The provider or the provider's designee shall submit a written request that:~~

- ~~1. Establishes exceptional circumstances for the delay in submitting records; and~~
- ~~2. Is received by the department before the expiration of the initial 15-day extension period.~~

~~(2) For purposes of these rules, “good cause” has the same meaning as in Iowa Rule of Civil Procedure 1.977.~~

(3) The department may grant a request for an extension of the time limit for submitting records at its discretion. The department shall issue a written notice of its decision.

(4) The provider may appeal the department's denial of a request to extend the time limit for submission of requested records according to the procedures in 441—Chapter 7.

ITEM 2. Adopt the following **new** paragraph **79.4(3)“f”**:

*f.* Self-audit. The department may require a provider to conduct a self-audit and report the results of the self-audit to the department.

ITEM 3. Amend subrule 79.4(7) as follows:

**79.4(7) Appeal by provider of care.** A provider may appeal the finding and order of repayment and withholding of payments pursuant to 441—Chapter 7. However, an appeal shall not stay the withholding of payments or other action to collect the overpayment. Records not provided to the department during the review process set forth in subrule 79.4(3) or 79.4(5) shall not be admissible in any subsequent contested case proceeding arising out of a finding and order for repayment of any overpayment identified under subrule 79.4(6). This provision does not preclude providers that have provided records to the department during the review process set forth in subrule 79.4(3) or 79.4(5) from presenting clarifying information or supplemental documentation in the appeals process in order to defend against any overpayment identified under subrule 79.4(6). This provision is intended to minimize potential duplication of effort and delay in the audit or review process, minimize unnecessary appeals, and otherwise forestall fraud, waste, and abuse in the Iowa Medicaid program.

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**ARC 0714C****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 81, "Nursing Facilities," Iowa Administrative Code.

This amendment allows nursing facilities to collect additional payment above the Medicaid payment from residents and families who desire a private room. Current rules do not allow supplementation of the rate for a private room. Iowa Code section 249A.4(10) makes this allowable when certain conditions are met.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0590C** on February 6, 2013.

The Department received one response on this amendment. The respondent asked that the 80 percent occupancy rule in this amendment be removed. This provision penalizes small, rural facilities that may have fluctuations in their occupancy rates due to the challenging and changing demographics of rural Iowa. It discriminates against rural nursing facility Medicaid-eligible residents wanting a private room and loved ones willing to pay the supplementation.

The Department's response is that this amendment is being adopted to implement Senate File 2160, which was passed by the Iowa Legislature in 2012. The intent of the legislative language was to specify that supplementation could not be required when the nursing facility already had so many vacancies that the member would have a private room anyway. The Department received communication from nursing facility industry groups that early drafts of the proposed language would have made it virtually impossible for a facility to ever allow supplementation for a private room. As such, the bill language was revised to require an 80 percent occupancy rate, with the rationale that this would allow facilities to supplement Medicaid payment for private rooms, but would not unduly require additional payment for residents who would otherwise have a private room without supplementation.

The Department cannot omit this requirement from the amendment without legislative direction because the legislation specifically requires an occupancy rate of 80 percent for a facility to supplement for a private room.

No changes were made to this amendment based on the comment. This amendment is identical to the one published under Notice of Intended Action.

The Council on Human Services adopted this amendment on April 10, 2013.

Specific waivers are not provided because the Department has an established procedure for considering exceptions to policy. 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.

This amendment will become effective July 1, 2013.

The following amendment is adopted.

Adopt the following **new** subparagraph **81.10(5)"e"(4)**:

(4) Supplementation for provision of a private room not otherwise covered under the medical assistance program, subject to the following conditions, requirements, and limitations:

1. Supplementation for provision of a private room is not permitted for any time period during which the private room is therapeutically required pursuant to 42 CFR § 483.10(c)(8)(ii).

2. Supplementation for provision of a private room is not permitted for a calendar month if no room other than the private room was available as of the first day of the month or as of the resident's subsequent initial occupation of the private room.

3. Supplementation for provision of a private room is not permitted for a calendar month if the facility's occupancy rate was less than 80 percent as of the first day of the month or as of the resident's subsequent initial occupation of the private room.

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

4. Supplementation for provision of a private room is not permitted if the nursing facility only provides one type of room or all private rooms.

5. If a nursing facility provides for supplementation for provision of a private room, the facility may base the supplementation amount on the difference between the amount paid for a room covered under the medical assistance program and the private-pay rate for the private room identified for supplementation. However, the total payment for the private room from all sources for a calendar month shall not be greater than the aggregate average private room rate during that month for the type of rooms covered under the medical assistance program for which the resident would be eligible.

