



IOWA ADMINISTRATIVE BULLETIN

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- Notice, Alarm bell in automatic passenger elevators, 72.25 **ARC 0753C** 1845

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PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Filed, Emergency/first dose drug supply; destruction of controlled substances in long-term care facilities, 10.18(3), 22.7, 23.5, 23.21(1) **ARC 0749C** 1888

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- Notice, White flashing light authorization, 133.1, 133.3 **ARC 0775C** 1846
- Notice, Trauma care facilities, 134.1, 134.2(3) **ARC 0772C** 1848
- Notice, Out-of-hospital trauma triage destination decision protocols, 135.1, 135.2(1) **ARC 0774C** 1849
- Notice, Initial and continuing trauma education, 137.1 to 137.3 **ARC 0773C** 1850

- Filed, Exemption from duplicate reporting of laboratory results, 1.4(1) **ARC 0754C** 1890
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PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

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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

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Dec. 19 '12	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	***May 22***	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	***June 19***	July 10	Aug. 14	Nov. 11
May 10	May 29	June 18	July 3	July 5	July 24	Aug. 28	Nov. 25
May 22	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
June 19	July 10	July 30	Aug. 14	Aug. 16	Sep. 4	Oct. 9	Jan. 6 '14
July 5	July 24	Aug. 13	Aug. 28	***Aug. 28***	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
Aug. 28	Sep. 18	Oct. 8	Oct. 23	***Oct. 23***	Nov. 13	Dec. 18	Mar. 17 '14
Sep. 13	Oct. 2	Oct. 22	Nov. 6	***Nov. 6***	Nov. 27	Jan. 1 '14	Mar. 31 '14
Sep. 27	Oct. 16	Nov. 5	Nov. 20	***Nov. 20***	Dec. 11	Jan. 15 '14	Apr. 14 '14
Oct. 11	Oct. 30	Nov. 19	Dec. 4	***Dec. 4***	Dec. 25	Jan. 29 '14	Apr. 28 '14
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Dec. 4	Dec. 25	Jan. 14 '14	Jan. 29 '14	Jan. 31 '14	Feb. 19 '14	Mar. 26 '14	June 23 '14
Dec. 18	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>
26	Friday, June 7, 2013	June 26, 2013
1	Wednesday, June 19, 2013	July 10, 2013
2	Friday, July 5, 2013	July 24, 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, June 11, 2013, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

AGING, DEPARTMENT ON[17]

Definitions, 1.5 Filed **ARC 0742C** 5/15/13
 Department fiscal operations, ch 5 Filed **ARC 0743C** 5/15/13
 Area agency on aging planning and administration, 6.2, 6.3, 6.13 to 6.18 Filed **ARC 0744C** 5/15/13

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Renewable fuel infrastructure program—update of citations, amendments to chs 13 to 16
Filed **ARC 0738C**..... 5/15/13
 Chronic wasting disease (CWD), 64.104, 64.106 to 64.111, 64.113, 64.114 Notice **ARC 0771C**..... 5/29/13
 Meat and poultry inspection, 76.1 to 76.4, 76.13, 76.14 Filed **ARC 0733C**..... 5/15/13

ATTORNEY GENERAL[61]

Forfeited property, 33.3(1), 33.4 Filed **ARC 0751C** 5/29/13

CREDIT UNION DIVISION[189]

COMMERCE DEPARTMENT[181]“umbrella”

Voting procedures, amend ch 3; adopt ch 12; rescind chs 16, 19 Notice **ARC 0769C**..... 5/29/13

DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Delegation of expanded function duties to registered dental hygienists, 10.3(1)
Notice of Termination **ARC 0768C** 5/29/13

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]“umbrella”

Teaching endorsements for health, music and physical education, 13.28(8), 13.28(13),
 13.28(14) Notice **ARC 0762C**..... 5/29/13

EDUCATION DEPARTMENT[281]

Bus inspection fee, 43.30 Filed **ARC 0767C** 5/29/13

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Hazardous air pollutants—adoption by reference of federal RICE NESHAP standards,
 23.1(4) Notice **ARC 0740C**..... 5/15/13

HUMAN SERVICES DEPARTMENT[441]

Exemption of counties from joining into regions to administer mental health and disability
 services, amendments to ch 25 Filed **ARC 0735C** 5/15/13
 Medicaid eligibility for family planning services, 75.1(41)“a” Notice **ARC 0746C** 5/15/13
 HCBS ill and handicapped waiver—name change, case management, amendments to chs 77
 to 79, 83 Filed **ARC 0757C**..... 5/29/13
 HAWK-I—eligibility, application, verification of income, amendments to ch 86 Notice **ARC 0747C** 5/15/13
 Programs of all-inclusive care for the elderly (PACE)—eligibility, 88.84(1)“a” Filed **ARC 0758C**..... 5/29/13
 Inclusion of Indian health care providers in IowaCare network, 92.1, 92.8
Filed Emergency After Notice **ARC 0760C** 5/29/13
 IowaCare premiums, 92.7(1)“a” Filed Emergency After Notice **ARC 0759C**..... 5/29/13

INSPECTIONS AND APPEALS DEPARTMENT[481]

Changes in terminology—“intellectually disabled,” amendments to chs 22, 50, 54, 57, 58, 65
Filed **ARC 0766C**..... 5/29/13
 Health care facilities and certified nurse aide training programs—background checks, 50.9,
 57.12(3), 58.11(3), 62.9(5), 63.11(3), 64.34, 65.9(5) Notice **ARC 0776C**..... 5/29/13
 Tuberculosis screening of health care workers and volunteers, 59.2 Filed **ARC 0761C** 5/29/13
 Minimum physical standards for nursing facilities, ch 61 Filed **ARC 0763C** 5/29/13
 Terminology changes— “intellectually disabled,” amendments to ch 63 Filed **ARC 0765C**..... 5/29/13
 Update of terminology to “intellectually disabled,” amendments to ch 64 Filed **ARC 0764C**..... 5/29/13

IOWA PUBLIC INFORMATION BOARD[497]

Organization and administration; complaint investigation and resolution; declaratory orders;
 contested cases; rule making; fair information practices, chs 1 to 7 Filed **ARC 0741C** 5/15/13

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

- Federal occupational safety and health standards for general industry and
 construction—adoption by reference, 10.20, 26.1 Notice **ARC 0752C** 5/29/13
- Alarm bell in automatic passenger elevators, 72.25 Notice **ARC 0753C** 5/29/13
- Boiler and pressure vessel program—"institution of health and custodial care" defined, 90.2
Filed **ARC 0739C**..... 5/15/13

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Emergency/first dose drug supply; destruction of controlled substances in long-term care
 facilities, 10.18(3), 22.7, 23.5, 23.21(1) Filed **ARC 0749C** 5/29/13

PUBLIC HEALTH DEPARTMENT[641]

- Exemption from duplicate reporting of laboratory results, 1.4(1) Filed **ARC 0754C**..... 5/29/13
- AIDS drug assistance program (ADAP), 11.84 to 11.93 Filed **ARC 0755C** 5/29/13
- White flashing light authorization, 133.1, 133.3 Notice **ARC 0775C** 5/29/13
- Trauma care facilities, 134.1, 134.2(3) Notice **ARC 0772C** 5/29/13
- Out-of-hospital trauma triage destination decision protocols, 135.1, 135.2(1) Notice **ARC 0774C** 5/29/13
- Initial and continuing trauma education, 137.1 to 137.3 Notice **ARC 0773C** 5/29/13
- EMS system development grants, 140.1, 140.4 Filed **ARC 0756C** 5/29/13

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

- Commission address; standard of review for appeal of stewards' decisions; wagering and
 simulcasting; harness racing; gambling games, amend chs 1 to 5, 10, 11; adopt ch 8;
 rescind ch 9 Filed **ARC 0734C** 5/15/13

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

- Supervisory appraisers, 15.1 to 15.4 Notice **ARC 0745C** 5/15/13

REAL ESTATE COMMISSION[193E]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

- Continuing education course topics, 17.5(1) Filed **ARC 0750C**..... 5/29/13

REVENUE DEPARTMENT[701]

- Valuation of agricultural real estate, 71.3(1) Filed **ARC 0770C** 5/29/13

SECRETARY OF STATE[721]

- Voting systems—accessibility testing by interested parties, 22.9(6), 22.12 Filed **ARC 0736C** 5/15/13

SOIL CONSERVATION DIVISION[27]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"

- Soil conservation and water protection practices—funding, amendments to chs 10, 12
Filed **ARC 0737C**..... 5/15/13

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

Senator Thomas Courtney
2609 Clearview
Burlington, Iowa 52601

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

Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001

Senator Roby Smith
2036 East 48th Street
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Representative Dave J. Jacoby
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Coralville, Iowa 52241

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

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

Representative Jeff Smith
1006 Brooks North Lane
Okoboji, Iowa 51355

Representative Guy Vander Linden
1610 Carbonado Road
Oskaloosa, Iowa 52577

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

CREDIT UNION DIVISION[189]

Voting procedures, amend ch 3; adopt ch 12; rescind chs 16, 19 IAB 5/29/13 ARC 0769C	Conference Room, Division Offices 200 E. Grand Ave. Des Moines, Iowa	June 18, 2013 1 p.m.
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DENTAL BOARD[650]

Delegation of expanded function duties to registered dental hygienists, 10.3(1) IAB 5/1/13 ARC 0722C	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 ARC 0724C	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 ARC 0723C	Suite D 400 SW 8th St. Des Moines, Iowa	June 5, 2013 3 p.m.

EDUCATIONAL EXAMINERS BOARD[282]

Teaching endorsements for health, music and physical education, 13.28(8), 13.28(13), 13.28(14) IAB 5/29/13 ARC 0762C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	June 19, 2013 1 p.m.
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ENVIRONMENTAL PROTECTION COMMISSION[567]

Hazardous air pollutants—adoption by reference of federal RICE NESHAP standards, 23.1(4) IAB 5/15/13 ARC 0740C	Conference Rooms Air Quality Bureau Office 7900 Hickman Rd. Windsor Heights, Iowa	June 4, 2013 10 a.m.
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HUMAN SERVICES DEPARTMENT[441]

Medicaid eligibility for family planning services, 75.1(41)“a” IAB 5/15/13 ARC 0746C	ICN Room Pottawattamie County DHS Office Western Service Area 417 E. Kanesville Blvd. Council Bluffs, Iowa	June 4, 2013 9 to 10 a.m.
	Room 1, River Place Des Moines Service Area 2309 Euclid Ave. Des Moines, Iowa	June 4, 2013 9 to 10 a.m.
	Administration Building Board Room First Floor Scott County DHS Office 600 W. 4th St. Davenport, Iowa	June 4, 2013 1:30 to 2:30 p.m.
	Fifth Floor ICN Room Iowa Building Cedar Rapids Service Area 411 3rd St. SE Cedar Rapids, Iowa	June 5, 2013 9:30 to 10:30 a.m.
	Room 220 Black Hawk County DHS Office 1407 Independence Ave. Waterloo, Iowa	June 6, 2013 10 to 11 a.m.

HUMAN SERVICES DEPARTMENT[441] (cont'd)

Integrated health home services for members with serious mental illness or serious emotional disturbance, 77.47(1), 78.53(2), 79.1(2) IAB 5/15/13 ARC 0748C (See ARC 0667C , IAB 4/3/13)	Fifth Floor ICN Room Iowa Building Cedar Rapids Service Area 411 3rd St. SE Cedar Rapids, Iowa	June 5, 2013 2 to 3 p.m.
	Lunch Room, Lower Level Pottawattamie County DHS Office Western Service Area 417 E. Kanesville Blvd. Council Bluffs, Iowa	June 6, 2013 9 to 10 a.m.
	Room 1, River Place Des Moines Service Area 2309 Euclid Ave. Des Moines, Iowa	June 6, 2013 10 to 11 a.m.
	Room 605 Scott County Administration Bldg. Eastern Iowa Service Area 600 W. 4th St. Davenport, Iowa	June 6, 2013 2 to 3 p.m.
	Room 201 Black Hawk County DHS Office 1407 Independence Ave. Waterloo, Iowa	June 6, 2013 2 to 3 p.m.

LABOR SERVICES DIVISION[875]

Federal occupational safety and health standards for general industry and construction—adoption by reference, 10.20, 26.1 IAB 5/29/13 ARC 0752C	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	June 19, 2013 2:30 p.m. (If requested)
Alarm bell in automatic passenger elevators, 72.25 IAB 5/29/13 ARC 0753C	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	June 19, 2013 1:30 p.m. (If requested)

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Supervisory appraisers, 15.1 to 15.4 IAB 5/15/13 ARC 0745C	Prof. Licensing Small Conference Rm. Second Floor 1920 SE Hulsizer Rd. Ankeny, Iowa	June 4, 2013 8:15 a.m. (If requested)
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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 0771C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 163.1, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 64, “Infectious and Contagious Diseases,” Iowa Administrative Code.

These amendments change the term for designated laboratories from “approved” to “official” laboratory. The amendments specify that contact with a contaminated premises causes an animal to become CWD exposed. The amendments remove negative stain electron microscopy and bioassay from the list of official cervid tests for CWD. The amendments update identification requirements. The amendments also clarify that CWD testing must occur and the results be found negative prior to the removal of a quarantine. The amendments clarify that the Department will investigate CWD suspect herds. The amendments also clarify that DNR approval is necessary for the disposal of CWD affected or exposed animals. The amendments clarify that the herd plan must contain testing requirements and that movement restrictions cannot be lifted prior to approval of the herd plan. The amendments provide that a complete physical herd inventory will be completed by the Department every three years.

Any interested persons may make written suggestions or comments on the proposed amendments on or before June 18, 2013. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to Margaret.Thomson@IowaAgriculture.gov.

The proposed amendments are subject to the Department’s general waiver provisions.

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

These amendments are intended to implement Iowa Code section 163.1.

The following amendments are proposed.

ITEM 1. Amend the following definitions in rule **21—64.104(163)**:

“*Accredited veterinarian*” means a veterinarian approved by the deputy administrator of veterinary services, Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), and the state veterinarian in accordance with Part 161 of Title 9, Chapter 1, of the Code of Federal Regulations, revised as of ~~July 21, 2006~~ January 9, 2013, to perform functions required by cooperative state/federal animal disease control and eradication programs.

“~~Approved~~ *Official laboratory*” means ~~an~~ a USDA-approved American Association of Veterinary Laboratory Diagnosticians (AAVLD) accredited laboratory or the National Veterinary Services Laboratory, Ames, Iowa.

“*Cervid CWD surveillance identification program*” or “*CCWDSI program*” means a CWD surveillance program that requires identification and laboratory diagnosis on all deaths of Cervidae 12 months of age and older including, but not limited to, deaths by slaughter, hunting, illness, and injury. A copy of ~~approved~~ official laboratory reports shall be maintained by the owner for purposes of completion of the annual inventory examination for recertification. Such diagnosis shall include examination of brain and any other tissue as directed by the state veterinarian. If there are deaths for which tissues were not submitted for laboratory diagnosis due to postmortem changes or unavailability, the department shall determine compliance.

“*CWD exposed*” or “*exposed*” means a designation applied to Cervidae that are either part of an affected herd or for which epidemiological investigation indicates contact with CWD affected animals,

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

~~or~~ contact with animals from a CWD affected herd or contact with a contaminated premises in the past five years.

“Official cervid identification” means one of the following:

1. A USDA-approved identification ear tag that conforms to the alphanumeric national uniform ear tagging system as defined in 9 CFR Part 71.1, Chapter 1, revised as of ~~July 21, 2006~~ January 9, 2013.
2. A plastic or other material tag that includes the official herd number issued by the USDA, and includes individual animal identification which is no more than five digits and is unique for each animal.
3. A legible tattoo which includes the official herd number issued by the USDA, and includes individual animal identification which is no more than five digits and is unique for each animal.
4. ~~A plastic or other material tag which provides unique animal identification and is issued and approved by the North American Elk Breeders Association.~~
5. ~~A plastic or other material tag which provides unique animal identification and is issued and approved by the North American Deer Farmers Association.~~

ITEM 2. Amend subrules 64.106(1) and 64.106(3) as follows:

64.106(1) Slaughter establishments. All slaughtered Cervidae 12 months of age and older must have brain tissue submitted at slaughter and examined for CWD by an ~~approved~~ official laboratory. This brain tissue sample will be obtained by a state or federal meat inspector or accredited veterinarian on the premises at the time of slaughter.

64.106(3) Identification. All cervid animals must be identified with two forms of official identification. Cervid animals identified with a tattoo must have a second visual form of official identification. Cervid animals must receive the identification before 12 months of age.

ITEM 3. Amend rule 21—64.107(163) as follows:

21—64.107(163) Official cervid tests. The following are recognized as official cervid tests for CWD:

1. Histopathology.
2. Immunohistochemistry.
3. Western blot.
4. ~~Negative stain electron microscopy.~~
5. ~~Bioassay.~~
6. 4. Any other tests performed by an official laboratory to confirm a diagnosis of CWD.

ITEM 4. Amend rule 21—64.108(163) as follows:

21—64.108(163) Investigation of CWD affected animals identified through surveillance. Traceback must be performed for all animals diagnosed at an ~~approved~~ official laboratory as affected with CWD. All herds of origin and all adjacent herds having contact with affected animals as determined by the CCWDSI program must be investigated epidemiologically. All herds of origin, adjacent herds, and herds having contact with affected animals or exposed animals must be quarantined. The department will investigate CWD suspect herds.

ITEM 5. Amend rule 21—64.109(163) as follows:

21—64.109(163) Duration of quarantine. Quarantines placed in accordance with these rules must maintain compliance with rules 21—64.104(163) through 21—64.119(163). Quarantines maintaining compliance shall be removed as follows:

1. ~~For herds of origin, quarantines shall be removed after five years of compliance with rules 21—64.104(163) through 21—64.119(163) from the date of the last CWD detected test or after all animals have died or been depopulated and have been tested without the detection of CWD.~~
2. ~~For herds having contact with affected or exposed animals, quarantines shall be removed after five years of compliance with rules 21—64.104(163) through 21—64.119(163).~~
3. ~~For adjacent herds, quarantines shall be removed as directed by the state veterinarian in consultation with the epidemiologist.~~

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

ITEM 6. Amend rule 21—64.110(163) as follows:

21—64.110(163) Herd plan. The herd owner, the owner's veterinarian, if requested, and the epidemiologist shall develop a plan for eradicating CWD in each affected herd. The plan must be designed to reduce and then eliminate CWD from the herd, to prevent spread of the disease to other herds, and to prevent reintroduction of CWD after the herd becomes a certified CWD cervid herd. Animals that die, are depopulated, or are otherwise killed must be tested for CWD. The herd plan must be developed and signed within 60 days after the determination that the herd is affected. The plan must address herd management and adhere to rules 21—64.104(163) through 21—64.119(163). The plan must be formalized as a memorandum of agreement between the owner and program officials, must be approved by the state veterinarian, and must include plans to obtain certified CWD cervid herd status. No movement restrictions may be removed prior to formalization of the agreement.

ITEM 7. Amend rule 21—64.111(163) as follows:

21—64.111(163) Identification and disposal requirements. Affected and exposed animals must remain on the premises where they are found until they are identified and disposed of in accordance with direction from the state veterinarian. The department and the Iowa department of natural resources shall approve disposal issues of affected and exposed animals including manner and site.

ITEM 8. Amend rule 21—64.113(163), introductory paragraph, as follows:

21—64.113(163) Methods for obtaining certified CWD cervid herd status. Certified CWD cervid herd status must include all Cervidae under common ownership. The animals that are part of a certified herd cannot be commingled with other cervids that are not certified, and a minimum geographic separation of 30 feet between herds of different status must be maintained in accordance with the USDA Uniform Methods and Rules as defined in APHIS Manual 91-45-011, revised as of January 22, 1999. The escape, disappearance or death of any cervid shall be promptly reported along with identification numbers and estimated time of escape, disappearance or death. Tissue samples shall be available. A herd may qualify for status as a certified CWD cervid herd by one of the following means:

ITEM 9. Amend rule 21—64.114(163) as follows:

21—64.114(163) Recertification of CWD cervid herds. A herd is certified for 12 months. Annual inventories conducted by ~~state veterinarians~~ the department or authorized federal personnel are required every 9 to 15 months from the anniversary date. A complete physical herd inventory will be completed by the department or authorized federal personnel every three years. For continuous certification, adherence to the provisions in these rules and all other state laws and rules pertaining to raising cervids is required. A herd's certification status is immediately terminated and a herd investigation shall be initiated if CWD affected or exposed animals are determined to originate from that herd.

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CREDIT UNION DIVISION[189]

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 533.107, the Credit Union Division hereby gives Notice of Intended Action to amend Chapter 3, “Conversion of an Iowa-Chartered Credit Union to Another Charter Type”; to rescind Chapter 12, “Bylaw Amendment Voting Procedure—Mailed Ballot,”

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and to adopt a new Chapter 12, "Votes of the Membership"; and to rescind Chapter 16, "Director Election—Absentee Ballot Voting Procedure," and Chapter 19, "Amend, Modify or Reverse Acts of the Board of Directors—Mailed Ballot Voting Procedure," Iowa Administrative Code.

These provisions detail certain voting procedures for specific types of credit union membership votes and are being amended and consolidated to reflect the recent change in Iowa Code section 533.203 that permits the use of multiple methods of voting by credit unions. The statutory changes are reflected in an amended Chapter 3 and a new Chapter 12.

The Division will fully consider any written suggestions or comments on these proposed amendments by any interested person on or before June 28, 2013. Written material should be directed to the Iowa Credit Union Division, 200 E. Grand, Suite 370, Des Moines, Iowa 50309-1827; fax (515)725-0519.

There will be a public hearing on June 18, 2013, at 1 p.m. in the conference room in the Division's offices at 200 E. Grand, Des Moines, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the 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 Division and advise of specific needs.

The proposed amendments do not contain conditions for waiver but would be subject to the process outlined in Chapter 23, "Uniform Waiver and Variance Rules."

After analysis and review of this rule making, the Division has determined that there will be no impact on jobs and no fiscal impact to the state. This rule making replaces rules detailing procedures for some types of voting by the membership in a credit union with a comprehensive set of procedures for all types of credit union membership votes conducted by credit unions.

These amendments are intended to implement Iowa Code sections 533.201(7), 533.201(8), 533.203, 533.203A, 533.208(3), 533.401(1), 533.401(3), 533.403(1), 533.405(1), 533.405(2), and 533.405(6).

The following amendments are proposed.

ITEM 1. Amend subrule 3.2(3) as follows:

3.2(3) Disclosure to members.

a. No credit union shall convert to a federal credit union without full disclosure to its members of the intents and purposes of conversion.

b. If the intent to undertake a second conversion to a mutual savings bank or a savings association is among the purposes for conversion to a federal credit union, those facts and all related information shall be fully disclosed to members.

c. If a further conversion to a stock institution is among the possible outcomes from the conversion, the converting Iowa-chartered credit union ~~must~~ shall fully and accurately disclose this possibility to its members.

ITEM 2. Amend subrules 3.3(1) to 3.3(4) as follows:

3.3(1) Any conversion proposal may be approved by the board of directors only upon the affirmative vote of a majority of the board. The board ~~must~~ shall then set a date for a vote on the proposal by the members of the credit union and select the method of voting by a favorable vote of a majority of the board, according to the provisions of Iowa Code section 533.203.

3.3(2) The membership ~~must~~ shall approve the proposal to convert by the affirmative vote of a majority of those members who vote on such proposal. Each eligible member shall have one vote regarding the conversion proposal.

3.3(3) The vote of the members to convert ~~must be at a special meeting called for that purpose, must shall be in the manner prescribed in the bylaws and this chapter, and must satisfy the number of members necessary to constitute a quorum to convene a meeting of the members as prescribed in the bylaws.~~

3.3(4) The board of directors ~~must~~ shall notify the superintendent of any proposed conversion ~~and within three days of an affirmative vote by the board on a conversion proposal.~~ The board shall also notify the superintendent of any abandonment or disapproval of the conversion by the members or by the recipient chartering authority, the National Credit Union Administration, or applicable federal deposit

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insurer within seven days of a membership vote to abandon or disapprove the conversion, receipt of disapproval by a chartering authority, or other decision to abandon the conversion.

ITEM 3. Rescind rule 189—3.4(533) and adopt the following **new** rule in lieu thereof:

189—3.4(533) Notice to members and voting procedures.

3.4(1) Requirements. All conversion plans shall be submitted to the superintendent in accordance with 189—3.5(533). The members may not vote on the proposal until the credit union has received preliminary approval from the superintendent under 189—3.5(533), as well as the preliminary determination from the National Credit Union Administration on the proposition for conversion.

3.4(2) Vote by board of directors. The board of directors shall, by majority vote, select the method of voting for the membership vote on the conversion proposal in accordance with Iowa Code section 533.203. Each credit union member shall have a meaningful opportunity to vote in a membership vote. The board of directors shall vote to conduct the vote in whole by electronic voting only if all members have access to an electronic voting device. If the number of members who have opted to receive notices electronically is less than all members, the board may provide access to an electronic device in each credit union office for the members to vote electronically in order to satisfy the access requirement. Otherwise, the board shall also conduct the vote in part by mail-in ballot or in person at a meeting held for the purpose of voting, pursuant to the requirements of this rule.

3.4(3) Election committee. The board shall appoint an election committee of not fewer than seven members, none of whom may be from the board of directors or be a member of a director's immediate family or be an employee of the credit union or a member of an employee's immediate family.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. If the balloting includes a vote taken at a meeting of members, the chairperson of the election committee shall announce the results of the election at the meeting; otherwise, the chairperson shall certify the vote to the board within five days of the close of balloting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

3.4(4) Notice of balloting. The secretary shall set forth the conversion issue in a notice mailed to all members eligible to vote at least 90 calendar days, 60 calendar days, and 30 calendar days prior to the closing date of balloting.

a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other vote on the subject shall be taken after the closing date of balloting.

(1) The close of balloting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes in order to be considered valid.

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(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting and received within five business days after the closing date of balloting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate, in bold-faced type, that members have the right to vote on the proposed amendment through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

b. The notice shall do all of the following:

(1) Adequately describe the purpose and the subject matter of the vote.

(2) Accurately disclose the reasons for the conversion, stated in specific terms and not as generalities. If a purpose of conversion is to become a mutual savings bank, a savings association that is in mutual form, or a stock institution, the notice shall clearly inform the member of all of the following:

1. That the conversion, if approved, could lead to members' losing their ownership interest in the credit union.

2. That a credit union member has no more than one vote regardless of the number of shares held, but that in a mutual savings bank or savings association, voting may be based on the amount in the member's deposit accounts, commonly one vote granted for each \$100 on deposit.

3. That if the mutual savings bank or association converts to a stock institution, members will lose their ownership interests and voting rights automatically received as a member.

4. The method that will be used to provide for a pro-rata distribution of all unencumbered credit union retained and undivided earnings in excess of regulatory required reserves, as calculated pursuant to Iowa Code section 533.303, or in excess of a well-capitalized net worth level, calculated pursuant to the Federal Credit Union Act, 12 U.S.C. §1790d, whichever amount is greater. The pro-rata distribution shall occur on all shares of record as of the date of first notice to members under this rule and shall be based upon the member's share balance less any amount pledged to share-secured loans.

(3) Specify the costs of the conversion, such as changing the credit union name, examination and operating fees, attorney and consulting fees, tax liability, and any change or increase in compensation or economic benefit to directors or senior management officials, pursuant to subrule 3.10(2).

(4) Include an affirmative statement that, at the time of conversion to a federal credit union and for a period of five years thereafter, the credit union does or does not intend to do each of the following:

1. Convert to a mutual savings bank or savings association or a stock institution.

2. Provide any compensation to previously uncompensated members of the board of directors, or increase compensation or other conversion-related economic benefit, including stock options, special prices on stock, or first rights of refusal, to directors, senior management officials, or their agents, brokers, family members or other closely related parties.

3. Base member voting rights on account balances.

c. The notice shall not be included as part of any general mailing to members.

d. The notice may be sent electronically to those members who have opted to receive notices electronically.

e. The notice shall be posted in each credit union office 90 calendar days, 60 calendar days, and 30 calendar days before the close of balloting.

f. A member who joins the credit union subsequent to the 30-calendar-day notice and prior to the close of balloting and who is eligible to vote on the conversion shall be provided a copy of the 30-calendar-day notice and any balloting materials.

3.4(5) Mailed ballots. If the board voted by majority vote to conduct the vote in whole or in part by mailed ballot:

a. The secretary shall include the following balloting materials with the 30-calendar-day notice of balloting:

(1) One ballot, clearly identified as the ballot.

(2) One ballot envelope clearly marked "ballot" with instructions that the completed ballot shall be placed in that envelope and sealed.

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(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed "ballot" envelope and the identification form. The mailing envelope shall have postage prepaid and be preaddressed for return to the election committee.

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If no other voting is scheduled to occur, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting.

3.4(6) *Electronic voting.* If the board voted by majority vote to conduct the vote in whole or in part by electronic voting:

a. The secretary shall include with the notice of balloting specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. For those members who have opted to receive notices or statements electronically, the instructions required under this subrule may be communicated electronically.

c. The electronic voting shall be tallied by the election committee prior to any meeting where voting is also scheduled to take place, and the committee shall take the tallies to the meeting. If no meeting is scheduled for voting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting.

3.4(7) *Absentee ballots—subsequent in-person vote at meeting.* If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting.

b. The secretary shall mail the balloting materials specified in paragraph 3.4(5) "a" to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

3.4(8) *In-person vote at meeting.* If the board voted by majority vote to conduct the vote in whole or in part at a meeting of members, then printed ballots shall be distributed to those in attendance at the meeting who have not voted by another method, and the ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee. After those members have been given an opportunity to vote at the meeting, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots.

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The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

3.4(9) *Preservation of ballots.* Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by 189—subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

3.4(10) *Certification of vote by board of directors.* The board of directors shall certify to the superintendent the results of the membership vote and the written materials provided to members according to the requirements of 189—3.6(533).

3.4(11) *Publication of results.* The board shall inform the membership of the results of the vote, and of the superintendent's approval or disapproval, by conspicuously posting notice in each credit union office for a period of 60 days following receipt of the superintendent's decision under 189—3.7(533). In addition to posting the results in each credit union office, the board shall also communicate the results to the membership by at least one of the following methods:

- a. Include the results in the next mailing of the member's statement of account.
- b. Include the results in the credit union newsletter.
- c. Include the results in the sponsor's newsletter.
- d. Post a notice on the credit union's Web site.
- e. Place a notice in a newspaper of general circulation within the geographic area of operation of the credit union.

3.4(12) *Effective date of conversion.* The board shall notify the superintendent of the effective date of the conversion and shall file evidence of federal regulatory approval for the conversion pursuant to 189—3.9(533).

3.4(13) *Certificate of conversion.* Upon receipt of the certificate of conversion from the superintendent, the credit union shall file the certificate pursuant to 189—3.9(533).

3.4(14) *Termination of conversion proceedings.* At any time prior to completion of a conversion to a federal credit union, the board or the members as provided in the bylaws may call for a special meeting of the members to be held to terminate the conversion proceedings. The membership shall approve the proposal to terminate the conversion proceedings by the affirmative vote of a majority of those members who vote on the proposal.

ITEM 4. Amend subrules 3.5(1) to 3.5(3) as follows:

3.5(1) The credit union ~~must~~ shall provide the superintendent with notice of its intent to convert and a plan of conversion no less than 30 calendar days prior to the 90-calendar-day period preceding the ~~date of the membership vote on the conversion~~ close of balloting under 189—3.4(533).

3.5(2) The credit union ~~must~~ shall give notice to the superintendent and provide a plan of conversion describing the material features of the conversion, along with a copy of the filing the credit union has made with the federal regulatory agency by which the credit union seeks that agency's approval of the conversion. The credit union ~~must~~ shall include with the notice to the superintendent a copy of the notice the credit union ~~provides~~ proposes to provide to members under 189—3.4(533), as well as the proposed ballot form and related instructions and envelopes, all written materials the credit union has distributed or intends to distribute to its members, ~~a copy of the return envelope addressed to the election committee marked "ballot" provided with the ballot form~~, and the procedures the election committee will follow in its receipt and counting of the ballots.

3.5(3) Superintendent's preliminary determination.

a. The superintendent ~~will~~ shall make a preliminary determination regarding the methods and procedures applicable to the membership vote.

b. The superintendent ~~will~~ shall notify the credit union within 30 calendar days of receipt of the credit union's notice of intent to convert if the superintendent disapproves of the proposed methods and procedures applicable to the membership vote.

c. The credit union's submission of the notice of intent and plan of conversion does not relieve the credit union of its obligation to certify the results of the membership vote required by 189—3.6(533) or certify compliance with these rules as required by 189—3.3(533) or eliminate the right of the

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superintendent to disapprove the actual methods and procedures applicable to the membership vote if the credit union fails to conduct the membership vote in a fair and legal manner.

ITEM 5. Amend rule 189—3.6(533) as follows:

189—3.6(533) Certification of vote on conversion proposal.

3.6(1) The board of directors of the converting credit union ~~must~~ shall certify the results of the membership vote to the superintendent within ten calendar days after the vote is taken.

3.6(2) The board of directors ~~must~~ shall also certify at the same time that the notice, ballot and other written materials provided to members were identical to those submitted pursuant to 189—3.5(533) or provide copies of any new or revised materials and an explanation of the reasons for the changes.

ITEM 6. Amend subrule 3.7(1) as follows:

3.7(1) The superintendent ~~will~~ shall issue a determination that the methods and procedures applicable to the membership vote are approved or disapproved within ten calendar days of receipt from the credit union of the certification of the result of the membership vote required under 189—3.6(533).

ITEM 7. Amend subrules 3.9(2) to 3.9(6) as follows:

3.9(2) Submission of evidence of approval and effective date.

a. The board of directors of the credit union ~~must~~ shall file with the superintendent appropriate evidence of approval of the conversion by the appropriate federal agency having jurisdiction over the financial institution after conversion and from the federal agency providing deposit insurance to the converted financial institution, and, if applicable, a copy of the notice from the National Credit Union Administration canceling the credit union insurance certificate.

b. The board of directors of the credit union ~~must~~ shall also notify the superintendent of the actual date on which the conversion is to be effective.

3.9(3) Upon receipt of satisfactory proof that the Iowa-chartered credit union has complied with all applicable laws and regulations of this state and of the United States, the superintendent ~~will~~ shall cancel the charter of the credit union and issue a certificate of conversion ~~which must~~ that shall be filed and recorded in the county in which the credit union has its principal place of business and in the county in which its original articles of incorporation or certification of organization ~~were~~ was filed and recorded, if different.

3.9(4) Violations of law or intent to deceive or mislead.

a. In the event it is subsequently determined the conversion was accomplished contrary to applicable law, regulation or the requirements of this chapter, in whole or in part, or with the intent to deceive or mislead the members of the credit union or the superintendent, the superintendent ~~will~~ shall take immediate action to cause the conversion to be declared null and void, and to request from the appropriate regulatory authority that the converted institution be ordered to surrender its charter and be ~~thereupon~~ returned to the authority of the superintendent for reinstatement as a state charter, or other action.

b. The provisions of Iowa Code chapter 533 shall apply in the event it is determined that any director, officer, agent, employee or clerk of the credit union knowingly submitted, or made or exhibited false statements, papers or reports to the superintendent ~~or committed~~.

c. If during the conversion process any person commits any acts which might result in that person's being found to have engaged in act constituting a fraudulent practice under Iowa Code section 714.8, the matter shall be referred to the attorney general.

3.9(5) If the superintendent finds a material deviation from the provisions of this chapter, or from Iowa Code chapter 533, that would invalidate any steps taken in the conversion, the superintendent ~~will~~ shall promptly notify the credit union and the National Credit Union Administration of the nature of the adverse findings.

3.9(6) The conversion of the Iowa credit union to a federal credit union ~~will~~ shall not be effective and completed until final approval is given by the superintendent, any improper actions are cured, and corrective steps have been accomplished, if applicable.

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ITEM 8. Amend rule 189—3.10(533) as follows:

189—3.10(533) Limit on compensation of officials.

3.10(1) No director or senior management official of an Iowa credit union ~~may~~ shall receive any economic benefit in connection with a plan of conversion or the actual conversion of the credit union, other than regular compensation and other usual benefits paid to directors or senior management officials in the ordinary course of business.

3.10(2) In connection with the notices to members required by this chapter, the converting credit union ~~must~~ shall disclose to the members the cost of the conversion, including any change or increase in compensation or economic benefit to directors or senior management officials of the credit union in the event the conversion process is accomplished.

ITEM 9. Amend **189—Chapter 3**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section~~ sections 533.203 and 533.403.

ITEM 10. Rescind 189—Chapter 12 and adopt the following **new** chapter in lieu thereof:

CHAPTER 12
VOTES OF THE MEMBERSHIP

189—12.1(533) Voting requirements and eligibility.

12.1(1) All elections are determined by plurality vote.

12.1(2) A member shall have one vote regardless of the number of or class of shares held by the member. Jointly held ownership shares are entitled to one vote, and joint tenants shall not be permitted to cast more than one vote per ownership share jointly held.

12.1(3) Members shall not vote by proxy.

12.1(4) A member other than a natural person may cast a single vote through a delegated agent.

12.1(5) Members shall be at least 16 years of age by the date of the meeting in order to vote, sign nominating petitions, or sign petitions requesting special meetings.

12.1(6) Members shall be at least 18 years of age by the date of the meeting where the election or appointment will occur in order to hold an elected or appointed position.

189—12.2(533) Nomination procedures for the board of directors.

12.2(1) *Nominating committee.* If the board has determined that voting for directors at the annual meeting will be conducted via one or more methods other than only in-person voting at the meeting, then at least 120 days before each annual meeting, the chairperson of the board shall appoint a nominating committee of three or more members, none of whom are directors currently eligible for reelection or their immediate family members.

a. It is the duty of the nominating committee to nominate at least one member for each vacancy, including for any unexpired-term vacancy, for which elections are being held and to obtain a signed certificate from the members nominated that they are agreeable to the placing of their names in nomination, will accept office if elected, and will cooperate with any background check required by the credit union.

b. The nominating committee shall file its nominations with the secretary of the credit union board at least 90 days before the annual meeting.

12.2(2) *Nominations by petition.* Upon majority vote, the board of directors may decide to accept additional nominations by petition, instead of taking nominations from the floor at the annual meeting.

a. At least 90 days before the annual meeting, the secretary shall notify in writing all members eligible to vote that nominations for vacancies may be made by petition signed by at least 1 percent of the members, subject to a minimum of 20 members and a maximum of 200 members.

(1) The notice shall indicate that there will be no nominations from the floor at the annual meeting.

(2) The notice shall include a list of the nominating committee's nominees and a brief statement of the nominees' qualifications and biographical data in a form approved by the board of directors. Each

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nominee by petition shall submit a similar statement of qualifications and biographical data with the petition.

(3) Nominations by petition shall be accompanied by a signed certificate from the nominee stating that the nominee is agreeable to nomination, will serve if elected to office, and will cooperate with any background check required by the credit union.

(4) The period for receiving nominations by petition shall extend at least 30 days from the date that the notice is sent. Petitions shall be filed with the secretary of the credit union at least 60 days before the annual meeting.

(5) Nominations by petition which are received after the closing date, or which are otherwise incomplete because they do not include a statement of qualifications and biographical data, or certification agreeing to the nomination and indicating a willingness to serve, shall be disqualified by the board secretary. The secretary shall immediately notify the nominee of the disqualification and of the reason. A petition for a disqualified nominee may be refiled provided that all requirements, including the closing date for receiving nominations by petition, are met.

b. The notice may be included with the notice of annual meeting, in statements or newsletters, on the credit union Web site, or on signs posted in the credit union.

c. The secretary may use electronic mail to notify members who have opted to receive notices or statements electronically.

12.2(3) Posting of nominations. The secretary shall ensure that all nominations are posted in a conspicuous place in each credit union office at least 30 days but no more than 60 days before the annual meeting.

12.2(4) Alternative schedule—voting only in person at annual meeting. If the board of directors determines that voting at the annual meeting shall only be conducted in person, and nominations will be taken from the floor at the annual meeting, the chairperson of the board shall appoint a nominating committee of three or more members, none of whom are directors currently eligible for reelection or their immediate family members, at least 60 days before the annual meeting. Nominations shall be posted according to subrule 12.2(3).

189—12.3(533) Election procedures for the board of directors.

12.3(1) Vote by board of directors. The board of directors shall, by majority vote, select the method of voting for the membership vote for the election of directors, in accordance with Iowa Code section 533.203. Each credit union member shall have a meaningful opportunity to vote in a membership vote. The board of directors shall vote to conduct the vote in whole by electronic voting only if all members have access to an electronic voting device. If the number of members who have opted to receive notices electronically is less than all members, the board may provide access to an electronic device in each credit union office for the members to vote electronically in order to satisfy the access requirement. Otherwise, the board shall also conduct the vote in part by mail-in ballot or in person at the annual meeting, pursuant to the requirements of this rule.

12.3(2) Election committee. The board of directors shall appoint an election committee of not fewer than five members, none of whom may be a current director or nominee for office or an immediate family member of any director or nominee for office.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. The chairperson of the election committee shall announce the results of the election at the annual meeting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203.

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e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

12.3(3) Notice of balloting. At least 20 days but not more than 30 days prior to the close of balloting, the secretary shall produce a notice of balloting.

a. The notice of balloting shall state the names of the candidates for the board of directors. The name of each candidate shall be followed by a brief statement of the candidate's qualifications and biographical data in a form approved by the board of directors.

b. If the board of directors elected to accept additional nominations by petition, then the notice of balloting shall state that additional nominations shall not be taken from the floor at the annual meeting. In this event, the board may vote to conduct the election in any form permitted by Iowa Code section 533.203.

c. If the board of directors did not elect to accept additional nominations by petition, then the notice of balloting shall state that additional nominations will be taken from the floor at the annual meeting. In this event, the board may only vote to conduct the election in person at the annual meeting, and not by mail-in ballot, electronic voting, absentee voting, or any combination permitted by Iowa Code section 533.203.

d. The notice shall set forth the rules and procedures for voting and the date of the close of balloting.

(1) The close of balloting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes in order to be considered valid.

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting and received within five business days after the closing date of balloting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate that members have the right to vote through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

e. The notice may be included with notice of the annual meeting and in statements or newsletters, on the credit union Web site, or on signs posted in the credit union.

f. Electronic mail may be used to provide the notice of balloting to members who have opted to receive notices or statements electronically.

12.3(4) Mailed ballots. If the board of directors, by majority vote, has elected to conduct the election in whole or in part by mailed ballot, then the secretary shall send with the notice of balloting a mail-in ballot.

a. The secretary shall include the following materials for balloting:

(1) One ballot, clearly identified as the ballot, on which the names of the candidates for the board of directors are printed in random order.

(2) One ballot envelope clearly marked "ballot" with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed "ballot" envelope and the identification form. The mailing envelope shall be preaddressed for return to the election committee.

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b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If voting will also occur at the annual meeting, the ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the annual meeting. If voting is not scheduled to occur at the annual meeting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the close of balloting.

12.3(5) *Electronic voting.* If the board of directors, by majority vote, has elected to conduct the election in whole or in part by electronic voting, then the secretary shall include with the notice of balloting specific instructions for electronic voting.

a. The instruction sheet for electronic voting shall contain specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. For those members who have opted to receive notices or statements electronically, the instructions for electronic voting required under this subrule may be communicated electronically.

c. The electronic voting shall be tallied by the election committee. If voting will also occur at the annual meeting, then the results shall be verified at the meeting.

d. If voting is not scheduled to occur at the annual meeting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the close of balloting.

12.3(6) *Absentee ballots—subsequent in-person vote at meeting.* If the board of directors, by majority vote, has elected to conduct the election only in person at the annual meeting, the board may also, by majority vote, utilize absentee ballots when no additional nominations will be taken from the floor at the annual meeting and when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of annual meeting a notification that members may vote either in person at the annual meeting or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting.

b. The secretary shall mail the balloting materials specified in paragraph 12.3(4)“a” to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the annual meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.3(7) *Nominations from the floor—subsequent in-person vote at meeting.* If the board of directors did not elect to accept additional nominations by petition, then additional nominations shall be taken from the floor at the annual meeting, provided that no electronic, mail-in, or absentee balloting has occurred.

a. At the annual meeting, printed ballots shall be distributed to those in attendance after additional nominations are taken from the floor, or the ballots shall also have blank spaces to write in the additional names. The ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting.

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b. After members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee.

c. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the annual meeting.

12.3(8) *In-person vote at meeting.* If the board of directors elected to accept additional nominations by petition, and if the board of directors also chose to conduct the vote in whole or in part by in-person voting at the annual meeting, printed ballots shall be distributed to those in attendance at the annual meeting who have not voted.

a. The ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting.

b. After those members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots.

c. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the annual meeting.

12.3(9) *Preservation of ballots.* Ballots shall be preserved according to the provisions of 189—12.9(533). The 60-day retention period required by subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

12.3(10) *Publication of results.* Results of the election shall be reported to members according to the provisions of 189—12.10(533). The 60-day posting period required by subrule 12.10(1) shall run from the date the results are certified to the board by the election committee.

189—12.4(533) Vote to amend bylaws or articles of incorporation.

12.4(1) *Requirements.* Voting on amendments of bylaws and articles of incorporation shall be conducted in accordance with Iowa Code section 533.201. All amendments shall be approved by the superintendent before the amendments become effective.

12.4(2) *Vote by board of directors.* If the board of directors has elected upon a favorable vote of the majority that the board of directors shall vote on the amendment, then the amendment is adopted by a favorable vote of the majority of the board.

12.4(3) *Membership vote.* The board of directors may vote to conduct the vote on the amendment by a method other than a majority vote of the board of directors, as provided in Iowa Code section 533.201. Each credit union member shall have a meaningful opportunity to vote in a membership vote. The board of directors shall vote to conduct the vote in whole by electronic voting only if all members have access to an electronic voting device. If the number of members who have opted to receive notices electronically is less than all members, the board may provide access to an electronic device in each credit union office for the members to vote electronically in order to satisfy the access requirement. Otherwise, the board shall also conduct the vote in part by mail-in ballot or in person at a meeting held for the purpose of voting, pursuant to the requirements of this rule.

12.4(4) *Election committee.* If the board of directors votes to conduct the vote on the amendment by a method other than a majority vote of the board of directors, as provided in Iowa Code section 533.201, then the board shall appoint an election committee of not fewer than five members, none of whom may be directors.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. The chairperson of the election committee shall announce the results of the vote at the annual meeting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election

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period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.201.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

12.4(5) Notice of balloting. The secretary shall set forth the proposed amendment in its entirety in a notice to all members eligible to vote at least 20 days but not more than 30 days prior to the closing date of balloting.

a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other vote on the subject shall be taken after the closing date of balloting. The notice shall also contain a summary of the board's reasons for recommending the amendment.

(1) The close of balloting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes in order to be considered valid.

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting and received within five business days after the closing date of balloting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate that members have the right to vote on the proposed amendment through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

b. The notice may be included in statements or newsletters, on the credit union Web site, or on signs posted in the credit union.

c. The notice may be sent electronically to those members who have opted to receive notices electronically.

12.4(6) Mailed ballots. If the board of directors has elected, upon a favorable vote of the majority, to conduct a vote on the proposed amendment in whole or in part via mailed ballot:

a. The secretary shall include the following materials for balloting with the notice of balloting:

(1) One ballot, clearly identified as the ballot, on which the proposed amendment is printed in full.

(2) One ballot envelope clearly marked "ballot" with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed "ballot" envelope and the identification form. The mailing envelope shall be preaddressed for return to the election committee.

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If voting is not scheduled to occur at a meeting, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting.

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12.4(7) *Electronic voting.* If the board of directors, by majority vote, has elected to conduct the vote in whole or in part by electronic voting, then the secretary shall include with the notice of balloting specific instructions for electronic voting to each member eligible to vote.

a. The instruction sheet for electronic voting shall contain specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. For those members who have opted to receive notices or statements electronically, the instructions required under this subrule may be communicated electronically.

c. The electronic voting shall be tallied by the election committee. If voting will also occur at a meeting, then the results shall be verified at the meeting.

d. If voting is not scheduled to occur at a meeting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting.

12.4(8) *Absentee ballots—subsequent in-person vote at meeting.* If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting.

b. The secretary shall mail the balloting materials specified in paragraph 12.4(6)“a” to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.4(9) *In-person voting at meeting.* If the board of directors has elected, upon a favorable vote of the majority, to present the proposed amendment for a vote in whole or in part at a meeting of members, printed ballots shall be given at the meeting to those members who have not voted by another method.

a. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting.

b. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots.

c. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.4(10) *Preservation of ballots.* Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by subrule 12.9(2) shall run from the date of final approval or denial of the amendment by the superintendent.

12.4(11) *Submission to superintendent.* The board of directors shall submit the amendment to the superintendent for approval before the amendment becomes effective. The board shall submit the following documentation in support of its request for approval:

a. A certified copy of the board minutes which contain the recommendation to submit the amendment to a vote of the membership.

b. A certified copy of the notices provided to members.

c. A certified copy of any ballots provided to members.

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d. A certified statement, including the vote count, that a majority of the eligible members voted in favor of the proposed amendment.

12.4(12) *Publication of results.* The board shall inform the membership of the results of the vote and whether the amendment received the approval of the superintendent, according to the provisions of 189—12.10(533). The 60-day posting period required by subrule 12.10(1) shall run from the date of final approval or denial of the amendment by the superintendent.

189—12.5(533) Vote to modify, amend, or reverse an act of the board of directors or to instruct the board to take action.

12.5(1) *Vote of members at meeting.* The majority of members present at any meeting may vote to modify, amend, or reverse any act of the board of directors or instruct the board to take action not inconsistent with the articles of incorporation, the bylaws, or the Iowa credit union Act or administrative rules.