6. If a nursing facility provides for supplementation for provision of a private room, the facility shall inform all residents, prospective residents, and their legal representatives of the following:

- That if the resident desires a private room, the resident or resident's family may provide supplementation by directly paying the facility the amount of supplementation;
- The nursing facility's policy if a resident residing in a private room converts from private pay to payment under the medical assistance program but the resident or resident's family is not willing or able to pay supplementation for the private room;
- The private rooms for which supplementation is available, including a description and identification of such rooms; and
- The process for an individual to take legal responsibility for providing supplementation, including identification of the individual and the extent of the legal responsibility.

7. For a resident for whom the nursing facility receives supplementation, the nursing facility shall indicate in the resident's record all of the following:

- A description and identification of the private room for which the nursing facility is receiving supplementation;
- The identity of the individual making the supplemental payments;
- The private-pay charge for the private room for which the nursing facility is receiving supplementation; and
- The total charge to the resident for the private room for which the nursing facility is receiving supplementation, the portion of the total charge reimbursed under the medical assistance program, and the portion of the total charge reimbursed through supplementation.

8. Supplementation pursuant to this subparagraph shall not be required as a precondition of admission, expedited admission, or continued stay in a facility.

9. The nursing facility shall ensure that all appropriate care is provided to all residents notwithstanding the applicability or availability of supplementation.

10. A private room for which supplementation is required shall be retained for the resident consistent with bed-hold policies.

[Filed 4/10/13, effective 7/1/13]

[Published 5/1/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/13.

**ARC 0715C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 234.6 and 237A.5(2)“d,” the Department of Human Services amends Chapter 110, “Child Development Homes,” and Chapter 170, “Child Care Services,” Iowa Administrative Code.

The purpose of these amendments is to implement a legislative mandate that the Department conduct national criminal history record checks on all registered child development homes, child care homes receiving child care assistance payments, and providers receiving child care assistance payments for the provision of in-home care, starting July 1, 2013.

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

All persons subject to a record check (aged 18 years and older) in registered child development homes and child care homes receiving child care assistance payments and providers subject to a record check for the purpose of receiving child care assistance payments for in-home care will be required to submit fingerprints for a national criminal history record check. All individuals subject to the record check will be responsible for any costs associated with the “rolling” or preparation of the prints. The Department is responsible for the costs of the national criminal history record check.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0566C** on January 23, 2013.

As a result of an internal Departmental review of the proposed amendments, several changes were made to ensure that the rules for record checks are consistent for all child development and child care homes. Specifically, language has been added to Item 1, new subrule 110.7(3), to change a form number previously used by the Department. Language was also revised in Item 4, amendments to paragraph 170.4(3)“h,” to change a form number and ensure clarity on when the form is to be used.

No comments were received from any interested parties external to the Department during the comment period.

The Council on Human Services adopted these amendments on April 10, 2013.

These amendments do not provide for waivers in specified situations because none are allowed under the Iowa Code. However, requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

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

These amendments are intended to implement Iowa Code sections 237A.5(2)“d”(1), 237A.5(2)“d”(4)(c), and 237A.13.

These amendments will become effective July 1, 2013.

The following amendments are adopted.

ITEM 1. Rescind subrule 110.7(3) and adopt the following **new** subrule in lieu thereof:

**110.7(3) Record checks.**

*a. Applicability.* The department shall conduct Iowa criminal history record and child abuse record checks for each registrant, substitute or staff member, anyone living in the home who is 14 years of age or older, and anyone having access to a child when the child is alone. The department shall conduct national criminal history record checks, based on fingerprints, for each registrant, substitute or staff member, anyone living in the home who is 18 years of age or older, and anyone 18 years of age or older having access to a child when the child is alone. In accordance with Iowa Code section 726.23, minors under the age of 18 will not be subject to the fingerprint requirement.

(1) The purpose of these record checks is to determine whether the person has committed a transgression that prohibits or limits the person’s involvement with child care.

(2) The department may also conduct criminal history record and child abuse record checks in other states and may conduct dependent adult abuse, sex offender registry, and other public or civil offense record checks in Iowa or other states.

(3) Effective July 1, 2013, registration or renewal certificates shall not be issued until the results of all state and national record checks have been received and, when necessary, evaluated.

*b. Authorization.* The person subject to record checks shall complete Form 470-5143, Iowa Department of Human Services Record Check Authorization Form; Form DCI-45, Waiver Agreement; Form FD-258, Federal Fingerprint Card; and any other forms required by the department of public safety to authorize the release of records.