12.5(2) *Subsequent vote of membership.* In order to be binding upon the board of directors, any action taken by the membership to modify, amend, or reverse an act of the board, or to instruct the board to take action, requires an affirmative vote of a majority of all eligible members obtained by submitting the modification, amendment, reversal, or instruction to the members for a vote.

a. After a majority of members present at a meeting have voted to modify, amend, or reverse any act of the board of directors, or to instruct the board to take action not inconsistent with the articles, the bylaws, or the Iowa credit union Act or administrative rules, the board of directors shall meet to determine the method of voting for the membership vote and shall, within 60 days of the date of the meeting where the majority of members voted to modify, amend, or reverse an act of the board of directors, or to instruct the board to take action, submit the issue to all eligible voters of record as of the date of the meeting.

b. The board of directors shall, by majority vote, select the method of voting for the membership vote, in accordance with Iowa Code section 533.203. Each credit union member shall have a meaningful opportunity to vote in a membership vote. The board of directors shall vote to conduct the vote in whole by electronic voting only if all members have access to an electronic voting device. If the number of members who have opted to receive notices electronically is less than all members, the board may provide access to an electronic device in each credit union office for the members to vote electronically in order to satisfy the access requirement. Otherwise, the board shall also conduct the vote in part by mail-in ballot or in person at a meeting held for the purpose of voting, pursuant to the requirements of this rule.

c. If a simple majority of all eligible members vote in favor of the amendment, modification, reversal or instruction to take action, the vote of the members taken at the annual or special meeting shall be considered affirmed, and the board of directors shall take immediate action to comply with the directions of the membership. However, if a simple majority of all eligible members failed to vote in favor of the amendment, modification, reversal or instruction to take action, the vote of the members taken at the annual or special meeting is not affirmed, and the prior action of the board of directors shall be considered upheld.

12.5(3) *Election committee.* The board shall appoint an election committee of not fewer than five members, no more than two of whom may be from the board of directors.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. If the balloting includes a vote taken at a meeting of members, the chairperson of the election committee shall announce the results of the election at the meeting; otherwise, the chairperson shall certify the vote to the board within five days of the close of balloting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election

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period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

12.5(4) Notice of balloting. The secretary shall set forth the proposed amendment, modification, reversal or instruction to take action in its entirety in a notice to all members eligible to vote at least 20 days but not more than 30 days prior to the closing date of balloting.

a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other vote on the subject shall be taken after the closing date of balloting. The notice shall also contain a summary of the board's reasons for its action or inaction, as well as a summary of the reasons, if known, for the vote to amend, modify, or reverse the board action, or to instruct the board to take action.

(1) The close of balloting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes in order to be considered valid.

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting and received within five business days after the closing date of balloting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate that members have the right to vote through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

b. The notice may be included in statements or newsletters, on the credit union Web site, or on signs posted in the credit union.

c. The notice may be sent electronically to those members who have opted to receive notices electronically.

12.5(5) Mailed ballots. If the board voted by majority vote to conduct the vote in whole or in part by mailed ballot:

a. The secretary shall include the following balloting materials with the notice of balloting:

(1) One ballot, clearly identified as the ballot, on which the proposed amendment, modification, or reversal, or instruction to the board to take action, is printed in full.

(2) One ballot envelope clearly marked "ballot" with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed "ballot" envelope and the identification form. The mailing envelope shall be preaddressed for return to the election committee.

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If no other voting

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is scheduled to occur, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting.

12.5(6) *Electronic voting.* If the board voted by majority vote to conduct the vote in whole or in part by electronic voting:

a. The secretary shall include with the notice of balloting specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. For those members who have opted to receive notices or statements electronically, the instructions required under this subrule may be communicated electronically.

c. The electronic voting shall be tallied by the election committee prior to any meeting where voting is also scheduled to take place, and the committee shall take the tallies to the meeting. If no meeting is scheduled for voting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting.

12.5(7) *Absentee ballots—subsequent in-person vote at meeting.* If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting.

b. The secretary shall mail the balloting materials specified in paragraph 12.5(5) “a” to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.5(8) *In-person vote at meeting.* If the board voted by majority vote to conduct the vote in whole or in part at a meeting of members, then printed ballots on which the proposed amendment, modification, or reversal, or instruction to the board to take action, is printed in full shall be distributed to those in attendance at the meeting who have not voted by another method, and the ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee. After those members have been given an opportunity to vote at the meeting, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.5(9) *Preservation of ballots.* Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

12.5(10) *Publication of results.* The board shall inform the membership of the results of the vote according to the provisions of 189—12.10(533). The 60-day posting period required by subrule 12.10(1) shall run from the date the results are certified to the board by the election committee.

189—12.6(533) *Vote on merger.*

12.6(1) *Vote by board of directors.* A state credit union that seeks to merge with another credit union shall proceed pursuant to a plan agreed upon by a favorable vote of a majority of directors.

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12.6(2) *Subsequent vote of the membership.* Following a vote by the board of directors to merge with another credit union, the board shall submit the merger to a vote of the membership of the merging credit union unless the superintendent finds that an emergency exists justifying the waiver of the membership vote.

a. The board of the continuing credit union shall, within three days of voting to merge, notify the superintendent of the merger vote.

b. After the superintendent has given preliminary approval to the merger, the board of the merging credit union shall submit the issue within 30 days to all eligible voters of record as of the date of the vote by the board of directors. The board of directors shall, by majority vote, select the method of voting for the membership vote, in accordance with Iowa Code section 533.203. Each credit union member shall have a meaningful opportunity to vote in a membership vote. The board of directors shall vote to conduct the vote in whole by electronic voting only if all members have access to an electronic voting device. If the number of members who have opted to receive notices electronically is less than all members, the board may provide access to an electronic device in each credit union office for the members to vote electronically in order to satisfy the access requirement. Otherwise, the board shall also conduct the vote in part by mail-in ballot or in person at a meeting held for the purpose of voting, pursuant to the requirements of this rule.

c. The approval of the merger is not final until approved by the superintendent after the membership vote of the merging credit union.

12.6(3) *Election committee.* The board shall appoint an election committee of not fewer than five members, no more than two of whom may be from the board of directors.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. If the balloting includes a vote taken at a meeting of members, the chairperson of the election committee shall announce the results of the vote at the meeting; otherwise, the chairperson shall certify the vote to the board within five days of the close of balloting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

12.6(4) *Notice of balloting.* The secretary shall set forth the proposed merger in a notice to all members eligible to vote at least 20 days but not more than 30 days prior to the closing date of balloting.

a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other vote on the subject shall be taken after the closing date of balloting. The notice shall also contain a summary of the board's reasons for voting to merge.

(1) The close of balloting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes in order to be considered valid.

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(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting and received within five business days after the closing date of balloting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate that members have the right to vote on the proposed merger through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

b. The notice may be included in statements or newsletters, on the credit union Web site, or on signs posted in the credit union.

c. The notice may be sent electronically to those members who have opted to receive notices electronically.

12.6(5) Mailed ballots. If the board voted by majority vote to conduct the vote in whole or in part by mailed ballot:

a. The secretary shall include the following balloting materials with the notice of balloting:

(1) One ballot, clearly identified as the ballot.

(2) One ballot envelope clearly marked “ballot” with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed “ballot” envelope and the identification form. The mailing envelope shall be preaddressed for return to the election committee.

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If no other voting is scheduled to occur, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting.

12.6(6) Electronic voting. If the board voted by majority vote to conduct the vote in whole or in part by electronic voting:

a. The secretary shall include with the notice of balloting specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. For those members who have opted to receive notices or statements electronically, the instructions required under this subrule may be communicated electronically.

c. The electronic voting shall be tallied by the election committee prior to any meeting where voting is also scheduled to take place, and the committee shall take the tallies to the meeting. If no meeting is scheduled for voting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting.

12.6(7) Absentee ballots—subsequent in-person vote at meeting. If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting.

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b. The secretary shall mail the balloting materials specified in paragraph 12.6(5) “a” to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.6(8) *In-person vote at meeting.* If the board voted by majority vote to conduct the vote in whole or in part at a meeting of members, then printed ballots shall be distributed to those in attendance at the meeting who have not voted by another method, and the ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee. After those members have been given an opportunity to vote at the meeting, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.6(9) *Preservation of ballots.* Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

12.6(10) *Submission to superintendent.* The board of directors shall submit the merger to the superintendent for approval before the merger becomes effective. The board shall submit the following documentation in support of its request for approval:

a. A certified copy of the board minutes which contain the vote of the board of directors to approve the merger and to submit the merger to a vote of the membership.

b. A certified copy of the notices provided to members.

c. A certified copy of any ballots provided to members.

d. A certified statement, including the vote count, that a majority of the eligible members voted in favor of the proposed merger.

12.6(11) *Publication of results.* The board shall inform the membership of the results of the vote according to the provisions of 189—12.10(533). The 60-day posting period required by subrule 12.10(1) shall run from the date the results are certified to the board by the election committee.

189—12.7(533) Vote on voluntary dissolution.

12.7(1) *Vote of board of directors.* A state credit union that seeks to dissolve shall proceed pursuant to a plan agreed upon by a favorable vote of a majority of directors. Within three days of the vote and prior to sending notice of the membership vote, the board of directors shall notify the superintendent of the intention to dissolve.

12.7(2) *Subsequent vote of the membership.* Following a vote by the board of directors to dissolve, the board shall submit the dissolution to a vote of the membership.

a. The board shall submit the issue to the membership within 30 days of voting to dissolve.

b. The board shall submit the issue to all eligible voters of record as of the date of the vote by the board of directors.

c. The board of directors shall, by majority vote, select the method of voting for the membership vote, in accordance with Iowa Code section 533.203. Each credit union member shall have a meaningful opportunity to vote in a membership vote. The board of directors shall vote to conduct the vote in whole by electronic voting only if all members have access to an electronic voting device. If the number of members who have opted to receive notices electronically is less than all members, the board may provide

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access to an electronic device in each credit union office for the members to vote electronically in order to satisfy the access requirement. Otherwise, the board shall also conduct the vote in part by mail-in ballot or in person at a meeting held for the purpose of voting, pursuant to the requirements of this rule.

d. The approval of the dissolution is not final until the superintendent issues a certificate of dissolution.

12.7(3) Election committee. The board shall appoint an election committee of not fewer than five members, no more than two of whom may be from the board of directors.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. If the balloting includes a vote taken at a meeting of members, the chairperson of the election committee shall announce the results of the election at the meeting; otherwise, the chairperson shall certify the vote to the board within five days of the close of balloting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

12.7(4) Notice of balloting. The secretary shall set forth the proposed dissolution in a notice to all members eligible to vote at least 20 days but not more than 30 days prior to the closing date of balloting.

a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other vote on the subject shall be taken after the closing date of balloting. The notice shall also contain a summary of the board's reasons for voting for the voluntary dissolution.

(1) The close of balloting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes in order to be considered valid.

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting and received within five business days after the closing date of balloting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate that members have the right to vote on the proposed dissolution through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

b. The notice may be included in statements or newsletters, on the credit union Web site, or on signs posted in the credit union.

c. The notice may be sent electronically to those members who have opted to receive notices electronically.

12.7(5) Mailed ballots. If the board voted by majority vote to conduct the vote in whole or in part by mailed ballot:

a. The secretary shall include the following balloting materials with the notice of balloting:

(1) One ballot, clearly identified as the ballot.

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(2) One ballot envelope clearly marked “ballot” with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed “ballot” envelope and the identification form. The mailing envelope shall be preaddressed for return to the election committee.

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If no other voting is scheduled to occur, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting.

12.7(6) *Electronic voting.* If the board voted by majority vote to conduct the vote in whole or in part by electronic voting:

a. The secretary shall include with the notice of balloting specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. For those members who have opted to receive notices or statements electronically, the instructions required under this subrule may be communicated electronically.

c. The electronic voting shall be tallied by the election committee prior to any meeting where voting is also scheduled to take place, and the committee shall take the tallies to the meeting. If no meeting is scheduled for voting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting.

12.7(7) *Absentee ballots—subsequent in-person vote at meeting.* If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting.

b. The secretary shall mail the balloting materials specified in paragraph 12.7(5) “*a*” to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.7(8) *In-person vote at meeting.* If the board voted by majority vote to conduct the vote in whole or in part at a meeting of members, then printed ballots shall be distributed to those in attendance at the meeting who have not voted by another method, and the ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee. After those members have been given

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an opportunity to vote at the meeting, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.7(9) *Preservation of ballots.* Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

12.7(10) *Submission to superintendent.* The board of directors shall submit the dissolution to the superintendent for review before the dissolution becomes effective. The state credit union shall cease existence when the superintendent issues a certificate of dissolution. The board shall submit the following documentation:

- a. A certified copy of the board minutes which contain the vote of the board of directors to approve the plan and to submit the dissolution to a vote of the membership.
- b. A certified copy of the notices provided to members.
- c. A certified copy of any ballots provided to members.
- d. A certified statement, including the vote count, that a majority of the eligible members voted in favor of the proposed dissolution.
- e. Proof that is satisfactory to the superintendent that all assets have been liquidated from which there is a reasonable expectation of realization, that the liabilities of the state credit union have been discharged and distribution made to its members, and that the liquidation has been completed.

12.7(11) *Publication of results.* The board shall inform the membership of the results of the vote according to the provisions of 189—12.10(533). The 60-day posting period required by subrule 12.10(1) shall run from the date the results are certified to the board by the election committee.

189—12.8(533) *Vote to remove or reinstate an officer, director, or member of the auditing committee.*

12.8(1) *Auditing committee vote.* If the auditing committee deems the action to be necessary to the proper conduct of the state credit union, the auditing committee may suspend, by majority vote, any officer, director, or member of the auditing committee.

12.8(2) *Subsequent vote of membership.* Following a vote by the auditing committee to suspend an officer, director, or member of the auditing committee, the suspension shall be put to a vote of the membership.

a. The members may vote to sustain the suspension and remove the officer, director, or auditing committee member permanently or may vote to reinstate the officer, director, or auditing committee member.

b. The board of directors shall meet to determine the method of voting for the membership vote and shall, within 30 days of the date of the auditing committee's vote, submit the issue to all eligible voters of record as of the date of the auditing committee's meeting. The board of directors shall, by majority vote, select the method of voting for the membership vote, in accordance with Iowa Code section 533.203. Each credit union member shall have a meaningful opportunity to vote in a membership vote. The board of directors shall vote to conduct the vote in whole by electronic voting only if all members have access to an electronic voting device. If the number of members who have opted to receive notices electronically is less than all members, the board may provide access to an electronic device in each credit union office for the members to vote electronically in order to satisfy the access requirement. Otherwise, the board shall also conduct the vote in part by mail-in ballot or in person at a meeting held for the purpose of voting, pursuant to the requirements of this rule.

12.8(3) *Election committee.* The board shall appoint an election committee of not fewer than five members, no more than two of whom may be from the board of directors and none of whom may be from the auditing committee.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

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b. The election committee shall elect a chairperson from among the committee members. If the balloting includes a vote taken at a meeting of members, the chairperson of the election committee shall announce the results of the election at the meeting; otherwise, the chairperson shall certify the vote to the board within five days of the close of balloting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

12.8(4) Notice of balloting. The secretary shall set forth the suspension and proposed removal in a notice to all members eligible to vote at least 20 days but not more than 30 days prior to the closing date of balloting.

a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other vote on the subject shall be taken after the closing date of balloting. The notice shall also contain a summary of the auditing committee's reasons for voting to suspend the officer, director, or member of the auditing committee, as well as a summary of the reasons, if known, that the officer, director, or member of the auditing committee believes that the officer, director, or member should be reinstated.

(1) The close of balloting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes in order to be considered valid.

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting and received within five business days after the closing date of balloting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate that members have the right to vote on the proposed removal through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

b. The notice may be included in statements or newsletters, on the credit union Web site, or on signs posted in the credit union.

c. The notice may be sent electronically to those members who have opted to receive notices electronically.

12.8(5) Mailed ballots. If the board voted by majority vote to conduct the vote in whole or in part by mailed ballot:

a. The secretary shall include the following balloting materials with the notice of balloting:

(1) One ballot, clearly identified as the ballot.

(2) One ballot envelope clearly marked "ballot" with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed "ballot" envelope and the identification form. The mailing envelope shall be preaddressed for return to the election committee.

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b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If no other voting is scheduled to occur, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting.

12.8(6) *Electronic voting.* If the board voted by majority vote to conduct the vote in whole or in part by electronic voting:

a. The secretary shall include with the notice of balloting specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. For those members who have opted to receive notices or statements electronically, the instructions required under this subrule may be communicated electronically.

c. The electronic voting shall be tallied by the election committee prior to any meeting where voting is also scheduled to take place, and the committee shall take the tallies to the meeting. If no meeting is scheduled for voting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting.

12.8(7) *Absentee ballots—subsequent in-person vote at meeting.* If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting.

b. The secretary shall mail the balloting materials specified in paragraph 12.8(5)“*a*” to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.8(8) *In-person vote at meeting.* If the board voted by majority vote to conduct the vote in whole or in part at a meeting of members, then printed ballots shall be distributed to those in attendance at the meeting who have not voted by another method, and the ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee. After those members have been given an opportunity to vote at the meeting, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.8(9) *Preservation of ballots.* Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

CREDIT UNION DIVISION[189](cont'd)

12.8(10) Publication of results. The board shall inform the membership of the results of the vote according to the provisions of 189—12.10(533). The 60-day posting period required by subrule 12.10(1) shall run from the date the results are certified to the board by the election committee.

189—12.9(533) Preservation of ballots.

12.9(1) Immediately upon certification of the results of the vote by the election committee, any written ballots shall be sealed and appropriately labeled. Electronic vote results shall be saved electronically.

12.9(2) All ballots and voting results shall be retained by the credit union for at least 60 days, and until any disputes are resolved.

189—12.10(533) Reporting the results of the vote to the membership.

12.10(1) Posting of results. Except as otherwise provided for a membership vote, the board shall inform the membership of the results of the vote by conspicuously posting notice in each credit union office for a period of 60 days.

12.10(2) Publication of results. Except as otherwise provided for a membership vote, in addition to posting the results in each credit union office, the board shall also communicate the results to the membership by at least one of the following methods:

- a. Include the results in the next mailing of the member's statement of account.
- b. Include the results in the credit union newsletter.
- c. Include the results in the sponsor's newsletter.
- d. Post a notice on the credit union's Web site.
- e. Place a notice in a newspaper of general circulation within the geographic area of operation of the credit union.

189—12.11(533) Vote on sale of assets by corporate central credit union.

12.11(1) Board of directors' vote. A corporate central credit union that seeks to sell all of its assets to another corporate credit union shall proceed pursuant to a plan agreed upon by a favorable vote of a majority of directors. The board shall notify the superintendent within three days.

12.11(2) Subsequent vote of the membership. Following a vote by the board of directors to approve a plan to sell all of the corporate central credit union's assets to another corporate credit union, the board shall submit the plan to a vote of the membership.

a. The board shall submit the issue within 30 days of voting to approve the plan to all eligible voters of record as of the date of the vote by the board of directors.

b. The board of directors shall, by majority vote, select the method of voting for the membership vote, in accordance with Iowa Code section 533.203. Each credit union member shall have a meaningful opportunity to vote in a membership vote. The board of directors shall vote to conduct the vote in whole by electronic voting only if all members have access to an electronic voting device. Otherwise, the board shall also conduct the vote in part by mail-in ballot or in person at a meeting held for the purpose of voting, pursuant to the requirements of this rule.

c. The approval of the sale is not final until approved by the superintendent after the membership vote.

12.11(3) Election committee. The board shall appoint an election committee of not fewer than five members, no more than two of whom may be from the board of directors.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. If the balloting includes a vote taken at a meeting of members, the chairperson of the election committee shall announce the results of the election at the meeting; otherwise, the chairperson shall certify the vote to the board within five days of the close of balloting.

CREDIT UNION DIVISION[189](cont'd)

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

12.11(4) Notice of balloting. The secretary shall set forth the proposed sale in a notice to all members eligible to vote at least 20 days but not more than 30 days prior to the closing date of balloting.

a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other vote on the subject shall be taken after the closing date of balloting. The notice shall also contain a summary of the board's reasons for selling the assets.

(1) The close of balloting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes in order to be considered valid.

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting and received within five business days after the closing date of balloting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate that members have the right to vote on the proposed sale through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

b. The notice may be included in statements or newsletters or on the credit union Web site.

c. The notice may be sent electronically to those members who have opted to receive notices electronically.

12.11(5) Mailed ballots. If the board voted by majority vote to conduct the vote in whole or in part by mailed ballot:

a. The secretary shall include the following balloting materials with the notice of balloting:

(1) One ballot, clearly identified as the ballot.

(2) One ballot envelope clearly marked "ballot" with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed "ballot" envelope and the identification form. The mailing envelope shall be preaddressed for return to the election committee.

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If no other voting

CREDIT UNION DIVISION[189](cont'd)

is scheduled to occur, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting.

12.11(6) *Electronic voting.* If the board voted by majority vote to conduct the vote in whole or in part by electronic voting:

a. The secretary shall include with the notice of balloting specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. For those members who have opted to receive notices or statements electronically, the instructions required under this subrule may be communicated electronically.

c. The electronic voting shall be tallied by the election committee prior to any meeting where voting is also scheduled to take place, and the committee shall take the tallies to the meeting. If no meeting is scheduled for voting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting.

12.11(7) *Absentee ballots—subsequent in-person vote at meeting.* If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting.

b. The secretary shall mail the balloting materials specified in paragraph 12.11(5) “a” to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.11(8) *In-person vote at meeting.* If the board voted by majority vote to conduct the vote in whole or in part at a meeting of members, then printed ballots shall be distributed to those in attendance at the meeting who have not voted by another method, and the ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee. After those members have been given an opportunity to vote at the meeting, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.11(9) *Preservation of ballots.* Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

12.11(10) *Submission to superintendent.* The board of directors shall submit the plan to the superintendent for approval before the plan to sell all of the assets of the corporate central credit union becomes effective. The board shall submit the following documentation in support of its request for approval:

a. A certified copy of the board minutes which contain the vote of the board of directors to approve the plan and to submit the sale to a vote of the membership.

b. A certified copy of the notices provided to members.

c. A certified copy of any ballots provided to members.

CREDIT UNION DIVISION[189](cont'd)

d. A certified statement, including the vote count, that a majority of the eligible members voted in favor of the proposed sale.

12.11(11) Publication of results. The board shall inform the membership of the results of the vote within ten days of certification of the results of the vote by the election committee. The board shall communicate the results to the membership by at least two of the following methods:

- a.* By mail.
- b.* By e-mail.
- c.* By posting a notice on the corporate central credit union's Web site.

189—12.12(533) Vote on conversion of an Iowa-chartered credit union to another charter type. An Iowa-chartered credit union that seeks to convert to another charter type shall comply with the conversion procedures, including a vote of the membership, as provided in 189—Chapter 3.

These rules are intended to implement Iowa Code sections 533.201, 533.203, 533.203A, 533.204, 533.208, 533.213, 533.401, 533.403, and 533.405.

ITEM 11. Rescind and reserve **189—Chapter 16.**

ITEM 12. Rescind and reserve **189—Chapter 19.**

ARC 0768C

DENTAL BOARD[650]

Notice of Termination

Pursuant to the authority of Iowa Code section 147.76, the Dental Board terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on May 1, 2013, as **ARC 0722C**, proposing to amend Chapter 10, "General Requirements," Iowa Administrative Code.

The Notice proposed to amend Chapter 10 to 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 to be delegated. The expanded function duties are as listed in subrule 20.3(3).

The Board is terminating the rule making and intends to postpone further action until after the Board receives the recommendations from its Ad Hoc Expanded Functions Committee. This Committee was appointed by the Board Chairperson on October 25, 2012, "to further address the matter of expanded functions for dental hygienists and dental assistants."

After analysis and review of this rule making, it has been determined that the amendment would have a positive impact if adopted. 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.

ARC 0762C**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.

These proposed changes to the endorsements for health, music, and physical education are recommended following reviews of the current endorsement requirements by committees composed of practicing educators, presidents of the relevant professional organizations, and representatives of institutions of higher education.

The current health endorsement requirements include 24 credit hours in community or public health, consumer health, substance abuse, family life education, mental/emotional health, and human nutrition. It is recommended that “consumer health” be changed to “personal wellness” to reflect current language and that a requirement of a current certificate of CPR training be added. Additionally, it is recommended that holders of the physical education endorsement or family and consumer science endorsement be able to obtain this endorsement with 18 credit hours, thus acknowledging that much of their coursework is parallel and that these candidates also be allowed to obtain the Class B license with 9 credit hours in health.

In regard to the music endorsement, it is recommended that the coursework requirements be changed to reflect the fact that many school districts in the state require music teachers to teach in more than one area (i.e., not just vocal, instrumental, or general music).

Finally, in regard to the physical education endorsement, it is recommended that “adapted physical education” be changed to “adaptive physical education” to reflect current language. The proposed amendments also eliminate the phrase “physical education in the elementary school” because this is covered through the required elementary physical education methods coursework, add the term “personal wellness” to reflect best practice, and require a current certificate of CPR training. The proposed changes to the secondary physical education requirements remove “assessment processes in physical education” as a separate requirement and include this requirement in “curriculum, assessment, and administration of physical education.” It is recommended that “personal wellness” be added, as well as a current certificate of CPR training.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, June 19, 2013, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, June 21, 2013. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by e-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

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, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

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

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

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

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 subrule 13.28(8) as follows:

13.28(8) Health. K-8 and 5-12. Completion of 24 semester hours in health to include coursework in public or community health, ~~consumer health~~ personal wellness, substance abuse, family life education, mental/emotional health, and human nutrition. A current certificate of CPR training is required in addition to the coursework requirements.

For holders of physical education or family and consumer science endorsements, completion of 18 credit hours in health to include coursework in public or community health, personal wellness, substance abuse, family life education, mental/emotional health, and human nutrition. A current certificate of CPR training is required in addition to the coursework requirements.

ITEM 2. Amend subrule 13.28(13) as follows:

13.28(13) Music.

a. K-8. Completion of 24 semester hours in music to include coursework in music theory (at least two courses), music history, and applied music, and a methods course in each of the following: general, vocal, and instrumental music.

b. 5-12. Completion of 24 semester hours in music to include coursework in music theory (at least two courses), music history (at least two courses), applied music, and conducting, and a methods course in each of the following: general, vocal, and instrumental music.

ITEM 3. Amend subrule 13.28(14) as follows:

13.28(14) Physical education.

a. K-8. Completion of 24 semester hours in physical education to include coursework in human anatomy, human physiology, movement education, ~~adapted~~ adaptive physical education, ~~physical education in the elementary school~~ personal wellness, human growth and development of children related to physical education, and first aid and emergency care. A current certificate of CPR training is required in addition to the coursework requirements.

b. 5-12. Completion of 24 semester hours in physical education to include coursework in human anatomy, kinesiology, human physiology, human growth and development related to maturational and motor learning, ~~adapted~~ adaptive physical education, curriculum and administration of physical education, ~~assessment processes in physical education~~ personal wellness, and first aid and emergency care. A current certificate of CPR training is required in addition to the coursework requirements.

ARC 0776C

INSPECTIONS AND APPEALS DEPARTMENT[481]

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 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 50, “Health Care Facilities Administration,” Chapter 57, “Residential Care Facilities,” Chapter 58, “Nursing Facilities,” Chapter 62, “Residential Care Facilities for Persons With Mental Illness (RCF/PMI),” Chapter 63, “Residential Care Facilities for the Intellectually Disabled,” Chapter 64, “Intermediate Care Facilities

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

for the Intellectually Disabled,” and Chapter 65, “Intermediate Care Facilities for Persons With Mental Illness (ICF/PMI),” Iowa Administrative Code.

The proposed amendments implement legislative changes, including those in 2013 Iowa Acts, Senate File 347, to Iowa Code section 135C.33, which requires criminal record checks and child and dependent adult abuse record checks of prospective employees of health care facilities and of students of certified nurse aide training programs.

The Department does not believe that the proposed amendments impose any financial hardship on any regulated entity, body, or individual.

The State Board of Health reviewed the proposed amendments at its May 8, 2013, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before June 18, 2013. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to david.werning@dia.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 section 135C.14 and section 135C.33 as amended by 2013 Iowa Acts, Senate File 347.

The following amendments are proposed.

ITEM 1. Rescind rule 481—50.9(135C) and adopt the following **new** rule in lieu thereof:

481—50.9(135C) Criminal, dependent adult abuse, and child abuse record checks.

50.9(1) Definitions. The following definitions apply for the purposes of this rule.

“*Background check*” or “*record check*” means criminal history, child abuse and dependent adult abuse record checks.

“*Certified nurse aide training program*” means a program approved in accordance with the rules for such programs adopted by the department of human services for the training of persons seeking to be a certified nurse aide for employment in a facility as defined by this rule or in a hospital as defined in Iowa Code section 135B.1.

“*Direct services*” means services provided through person-to-person contact. “Direct services” excludes services provided by individuals such as building contractors, repair workers, or others who are in a facility for a very limited purpose, are not in the facility on a regular basis, and who do not provide any treatment or services for residents, patients, tenants, or participants of the provider.

“*Employed in a facility*” or “*employment within a facility*” means all of the following if the provider is regulated by the state or receives any federal or state funding:

1. An employee of a health care facility licensed under Iowa Code chapter 135C if the employee provides direct or indirect services to residents;
2. An employee of a home health agency if the employee provides direct services to consumers;
3. An employee of a hospice if the employee provides direct services to consumers.

“*Employee*” means any individual who is paid either by the facility or any other entity (i.e., temporary agency, private duty, Medicare/Medicaid or independent contractors).

“*Evaluation*” means review by the department of human services to determine whether a founded child abuse, dependent adult abuse or criminal conviction warrants prohibition of the person’s employment in a facility; or whether a founded child abuse, dependent adult abuse or criminal conviction warrants prohibition of a student’s involvement in a clinical education component of the certified nurse aide training program involving children or dependent adults.

“*Facility*,” for purposes of this rule, means all of the following if the provider is regulated by the state or receives any federal or state funding:

1. A health care facility licensed under Iowa Code chapter 135C;
2. A home health agency;
3. A hospice.

“*Indirect services*” means services provided without person-to-person contact such as those provided by administration, dietary, laundry, and maintenance.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

“*Student*” means a person applying for, enrolled in, or returning to a certified nurse aide training program.

50.9(2) *Explanation of “crime.”* For purposes of this rule, the term “crime” does not include offenses under Iowa Code chapter 321 classified as simple misdemeanor or equivalent simple misdemeanor offenses from another jurisdiction.

50.9(3) *Requirements for employer prior to employing an individual.* Prior to employment of a person in a facility, the facility shall request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks of the person in this state.

a. Informing the prospective employee. A facility shall ask each person seeking employment by the facility, “Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime other than a simple misdemeanor offense relating to motor vehicles and laws of the road under Iowa Code chapter 321 or equivalent provisions, in this state or any other state?” In addition, the person shall be informed that a background check will be conducted. The person shall indicate, by signature, that the person has been informed that the background check will be conducted. (I, II, III)

b. Conducting a background check. The facility may access the single contact repository (SING) to perform the required background check. If the SING is used, the facility shall submit the person’s maiden name, if applicable, with the background check request. If the SING is not used, the facility must obtain a criminal history check from the department of public safety and a check of the child and dependent adult abuse registries from the department of human services. (I, II, III)

c. If a person being considered for employment has been convicted of a crime. If a person being considered for employment in a facility has been convicted of a crime under a law of any state, the department of public safety shall notify the facility that upon the request of the facility the department of human services will perform an evaluation to determine whether the crime warrants prohibition of the person’s employment in the facility. (I, II, III)

d. If a person being considered for employment has a record of founded child or dependent adult abuse. If a department of human services child or dependent adult abuse record check shows that a person being considered for employment in a facility has a record of founded child or dependent adult abuse, the department of human services shall notify the facility that upon the request of the facility the department of human services will perform an evaluation to determine whether the founded child or dependent adult abuse warrants prohibition of the person’s employment in the facility. (I, II, III)

e. Employment pending evaluation. The facility may employ a person for not more than 60 calendar days pending the completion of the evaluation by the department of human services if all of the following apply. The 60-day period begins on the first day of the person’s employment.

(1) The person is being considered for employment other than employment involving the operation of a motor vehicle;

(2) The person does not have a record of founded child or dependent adult abuse;

(3) The person has been convicted of a crime that is a simple misdemeanor offense under Iowa Code section 123.47 or a first offense of operating a motor vehicle while intoxicated under Iowa Code section 321J.2(1); and

(4) The facility has requested that the department of human services perform an evaluation to determine whether the crime warrants prohibition of the person’s employment. (I, II, III)

50.9(4) *Validity of background check results.* The results of a background check conducted pursuant to this rule shall be valid for a period of 30 calendar days from the date the results of the background check are received by the facility. (I, II, III)

50.9(5) *Employment prohibition.* A person who has committed a crime or has a record of founded child or dependent adult abuse shall not be employed in a facility unless an evaluation has been performed by the department of human services. (I, II, III)

50.9(6) *Transfer of an employee to another facility owned or operated by the same person.* If an employee transfers from one facility to another facility owned or operated by the same person, without a lapse in employment, the facility is not required to request additional criminal and child and dependent adult abuse record checks of that employee. (I, II, III)

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

50.9(7) *Transfer of ownership of a facility.* If the ownership of a facility is transferred, at the time of transfer the background check required by this rule shall be performed for each employee for whom there is no documentation that such background check has been performed. The facility may continue to employ such employee pending the performance of the background check and any related evaluation. (I, II, III)

50.9(8) *Change of employment—person with criminal or abuse record—exception to record check evaluation requirements.* A person with a criminal or abuse record who is or was employed by a facility and is hired by another facility shall be subject to the background check.

a. A reevaluation of the latest record check is not required, and the person may commence employment with the other facility if the following requirements are met:

(1) The department of human services previously performed an evaluation concerning the person's criminal or abuse record and concluded the record did not warrant prohibition of the person's employment;

(2) The latest background check does not indicate a crime was committed or founded abuse record was entered subsequent to the previous evaluation;

(3) 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;

(4) Any restrictions placed on the person's employment in the previous evaluation by the department of human services and still applicable shall remain applicable in the person's subsequent employment; and

(5) The person subject to the background check has maintained a copy of the previous evaluation and provided it to the subsequent employer, or the previous employer provides 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, a current record check evaluation shall be performed. (I, II, III)

b. For purposes of this subrule, a position is "substantially the same or has the same job responsibilities" if the position requires the same certification, licensure, or advanced training. For example, a licensed nurse has substantially the same or the same job responsibilities as a director of nursing; a certified nurse aide does not have substantially the same or the same job responsibilities as a licensed nurse.

c. The subsequent employer must maintain the previous evaluation in the employee's personnel file for verification of the exception to the requirement for a record check evaluation. (I, II, III)

d. The subsequent employer may request a reevaluation of the background check and may employ the person while the reevaluation is being performed, even though an exemption under paragraph 50.9(8) "a" may be authorized.

50.9(9) *Employee notification of criminal conviction or founded abuse after employment.* If a person employed by a facility employer that is subject to this rule is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the person's employment application date, the person shall inform the employer of such information within 48 hours of the criminal conviction or entry of the record of founded child or dependent adult abuse.

a. The employer shall act to verify the information within 48 hours of notification. "Verify," for purposes of this subrule, means to access the single contact repository (SING) to perform a background check, to request a criminal background check from the department of public safety, to request an abuse record check from the department of human services, to conduct an online search through the Iowa Courts Online Web site, or to contact the county clerk of court office and obtain a copy of relevant court documents.

b. If the information is verified, the facility shall follow the requirements of paragraphs 50.9(3) "c" and "d." (I, II, III)

c. The employer may continue to employ the person pending the performance of an evaluation by the department of human services.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

d. A person who is required by this subrule to inform the person's employer of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor under Iowa Code section 135C.33.

e. The employer may notify the county attorney for the county where the employer is located of any violation or failure by an employee to notify the employer of a criminal conviction or entry of an abuse record within the period required under this subrule.

50.9(10) *Facility receipt of credible information that an employee has been convicted of a crime or has a record of founded abuse.* If the facility receives credible information, as determined by the facility, from someone other than the employee, that the employee has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after employment, and the employee has not informed the employer of the information within the time required by subrule 50.9(9), the facility shall take the following actions:

a. The facility shall act to verify credible information within 48 hours of receipt. "Verify," for purposes of this subrule, means to access the single contact repository (SING) to perform a background check, to request a criminal background check from the department of public safety, to request an abuse record check from the department of human services, to conduct an online search through the Iowa Courts Online Web site, or to contact the county clerk of court office and obtain a copy of relevant court documents.

b. If the information is verified, the facility shall follow the requirements of paragraphs 50.9(3) "c" and "d." (I, II, III)

50.9(11) *Proof of background checks for temporary employment agencies and contractors.* Proof of background checks may be kept in the files maintained by temporary employment agencies and contractors. Facilities may require temporary employment agencies and contractors to provide a copy of the result of the background checks. Copies of such results shall be made available to the department upon request. (I, II, III)

50.9(12) *Certified nurse aide training program students.* Prior to a student's beginning or returning to a certified nurse aide training program, the program shall request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks, in this state, of the student.

a. Prohibition of involvement in clinical education. If a student has a criminal record or a record of founded child or dependent adult abuse, the student shall not be involved in a clinical education component of the certified nurse aide training program involving children or dependent adults unless an evaluation has been performed by the department of human services. The evaluation shall be performed upon request of the certified nurse aide training program.

b. Involvement in clinical education component pending evaluation. The training program may allow the student's participation in the clinical education component for not more than 60 calendar days pending the completion of the evaluation by the department of human services if all of the following apply. The 60-day period begins on the first day of the student's participation in the clinical education component.

(1) The student's clinical education component of the training program involves children or dependent adults but does not involve the operation of a motor vehicle;

(2) The student does not have a record of founded child or dependent adult abuse;

(3) The student has been convicted of a crime that is a simple misdemeanor offense under Iowa Code section 123.47 or a first offense of operating a motor vehicle while intoxicated under Iowa Code section 321J.2(1); and

(4) The training program has requested that the department of human services perform an evaluation to determine whether the crime warrants prohibition of the student's involvement in the clinical education component.

c. Student notification of criminal conviction or founded abuse after performance of record checks and evaluation. If a student is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the record checks and any evaluation have been performed, the

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

student shall inform the certified nurse aide training program of such information within 48 hours of the criminal conviction or entry of the record of founded child or dependent adult abuse.

(1) The program shall act to verify the information within 48 hours of notification. "Verify," for purposes of this paragraph, means to access the single contact repository (SING) to perform a background check, to request a criminal background check from the department of public safety, to request an abuse record check from the department of human services, to conduct an online search through the Iowa Courts Online Web site, or to contact the county clerk of court office and obtain a copy of relevant court documents. If the information is verified, the program shall follow the requirements of paragraph 50.9(12)"a" to determine whether or not the student's involvement in a clinical education component may continue.

(2) The program may allow the student involvement to continue pending the performance of an evaluation by the department of human services.

(3) A student who is required to inform the program of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor under Iowa Code section 135C.33.

(4) The program may notify the county attorney for the county where the program is located of any violation or failure by a student to notify the program of a criminal conviction or entry of an abuse record within the period required by this paragraph.

d. Program receipt of credible information that a student has been convicted of a crime or has a record of founded abuse. If a program receives credible information, as determined by the program, that a student has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after the record checks and any evaluation have been performed, from a person other than the student, and the student has not informed the program of such information within 48 hours, the program shall act to verify the credible information within 48 hours of receipt of the credible information. "Verify," for purposes of this paragraph, means to access the single contact repository (SING) to perform a background check, to request a criminal background check from the department of public safety, to request an abuse record check from the department of human services, to conduct an online search through the Iowa Courts Online Web site, or to contact the county clerk of court office and obtain a copy of relevant court documents. If the information is verified, the requirements of paragraph 50.9(12)"a" shall be applied to determine whether or not the student's involvement in a clinical education component may continue.

e. Completion of a certified nurse aide training program conducted by the health care facility. If a certified nurse aide training program is conducted by the facility and a student of that program accepts and begins employment with the facility within 30 days of completing the program, the background check of the student performed prior to beginning the training program shall fulfill the criminal and abuse background check requirements. The facility shall maintain the proof required in subrule 50.9(11). (I, II, III)

This rule is intended to implement Iowa Code section 135C.14 and section 135C.33 as amended by 2013 Iowa Acts, Senate File 347.

ITEM 2. Rescind subrule 57.12(3) and adopt the following **new** subrule in lieu thereof:

57.12(3) *Employee criminal record checks, child abuse checks and dependent adult abuse checks and employment of individuals who have committed a crime or have a founded abuse.* The facility shall comply with the requirements found in Iowa Code section 135C.33 as amended by 2013 Iowa Acts, Senate File 347, and rule 481—50.9(135C) related to completion of criminal record checks, child abuse checks, and dependent adult abuse checks and to employment of individuals who have committed a crime or have a founded abuse. (I, II, III)

ITEM 3. Rescind subrule 58.11(3) and adopt the following **new** subrule in lieu thereof:

58.11(3) *Employee criminal record checks, child abuse checks and dependent adult abuse checks and employment of individuals who have committed a crime or have a founded abuse.* The facility shall comply with the requirements found in Iowa Code section 135C.33 as amended by 2013 Iowa Acts, Senate File 347, and rule 481—50.9(135C) related to completion of criminal record checks, child abuse

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

checks, and dependent adult abuse checks and to employment of individuals who have committed a crime or have a founded abuse. (I, II, III)

ITEM 4. Rescind subrule 62.9(5) and adopt the following **new** subrule in lieu thereof:

62.9(5) *Employee criminal record checks, child abuse checks and dependent adult abuse checks and employment of individuals who have committed a crime or have a founded abuse.* The facility shall comply with the requirements found in Iowa Code section 135C.33 as amended by 2013 Iowa Acts, Senate File 347, and rule 481—50.9(135C) related to completion of criminal record checks, child abuse checks, and dependent adult abuse checks and to employment of individuals who have committed a crime or have a founded abuse. (I, II, III)

ITEM 5. Rescind subrule 63.11(3) and adopt the following **new** subrule in lieu thereof:

63.11(3) *Employee criminal record checks, child abuse checks and dependent adult abuse checks and employment of individuals who have committed a crime or have a founded abuse.* The facility shall comply with the requirements found in Iowa Code section 135C.33 as amended by 2013 Iowa Acts, Senate File 347, and rule 481—50.9(135C) related to completion of criminal record checks, child abuse checks, and dependent adult abuse checks and to employment of individuals who have committed a crime or have a founded abuse. (I, II, III)

ITEM 6. Rescind rule 481—64.34(135C) and adopt the following **new** rule in lieu thereof:

481—64.34(135C) **Employee criminal record checks, child abuse checks and dependent adult abuse checks and employment of individuals who have committed a crime or have a founded abuse.** The facility shall comply with the requirements found in Iowa Code section 135C.33 as amended by 2013 Iowa Acts, Senate File 347, and rule 481—50.9(135C) related to completion of criminal record checks, child abuse checks, and dependent adult abuse checks and to employment of individuals who have committed a crime or have a founded abuse. (I, II, III)

ITEM 7. Rescind subrule 65.9(5) and adopt the following **new** subrule in lieu thereof:

65.9(5) *Employee criminal record checks, child abuse checks and dependent adult abuse checks and employment of individuals who have committed a crime or have a founded abuse.* The facility shall comply with the requirements found in Iowa Code section 135C.33 as amended by 2013 Iowa Acts, Senate File 347, and rule 481—50.9(135C) related to completion of criminal record checks, child abuse checks, and dependent adult abuse checks and to employment of individuals who have committed a crime or have a founded abuse. (I, II, III)

ARC 0752C

LABOR SERVICES DIVISION[875]

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 88.5, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 10, “General Industry Safety and Health Rules,” and Chapter 26, “Construction Safety and Health Rules,” Iowa Administrative Code.

The proposed amendments adopt by reference changes to federal occupational safety and health standards concerning cranes and derricks in construction and hazard communication in general industry. The changes supplement previous changes to the standards.

In 2010, the prior standard concerning cranes and derricks in construction was replaced for most construction activities. However, the new standard did not apply to cranes and derricks used in

LABOR SERVICES DIVISION[875](cont'd)

demolition and underground construction. Thus, since 2010, one standard has applied to cranes and derricks in demolition and underground construction, while a different standard has applied to cranes and derricks used in other construction activities. The federal changes apply the same standard to all cranes and derricks used in construction.

The federal changes also correct inadvertent errors made during adoption of the 2010 changes to the cranes and derricks standard and the 2012 changes to the general industry hazard communication 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.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on June 18, 2013, a public hearing will be held on June 19, 2013, at 2:30 p.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments.

The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515) 281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than June 19, 2013, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

No variance procedures are included in this rule. Variance 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.

The following amendments are proposed.

ITEM 1. Amend rule **875—10.20(88)** by inserting the following at the end thereof:

78 Fed. Reg. 9313 (February 8, 2013)

ITEM 2. Amend rule **875—26.1(88)** by inserting the following at the end thereof:

78 Fed. Reg. 23841 (April 23, 2013)

ARC 0753C

LABOR SERVICES DIVISION[875]

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 89A.3, the Elevator Safety Board hereby gives Notice of Intended Action to amend Chapter 72, “Conveyances Installed On or After January 1, 1975,” Iowa Administrative Code.

In 2002, the American Society of Mechanical Engineers removed from the Safety Code for Elevators and Escalators a long-standing requirement that automatic passenger elevators be equipped with an alarm bell. In the past year, a very small number of elevators have been installed without an alarm bell. The proposed new rule would require an alarm bell for all automatic passenger elevators installed since 1975.

LABOR SERVICES DIVISION[875](cont'd)

The Elevator Safety Board has determined that an alarm bell is an important, cost-effective safety feature, especially in the event the telephone on the elevator car does not work.

The purposes of this amendment are to protect the health and safety of the public and implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on June 18, 2013, a public hearing will be held on June 19, 2013, at 1:30 p.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendment.

The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than June 19, 2013, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

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

After analysis and review of this rule making, no impact on jobs will occur.

This amendment is intended to implement Iowa Code chapter 89A.

The following amendment is proposed.

Adopt the following **new** rule 875—72.25(89A):

875—72.25(89A) Alarm bell. An automatic passenger elevator shall be provided with an alarm bell that is activated by a switch marked “ALARM” located in or adjacent to the car operating panel. The alarm bell shall be audible inside the car and outside the hoistway.

ARC 0775C

PUBLIC HEALTH DEPARTMENT[641]

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 321.423(7)“b,” the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 133, “White Flashing Light Authorization,” Iowa Administrative Code.

The rules in Chapter 133 describe the standards for white flashing lights that may be used by emergency medical care providers for identification of vehicles. These proposed amendments update the definitions contained in the rules and add direction to the Department’s Web site for the white light permit form.

Any interested person may make written comments or suggestions on the proposed amendments on or before June 18, 2013. Such written comments should be directed to Rebecca Curtiss, Bureau of EMS, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to rebecca.curtiss@idph.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 section 321.423(7).

The following amendments are proposed.

ITEM 1. Amend the following definitions in rule **641—133.1(321)**:

“*Ambulance*” means ~~the same~~ ambulance as defined in ~~641 IAC 132.1(147A)~~ 641—132.1(147A).

PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~“Ambulance service” means the same ambulance service as defined in 641 IAC 132.1(147A) 641—132.1(147A).~~

~~“Emergency medical care provider” means an individual who has been trained to provide emergency and nonemergency medical care at the first responder, EMT basic, EMT intermediate, EMT paramedic, paramedic specialist or other certification levels recognized by the department before 1984 and who has been issued a certificate by the department emergency medical care provider as defined in 641—131.1(147A).~~

~~“First response vehicle” means the same first response vehicle as defined in 641 IAC 132.1(147A) 641—132.1(147A).~~

~~“Medical director” means any physician licensed under Iowa Code chapter 148, 150, or 150A who shall be responsible for overall medical direction of the service program and who has completed a medical director workshop, sponsored by the department, within one year of the physician’s assuming duties medical director as defined in 641—132.1(147A).~~

~~“Nontransport service” means any privately or publicly owned rescue or first response service program which does not provide patient transportation (except when no ambulance is available or in a disaster situation) and utilizes only rescue or first response vehicles to provide emergency medical care at the scene of an emergency nontransport service as defined in 641—132.1(147A).~~

~~“Rescue vehicle” means the same rescue vehicle as defined in 641 IAC 132.1(147A) 641—132.1(147A).~~

~~“Service director” means an individual who is responsible for the operation and administration of a service program service director as defined in 641—132.1(147A).~~

~~“Service program” or “service” means any medical care ambulance service or nontransport service that has received authorization by the department service program as defined in 641—132.1(147A).~~

ITEM 2. Amend subrule 133.3(1) as follows:

133.3(1) Authorization certificates ~~(provided by the department)~~ shall be issued by the service director for service vehicles and vehicles owned by emergency medical care providers who are members in good standing with the service. Authorization certificates are available through the Iowa Department of Public Health, Bureau of EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the bureau of EMS Web site (www.idph.state.ia.us/ems). Vehicle authorization shall be limited to:

a. to d. No change.

ITEM 3. Amend subrule 133.3(5) as follows:

133.3(5) The service director shall provide an informational sheet which explains the requirements for use of the white lights to each member who is issued an authorization certificate. The information sheet is available upon request from the Iowa Department of Public Health, Bureau of ~~Emergency Medical Services~~ EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the bureau of EMS Web site (www.idph.state.ia.us/ems).

ITEM 4. Amend **641—Chapter 133**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~sections~~ section 321.423 ~~and 321.428.~~

ARC 0772C

PUBLIC HEALTH DEPARTMENT[641]**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 147A.27, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 134, “Trauma Care Facility Categorization and Verification,” Iowa Administrative Code.

The rules in Chapter 134 describe the process and standards for the categorization and verification of hospitals and emergency care facilities as trauma care facilities. These proposed amendments amend the definition of emergency medical care provider by referencing the definition found in 641—131.1(147A). These proposed amendments also update the reference to the “Iowa Trauma System Regional (Level II) Hospital and Emergency Care Facility Categorization Criteria”; the “Iowa Trauma System Area (Level III) Hospital and Emergency Care Facility Categorization Criteria”; and the “Iowa Trauma System Community (Level IV) Hospital and Emergency Care Facility Categorization Criteria” documents to the 2013 editions.

Any interested person may make written comments or suggestions on the proposed amendments on or before June 18, 2013. Such written comments should be directed to Janet Houtz, Bureau of EMS, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to Janet.Houtz@idph.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 section 147A.23.

The following amendments are proposed.

ITEM 1. Amend rule **641—134.1(147A)**, definition of “Emergency medical care provider,” as follows:

“Emergency medical care provider” means ~~an individual who has been trained to provide emergency and nonemergency medical care at the first responder, EMT-basie, EMT-intermediate, EMT-paramedic, paramedic specialist or other certification levels recognized by the department before 1984 and who has been issued a certificate by the department~~ emergency medical care provider as defined in 641—131.1(147A).