*c. Iowa records checks.* Checks and evaluations of Iowa child abuse and criminal history records shall be completed before the person’s involvement with child care. Iowa records checks shall be repeated at a minimum of every two years and when the department or the registrant becomes aware of any possible transgressions. The department is responsible for the cost of conducting the Iowa records checks.

*d. National criminal history record checks.* Fingerprint-based checks of national criminal history records shall also be completed before a person’s involvement with child care. This requirement shall

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

be effective on or after July 1, 2013, for an initial application for registration or a renewal application for registration. The national criminal history record check shall be repeated for each person subject to the check every four years and when the department or registrant becomes aware of any new transgressions committed by that person in another state. The department is responsible for the cost of conducting the national criminal history record check.

(1) The registrant is responsible for any costs associated with the taking (rolling) of fingerprints of all persons subject to record checks and for submitting the prints to the department so the national criminal history record check can be completed. Fingerprints may be taken (rolled) by law enforcement agencies or by agencies or companies that specialize in taking (rolling) fingerprints.

(2) The department shall provide fingerprints to the department of public safety no later than ten business days after receipt of the fingerprint cards. The department shall submit the fingerprints on forms or in a manner allowed by the department of public safety.

(3) The department may rely on the results of previously conducted national criminal history record checks when a person subject to a record check in one child development home or child care home submits a request for involvement with child care in another child development home or child care home, so long as the person's national criminal history record check is within the allowable four-year time frame. All initial or new applications shall require a new national criminal history record check.

*e. Mandatory prohibition.* A person with any of the following convictions or founded abuse reports is prohibited from involvement with child care:

- (1) Founded child or dependent adult abuse that was determined to be sexual abuse.
- (2) Placement on the sex offender registry.
- (3) Felony child endangerment or neglect or abandonment of a dependent person.
- (4) Felony domestic abuse.
- (5) Felony crime against a child including, but not limited to, sexual exploitation of a minor.
- (6) Forcible felony.

*f. Mandatory time-limited prohibition.*

(1) A person with the following conviction or founded abuse report is prohibited from involvement with child care for five years from the date of the conviction or founded abuse report:

1. Conviction of a controlled substance offense under Iowa Code chapter 124.
2. Founded child abuse that was determined to be physical abuse.

(2) After the five-year prohibition period (from the date of the conviction or the founded abuse report) as defined in subparagraph 110.7(3) "f"(1), the person may request the department to perform an evaluation under paragraph 110.7(3) "g" to determine whether prohibition of the person's involvement with child care continues to be warranted.

*g. Evaluation required.* For all other transgressions, and as requested under subparagraph 110.7(3) "f"(2), the department shall evaluate the transgression and make a decision about the person's involvement with child care.

(1) The person with the transgression shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date on the form. The department shall use the information the person with the transgression provides on this form to assist in the evaluation. Failure of the person with the transgression to complete and return this form within ten calendar days of the date on the form shall result in denial or revocation of the registration certificate.

(2) The department may use information from the department's case records in performing the evaluation.

(3) In an evaluation, the department shall consider all of the following factors:

1. The nature and seriousness of the transgression in relation to the position sought or held.
2. The time elapsed since the commission of the transgression.
3. The circumstances under which the transgression was committed.
4. The degree of rehabilitation.
5. The likelihood that the person will commit the transgression again.
6. The number of transgressions committed by the person.

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

(4) When a person subject to a record check has a transgression that has been determined in a previous evaluation not to warrant prohibition of the person's involvement with child care and the person has no subsequent transgressions, an exemption from reevaluation of the latest record check is authorized. The person may commence employment with another child care facility in accordance with the department's previous evaluation. The exemption is subject to all of the following conditions:

1. The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.

2. Any restrictions placed on the person's employment by the department in the previous evaluation shall remain applicable in the person's subsequent employment.

3. The person subject to the record check has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer or the previous employer provides to the subsequent employer the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, the record check shall be reevaluated.

4. The subsequent employer may request a reevaluation of the record check and may employ the person while the reevaluation is being performed.

*h. Evaluation decision.* The department has final authority in determining whether prohibition of the person's involvement with child care is warranted and in developing any conditional requirements or corrective action plan.

(1) Within 30 calendar days of receipt of a completed Form 470-2310, Record Check Evaluation, the department shall make a decision on the person's involvement with child care.

(2) Within 30 calendar days of receipt of a completed Form 470-2310, Record Check Evaluation, the department shall mail to the person subject to an evaluation Form 470-2386, Record Check Decision, that explains the decision reached regarding the evaluation of the transgression and Form 470-4558, Notice of Decision: Child Care.