ITEM 2. Amend subrule 134.2(3) as follows:

134.2(3) Adoption by reference.

a. “Resources for Optimal Care of the Injured Patient” (2006) published by the American College of Surgeons Committee on Trauma is incorporated and adopted by reference for Resource (Level I) hospital and emergency care facility categorization criteria. “Iowa Trauma System Regional (Level II) Hospital and Emergency Care Facility Categorization Criteria” (2006 2013) is incorporated and adopted by reference for Regional (Level II) hospital and emergency care facility categorization criteria. “Iowa Trauma System Area (Level III) Hospital and Emergency Care Facility Categorization Criteria” (2006 2013) is incorporated and adopted by reference for Area (Level III) hospital and emergency care facility categorization criteria. “Iowa Trauma System Community (Level IV) Hospital and Emergency Care Facility Categorization Criteria” (2010 2013) is incorporated and adopted by reference for Community (Level IV) hospital and emergency care categorization criteria. For any differences which may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

b. “Iowa Trauma System Regional (Level II) Hospital and Emergency Care Facility Categorization Criteria” (2006 2013), “Iowa Trauma System Area (Level III) Hospital and Emergency Care Facility Categorization Criteria” (2006 2013) and “Iowa Trauma System Community (Level IV)

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Hospital and Emergency Care Facility Categorization Criteria” (2010 2013) are available through the Iowa Department of Public Health, Bureau of ~~Emergency Medical Services~~ EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the bureau of EMS Web site (www.idph.state.ia.us/ems).

ARC 0774C

PUBLIC HEALTH DEPARTMENT[641]

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 147A.27, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 135, “Trauma Triage and Transfer Protocols,” Iowa Administrative Code.

The rules in Chapter 135 establish the out-of-hospital trauma triage destination decision and the intertrauma care facility triage and transfer protocols. These proposed amendments update the references to “Out-of-Hospital Trauma Triage Destination Decision Protocol” (Adult and Pediatric) documents to the 2013 editions and rescind the references to “Inter-Trauma Care Facility Triage and Transfer Protocol” (August 1996).

Any interested person may make written comments or suggestions on the proposed amendments on or before June 18, 2013. Such written comments should be directed to Janet Houtz, Bureau of EMS, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to Janet.Houtz@idph.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 section 147A.24(4)“e.”

The following amendments are proposed.

ITEM 1. Rescind the definition of “Intertrauma care facility triage and transfer protocol” in rule **641—135.1(147A)**.

ITEM 2. Amend rule **641—135.1(147A)**, definition of “Out-of-hospital triage and transfer destination decision protocol,” as follows:

“~~Out-of-hospital triage and transfer destination decision protocol~~ Out-of-Hospital Trauma Triage Destination Decision Protocol” means written directives to assist in the decision making, established and approved by the department, that address the method of transport and trauma care facility destination to be followed by the service program.

ITEM 3. Amend paragraphs **135.2(1)“a”** to “c” as follows:

a. Adoption by reference. The “~~Out-of-Hospital Trauma Triage Destination Decision Protocol~~” (Adult and Pediatric, November 2001 2013) and the “~~Inter-Trauma Care Facility Triage and Transfer Protocol~~” (August 1996) “Out-of-Hospital Trauma Triage Destination Decision Protocol” (Pediatric, 2013) are incorporated by reference and adopted as the out-of-hospital trauma triage destination decision ~~and the intertrauma care facility triage and transfer protocols~~. For any differences which may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

b. The ~~out-of-hospital trauma triage destination decision protocol (Adult and Pediatric) and the intertrauma care facility triage and transfer protocol~~ protocols adopted by reference in paragraph 135.2(1)“a” are available through the Iowa Department of Public Health, Bureau of EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the bureau of EMS Web site (www.idph.state.ia.us/ems).

c. Revisions and modifications to the ~~out-of-hospital trauma triage destination decision protocol and the intertrauma care facility triage and transfer protocol~~ protocols adopted by reference in paragraph

PUBLIC HEALTH DEPARTMENT[641](cont'd)

135.2(1) “a” may be made upon recommendation to the department from the system evaluation quality improvement committee (SEQIC) or the trauma system advisory council (TSAC). Revisions and modifications shall be approved by the department.

ARC 0773C

PUBLIC HEALTH DEPARTMENT[641]

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 147A.27, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 137, “Trauma Education and Training,” Iowa Administrative Code.

The rules in Chapter 137 describe trauma education and training for Iowa’s trauma system. These proposed amendments clarify the trauma education and training requirements and replace the existing tables with written requirements.

Any interested person may make written comments or suggestions on the proposed amendments on or before June 18, 2013. Such written comments should be directed to Janet Houtz, Bureau of EMS, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to Janet.Houtz@idph.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 section 147A.27.

The following amendments are proposed.

ITEM 1. Rescind the definitions of “ARNP,” “ATLS,” “LPN,” “PA,” “RN,” “RTTDC,” “SEQIC” and “TSAC” in rule **641—137.1(147A)**.

ITEM 2. Adopt the following **new** definitions in rule **641—137.1(147A)**:

“*Advanced emergency medical technician*” or “*AEMT*” means advanced emergency medical technician as defined in 641—131.1(147A).

“*Formal education*” means education in standardized educational settings with a curriculum.

“*Paramedic*” means paramedic as defined in 641—131.1(147A).

ITEM 3. Amend the following definitions in rule **641—137.1(147A)**:

“*Advanced registered nurse practitioner* (~~ARNP~~)” or “*ARNP*” means a nurse pursuant to 655—7.1(152) with current licensure as a registered nurse in Iowa who is registered in Iowa to practice in an advanced role. The ARNP is prepared for an advanced role by virtue of additional knowledge and skills gained through a formal advanced practice education program of nursing in a specialty area approved by the board. In the advanced role, the nurse practices nursing assessment, intervention, and management within the boundaries of the nurse-client relationship. Advanced nursing practice occurs in a variety of settings within an interdisciplinary health care team, which provide for consultation, collaborative management, or referral. The ARNP may perform selected medically delegated functions when a collaborative practice agreement exists.

“*Advanced trauma life support course*®” or “*ATLS*®” means a course for physicians with an emphasis on the first hour of initial assessment and primary management of the injured patient, starting at the point in time of injury continuing through initial assessment, life-saving intervention, reevaluation, stabilization, and transfer when appropriate.

“*Emergency medical care provider*” means ~~an individual who has been trained to provide emergency and nonemergency medical care at the first responder, EMT-basic, EMT-intermediate, EMT-paramedic, paramedic specialist or other certification levels recognized by the department before~~

PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~1984 and who has been issued a certificate by the department~~ emergency medical care provider as defined in 641—131.1(147A).

“Emergency medical services” or “EMS” means emergency medical services as defined in 641—131.1(147A).

“Emergency medical technician” or “EMT” means emergency medical technician as defined in 641—131.1(147A).

“Emergency medical technician-ambulance” or “EMT-A” means emergency medical technician-ambulance as defined in 641—131.1(147A).

“Emergency medical technician-basic” or “EMT-B” means emergency medical technician-basic as defined in 641—131.1(147A).

“Emergency medical technician-defibrillation” or “EMT-D” means emergency medical technician-defibrillation as defined in 641—131.1(147A).

“Emergency medical technician-intermediate” or “EMT-I” means emergency medical technician-intermediate as defined in 641—131.1(147A).

“Emergency medical technician-paramedic” or “EMT-P” means emergency medical technician-paramedic as defined in 641—131.1(147A).

“First responder” or “FR” means first responder as defined in 641—131.1(147A).

“First responder-defibrillation” or “FR-D” means first responder-defibrillation as defined in 641—131.1(147A).

“Licensed practical nurse” or “LPN” means an individual licensed pursuant to Iowa Code chapter 152.

“Physician assistant” or “PA” means an individual licensed pursuant to Iowa Code chapter 148C.

“Paramedic specialist” or “PS” means paramedic specialist as defined in 641—131.1(147A).

“Registered nurse” or “RN” means an individual licensed pursuant to Iowa Code chapter 152.

~~“Service program” or “service” means any medical care ambulance service or nontransport service that has received authorization by the department~~ service program as defined in 641—131.1(147A).

“System evaluation quality improvement committee” or “SEQIC” means the committee established by the department pursuant to Iowa Code section 147A.25 to develop, implement, and conduct trauma care system evaluation, quality assessment, and quality improvement.

“Trauma system advisory council” or “TSAC” means the council established by the department pursuant to Iowa Code section 147A.24 to advise the department on issues and strategies to achieve optimal trauma care delivery throughout the state, to assist the department in the implementation of an Iowa trauma care plan, to develop criteria for the categorization of all hospitals and emergency care facilities according to their trauma care capabilities, to develop a process for verification of the trauma care capacity of each facility and the issuance of a certificate of verification, to develop standards for medical direction, trauma care, triage and transfer protocols, and trauma registries, to promote public information and education activities for injury prevention, and to review rules adopted under this division, and to make recommendations to the director for changes to further promote optimal trauma care.

ITEM 4. Amend rule 641—137.2(147A), introductory paragraph, as follows:

641—137.2(147A) Initial trauma education for Iowa’s trauma system. Initial trauma education (Table 1) is required of physicians, physician assistants, advanced registered nurse practitioners, registered nurses, and licensed practical nurses who are identified or defined as trauma team members by a trauma care facility and who participate directly in the initial resuscitation of the trauma patient.

ITEM 5. Rescind Table 1 in rule **641—137.2(147A).**

ITEM 6. Amend paragraph **137.2(1)“b”** as follows:

b. Trauma nursing course objectives ~~(1998)~~ (2007) are incorporated and adopted by reference for all trauma care facilities. For any differences which may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 7. Adopt the following **new** subrule 137.2(2):

137.2(2) Specific requirements for initial trauma education for each provider category are as follows:

- a. Physicians, PAs and ARNPs: current ATLS® certification.
- b. RNs and LPNs: successful completion of trauma nursing course objectives (2007) recommended by TSAC.

ITEM 8. Amend rule 641—137.3(147A), introductory paragraph, as follows:

641—137.3(147A) Continuing trauma education for Iowa's trauma system. Continuing trauma education (~~Table 2~~) is required every four years of physicians, physician assistants, advanced registered nurse practitioners, registered nurses, and licensed practical nurses who are identified or defined as trauma team members by a trauma care facility and who participate directly in the initial resuscitation of the trauma patient.

ITEM 9. Rescind Table 2 in rule **641—137.3(147A)**.

ITEM 10. Amend subrule 137.3(2) as follows:

137.3(2) General requirements for continuing trauma education.

- a. ~~Three-fourths~~ Sixteen hours of the required continuing trauma education hours may be informal, determined and approved by a trauma care facility from any of the following:
 1. to 7. No change.
- b. ~~One-fourth~~ Eight hours of the required continuing trauma education hours shall be obtained through any formalized continuing education programs.

ITEM 11. Renumber subrule **137.3(3)** as **137.3(4)**.

ITEM 12. Adopt the following **new** subrule 137.3(3):

137.3(3) Specific requirements for each provider category are as follows:

- a. Physicians: 24 hours of continuing trauma education is required, with a minimum of 8 hours as formal education.
 - (1) Physicians who treat trauma patients in the emergency department but are not board-certified in emergency medicine must maintain current ATLS® certification.
 - (2) Surgeons who are not board-certified in general surgery must maintain current ATLS® certification.
 - (3) The designated trauma service medical director, regardless of board certification, must maintain current ATLS® certification.
- b. PA and ARNP: 24 hours of continuing trauma education is required, with a minimum of 8 hours as formal education. Of the 8 hours of formal education, current ATLS® certification is required.
- c. RN and LPN: 16 hours of continuing trauma education is required, with a minimum of 4 hours as formal education based upon the trauma nursing course objectives (2007) recommended by TSAC.

ITEM 13. Amend renumbered subrule 137.3(4) as follows:

137.3(4) Continuing trauma education is required of certified emergency medical care providers every two years as follows:

- a. EMR, FR or FR-D: 2 continuing education hours.
- b. EMT, EMT-A, EMT-B, EMT-D: 4 continuing education hours.
- c. AEMT, EMT-I: 4 continuing education hours.
- d. EMT-P, PS, Paramedic: 6 continuing education hours.

REVENUE DEPARTMENT

Notice of Electric and Natural Gas Delivery Tax Rate Changes

Pursuant to the authority of Iowa Code sections 437A.4 and 437A.5, the Director of Revenue hereby gives notice of the changes to the electric and the natural gas delivery tax rates. These rates will be used

REVENUE DEPARTMENT(cont'd)

in conjunction with the number of kilowatt hours of electricity and the number of therms of natural gas delivered to consumers in calendar year 2012 by each taxpayer, for replacement taxes payable in the 2013-2014 fiscal year.

2012 ELECTRIC DELIVERY TAX RATES BY SERVICE AREA

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3201	Algona Municipal Utilities	0.00025235
3227	Anthon Municipal Electric Utility	0.00011365
3213	Bellevue Municipal Utilities	0.00009353
3228	Bigelow Municipal Electric Utility	0.00169211
3079	Cascade Municipal Utilities	0.00139918
3252	Fontanelle Municipal Utilities	0.00033407
3267	Hopkinton Municipal Utilities	0.00000714
3271	Indianola Municipal Utilities	0.00000742
3291	Milford Municipal Utilities	0.00018240
3328	Sumner Municipal Light Plant	0.00020443
3330	Tipton Municipal Utilities	0.00143611
3332	Traer Municipal Utilities	0.00066520
3337	Villisca Municipal Power Plant	0.00022186
3342	Webster City Municipal Utilities	0.00043854
3345	West Bend Municipal Power Plant	0.00086892

CO. #	IOU's — ELECTRIC	DELIVERY TAX RATE
7248	Eldridge Electric & Water Utilities	0.00054889
7305	Omaha Public Power District	0.00130319

CO. #	REC's	DELIVERY TAX RATE
4218	Butler County REC	0.00071872
4254	Freeborn-Mower Cooperative	0.00109255
4255	Glidden Rural Electric Coop	0.00055807
4259	Grundy County REC	0.00097665
4260	Grundy Electric Coop	0.00056379
4261	Guthrie County REC	0.00121224
4262	Hancock Co. REC	0.00103968
4266	Hawkeye Tri-County Electric Coop	0.00053339
4280	Lyon Rural Electric Coop	0.00059264
4300	North West Rural Electric Coop	0.00036191
4313	Pleasant Hill Community Line	0.00022255
4348	Western Iowa Power Coop	0.00093220

REVENUE DEPARTMENT(cont'd)

2012 NATURAL GAS DELIVERY TAX RATES BY SERVICE AREA

CO. #	MUNICIPAL GAS	DELIVERY TAX RATE
5215	Brighton Gas	0.00822169
5238	Coon Rapids Municipal Gas	0.00004230
5241	Corning Municipal Gas	0.00000689
5275	Lamoni Municipal Gas	0.00104176
5281	Manilla Municipal Gas	0.00050492
5306	Osage Municipal Gas	0.00004572
5317	Rock Rapids Municipal Gas	0.00010746
5340	Wayland Municipal Gas	0.00030291
5344	West Bend Municipal Gas	0.00002083
5349	Winfield Municipal Gas	0.00054523

CO. #	IOU's — GAS	DELIVERY TAX RATE
5312	Peoples Natural Gas	0.00752829

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions JoAnn Johnson, Superintendent of Banking James M. Schipper, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for May is 4.00%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective May 9, 2013, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TREASURER OF STATE(cont'd)

TIME DEPOSITS

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

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 0760C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 217.6 and chapter 249J, the Department of Human Services amends Chapter 92, "IowaCare," Iowa Administrative Code.

Amendments to Chapter 92 add language to include Indian Health Care providers in the IowaCare network to serve IowaCare-eligible Native Americans.

The inclusion of Indian Health Care providers in the IowaCare network for IowaCare-eligible Native Americans is required by the American Recovery and Reinvestment Act of 2009 (PL 111-5), Section 5006(d). Pursuant to the federal requirement, Indian Health Care providers have been allowed to enroll in the IowaCare network to serve Native Americans since November 2012. These amendments revise the Department's rules to reflect the federally required policy, which allows the estimated 300 IowaCare-eligible Native Americans the option to receive care from participating Indian Health Care providers as well as from their assigned medical home.

Notice of Intended Action on these amendments was published as **ARC 0637C** in the Iowa Administrative Bulletin on March 6, 2013. The Department received no comments on these amendments. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on May 8, 2013.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Council on Human Services finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective May 8, 2013. The implementation period can be waived because the amendments confer a benefit on the public. Native Americans who are eligible for IowaCare will be allowed access to participating Indian Health Centers.

These amendments do not provide for waivers in specified situations because the amendments are required by federal law which does not allow for any waiver and because these amendments confer a benefit by allowing for coverage of services provided by Indian Health Care providers. 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 217.6 and chapter 249J.

These amendments became effective on May 8, 2013.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definitions of "Indian" and "Indian health care provider" in rule **441—92.1(249A,249J)**:

"*Indian*" means a Native American eligible, as an Indian, to receive health care services from an Indian health care provider as defined in this rule.

"*Indian health care provider*" means a health care program operated by the Indian Health Service of the U.S. Department of Health and Human Services or by an Indian tribe, tribal organization, or urban Indian organization as those terms are defined in 25 U.S.C. § 1603.

ITEM 2. Amend subrule 92.8(1) as follows:

92.8(1) Provider network. Except as provided in subrules 92.8(3) through ~~92.8(6)~~ 92.8(5), IowaCare members shall have medical assistance only for services provided to the member by:

a. to c. No change.

d. Any physician, advanced registered nurse practitioner, or physician assistant who is part of a medical institution listed in this subrule. Physician assistants are able to render covered services as auxiliary personnel of a physician pursuant to 441—subrule 78.1(13); or

e. An Indian health care provider enrolled in the IowaCare program, for services provided to Indians.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 3. Amend paragraph **92.8(3)“c”** as follows:

c. For persons who reside in Cedar, Clinton, Iowa, Johnson, Keokuk, Louisa, Muscatine, Scott, or Washington County, the services listed in this subrule are covered only when provided by the University of Iowa Hospitals and Clinics or when provided by an Indian health care provider to an Indian.

ITEM 4. Amend subrule 92.8(6) as follows:

92.8(6) Medical home. As a condition of participation in the IowaCare program, network providers designated pursuant to subrule 92.8(1) other than Indian health care providers must also qualify as medical homes, pursuant to Iowa Code chapter 135, division XXII.

a. and b. No change.

c. If an IowaCare member resides in a designated county near a designated medical home provider, the department shall assign the member to that provider. If an IowaCare member who is assigned to a medical home and who is not an Indian chooses to go to another provider without a referral from the medical home:

(1) and (2) No change.

d. Subject to subrule 92.8(1), services provided to Indians assigned to a medical home may be covered by the IowaCare program if:

(1) Provided by the assigned medical home or pursuant to a referral by the assigned medical home;

or

(2) Provided by an Indian health care provider enrolled in the IowaCare program or pursuant to a referral by an Indian health care provider enrolled in the IowaCare program.

[Filed Emergency After Notice 5/8/13, effective 5/8/13]

[Published 5/29/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/29/13.

ARC 0759C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 92, “IowaCare,” Iowa Administrative Code.

This amendment adjusts the premiums for medical assistance benefits under the IowaCare program to reflect the revised 2013 Federal Poverty Levels (FPLs) based on income for the household size.

IowaCare members with income over 150 percent of the FPL will have their premium amount adjusted at their next eligibility review on and after April 1, 2013, to adjust for the changes to the 2013 FPL.

IowaCare applicants who are approved for eligibility effective on and after April 1, 2013, will have their premium assessment calculated based on the new premium scale.

Notice of Intended Action on this amendment was published as **ARC 0638C** in the Iowa Administrative Bulletin on March 6, 2013. The Department received no comments on this amendment. This amendment is identical to the one published under Notice of Intended Action.

Pursuant to Iowa Code section 17A.5(2)“b”(2), the Council on Human Services finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective May 8, 2013. The implementation period can be waived because the amendment confers a benefit on the public by ensuring accurate implementation of current federal policy.

This amendment does not provide for waivers in specific situations because all members should be subject to the same sliding scale for IowaCare premiums. 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 became effective May 8, 2013.

The following amendment is adopted.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Amend paragraph **92.7(1)“a”** as follows:

a. The monthly premium is based on the household’s countable monthly income as a percentage of the federal poverty level for a household of that size. If there is more than one IowaCare member in a household, a single premium is established for coverage of all of the members in the household. Subject to the annual update pursuant to paragraph 92.7(1)“*b*,” for certification periods beginning on or after April 1, ~~2012~~ 2013, premiums are as follows:

When there is one IowaCare member in the household and the household’s income is at or below:	The member’s premium amount is:
150% of federal poverty level	\$0
160% of federal poverty level	\$51 <u>52</u>
170% of federal poverty level	\$55 <u>56</u>
180% of federal poverty level	\$58 <u>59</u>
190% of federal poverty level	\$61 <u>62</u>
200% of federal poverty level	\$65 <u>66</u>

When there are two or more IowaCare members in the household and the household’s income is at or below:	The household’s premium amount is:
150% of federal poverty level	\$0
160% of federal poverty level	\$69 <u>70</u>
170% of federal poverty level	\$73 <u>74</u>
180% of federal poverty level	\$78 <u>79</u>
190% of federal poverty level	\$82 <u>83</u>
200% of federal poverty level	\$86 <u>87</u>

[Filed Emergency After Notice 5/8/13, effective 5/8/13]

[Published 5/29/13]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/29/13.

ARC 0751C

ATTORNEY GENERAL[61]

Adopted and Filed

Pursuant to the authority of Iowa Code section 809A.25, the Attorney General hereby amends Chapter 33, "Forfeited Property," Iowa Administrative Code.

Forfeited property may be used by the Attorney General ("the Department") in the enforcement of the criminal law. The Department may give forfeited property to any other law enforcement agency within the state if, in the opinion of the Attorney General, it will enhance law enforcement within the state. (See Iowa Code section 809A.17.)

The amendments decrease the amount of forfeited funds retained by the Department from 20 percent to 10 percent and increase the amount of forfeited funds given to local law enforcement agencies from 80 percent to 90 percent. The amendments also decrease from 20 percent to 10 percent the amount of proceeds from the sale of forfeited real estate retained by the Department.

The amendments correspond with the provisions of Iowa Code section 809A.17(5). The amendments remove a requirement that law enforcement agencies notify the Department whenever they seize property for forfeiture, except seizure of real property. The amendments also require a seizing agency to apply within ten days for a certificate of title or a junking certificate for a forfeited vehicle which has been transferred to the agency.

The amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on March 20, 2013, as **ARC 0646C**.

The proposed amendments were reviewed at the Administrative Rules Review Committee meeting held on April 12, 2013. There were no comments in opposition to the amendments. It was noted that the amendments regarding the sharing of funds will revise the rule to correspond with the provisions of Iowa Code section 809A.17(5) and that the elimination of requiring notice of seizures, except for real estate seizures, reduces unnecessary bureaucracy and costs to local law enforcement agencies. The amendment regarding the requirement that law enforcement agencies apply for a new certificate of title or junking certificate of title for forfeited vehicles within ten days imposes no undue burden and ensures that ownership of such vehicles is promptly transferred from the State of Iowa to the possessory agency.

These amendments are identical to those published under Notice of Intended Action.

These amendments are not subject to waiver.

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

These amendments are intended to implement Iowa Code chapter 809A.

These amendments will become effective July 3, 2013.

The following amendments are adopted.

ITEM 1. Amend subrule 33.3(1) as follows:

33.3(1) An agency which seizes real property for forfeiture must notify the department within ten days of the seizure. Notice shall include the identity of the party from whom the property was seized, the date and county of seizure, and ~~an inventory~~ a legal description of the property seized for forfeiture.

ITEM 2. Amend paragraph **33.4(4)"e"** as follows:

e. The department will retain ~~20~~ 10 percent of the gross sale price of the real property. The balance of the proceeds, ~~80~~ 90 percent, will be given to the seizing agency for its use or for division among law enforcement agencies and prosecutors pursuant to agreement.

ITEM 3. Adopt the following new paragraph **33.4(6)"d"**:

d. The seizing agency shall, within ten days of receipt of the transferred title, send to the Iowa department of transportation an application for certificate of title or a junking certificate for the vehicle.

ATTORNEY GENERAL[61](cont'd)

ITEM 4. Amend subrule 33.4(7) as follows:

33.4(7) Cash.

a. The department will retain ~~20~~ 10 percent of forfeited cash. The balance of forfeited cash, ~~80~~ 90 percent, will be given to the seizing agency for its use or for division among law enforcement agencies and prosecutors pursuant to agreement.

b. In the event of a cash forfeiture in excess of \$400,000, amounts over \$400,000 shall be apportioned as follows: ~~40~~ 45 percent to the seizing agency or agencies; ~~40~~ 45 percent to other law enforcement agencies within the region; and ~~20~~ 10 percent to be retained by the department.

[Filed 5/6/13, effective 7/3/13]

[Published 5/29/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/29/13.

ARC 0767C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 43, "Pupil Transportation," Iowa Administrative Code.

This amendment updates the current rule which provides for a bus inspection fee of \$28 per inspection. The amendment increases the fee to \$40 per inspection effective July 3, 2013. This increase in the fee will pay for an additional inspector.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the March 6, 2013, Iowa Administrative Bulletin as **ARC 0641C**. Public comments were allowed until 4:30 p.m. on March 26, 2013. A public hearing was held on that date, and no person attended. No written comments were received on the proposed amendment.

Since publication of the Notice, the effective date has been changed from July 1 to July 3, due to delay in working through the rule-making process.

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

This amendment is intended to implement Iowa Code section 285.8(4).

This amendment shall become effective on July 3, 2013.

The following amendment is adopted.

Amend rule 281—43.30(285) as follows:

281—43.30(285) Semiannual inspection. To facilitate the semiannual inspection program, school and school district officials shall send their buses to inspection centers as scheduled. A sufficient number of drivers or other school personnel shall be available at the inspection to operate the equipment for the inspectors. The fee for each vehicle inspected shall be \$20 effective July 1, 2005; \$25 effective July 1, 2007; and \$28 effective July 1, 2009. Effective July 3, 2013, the fee for each vehicle inspected shall be \$40.

[Filed 5/9/13, effective 7/3/13]

[Published 5/29/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/29/13.

ARC 0757C

HUMAN SERVICES DEPARTMENT[441]**Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

The name of the home- and community-based services (HCBS) ill and handicapped waiver is being changed to the health and disability waiver. The health and disability waiver is being amended to allow targeted case managers as well as service workers to manage this waiver. The word “consumer” is being changed to “member.”

The ill and handicapped waiver that originated in 1984 needs to reflect the current population being served. The change in the name of this waiver to the health and disability waiver portrays a more positive view of the members under this waiver. Adding targeted case managers as an option to manage the cases under this waiver allows members receiving habilitation services to have one case manager rather than have both a service worker and a targeted case manager. Without the addition of the targeted case managers in these rules, an exception to policy would continue to be required to allow for only one case management entity to manage the case. Changing the word “consumer” to “member” makes these rules consistent with other Medicaid-related administrative rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0615C** on February 20, 2013. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on May 8, 2013.

These amendments do not provide for waivers in specified situations because waivers are not needed. 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 section 249A.4.

These amendments will become effective August 1, 2013.

The following amendments are adopted.

ITEM 1. Amend rule 441—77.30(249A), introductory paragraph, as follows:

441—77.30(249A) HCBS ~~ill and handicapped~~ health and disability waiver service providers. HCBS ~~ill and handicapped~~ health and disability waiver services shall be rendered by a person who is at least 16 years old (except as otherwise provided in this rule) and is not the spouse of the ~~consumer~~ member served or the parent or stepparent of a ~~consumer~~ member aged 17 or under. People who are 16 or 17 years old must be employed and supervised by an enrolled HCBS provider unless they are employed to provide self-directed personal care services through the consumer choices option. A person hired for self-directed personal care services need not be supervised by an enrolled HCBS provider. A provider hired through the consumer choices option for independent support brokerage, self-directed personal care, individual-directed goods and services, or self-directed community support and employment is not required to enroll as a Medicaid provider. The following providers shall be eligible to participate in the Medicaid HCBS ~~ill and handicapped~~ health and disability waiver program if they meet the standards in subrule 77.30(18) and also meet the standards set forth below for the service to be provided:

ITEM 2. Amend subrule 77.30(18), introductory paragraph, as follows:

77.30(18) Incident management and reporting. As a condition of participation in the medical assistance program, HCBS ~~ill and handicapped~~ health and disability waiver service providers must comply with the requirements of Iowa Code sections 232.69 and 235B.3 regarding the reporting of child abuse and dependent adult abuse and with the incident management and reporting requirements

HUMAN SERVICES DEPARTMENT[441](cont'd)

in this subrule. EXCEPTION: The conditions in this subrule do not apply to providers of goods and services purchased under the consumer choices option or providers of home and vehicle modification, home-delivered meals, or personal emergency response.

ITEM 3. Amend paragraph **77.33(9)“c”** as follows:

c. Providers eligible to participate as home and vehicle modification ~~provides providers~~ under the ~~ill and handicapped~~ health and disability waiver, enrolled as home and vehicle modification providers under the physical disability waiver, or certified as home and vehicle modification providers under the home- and community-based services intellectual disability or brain injury waiver.

ITEM 4. Amend paragraph **77.37(17)“b”** as follows:

b. Providers eligible to participate as home and vehicle modification providers under the elderly or ~~ill and handicapped~~ health and disability waiver, enrolled as home and vehicle modification providers under the physical disability waiver, or certified as home and vehicle modification providers under the brain injury waiver.

ITEM 5. Amend paragraph **77.39(16)“a”** as follows:

a. Providers eligible to participate as home and vehicle modification providers under the elderly or ~~ill and handicapped~~ health and disability waiver, enrolled as home and vehicle modification providers under the physical disability waiver, or certified as home and vehicle modification providers under the physical disability waiver.

ITEM 6. Amend paragraph **77.41(3)“a”** as follows:

a. Providers eligible to participate as home and vehicle modification providers under the elderly or ~~ill and handicapped~~ health and disability waiver or certified as home and vehicle modification providers under the home- and community-based services intellectual disability or brain injury waiver.

ITEM 7. Amend subparagraph **78.34(13)“b”(1)** as follows:

(1) Services that may be included in determining the individual budget amount for a member in the HCBS ~~ill and handicapped~~ health and disability waiver are:

1. to 5. No change.

ITEM 8. Amend subrule **79.1(2)**, provider category “HCBS waiver service providers,” paragraphs “3,” “5” and “9,” as follows:

Provider category	Basis of reimbursement	Upper limit
3. Home health aides	Retrospective cost-related	For AIDS/HIV, elderly, and ill and handicapped <u>health and disability</u> waivers effective 1/1/13: Lesser of maximum Medicare rate in effect 11/30/09 plus 2% or maximum Medicaid rate in effect 6/30/12 plus 2%. For intellectual disability waiver effective 1/1/13: Lesser of maximum Medicare rate in effect 11/30/09 plus 2% or maximum Medicaid rate in effect 6/30/12 plus 2%, converted to an hourly rate.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Provider category	Basis of reimbursement	Upper limit
5. Nursing care	For elderly and intellectual disability waivers: Fee schedule as determined by Medicare.	For elderly waiver effective 1/1/13, provider's rate in effect 6/30/12 plus 2%. If no 6/30/12 rate: \$84.58 per visit. For intellectual disability waiver effective 1/1/13: Lesser of maximum Medicare rate in effect 11/30/09 plus 2% or maximum Medicaid rate in effect 6/30/12 plus 2%, converted to an hourly rate.
	For AIDS/HIV and ill and handicapped <u>health and disability</u> waivers: Agency's financial and statistical cost report and Medicare percentage rate per visit.	For AIDS/HIV and ill and handicapped <u>health and disability</u> waivers effective 1/1/13, provider's rate in effect 6/30/12 plus 2%. If no 6/30/12 rate: \$84.58 per visit.
9. Home and vehicle modification	Fee schedule. See 79.1(17)	For elderly waiver effective 1/1/13: \$1,030.20 lifetime maximum. For intellectual disability waiver effective 1/1/13: \$5,151 lifetime maximum. For brain injury, ill and handicapped <u>health and disability</u> , and physical disability waivers effective 1/1/13: \$6,181.20 per year.

ITEM 9. Amend **441—Chapter 83**, Division I heading, as follows:

DIVISION I—HCBS ~~ILL AND HANDICAPPED~~ HEALTH AND DISABILITY WAIVER SERVICES

ITEM 10. Amend rule **441—83.1(249A)**, definition of “Client participation,” as follows:

“*Client participation*” means the amount of the recipient income that the person must contribute to the cost of ~~ill and handicapped~~ health and disability waiver services exclusive of medical vendor payments before Medicaid will participate.

ITEM 11. Amend rule 441—83.2(249A), introductory paragraph, as follows:

441—83.2(249A) Eligibility. To be eligible for ~~ill and handicapped~~ health and disability waiver services, a person must meet certain eligibility criteria and be determined to need a service(s) allowable under the program.

ITEM 12. Amend paragraph **83.2(1)“b”** as follows:

b. The person must be ineligible for Supplemental Security Income (SSI) if the person is 21 years of age or older, except that persons who are receiving ~~ill and handicapped~~ health and disability waiver services upon reaching the age of 21 may continue to be eligible regardless of SSI eligibility until they reach the age of 25.

ITEM 13. Amend subparagraph **83.2(1)“d”(3)** as follows:

(3) ~~Ill and handicapped~~ Health and disability waiver services will not be provided when the person is an inpatient in a medical institution.

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ITEM 14. Amend subrule 83.2(2) as follows:

83.2(2) Need for services.

a. The ~~consumer~~ member shall have a service plan approved by the department which is developed by the service worker or targeted case manager identified by the county of residence. This service plan must be completed prior to services provision and annually thereafter.

The service worker or targeted case manager shall establish the interdisciplinary team for the ~~consumer~~ member and, with the team, identify the ~~consumer's~~ member's need for service based on the ~~consumer's~~ member's needs and desires as well as the availability and appropriateness of services, using the following criteria:

(1) This service plan shall be based, in part, on information in the completed Service Worker Comprehensive Assessment, Form 470-5044. Form 470-5044 shall be completed annually. The service worker or targeted case manager shall have a face-to-face visit with the member at least annually.

(2) Service plans for persons aged 20 or under shall be developed to reflect use of all appropriate nonwaiver Medicaid services and so as not to replace or duplicate those services. The service worker or targeted case manager shall list all nonwaiver Medicaid services in the service plan.

(3) Service plans for persons aged 20 or under that include home health or nursing services shall not be approved until a home health agency has made a request to cover the ~~consumer's~~ member's service needs through nonwaiver Medicaid services.

b. Except as provided below, the total monthly cost of the ~~ill and handicapped~~ health and disability waiver services shall not exceed the established aggregate monthly cost for level of care as follows:

Skilled level of care	Nursing level of care	ICF/ID
\$2,684	\$922	\$3,267

(1) For members eligible for SSI who remain eligible for ~~ill and handicapped~~ health and disability waiver services until the age of 25 because they are receiving ~~ill and handicapped~~ health and disability waiver services upon reaching the age of 21, these amounts shall be increased by the cost of services for which the member would be eligible under 441—subrule 78.9(10) if still under 21 years of age.

(2) If more than \$505 is paid for home and vehicle modification services, the service worker or targeted case manager shall encumber up to \$505 per month within the monthly dollar cap allowed for the ~~consumer~~ member until the total amount of the modification is reached within a 12-month period.

c. Interim medical monitoring and treatment services must be needed because all usual caregivers are unavailable to provide care due to one of the following circumstances:

(1) No change.

(2) Academic or vocational training. Interim medical monitoring and treatment services provided while a usual caregiver participates in postsecondary education or vocational training shall be limited to 24 periods of no more than 30 days each per caregiver as documented by the service worker or targeted case manager. Time spent in high school completion, adult basic education, GED, or English as a second language does not count toward the limit.

(3) and (4) No change.

ITEM 15. Amend subrule 83.3(1) as follows:

83.3(1) Application for HCBS ~~ill and handicapped~~ health and disability waiver services. The application process as specified in rules 441—76.1(249A) to 441—76.6(249A) shall be followed.

ITEM 16. Amend subrule 83.3(2), introductory paragraph, as follows:

83.3(2) Application and services program limit. The number of persons who may be approved for the HCBS ~~ill and handicapped~~ health and disability waiver shall be subject to the number of ~~consumers~~ members to be served as set forth in the federally approved HCBS ~~ill and handicapped~~ health and disability waiver. The number of ~~consumers~~ members to be served is set forth at the time of each five-year renewal of the waiver or in amendments to the waiver approved by the Centers for Medicare and Medicaid Services (CMS). When the number of applicants exceeds the number of ~~consumers~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

members specified in the approved waiver, the applicant's name shall be placed on a waiting list maintained by the bureau of long-term care.

ITEM 17. Amend subrule 83.3(3) as follows:

83.3(3) Approval of application.

a. Applications for the HCBS ~~ill and handicapped~~ health and disability waiver program shall be processed in 30 days unless one or more of the following conditions exist:

(1) to (5) No change.

b. No change.

c. An applicant must be given the choice between HCBS ~~ill and handicapped~~ health and disability waiver services and institutional care. The applicant, parent, guardian, or attorney in fact under a durable power of attorney for health care shall sign Form 470-5044, Service Worker Comprehensive Assessment, and indicate that the applicant has elected home- and community-based services.

d. No change.

e. A ~~consumer~~ member may be enrolled in only one waiver program at a time. Costs for waiver services are not reimbursable while the ~~consumer~~ member is in a medical institution (hospital or nursing facility) or residential facility. Services may not be simultaneously reimbursed for the same time period as Medicaid or other Medicaid waiver services.

ITEM 18. Amend subrule 83.3(4) as follows:

83.3(4) Effective date of eligibility.

a. No change.

b. The effective date of eligibility for the ~~ill and handicapped~~ health and disability waiver for persons who qualify for Medicaid due to eligibility for the waiver services and to whom paragraphs 83.3(4) "a" and "c" ~~of this subrule~~ do not apply is the date on which the income eligibility and level of care determinations and the case plan are completed.

c. No change.

d. Eligibility continues until the ~~consumer~~ member has been in a medical institution for 30 consecutive days for other than respite care. ~~Consumers~~ Members who are inpatients in a medical institution for 30 or more consecutive days for other than respite care shall be terminated from ~~ill and handicapped~~ health and disability waiver services and reviewed for eligibility for other Medicaid coverage groups. The ~~consumer~~ member will be notified of that decision through Form 470-0602, Notice of Decision. If the ~~consumer~~ member returns home before the effective date of the notice of decision and the ~~consumer's~~ member's condition has not substantially changed, the denial may be rescinded and eligibility may continue.

ITEM 19. Amend rule 441—83.4(249A) as follows:

441—83.4(249A) Financial participation. Persons must contribute their predetermined financial participation to the cost of ~~ill and handicapped~~ health and disability waiver services or other Medicaid services, as applicable.

83.4(1) No change.

83.4(2) Limitation on payment. If the sum of the third-party payment and client participation equals or exceeds the reimbursement established by the service worker or targeted case manager for ~~ill and handicapped~~ health and disability waiver services, Medicaid shall make no payments to ~~ill and handicapped~~ health and disability waiver service providers. However, Medicaid shall make payments to other medical vendors, as applicable.

83.4(3) No change.

ITEM 20. Amend rule 441—83.5(249A) as follows:

441—83.5(249A) Redetermination. A complete redetermination of eligibility for the ~~ill and handicapped~~ health and disability waiver shall be completed at least once every 12 months or when there is significant change in the person's situation or condition.

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A redetermination of continuing eligibility factors shall be made in accordance with rules 441—76.7(249A) and 441—83.2(249A). A redetermination shall include verification of the existence of a current ease service plan meeting the requirements listed in rule 441—83.7(249A).

ITEM 21. Amend rule 441—83.6(249A) as follows:

441—83.6(249A) Allowable services. Services allowable under the ~~ill and handicapped health and disability~~ waiver are homemaker, home health, adult day care, respite care, nursing, counseling, consumer-directed attendant care, interim medical monitoring and treatment, home and vehicle modification, personal emergency response system, home-delivered meals, nutritional counseling, financial management, independent support brokerage, self-directed personal care, self-directed community supports and employment, and individual-directed goods and services as set forth in rule 441—78.34(249A).

ITEM 22. Amend rule 441—83.7(249A) as follows:

441—83.7(249A) Service plan. A service plan shall be prepared for ~~ill and handicapped health and disability~~ waiver ~~consumers~~ members in accordance with rule 441—130.7(234) except that service plans for both children and adults shall be completed every 12 months or when there is significant change in the person's situation or condition.

83.7(1) The service plan shall include the frequency of the ~~ill and handicapped health and disability~~ waiver services and the types of providers who will deliver the services.

83.7(2) The service plan shall indicate whether the ~~consumer~~ member has elected the consumer choices option. If the ~~consumer~~ member has elected the consumer choices option, the service plan shall identify:

- a. The independent support broker selected by the ~~consumer~~ member; and
- b. The financial management service selected by the ~~consumer~~ member.

83.7(3) The service plan shall also list all nonwaiver Medicaid services.

83.7(4) The service plan shall identify a plan for emergencies and the supports available to the ~~consumer~~ member in an emergency.

ITEM 23. Amend subrule 83.8(2) as follows:

83.8(2) Termination. A particular service may be terminated when the department determines that:

- a. The provisions of ~~441—paragraph~~ 130.5(2) "a," "b," "c," "g," or "h" apply.
- b. The costs of the ~~ill and handicapped health and disability~~ waiver service for the person exceed the aggregate monthly costs established in 83.2(2) "b."
- c. The ~~client~~ member receives care in a hospital, nursing facility, or intermediate care facility for persons with an intellectual ~~disability~~ disability for 30 days in any one stay for purposes other than respite care.
- d. The ~~client~~ member receives ~~ill and handicapped health and disability~~ waiver services and the physical or mental condition of the ~~client~~ member requires more care than can be provided in the ~~client's~~ member's own home as determined by the service worker or targeted case manager.
- e. Service providers are not available.

[Filed 5/8/13, effective 8/1/13]

[Published 5/29/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/29/13.

ARC 0758C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 88, "Managed Health Care Providers," Iowa Administrative Code.

The purpose of this amendment is to clarify policy on the treatment of income and resources for institutionalized spouses who apply for the Programs of All-Inclusive Care for the Elderly (PACE). Specifically, the amendment clarifies policy on the treatment of income and resources for certain institutionalized spouses who apply for PACE.

The effect of this amendment is to clarify policy that PACE enrollees are considered to be institutionalized for Medicaid eligibility purposes and that spousal impoverishment eligibility rules do apply. The clarification will assist income maintenance workers in making correct determinations of eligibility for PACE.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0639C** on March 6, 2013. The Department received no comments. This amendment is identical to the one published under Notice of Intended Action.

The Council on Human Services adopted this amendment on May 8, 2013.

This amendment does not provide for waivers in specific situations because it confers a benefit and because all Medicaid members are subject to the same rules regarding the determination of eligibility for PACE. 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.

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

This amendment will become effective August 1, 2013.

The following amendment is adopted.

Amend paragraph **88.84(1)"a"** as follows:

a. Basic eligibility requirements.

(1) The person must be 55 years of age or older.

(2) The person must reside in the service area of the PACE organization.

(3) The person must be eligible for Medicaid pursuant to the provisions in 441—Chapter 75 for persons in a medical institution.

~~(3)~~ (4) The department must determine that the person is eligible for Iowa Medicaid pursuant to 441—Chapter 76.

(4) (5) The department must determine that the person needs the nursing facility level of care.

~~(5)~~ (6) The person must meet any additional program-specific eligibility conditions imposed under the PACE program agreement. These additional conditions shall not modify the requirements stated in this subrule.

[Filed 5/8/13, effective 8/1/13]

[Published 5/29/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/29/13.

ARC 0766C**INSPECTIONS AND APPEALS DEPARTMENT[481]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 22, "Health Care Facility Audits," Chapter 50, "Health Care Facilities Administration," Chapter 54, "Governor's Award for Quality Care," Chapter

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

57, "Residential Care Facilities," Chapter 58, "Nursing Facilities," and Chapter 65, "Intermediate Care Facilities for Persons With Mental Illness (ICF/PMI)," Iowa Administrative Code.

The amendments strike the terms "mental retardation" and "mentally retarded" from the Department's administrative rules and replace them with the term "intellectually disabled." The amendments make corresponding changes in the Department's administrative rules to implement sections 11 through 18 of 2012 Iowa Acts, chapter 1019.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 6, 2013, as **ARC 0601C**. While no comments were received, the Department has made several changes to the Noticed amendments, including changing the definition of and reference to "qualified mental retardation professional" to reflect a change in the federal definition of a "qualified intellectual disabilities professional." These changes are reflected in Item 4, in new Items 9, 10, 17 and 18, and in renumbered Items 11 and 15.

The State Board of Health reviewed the amendments at its January 9, 2013, meeting, and subsequently approved them at its May 8, 2013, meeting.

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

These amendments are intended to implement 2012 Iowa Acts, chapter 1019, sections 11 to 18.

These amendments shall become effective July 3, 2013.

The following amendments are adopted.

ITEM 1. Amend rule 481—22.1(10A) as follows:

481—22.1(10A) Audit occurrence. The department audits financial records of intermediate care facilities, residential care facilities, and intermediate care facilities for the ~~mentally retarded~~ intellectually disabled on a rotating basis or upon request of the department of human services (DHS). Audits are intended to ensure compliance with the following Iowa Administrative Code chapters:

1. 441—Chapter 52, Payment, specifically subrule 52.1(3).
2. 441—Chapter 54, Facility Participation, specifically rule 441—54.5(249) and subrule 54.8(2).
3. 441—Chapter 81, ~~Intermediate Care~~ Nursing Facilities, specifically subrule 81.4(3), rule 441—81.10(249A) and subrule 81.14(2).
4. 441—Chapter 82, Intermediate Care Facilities for the ~~Mentally Retarded~~ Persons With an Intellectual Disability, specifically subrules 82.9(3) and 82.17(2).

If a rule not listed is used in an audit, the auditor will notify the facility.

The department acts as an agent for DHS when conducting the above audits.

~~This rule is intended to implement Iowa Code sections 10A.302(2) and 10A.302(3).~~

ITEM 2. Amend subrule 50.3(3) as follows:

50.3(3) Standards used to determine whether a license is granted or retained are found in the rules of the department of inspections and appeals in the Iowa Administrative Code as follows:

- a. Hospitals, 481—Chapter 51;
- b. Hospices, 481—Chapter 53;
- c. Residential care facilities, 481—Chapters 57 and 60;
- d. Nursing facilities, 481—Chapters 58 and 61;
- e. Residential care facilities for persons with mental illness, 481—Chapters 60 and 62;
- f. Residential care facilities for the ~~mentally retarded~~ intellectually disabled, 481—Chapters 60 and 63;
- g. Intermediate care facilities for the ~~mentally retarded~~ intellectually disabled, 481—Chapter 64; and
- h. Intermediate care facilities for persons with mental illness, 481—Chapter 65.

ITEM 3. Amend rule **481—54.2(135C)**, definition of "Health care facility," as follows:

"Health care facility" or "facility" means residential care facilities, nursing facilities, intermediate care facilities for persons with mental illness, and intermediate care facilities for persons with ~~mental retardation~~ an intellectual disability licensed pursuant to Iowa Code chapter 135C.

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ITEM 4. Amend subrule 57.1(15) as follows:

57.1(15) “Qualified ~~mental retardation~~ intellectual disabilities professional” means a psychologist, physician, registered nurse, educator, social worker, physical or occupational therapist, speech therapist or audiologist who meets the educational requirements for the profession, as required in the state of Iowa, and having one year’s experience working with ~~the mentally retarded~~ persons with an intellectual disability.

ITEM 5. Amend rule 481—57.4(135C) as follows:

481—57.4(135C) Special categories. Special variations and considerations may be granted a residential care facility which is operated for people who have special problems such as ~~retardation~~ intellectual disabilities, physical disabilities, have a physical or mental disability or a condition in common which can best be treated in a specialized environment under an approved program of care commensurate with the needs of the residents of the facility. Criteria for these specialized programs shall be established by the department based on the résumé of programs and services furnished by the facility and the numbers and qualifications of the administrator and staff providing these services in the facility.

57.4(1) No change.

57.4(2) On approval of the department, the state fire marshal, the department of ~~social~~ human services, or other appropriate agencies, other variations from the established rules and regulations and standards for a licensed health care facility of that category may be made as is necessary to successfully implement the specialized program, providing that it does not endanger the health, safety, or welfare of any resident and that alternate means to effect the same degree of protection shall be used when such variances are permitted.