(3) The department shall issue Form 470-4558, Notice of Decision: Child Care, prohibiting involvement with child care, when the person subject to an evaluation fails to complete the Record Check Evaluation, Form 470-2310, within the ten-calendar-day time frame.

(4) If the department determines, through the record check evaluation process, that the person's prohibition of involvement with child care is warranted, the person shall be prohibited from involvement with child care. The department may identify a period of time after which the person may request that another record check and evaluation be performed.

(5) The department may permit a person who is evaluated to maintain involvement with child care if the person complies with the department's conditions relating to the person's involvement with child care, which may include completion of additional training or an individually designed corrective action plan or both. For an employee of a registrant, these conditional requirements shall be developed with the registrant. All conditions placed on a person's involvement with child care shall be communicated, in writing, to both the person subject to the evaluation and the registrant.

*i. Notice to parents of abuse in care.* If there has been founded child abuse committed by an owner, director, or staff member of the child care facility or child care home, the department's administrator shall notify the parent, guardian, or custodian of each child for whom the facility or child care home provides care.

(1) The child care facility or child care home shall cooperate with the department in providing the names and addresses of the parent, guardian, or custodian of each child for whom the facility provides child care.

(2) This information shall be provided to the department within ten calendar days from the date of the initial request.

(3) Failure or refusal to provide the requested information may result in revocation of registration.

ITEM 2. Amend paragraph **170.4(3)"e,"** introductory paragraph, as follows:

*e. In-home care.* The adult caretaker selected by the parent to provide care in the child's own home shall be sent the pamphlet Comm. 95 or Comm. 95(S), Minimum Health and Safety Requirements for

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

Nonregistered Child Care Home Providers, and Form 470-2890 or 470-2890(S), Payment Application for Nonregistered Providers. The provider shall complete and sign Form 470-2890 or 470-2890(S) and return the form to the department before payment may be made. An identifiable application is an application that contains a legible name and address and that has been signed. Signature on the form certifies the provider's understanding of and compliance with the conditions and requirements for nonregistered providers that include:

ITEM 3. Amend paragraph **170.4(3)“f,”** introductory paragraph, as follows:

*f. Nonregistered family child care home.* The adult caretaker selected by the parent to provide care in a nonregistered family child care home shall be sent the pamphlet Comm. 95 or Comm. 95(S), Minimum Health and Safety Requirements for Nonregistered Child Care Home Providers, and Form 470-2890 or 470-2890(S), Payment Application for Nonregistered Providers. The provider shall complete and sign Form 470-2890 or 470-2890(S) and return the form to the department before payment may be made. An identifiable application is an application that contains a legible name and address and that has been signed. Signature on the form certifies the provider's understanding of and compliance with the conditions and requirements for nonregistered providers that include:

ITEM 4. Amend paragraph **170.4(3)“h”** as follows:

*h. Record Iowa records checks for nonregistered family child care homes and in-home care.* If a nonregistered child care provider ~~wishes or a person who provides in-home care applies~~ to receive public funds as reimbursement for providing child care for eligible clients, the provider shall complete and submit to the department Form 470-0643, ~~Request for Child Abuse Information, and Form 595-1489 or 595-1489(S), Non-Law Enforcement Record Check Request, Form A 470-5143, Iowa Department of Human Services Record Check Authorization Form,~~ for the provider, for anyone having access to a child when the child is alone, and for anyone 14 years of age or older living in the home. ~~The department worker or the PROMISE JOBS worker shall provide the necessary forms. The provider shall return the forms to the department worker or PROMISE JOBS worker.~~ The department shall use this form to conduct Iowa criminal history record and child abuse record checks.

~~(1) If any of these individuals has a record of founded child abuse, a criminal conviction, or placement on the sex offender registry, the department shall perform an evaluation following the process defined at 441—subrule 110.7(3).~~

(1) The purpose of these checks is to determine whether the person has committed a transgression that prohibits or limits the person's involvement with child care.

~~(2) If any of the individuals would be prohibited from registration, employment, or residence, the person shall not provide child care and is not eligible to receive public funds to do so. The department's designee shall notify the applicant.~~

(2) The department may also conduct criminal and child abuse record checks in other states and may conduct dependent adult abuse, sex offender registry, and other public or civil offense record checks in Iowa or in other states.

~~(3) A person who continues to provide child care in violation of this law is subject to penalty and injunction under Iowa Code chapter 237A.~~

(3) Records checks shall be repeated for each person subject to the check every two years and when the department or provider becomes aware of any new transgressions committed by that person.

ITEM 5. Adopt the following **new** paragraph **170.4(3)“i”**:

*i. National criminal history record checks for nonregistered child care homes and in-home care.* If a nonregistered child care provider or a person who provides in-home care applies to receive public funds as reimbursement for providing child care for eligible clients, the provider shall complete Form DCI-45, Waiver Agreement, and Form FD-258, Federal Fingerprint Card, for the provider, for anyone 18 years of age or older who is living in the home, or for anyone having access to a child when the child is alone.

(1) The provider or other person subject to this check shall submit any other forms required by the department of public safety to authorize the release of records.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(2) The provider or other person subject to this check is responsible for any costs associated with obtaining the fingerprints and for submitting the prints to the department.

(3) Fingerprints may be taken (rolled) by law enforcement agencies or by agencies or companies that specialize in taking fingerprints.

(4) The national criminal history record check shall be repeated for each person subject to the check every four years and when the department or provider becomes aware of any new transgressions committed by that person in another state.

(5) The department may rely on the results of previously conducted national criminal history record checks when a person subject to a record check in one child development home or child care home submits a request for involvement with child care in another child care home, so long as the person's national criminal history record check is within the allowable four-year time frame. All initial or new applications shall require a new national criminal history record check.

ITEM 6. Adopt the following new paragraph **170.4(3)“j”**:

*j. Transgressions.* If any person subject to the record checks in paragraph 170.4(3)“h” or 170.4(3)“i” has a record of founded child abuse, dependent adult abuse, a criminal conviction, or placement on the sex offender registry, the department shall follow the process for prohibition or evaluation defined at 441—subrule 110.7(3).

(1) If any person would be prohibited from registration, employment, or residence, the person shall not provide child care and is not eligible to receive public funds to do so. The department's designee shall notify the applicant.

(2) A person who continues to provide child care in violation of this rule is subject to penalty and injunction under Iowa Code chapter 237A.

[Filed 4/10/13, effective 7/1/13]

[Published 5/1/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/13.

**ARC 0726C**

## **LABOR SERVICES DIVISION[875]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 88.5, the Labor Commissioner hereby amends Chapter 10, “General Industry Safety and Health Rules,” and Chapter 26, “Construction Safety and Health Rules,” Iowa Administrative Code.

The amendments adopt by reference changes to federal occupational safety and health standards. The changes to the federal standards make corrections and technical amendments to the general industry and construction standards. The federal Occupational Safety and Health Administration determined that these changes were not subject to the procedures for public notice and comment found in federal law because no stakeholder is likely to object and the changes do not impact existing rights or duties.

The changes remove the noun “fits” from Appendix C of the respiratory protection standard; correct erroneous cross references appearing in Appendix A of the scaffold standard; restore reporting requirements removed in error from the mechanical power press standard; remove outdated references from the construction sling standard; and update references to the American National Standards Institute head protection standard.

The principal reasons for adoption of these amendments are to implement legislative intent, protect the safety and health of Iowa workers, and make Iowa's regulations current and consistent with federal regulations. Pursuant to Iowa Code subsection 88.5(1) and 29 CFR 1953.5, Iowa must adopt changes to the federal occupational safety and health standards.

Notice of Intended Action was published in the February 6, 2013, Iowa Administrative Bulletin as **ARC 0587C**. No public comment was received on the proposed amendments. These amendments are identical to those published under Notice of Intended Action.

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

No variance procedures are included in this rule. Variances procedures are set forth in 875—Chapter 5.

After analysis and review of this rule making, jobs could be impacted. However, these amendments are implementing federally mandated regulations, and the State of Iowa is only implementing the federal regulations. The requirements imposed on Iowa businesses by these regulations do not exceed those imposed by federal law.

These amendments are intended to implement Iowa Code section 88.5 and 29 CFR 1953.5.

These amendments shall become effective on June 5, 2013.

The following amendments are adopted.

ITEM 1. Amend rule **875—10.20(88)** by inserting the following at the end thereof:

77 Fed. Reg. 37598 (June 22, 2012)

77 Fed. Reg. 46949 (August 7, 2012)

ITEM 2. Amend rule **875—26.1(88)** by inserting the following at the end thereof:

77 Fed. Reg. 23118 (April 18, 2012)

77 Fed. Reg. 37598 (June 22, 2012)

77 Fed. Reg. 42988 (July 23, 2012)

77 Fed. Reg. 46949 (August 7, 2012)

[Filed 4/12/13, effective 6/5/13]

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