ITEM 6. Amend paragraph **57.35(6)“c”** as follows:

c. A statement shall be signed by the resident, or the resident’s responsible party, if applicable, indicating an understanding of these rights and responsibilities, and shall be maintained in the record. The statement shall be signed no later than five days after admission, and a copy of the signed statement shall be given to the resident or responsible party. In the case of a ~~mentally retarded~~ an intellectually disabled resident, the signature shall be witnessed by a person not associated with or employed by the facility. The witness may be a parent, guardian, Medicaid agency representative, etc. (II)

ITEM 7. Amend subrule 57.35(8) as follows:

57.35(8) Each resident or responsible party shall be fully informed by a physician of the resident’s health and medical condition unless medically contraindicated (as documented by a physician in the resident’s record). Each resident shall be afforded the opportunity to participate in the planning of the resident’s total care and medical treatment, which may include, but is not limited to, nursing care, nutritional care, rehabilitation, restorative therapies, activities, and social work services. Each resident only participates in experimental research conducted under the ~~department of health and human services~~ U.S. Department of Health and Human Services protection from research risks policy and then only upon the resident’s informed written consent. Each resident has the right to refuse treatment except as provided by Iowa Code chapter 229. In the case of a confused or ~~mentally retarded~~ intellectually disabled individual, the responsible party shall be informed by the physician of the resident’s medical condition and be afforded the opportunity to participate in the planning of the resident’s total care and medical treatment, to be informed of the medical condition, and to refuse to participate in experimental research. (II)

a. The requirement that residents shall be informed of their conditions, involved in the planning of their care, and advised of any significant changes in either, shall be communicated to every physician responsible for the medical care of residents in the facility. (II)

b. The administrator or designee shall be responsible for working with attending physicians in the implementation of this requirement. (II)

c. If the physician determines or in the case of a confused or ~~mentally retarded~~ intellectually disabled resident the responsible party determines that informing the resident of the resident’s condition

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is contraindicated, this decision and reasons for it shall be documented in the resident's record by the physician. (II)

d. Any clinical investigation involving residents must be under the sponsorship of an institution with a human subjects review board functioning in accordance with the requirements of Public Law 93-348, as implemented by Part 46 of Title 45 of the Code of Federal Regulations, as amended to December 1, 1981 (45 CFR 46). A resident being considered for participation in experimental research must be fully informed of the nature of the experiment, e.g., medication, treatment, and understand the possible consequences of participating or not participating. The resident's (or responsible party's) written informed consent must be received prior to participation. (II)

ITEM 8. Amend subrule 57.38(3) as follows:

57.38(3) The facility shall keep on deposit personal funds over which the resident has control in accordance with Iowa Code subsection 135C.24(2). Should the resident request these funds, they shall be given to the resident on request with receipts maintained by the facility and a copy to the resident. In the case of a confused or ~~mentally retarded~~ intellectually disabled resident, the resident's responsible party shall designate a method of disbursing the resident's funds. (II)

ITEM 9. Amend subrule 57.43(7) as follows:

57.43(7) Residents shall be permitted to leave the facility and environs at reasonable times unless there are justifiable reasons established in writing by the attending physician, qualified ~~mental retardation~~ intellectual disabilities professional, or facility administrator for refusing permission. (II)

ITEM 10. Amend rule 481—57.44(135C), introductory paragraph, as follows:

481—57.44(135C) Resident activities. Each resident may participate in activities of social, religious, and community groups at the resident's discretion unless contraindicated for reasons documented by the attending physician or qualified ~~mental retardation~~ intellectual disabilities professional as appropriate in the resident's resident record. (II)

ITEM 11. Amend rule **481—58.1(135C)**, definition of "Qualified mental retardation professional," as follows:

"Qualified ~~mental retardation~~ intellectual disabilities professional" means a psychologist, physician, registered nurse, educator, social worker, physical or occupational therapist, speech therapist or audiologist who meets the educational requirements for the profession, as required in the state of Iowa, and having one year's experience working with ~~the mentally retarded~~ persons with an intellectual disability.

ITEM 12. Amend paragraph **58.39(7)"c"** as follows:

c. A statement shall be signed by the resident, or the resident's responsible party, indicating an understanding of these rights and responsibilities, and shall be maintained in the record. The statement shall be signed no later than five days after admission, and a copy of the signed statement shall be given to the resident or responsible party, if applicable. In the case of a ~~mentally retarded~~ an intellectually disabled resident, the signature shall be witnessed by a person not associated with or employed by the facility. The witness may be a parent, guardian, Medicaid agency representative, etc. (II)

ITEM 13. Amend subrule 58.39(9) as follows:

58.39(9) Each resident or responsible party shall be fully informed by a physician of the resident's health and medical condition unless medically contraindicated (as documented by a physician in the resident's record). Each resident shall be afforded the opportunity to participate in the planning of the resident's total care and medical treatment, which may include, but is not limited to, nursing care, nutritional care, rehabilitation, restorative therapies, activities, and social work services. Each resident only participates in experimental research conducted under the U.S. Department of Health and Human Services' protection from research risks policy and then only upon the resident's informed written consent. Each resident has the right to refuse treatment except as provided by Iowa Code chapter 229. In the case of a confused or ~~mentally retarded~~ intellectually disabled individual, the responsible party shall be informed by the physician of the resident's medical condition and be afforded the opportunity

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

to participate in the planning of the resident's total care and medical treatment, to be informed of the medical condition, and to refuse to participate in experimental research. (II)

a. The requirement that residents shall be informed of their conditions, involved in the planning of their care, and advised of any significant changes in either, shall be communicated to every physician responsible for the medical care of residents in the facility. (II)

b. The administrator or designee shall be responsible for working with attending physicians in the implementation of this requirement. (II)

c. If the physician determines or in the case of a confused or ~~mentally-retarded~~ intellectually disabled resident the responsible party determines that informing the resident of the resident's condition is contraindicated, this decision and reasons for it shall be documented in the resident's record by the physician. (II)

d. The resident's plan of care shall be based on the physician's orders. It shall be developed upon admission by appropriate facility staff and shall include participation by the resident if capable. Residents shall be advised of alternative courses of care and treatment and their consequences when such alternatives are available. The resident's preference about alternatives shall be elicited and honored if feasible.

e. Any clinical investigation involving residents must be under the sponsorship of an institution with a human subjects review board functioning in accordance with the requirements of Public Law 93-348, as implemented by Part 46 of Title 45 of the Code of Federal Regulations, as amended to December 1, 1981 (45 CFR 46). A resident being considered for participation in experimental research must be fully informed of the nature of the experiment, e.g., medication, treatment, and understand the possible consequences of participating or not participating. The resident's (or responsible party's) written informed consent must be received prior to participation. (II)

ITEM 14. Amend subrule 58.42(3) as follows:

58.42(3) The facility shall keep on deposit personal funds over which the resident has control in accordance with Iowa Code section 135C.24(2). Should the resident request these funds, they shall be given to the resident on request with receipts maintained by the facility and a copy to the resident. In the case of a confused or ~~mentally-retarded~~ intellectually disabled resident, the resident's responsible party shall designate a method of disbursing the resident's funds. (II)

ITEM 15. Amend rule 481—58.43(135C), introductory paragraph, as follows:

481—58.43(135C) Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from mental and physical abuse. Each resident shall be free from chemical and physical restraints except as follows: when authorized in writing by a physician for a specified period of time; when necessary in an emergency to protect the resident from injury to the resident or to others, in which case restraints may be authorized by designated professional personnel who promptly report the action taken to the physician; and in the case of a ~~mentally-retarded~~ an intellectually disabled individual when ordered in writing by a physician and authorized by a designated qualified ~~mental-retardation~~ intellectual disabilities professional for use during behavior modification sessions. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

ITEM 16. Amend subrule 58.43(8), introductory paragraph, as follows:

58.43(8) In the case of a ~~mentally-retarded~~ an intellectually disabled individual who participates in a behavior modification program involving use of restraints or aversive stimuli, the program shall be conducted only with the informed consent of the individual's parent or responsible party. Where restraints are employed, an individualized program shall be developed by the interdisciplinary team with specific methodologies for monitoring its progress. (II)

ITEM 17. Amend subrule 58.47(7) as follows:

58.47(7) Residents shall be permitted to leave the facility and environs at reasonable times unless there are justifiable reasons established in writing by the attending physician, qualified ~~mental-retardation~~ intellectual disabilities professional or facility administrator for refusing permission. (II)

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

ITEM 18. Amend rule 481—58.48(135C), introductory paragraph, as follows:

481—58.48(135C) Resident activities. Each resident may participate in activities of social, religious, and community groups at the resident's discretion unless contraindicated for reasons documented by the attending physician or qualified ~~mental-retardation~~ intellectual disabilities professional as appropriate in the resident's record. (II)

ITEM 19. Amend rule **481—65.1(135C)**, definition of "Commission," as follows:

"*Commission*" means the mental health and ~~mental-retardation~~ disability services commission.

ITEM 20. Amend paragraph **65.4(2)"e"** as follows:

e. Obtain approval of the Iowa mental health and ~~mental-retardation~~ disability services commission, when the request is for a variance from the requirement for qualification of a mental health professional.

[Filed 5/8/13, effective 7/3/13]

[Published 5/29/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/29/13.

ARC 0761C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 59, "Tuberculosis (TB) Screening," Iowa Administrative Code.

The amendment clarifies which health care workers are subject to the tuberculosis screening requirements outlined in 481—Chapter 59, as well as those individuals who are exempt from the screening requirements. The amendment was developed in cooperation with the Iowa Department of Public Health and addresses concerns raised by the Iowa Health Care Association and LeadingAge Iowa regarding TB screening of volunteers who work in health care facilities.

Chapter 59 addresses TB screening for health care workers in hospitals licensed pursuant to Iowa Code chapter 135B and health care facilities licensed pursuant to Iowa Code chapter 135C. One association submitted a comment related to the definition of "health care worker" during the initial rule-making process to adopt Chapter 59 (see **ARC 0484C**, IAB 12/12/12). However, after careful consideration of all comments and discussion with the Department of Public Health, it was decided that no changes should be made to the Adopted and Filed rules. After publication of the Adopted and Filed rules, additional groups and individual providers expressed concerns specifically related to volunteers, prompting the need for this rule-making action, which is designed to address those concerns.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 3, 2013, as **ARC 0675C**. No comments were received; no changes were made to the amendment published under Notice of Intended Action.

The amendment was also Adopted and Filed Emergency on April 3, 2013, as **ARC 0674C**. The emergency filing permitted the Department to implement Chapter 59 in a timely manner and avoided unnecessary confusion for health care providers regarding the effective date of the chapter.

The State Board of Health initially reviewed the amendment at its March 13, 2013, meeting, and subsequently approved it at the Board's May 8, 2013, meeting.

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

This amendment is intended to implement Iowa Code section 135C.14.

This amendment shall become effective July 3, 2013, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

Amend rule **481—59.2(135B,135C)**, definition of “Health care worker,” as follows:

“*Health care worker*” or “*HCW*” means any paid or unpaid person working in a health care facility or hospital, including any ~~volunteer~~ or person who is paid either by the health care facility or hospital, or paid by any other entity (i.e., temporary agency, private duty, Medicaid/Medicare or independent contractors), or any volunteer who volunteers in a health care facility or hospital on a consistent and regularly scheduled basis for five or more hours per week. Specifically excluded from the definition of “health care worker” are individuals such as visitors, building contractors, repair workers or others who are in the facility or hospital for a very limited purpose and are not in the facility or hospital on a regular basis.

[Filed 5/8/13, effective 7/3/13]

[Published 5/29/13]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/29/13.

ARC 0763C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby rescinds Chapter 61, “Minimum Physical Standards for Nursing Facilities,” Iowa Administrative Code, and adopts new Chapter 61 with the same title.

The rule making rescinds the current Chapter 61 and replaces it with a new Chapter 61, which incorporates by reference generally accepted design and construction standards for the construction and renovation of nursing facilities. The Department requested the assistance of the Building Code Bureau of the State Fire Marshal’s office to review the rules pertaining to minimum physical standards for nursing facilities. A full review of the rules has not been conducted for nearly 20 years, during which time most national building codes and standards have been significantly revised.

During the review process, the Building Code Bureau compared the provisions of existing Chapter 61 against the national building codes and standards and determined that many of the provisions were outdated, unenforceable, or irrelevant.

The new Chapter 61 incorporates the following building codes and standards:

- Life Safety Code, 2000 edition.
- Iowa State Building Code—General Provisions, 661—Chapter 301.
- Guidelines for Design and Construction of Health Care Facilities, 2010 edition, published by the Facilities Guidelines Institute.

Additionally, the new Chapter 61 incorporates references to the FDA Food Code, adopted pursuant to Iowa Code section 137F.2, and updates requirements pertaining to physical standards dealing with food preparation and service areas. Consideration is given to existing nursing facilities, which are deemed to be in compliance if they were in compliance with prior versions of Chapter 61 at the time of their construction or renovation.

Essentially, the rule making omits from new Chapter 61 all design and construction standards contained within the administrative rules of the Department of Public Safety, State Building Code Bureau. The new Chapter 61, therefore, focuses on those physical standards directly related to the care of nursing home residents, including the preparation of foods and the maintenance of specialized units or rooms.

The Department does not believe that the adopted amendments pose a financial hardship on any regulated entity or individual. Rather, adoption of the amendments eliminates redundant language from the Iowa Administrative Code and references minimum physical standards to national standards.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 12, 2012, as **ARC 0514C**. Comments were received from the Iowa Health Care Association, LeadingAge Iowa,

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

and one member of the public. After consideration of the comments and discussion with the Department of Public Safety, State Building Code Bureau, the following changes were made:

1. The requirement that final plan approval and final occupancy be given by the State Fire Marshal's office has been moved to new subrule 61.2(7) and new paragraphs 61.6(1)"d" and 61.6(2)"c."

2. Proposed subrule 61.2(6) has been changed to add a reference to the 2000 Life Safety Code, which allows conversion of a nursing home to a hospital and a hospital to a nursing home without considering it a change of occupancy.

3. Proposed paragraph 61.5(1)"c" has been changed to clarify when an existing building must meet requirements for new construction. The proposed language used the total cost for renovation to make the determination; the adopted language requires the portion of the building that is part of the project to meet requirements for new construction if the project includes changes to structural and life safety components of the building or changes for accessibility of persons with disabilities.

4. The lighting table in proposed subrule 61.6(6) has not been adopted and has been replaced by a reference to the lighting requirements found in Table 4.1-3 of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, published by the Facilities Guidelines Institute.

5. Proposed subrule 61.6(7) has been changed to clarify that an exit door alarm system must be installed on all exterior doors.

6. Proposed subrules 61.7(1), 61.7(2) and 61.7(3), which addressed the locations of the head of the bed in each resident bedroom, soap holders and showerheads, respectively, have not been adopted. Proposed subrule 61.7(4) has been divided and renumbered as subrules 61.7(1) and 61.7(2).

7. Proposed paragraphs 61.7(4)"k" and "l," which addressed exterior windows of a seclusion room, have not been adopted. Consequently, proposed paragraphs 61.7(4)"m" to "p" have been relettered as 61.7(2)"k" to "n."

8. Relettered paragraph 61.7(2)"k" has been changed to clarify that the exhaust ventilation system must discharge to the outside of the building.

Proposed rules 481—61.2(135C) and 481—61.6(135C) were amended to clarify when projects may be deemed to be in compliance with the state building code. One commenter asked if the local jurisdiction's building code must be equivalent to or more restrictive than the state building code. Subrule 61.2(2) and paragraph 61.6(1)"b" provide that the project will be deemed in compliance with the state building code under the circumstances set forth in that subrule and paragraph; this is true regardless of whether the local jurisdiction's building code is less restrictive or more restrictive than the state building code.

One commenter asked whether stairs will be permitted outside a unit or facility for persons with chronic confusion or a dementing illness (CCDI) or freestanding CCDI facility where doors discharge to the outside. Subrule 61.9(4) states "there shall be no steps inside the CCDI unit or freestanding CCDI facility." The subrule does not prohibit stairs outside a CCDI unit or freestanding CCDI facility where doors discharge to the outside.

The State Board of Health reviewed the rules at the Board's November 14, 2012, meeting, and approved them at the Board's May 8, 2013, meeting.

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

These rules are intended to implement Iowa Code section 135C.14.

These rules shall become effective July 3, 2013.

The following amendment is adopted.

Rescind 481—Chapter 61 and adopt the following **new** chapter in lieu thereof:

CHAPTER 61
MINIMUM PHYSICAL STANDARDS FOR NURSING FACILITIES

481—61.1(135C) Definitions. Definitions in rule 481—58.1(135C) are incorporated by reference as part of this chapter. In addition, the following definition shall apply:

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“*Responsible design professional*” means a registered architect or licensed professional engineer who signs the documents submitted pursuant to rule 481—61.3(135C).

481—61.2(135C) General requirements. Nursing facilities licensed under this chapter shall be built in accordance with the following construction standards:

61.2(1) Construction shall be in conformance with 661—Chapter 205, Fire Safety Requirements for Hospitals and Health Care Facilities. Projects required to meet the provisions of the state building code shall be deemed to be in compliance with the fire safety requirements of the state building code if the project is in compliance with the provisions of 661—Chapter 205.

61.2(2) Construction shall be in conformance with 661—Chapter 301, State Building Code—General Provisions. Projects meeting the local building code shall be deemed to be in compliance with the state building code provided that the local jurisdiction has established a building department, has adopted a building code by ordinance and enforces the local code through a system which includes both plan review and inspection.

61.2(3) Construction shall be in accordance with the standards set forth in Part 4.2 and other applicable provisions of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, published by the Facility Guidelines Institute.

61.2(4) Nothing in these rules shall relieve a nursing facility from compliance with fire and building codes, ordinances and regulations which are enforced by city, county, state or federal jurisdictions.

61.2(5) New equipment. Any alteration or installation of new equipment shall be accomplished as nearly as practical in conformance with all applicable codes, ordinances, regulations and standards required for new construction. Alteration or installation of new equipment shall not diminish the level of compliance with any codes, ordinances, regulations or standards below that which existed prior to the alteration. Any feature that does not meet the requirement for new buildings but exceeds the requirement for existing buildings shall not be further diminished. Features that exceed requirements for new construction need not be maintained. In no case shall any feature be less than that required for existing buildings. (III)

61.2(6) Existing nursing facilities built in compliance with prior versions of this chapter will be deemed in compliance, with the exception of any renovations, additions, functional alterations, changes of space utilization, or conversions to existing facilities for which construction documents are submitted pursuant to rule 481—61.3(135C) on or after July 1, 2013, which shall meet the standards specified in this chapter. Conversion of a building or any of the parts not currently licensed as a nursing facility must meet the rules governing construction of new facilities, except as provided in Life Safety Code, 2000 edition, sections 18.1.1.4.4 and 19.1.1.4.4.

61.2(7) Final plan approval and final occupancy shall be given by the state fire marshal’s office.

481—61.3(135C) Submission of construction documents.

61.3(1) Submissions of architectural technical documents, engineering documents, and plans and specifications to the state fire marshal’s office shall be as required by rule 661—300.4(103A) and are the responsibility of the owner of the building or facility, although the actual submission may be completed by an authorized agent of the owner or the responsible design professional.

61.3(2) Plans, specifications and other supporting information shall be sufficiently clear and complete to show in detail that the proposed work will comply with the construction standards required by rule 481—61.2(135C).

61.3(3) Submittals to the state fire marshal’s office shall be certified or stamped and signed as required by Iowa Code chapters 542B and 544A unless the applicant has certified on the submittal to the applicability of a specific exception under Iowa Code section 544A.18 and the submittal does not constitute the practice of engineering as defined by Iowa Code section 542B.2.

61.3(4) The responsible design professional shall certify that the building plans meet the requirements specified in this chapter, unless a variance has been granted pursuant to rule 481—61.4(135C).

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481—61.4(135C) Variances.

61.4(1) Procedures in rule 481—58.2(135C) for requesting a variance are incorporated by reference as part of this chapter.

61.4(2) Certain resident populations, conditions in the area, or the site may justify variances. In specific cases, variances to the rules may be granted by the director after the following conditions are met:

- a.* The design and planning for the specific property shall offer improved or compensating features which provide equivalent desirability and utility;
- b.* Alternate or special construction methods, techniques, and mechanical equipment shall offer equivalent durability, utility, safety, structural strength and rigidity, sanitation, odor control, protection from corrosion, decay and insect attack, and quality of workmanship;
- c.* The health, safety or welfare of any resident shall not be endangered;
- d.* Variations are limited to the specific project under consideration and shall not be construed as establishing a precedent for similar acceptance in other cases;
- e.* The occupancy and function of the building shall be considered; and
- f.* The type of licensure shall be considered.

481—61.5(135C) Additional notification requirements.

61.5(1) When new construction or renovation, addition, functional alteration, change of space utilization, or conversion of an existing building is contemplated, the licensee or applicant for a license shall:

a. File a detailed and comprehensive program of care, as set forth in rule 481—58.3(135C), which includes a description of the specific needs of the residents to be served, and any other information the department may require. (III)

b. Receive written approval from the state fire marshal's office before starting construction. The applicant is responsible for ensuring that construction proceeds according to approved plans and specifications. If construction is not started within 12 months of the date of final approval of the working drawings and specifications, the approval shall be void and the plans and specifications shall be resubmitted. Multiphase projects shall be completed within a time period approved by the state fire marshal's office.

c. Meet requirements for new construction if the project includes changes to structural and life safety components of the building or changes for accessibility of persons with disabilities. Only that portion of the building that is part of the project must meet requirements for new construction.

61.5(2) Inspections.

a. For new construction or renovations, additions, functional alterations, change of space utilization or conversion of an existing building, it is the responsibility of the owner or an agent to notify the state fire marshal's office at all of the following intervals and wait for inspection before proceeding. Inspections shall be conducted in accordance with the following schedule:

- (1) Two days prior to the beginning of any construction or demolition.
- (2) After installation of any under-slab plumbing and before covering is installed.
- (3) After installation of electrical, mechanical and plumbing and prior to covering.
- (4) Five days prior to a final occupancy inspection.

b. The following must approve the project before final occupancy: the state fire inspector, the state building inspector and, in jurisdictions without electrical code enforcement, the state electrical inspector. Approval of local or county jurisdictions is as required by those jurisdictions.

481—61.6(135C) Construction requirements. This rule contains construction requirements for all areas of the building.

61.6(1) General provisions.

a. Projects shall be constructed in compliance with 661—Chapter 205, Fire Safety Requirements for Hospitals and Health Care Facilities. Projects required to meet the provisions of the state building code shall be deemed to be in compliance with the fire safety requirements of the state building code if

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the nursing facility is in compliance with the provisions of 661—Chapter 205, Fire Safety Requirements for Hospitals and Health Care Facilities.

b. Projects shall be constructed in compliance with 661—Chapter 301, State Building Code—General Provisions. Projects meeting the local building code shall be deemed to be in compliance with the state building code provided that the local jurisdiction has established a building department, has adopted a building code by ordinance and enforces the local code through a system which includes both plan review and inspection.

c. Projects shall be constructed in compliance with the standards set forth in Part 4.2 and other applicable provisions of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, published by the Facility Guidelines Institute.

d. Final plan approval and final occupancy shall be given by the state fire marshal's office.

61.6(2) Mechanical requirements.

a. Projects shall be constructed in compliance with 661—Chapter 205, Fire Safety Requirements for Hospitals and Health Care Facilities.

b. Projects shall be constructed in compliance with the state mechanical code as provided in rule 661—301.4(103A). Projects meeting the local mechanical code shall be deemed to be in compliance with the state mechanical code provided that the local jurisdiction has established a building department, has adopted a building code by ordinance and enforces the local code through a system which includes both plan review and inspection.

c. Final plan approval and final occupancy shall be given by the state fire marshal's office.

61.6(3) Electrical requirements.

a. Projects shall be constructed in compliance with standards referenced in 661—Chapter 205, Fire Safety Requirements for Hospitals and Health Care Facilities.

b. Projects shall be constructed in compliance with the state electrical code as provided in rule 661—301.5(103A).

61.6(4) Plumbing requirements. Projects shall be constructed in compliance with 641—Chapter 25, State Plumbing Code.

61.6(5) Accessibility requirements. Projects shall be constructed in compliance with 661—Chapter 302, State Building Code—Accessibility of Buildings and Facilities Available to the Public.

61.6(6) Lighting requirements. Light shall be provided in the areas of the building as required in Table 4.1-3 of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, published by the Facilities Guidelines Institute.

61.6(7) Exit door alarm system. An exit door alarm system shall be installed on all exterior doors. (I, II, III)

481—61.7(135C) Nursing care unit.

61.7(1) A seclusion room may be used in an intermediate care facility for persons with mental illness.

61.7(2) When a seclusion room is used, it must meet the following standards. A seclusion room shall:

- a.* Be located where direct care staff can provide direct supervision; (I, II, III)
- b.* Have only one door which swings out but does not swing into a corridor; (II, III)
- c.* Have only locking devices that are approved by the state fire marshal; (I, II, III)
- d.* Have unbreakable, fire-safe vision panels arranged to permit observation of the resident. The arrangement shall ensure resident privacy and prevent casual observation by visitors or other residents; (I, II, III)
- e.* House only one resident at a time; (I, II, III)
- f.* Have an area of at least 60 square feet, but not more than 100 square feet; (II, III)
- g.* Be constructed to protect against the possibility of hiding, escape, injury and suicide; (I, II, III)
- h.* Have construction of the room area, including floor, walls, ceilings, and all openings, approved in writing by the state fire marshal prior to construction or alteration of a room. Padding materials, if used, shall be approved in writing by the state fire marshal; (I, II, III)
- i.* Contain only vandal- and tamper-resistant fixtures and hardware; (I, II, III)

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- j.* Contain no electrical receptacles; (I, II, III)
- k.* Contain an exhaust ventilation system with a fan located at the discharge end of the system, with exhaust discharging to the outside; (II, III)
- l.* Have electrical switches for the light and exhaust ventilation systems installed outside the room; (I, II, III)
- m.* Have an emergency call system for staff located outside the room near the observation window; (II, III) and
- n.* Be built with materials that are easily maintained and sanitized. (III)

481—61.8(135C) Dietetic and other service areas.

61.8(1) *Dietetic service area.* The construction and installation of equipment of the dietetic service area shall comply with the requirements of the Food and Drug Administration Food Code adopted under provisions of Iowa Code section 137F.2. (III)

61.8(2) *General storage areas.* General storage areas totaling not less than 14 square feet per bed shall be provided. If each resident has a 4-foot wide closet in the bedroom, the general storage area per bed may be reduced from 14 square feet to 10 square feet per bed. Storage areas are not required to be located in only one room. (III)

a. Storage areas for linens, janitor's supplies, sterile nursing supplies, activities supplies, library books, office supplies, kitchen supplies and mechanical plant accessories shall not be included as part of the general storage area and are not required to be located in the same area. (III)

b. Thirty percent of the general storage area may be provided in a building outside the facility if the building is easily accessible to personnel. (III)

481—61.9(135C) Specialized unit or facility for persons with chronic confusion or a dementing illness (CCDI unit or facility). A CCDI unit or facility shall be designed in accordance with Section 4.2-2.2.3.2 and other applicable provisions of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, produced by the Facility Guidelines Institute. The following provisions shall also apply:

61.9(1) A CCDI unit or facility shall be designed so that residents, staff and visitors will not pass through the unit in order to reach exits or other areas of the facility unless in an emergency. (III)

61.9(2) If the unit or facility is to be a locked unit or facility, all locking devices shall meet the requirements of the state fire marshal. If the unit or facility is to be unlocked, a system of security monitoring is required. (I, II, III)

61.9(3) The outdoor activity area for the unit or facility shall be secure. Nontoxic plants shall be used in the secured outdoor activity area. (I, II)

61.9(4) There shall be no steps inside the CCDI unit or freestanding CCDI facility. (III)

61.9(5) Dining and activity areas for the unit or facility shall be located within the unit or facility and shall not be used as the primary dining or activity area by other facility residents. (III)

61.9(6) An area shall be provided to allow nurses to prepare daily resident reports. (III)

61.9(7) If the lounge and activity areas are not adjacent to resident rooms, there shall be in clear view of the lounge and activity area one unisex resident toilet room for each ten residents. (III)

These rules are intended to implement Iowa Code section 135C.14.

[Filed 5/8/13, effective 7/3/13]

[Published 5/29/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/29/13.

ARC 0765C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 63, “Residential Care Facilities for the Mentally Retarded,” Iowa Administrative Code.

The amendments strike the terms “mental retardation” and “mentally retarded” from the Department’s administrative rules and replace them with the terms “intellectually disabled” and “intellectual disabilities,” as appropriate. The amendments make corresponding changes in the Department’s administrative rules to implement sections 11 through 18 of 2012 Iowa Acts, chapter 1019.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 6, 2013, as **ARC 0600C**. While no comments were received, the Department has made several changes to the noticed amendments, including changing the definition of and references to “qualified mental retardation professional” to reflect a change in the federal definition of a “qualified intellectual disabilities professional.” These changes are reflected in Items 2 and 13, in new Items 38 and 39 and in renumbered Item 43. Additionally, rule 481—63.48(135C), which was proposed to be amended under Notice of Intended Action, has been rescinded as it is obsolete and no longer relevant.

The State Board of Health reviewed the proposed amendments at its January 9, 2013, meeting, and subsequently approved the amendments at its May 8, 2013, meeting.

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

These amendments are intended to implement 2012 Iowa Acts, chapter 1019.

These amendments shall become effective July 3, 2013.

The following amendments are adopted.

ITEM 1. Amend **481—Chapter 63**, title, as follows:

RESIDENTIAL CARE FACILITIES FOR THE
~~MENTALLY RETARDED~~ INTELLECTUALLY DISABLED

ITEM 2. Amend subrules 63.1(2), 63.1(9) and 63.1(16) as follows:

63.1(2) “*Administrator*” means a person who administers, manages, supervises, and is in general administrative charge of a residential care facility for the ~~mentally retarded~~ intellectually disabled, whether or not such individual has an ownership interest in such facility, and whether or not the functions and duties are shared with one or more individuals.

63.1(9) “*Distinct part*” means a clearly identifiable area or section within a residential care facility for the ~~mentally retarded~~ intellectually disabled, consisting of at least a residential unit, wing, floor, or building containing contiguous rooms.

63.1(16) “*Qualified ~~mental retardation~~ intellectual disabilities professional*” means a psychologist, physician, registered nurse, educator, social worker, physical or occupational therapist, speech therapist or audiologist who meets the educational requirements for the profession, as required in the state of Iowa, and having one year’s experience working with the ~~mentally retarded~~ intellectually disabled.

ITEM 3. Amend rule 481—63.2(135C), introductory paragraph, as follows:

481—63.2(135C) Variances. Variances from these rules may be granted by the director of the department of inspections and appeals for good and sufficient reason when the need for variance has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the variance will apply only to an individual residential care facility for the ~~mentally retarded~~ intellectually disabled. Variances will be reviewed at the discretion of the director of the department of inspections and appeals.

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ITEM 4. Amend subrule 63.3(1), introductory paragraph, as follows:

63.3(1) Initial application and licensing. In order to obtain an initial residential care facility for the ~~mentally retarded~~ intellectually disabled license; for a residential care facility for the ~~mentally retarded~~ intellectually disabled which is currently licensed, the applicant must:

ITEM 5. Amend paragraph **63.3(1)“f”** as follows:

f. Submit the statutory fee for a residential care facility for the ~~mentally retarded~~ intellectually disabled for which licensure application is made;

ITEM 6. Amend subrule 63.3(2), introductory paragraph, as follows:

63.3(2) In order ~~for a facility not currently licensed as a residential care facility for the intellectually disabled~~ to obtain an initial license as a residential care facility for the ~~mentally retarded~~ intellectually disabled license ~~for a facility not currently licensed as a residential care facility for the mentally retarded,~~ the applicant must:

ITEM 7. Amend paragraphs **63.3(2)“d”** to **“f”** as follows:

d. Submit a floor plan of each floor of the residential care facility for the ~~mentally retarded~~ intellectually disabled, drawn on 8½- × 11-inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which the room will be put and window and door locations;

e. Submit a photograph of the front and side elevation of the residential care facility for the ~~mentally retarded~~ intellectually disabled;

f. Submit the statutory fee for a residential care facility for the ~~mentally retarded~~ intellectually disabled;

ITEM 8. Amend subrule 63.3(3) as follows:

63.3(3) Renewal application. In order to obtain a renewal of the residential care facility for the ~~mentally retarded~~ intellectually disabled license, the applicant must:

a. Submit the completed application form 30 days prior to annual license renewal date of residential care facility for the ~~mentally retarded~~ intellectually disabled license;

b. Submit the statutory license fee for a residential care facility for the ~~mentally retarded~~ intellectually disabled with the application for renewal;

c. Have an approved current certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations;

d. Submit appropriate changes in the résumé to reflect any changes in the resident care program and other services.

ITEM 9. Amend subrule 63.4(3) as follows:

63.4(3) The posted license shall accurately reflect the current status of the residential care facility for the ~~mentally retarded~~ intellectually disabled. (III)

ITEM 10. Amend subrules 63.5(2) to 63.5(4) and 63.5(7) as follows:

63.5(2) Of any proposed change in the residential care facility for the ~~mentally retarded's~~ intellectually disabled's functional operation or addition or deletion of required services; (III)

63.5(3) Thirty days before addition, alteration, or new construction is begun in the residential care facility for the ~~mentally retarded~~ intellectually disabled, or on the premises; (III)

63.5(4) Thirty days in advance of closure of the residential care facility for the ~~mentally retarded~~ intellectually disabled; (III)

63.5(7) Prior to the purchase, transfer, assignment, or lease of a residential care facility for the ~~mentally retarded~~ intellectually disabled, the licensee shall:

a. Inform the department of the pending sale, transfer, assignment, or lease of the facility; (III)

b. Inform the department of the name and address of the prospective purchaser, transferee, assignee, or lessee at least 30 days before the sale, transfer, assignment, or lease is completed; (III)

c. Submit a written authorization to the department permitting the department to release all information of whatever kind from the department's files concerning the licensee's residential care

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facility for the ~~mentally-retarded~~ intellectually disabled to the named prospective purchaser, transferee, assignee, or lessee; (III)

ITEM 11. Amend subrule 63.5(8) as follows:

63.5(8) Pursuant to the authorization submitted to the department by the licensee prior to the purchase, transfer, assignment, or lease of a residential care facility for the ~~mentally-retarded~~ intellectually disabled, the department shall upon request, send or give copies of all recent licensure surveys and of any other pertinent information relating to the facility's licensure status to the prospective purchaser, transferee, assignee, or lessee; costs for such copies shall be paid by the prospective purchaser.

ITEM 12. Amend rule 481—63.8(135C), introductory paragraph, as follows:

481—63.8(135C) Administrator. Each residential care facility for the ~~mentally-retarded~~ intellectually disabled shall have one person in charge, duly approved by the department or acting in a provisional capacity in accordance with these regulations. (III)

ITEM 13. Amend paragraphs **63.8(1)**“a,” “b” and “c” as follows:

a. Be a licensed nursing home administrator who is also a qualified ~~mental-retardation~~ intellectual disabilities professional; (III) or

b. Be a qualified ~~mental-retardation~~ intellectual disabilities professional with at least one year of experience in an administrative capacity in a health care facility; (III) or

c. Have completed a one-year educational training program approved by the department for residential care facility for the ~~mentally-retarded~~ intellectually disabled. (III)

ITEM 14. Amend subrule 63.8(2), introductory paragraph, as follows:

63.8(2) The administrator may act as an administrator for not more than two residential care facilities for the ~~mentally-retarded~~ intellectually disabled. (II)

ITEM 15. Amend subrule 63.8(4) as follows:

63.8(4) A provisional administrator may be appointed on a temporary basis by the residential care facility for the ~~mentally-retarded~~ intellectually disabled licensee to assume the administrative responsibilities for a residential care facility for the ~~mentally-retarded~~ intellectually disabled for a period not to exceed six months when, through no fault of its own, the home has lost its administrator and has not been able to replace the administrator, provided the department has been notified prior to the date of the administrator's appointment. (III)

ITEM 16. Amend paragraphs **63.8(6)**“a” and “c” as follows:

a. Assume the responsibility for the overall operation of the residential care facility for the ~~mentally-retarded~~ intellectually disabled; (III)

c. Establish written policies, which shall be available for review, for the operation of the residential care facility for the ~~mentally-retarded~~ intellectually disabled. (III)

ITEM 17. Amend paragraph **63.8(7)**“d” as follows:

d. Make available the residential care facility for the ~~mentally-retarded~~ intellectually disabled payroll records for departmental review as needed. (III)

ITEM 18. Amend subrules 63.9(8) and 63.9(9) as follows:

63.9(8) The residential care facility for the ~~mentally-retarded~~ intellectually disabled shall have established policies concerning the control, investigation, and prevention of infections within the facility. (III)

63.9(9) Each facility licensed as a residential care facility for the ~~mentally-retarded~~ intellectually disabled shall provide an organized continuous 24-hour program of care commensurate with the needs of the residents of the home and under the direction of an administrator whose combined training and supervisory experience is such as to ensure adequate and competent care. (III)

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

ITEM 19. Amend paragraphs **63.11(1)**“a” and “b” as follows:

a. No person with a current record of habitual alcohol intoxication or addiction to the use of drugs shall serve in a managerial role of a residential care facility for the ~~mentally-retarded~~ intellectually disabled. (II)

b. No person under the influence of alcohol or intoxicating drugs shall be permitted to provide services in a residential care facility for the ~~mentally-retarded~~ intellectually disabled. (II)

ITEM 20. Amend paragraphs **63.11(2)**“a” and “b” as follows:

a. The department shall establish on an individual facility basis the numbers and qualifications of the staff required in a residential care facility for the ~~mentally-retarded~~ intellectually disabled, using as its criteria the services being offered as indicated on the résumé program of care and, as required for individual care plans, the needs of the resident. (II, III)

b. Personnel in a residential care facility for the ~~mentally-retarded~~ intellectually disabled shall provide 24-hour coverage for residential care services for the ~~mentally-retarded~~ intellectually disabled. Personnel shall be up and dressed at all times in facilities ~~over~~ with more than 15 beds. In facilities with 15 or ~~less~~ fewer beds, personnel shall be up and dressed when residents are awake. (II, III)

ITEM 21. Amend paragraphs **63.13(1)**“a” and “b,” “e” to “g” and “i” as follows:

a. No resident who is in need of greater services than the facility can provide shall be admitted or retained in a residential care facility for the ~~mentally-retarded who is in need of greater services than the facility can provide~~ intellectually disabled. (II, III)

b. No residential care facility for the ~~mentally-retarded~~ intellectually disabled shall admit more residents than the number of beds for which it is licensed. (II, III)

e. The admission of a resident to a residential care facility for the ~~mentally-retarded~~ intellectually disabled shall not give the facility or any employee of the facility the right to manage, use, or dispose of any property of the resident except with the written authorization of the resident or the resident’s legal representative. (III)

f. The admission of a resident shall not grant the residential care facility for the ~~mentally-retarded~~ intellectually disabled the authority or responsibility to manage the personal affairs of the resident except as may be necessary for the safety of the resident and safe and orderly management of the residential care facility for the ~~mentally-retarded~~ intellectually disabled as required by these rules. (III)

g. A residential care facility for the ~~mentally-retarded~~ intellectually disabled shall provide for the safekeeping of personal effects, funds, and other property of its residents. The facility may require that items of exceptional value or which would convey unreasonable responsibilities to the licensee be removed from the premises of the facility for safekeeping. (III)

i. Funds or properties received by the residential care facility for the ~~mentally-retarded~~ intellectually disabled, belonging to or due a resident, expendable for the resident’s account, shall be trust funds. (III)

ITEM 22. Amend paragraph **63.13(2)**“b” as follows:

b. Proper arrangements shall be made by the residential care facility for the ~~mentally-retarded~~ intellectually disabled for the welfare of the resident prior to transfer or discharge in the event of an emergency or inability to reach the next of kin or legal representative. (III)

ITEM 23. Amend subrules 63.15(1), 63.15(2), 63.15(6) and 63.15(7) as follows:

63.15(1) Each resident in a residential care facility for the ~~mentally-retarded~~ intellectually disabled shall have a designated licensed physician, who may be called when needed. (III)

63.15(2) Each resident admitted to a residential care facility for the ~~mentally-retarded~~ intellectually disabled shall have had a physical examination prior to admission. (II, III)

a. to c. No change.

63.15(6) Each resident shall be visited by or shall visit the resident’s physician at least annually. The year period shall be measured from the date of admission and is not to include preadmission physicals. Any required physician task or visit in a residential care facility for the ~~mentally-retarded~~ intellectually

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

disabled may also be performed by an advanced registered nurse practitioner, clinical nurse specialist, or physician assistant who is working in collaboration with the physician. (III)

63.15(7) Residents shall be admitted to a residential care facility for the ~~mentally-retarded~~ intellectually disabled only on a written order signed by a physician certifying that the individual being admitted requires no more than personal care and supervision but does not require nursing care. (III)

ITEM 24. Amend subrule 63.16(1) as follows:

63.16(1) The residential care facility for the ~~mentally-retarded~~ intellectually disabled personnel shall assist residents to obtain regular and emergency dental services. (III)

ITEM 25. Amend subrule 63.17(1), introductory paragraph, as follows:

63.17(1) *Resident record.* The licensee shall keep a permanent record on all residents admitted to a residential care facility for the ~~mentally-retarded~~ intellectually disabled with all entries current, dated, and signed. (III) The record shall include:

ITEM 26. Amend paragraph **63.17(2)“a”** as follows:

a. Each residential care facility for the ~~mentally-retarded~~ intellectually disabled shall maintain an incident record report and shall have available incident report forms. (III)

ITEM 27. Amend paragraph **63.18(1)“c”** as follows:

c. Bulk supplies of prescription drugs shall not be kept in a residential care facility for the ~~mentally-retarded~~ intellectually disabled unless a licensed pharmacy is established in the facility under the direct supervision and control of a pharmacist. (III)

ITEM 28. Amend paragraph **63.18(3)“f”** as follows:

f. In an ~~RCF/MR~~ RCF/ID facility licensed for 15 or fewer beds, a person who has successfully completed a state-approved medication manager course may administer medications.

ITEM 29. Amend subrule 63.21(2), introductory paragraph, as follows:

63.21(2) Each residential care facility for the ~~mentally-retarded~~ intellectually disabled shall provide an organized resident activity program for the group and for the individual resident which shall include suitable activities for evenings and weekends. (III)

ITEM 30. Amend paragraph **63.21(3)“a”** as follows:

a. Each residential care facility for the ~~mentally-retarded~~ intellectually disabled with over 15 beds shall employ a person to direct the activities program. (III)

ITEM 31. Amend rule 481—63.23(135C), introductory paragraph, as follows:

481—63.23(135C) Safety. The licensee of a residential care facility for the ~~mentally-retarded~~ intellectually disabled shall be responsible for the provision and maintenance of a safe environment for residents and personnel. (III)

ITEM 32. Amend paragraph **63.23(1)“a”** as follows:

a. All residential care facilities for the ~~mentally-retarded~~ intellectually disabled shall meet the fire safety rules and regulations as promulgated by the state fire marshal. (I, II)

ITEM 33. Amend subrule 63.31(1) as follows:

63.31(1) A residential care facility for the ~~mentally-retarded~~ intellectually disabled shall be constructed in a neighborhood free from excessive noise, dirt, polluted or odorous air, or similar disturbances. (III)

ITEM 34. Amend paragraph **63.33(6)“c”** as follows:

c. A statement shall be signed by the resident, or responsible party, indicating an understanding of these rights and responsibilities, and shall be maintained in the record. The statement shall be signed no later than five days after admission, and a copy of the signed statement shall be given to the resident or responsible party, if applicable. In the case of a ~~mentally-retarded~~ intellectually disabled resident, the signature shall be witnessed by a person not associated with or employed by the facility. The witness may be a parent, guardian, Medicaid agency representative, etc. (II)

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

ITEM 35. Amend subrule 63.33(8), introductory paragraph, as follows:

63.33(8) Each resident or responsible party shall be fully informed by a physician of the resident's health and medical condition unless medically contraindicated (as documented by a physician in the resident's record). Each resident shall be afforded the opportunity to participate in the planning of the resident's total care and medical treatment, which may include, but is not limited to, nursing care, nutritional care, rehabilitation, restorative therapies, activities, and social work services. Each resident only participates in experimental research conducted under the ~~department of health and human services~~ U.S. Department of Health and Human Services' protection from research risks policy and then only upon the resident's informed written consent. Each resident has the right to refuse treatment except as provided by Iowa Code chapter 229. In the case of a confused or ~~mentally retarded~~ intellectually disabled individual, the responsible party shall be informed by the physician of the resident's medical condition and be afforded the opportunity to participate in the planning of the resident's total care and medical treatment, to be informed of the medical condition, and to refuse to participate in experimental research. (II)

ITEM 36. Amend paragraph **63.33(8)"c"** as follows:

c. If the physician determines or in the case of a confused or ~~mentally retarded~~ intellectually disabled resident the responsible party determines that informing the resident of the resident's condition is contraindicated, this decision and reasons for it shall be documented in the resident's record by the physician. (II)

ITEM 37. Amend subrule 63.36(3) as follows:

63.36(3) The facility shall keep on deposit personal funds over which the resident has control in accordance with Iowa Code section 135C.24(2). Should the resident request these funds, they shall be given to the resident on request with receipts maintained by the facility and a copy to the resident. In the case of a confused or ~~mentally retarded~~ intellectually disabled resident, the resident's responsible party shall designate a method of disbursing the resident's funds. (II)

ITEM 38. Amend subrule 63.41(7) as follows:

63.41(7) Residents shall be permitted to leave the facility and environs at reasonable times unless there are justifiable reasons established in writing by the attending physician, qualified ~~mental retardation~~ intellectual disabilities professional or facility administrator for refusing permission. (II)

ITEM 39. Amend rule 481—63.42(135C), introductory paragraph, as follows:

481—63.42(135C) Resident activities. Each resident may participate in activities of social, religious, and community groups at the resident's discretion unless contraindicated for reasons documented by the attending physician or qualified ~~mental retardation~~ intellectual disabilities professional as appropriate in the resident's record. (II)

ITEM 40. Amend rule 481—63.47(135C), introductory paragraph, as follows:

481—63.47(135C) Specialized license for three- to five-bed facilities. The specialized license is for residential care facilities which serve persons with ~~mental retardation~~ intellectual disabilities, chronic mental illness and other developmental disabilities having five or fewer residents as specified in Iowa Code section 225C.26. The facility is exempt from Iowa Code section 135.63. For this specialized license, all rules of 481—Chapter 63 apply except those which are deleted or amended, as indicated in subsequent rules.

ITEM 41. Amend paragraph **63.47(1)"f"** as follows:

f. Unless documented as appropriate within the residents' individual program plans, populations with primary diagnosis of chronic mental illness or ~~mental retardation~~ intellectual disability/developmental disability may not be residents of the same specialized license facility. (II, III)

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

ITEM 42. Amend subrule 63.47(2) as follows:

63.47(2) The housing for persons with ~~mental retardation~~ intellectual disabilities, chronic mental illness, and other developmental disabilities, developed pursuant to this rule shall be eligible for funding utilized by licensed residential care facilities for the ~~mentally retarded~~ intellectually disabled.

ITEM 43. Amend subrule **63.47(7)**, numbered paragraphs “**2**,” “**3**” and “**28**,” as follows:

2. 63.8(1)“*a*”—Add “or qualified mental health professional (III)” after “qualified ~~mental retardation~~ intellectual disabilities professional”. (III)

3. 63.8(2)—Add “For purposes of the specialized license, the administrator may act as an administrator for not more than three residential care facilities for the ~~mentally retarded~~ intellectually disabled, chronic mentally ill, and developmentally disabled.” (II)

28. 63.33(8)“*c*”—Delete “in the case of a confused or ~~mentally retarded~~ intellectually disabled resident”. Change any reference of “responsible party” to “legal guardian”.

ITEM 44. Amend subrule 63.47(9), introductory paragraph, as follows:

63.47(9) “~~Mental retardation~~” “Intellectual disabilities” as used in this chapter shall also include the chronically mentally ill and the developmentally disabled for purposes of this specialized license.

ITEM 45. Amend paragraph **63.47(9)“a**,” introductory paragraph, as follows:

a. For the specialized license, “persons with ~~mental retardation~~ intellectual disabilities” means persons with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, manifested during the developmental period.

ITEM 46. Rescind and reserve rule **481—63.48(135C)**.

[Filed 5/8/13, effective 7/3/13]

[Published 5/29/13]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/29/13.

ARC 0764C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 64, “Intermediate Care Facilities for the Mentally Retarded,” Iowa Administrative Code.

The amendments strike the terms “mental retardation” and “mentally retarded” from the Department’s administrative rules and replace them with the terms “intellectually disabled” and “intellectual disabilities,” as appropriate. The amendments make corresponding changes in the Department’s administrative rules to implement sections 11 through 18 of 2012 Iowa Acts, chapter 1019.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 6, 2013, as **ARC 0599C**. While no comments were received, the Department has made several changes to the noticed amendments, including changing the term “qualified mental retardation professional” to “qualified intellectual disabilities professional.” This change is being made to reflect a change in the federal definition of the job description and can be found in new Item 12. Additionally, rule 481—64.59(135C), which was proposed to be amended under Notice of Intended Action, has been rescinded as it is obsolete and no longer relevant.

The State Board of Health reviewed the amendments at its January 9, 2013, meeting, and subsequently approved the amendments at its May 8, 2013, meeting.

These amendments are intended to implement 2012 Iowa Acts, chapter 1019.

The amendments shall become effective July 3, 2013.

The following amendments are adopted.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

ITEM 1. Amend **481—Chapter 64**, title, as follows:

INTERMEDIATE CARE FACILITIES FOR THE
~~MENTALLY RETARDED~~ INTELLECTUALLY DISABLED

ITEM 2. Amend rule 481—64.2(135C), introductory paragraph, as follows:

481—64.2(135C) Variances. Variances from these rules may be granted by the director of the department of inspections and appeals for good and sufficient reason when the need for variance has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the variance will apply only to an individual intermediate care facility for the ~~mentally retarded~~ intellectually disabled. Variances will be reviewed at the discretion of the director of the department of inspections and appeals.

ITEM 3. Amend subrule 64.3(1), introductory paragraph, as follows:

64.3(1) Initial application. In order to obtain an initial intermediate care facility for the ~~mentally retarded~~ intellectually disabled license for an intermediate care facility for the ~~mentally retarded~~ intellectually disabled which is currently licensed, the applicant must:

ITEM 4. Amend paragraphs **64.3(1)“d”** and **“e”** as follows:

d. Submit a photograph of the front and side elevation of the intermediate care facility for the ~~mentally retarded~~ intellectually disabled;

e. Submit the statutory fee for an intermediate care facility for the ~~mentally retarded~~ intellectually disabled license;

ITEM 5. Amend subrule 64.3(2), introductory paragraph, as follows:

64.3(2) In order to obtain an initial intermediate care facility for the ~~mentally retarded~~ intellectually disabled license for a facility not currently licensed as an intermediate care facility for the ~~mentally retarded~~ intellectually disabled, the applicant must:

ITEM 6. Amend paragraphs **64.3(2)“d,” “e”** and **“f”** as follows:

d. Submit a floor plan of each floor of the intermediate care facility for the ~~mentally retarded~~ intellectually disabled, drawn on 8½- × 11-inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which the rooms will be put and window and door locations;

e. Submit a photograph of the front and side elevation of the intermediate care facility for the ~~mentally retarded~~ intellectually disabled;

f. Submit the statutory fee for an intermediate care facility for the ~~mentally retarded~~ intellectually disabled;

ITEM 7. Amend subrule 64.3(3), introductory paragraph, as follows:

64.3(3) Renewal application. In order to obtain a renewal of the intermediate care facility for the ~~mentally retarded~~ intellectually disabled license, the applicant must:

ITEM 8. Amend paragraphs **64.3(3)“a”** and **“b”** as follows:

a. Submit the completed application form 30 days prior to annual license renewal date of intermediate care facility for the ~~mentally retarded~~ intellectually disabled license;

b. Submit the statutory license fee for an intermediate care facility for the ~~mentally retarded~~ intellectually disabled with the application for renewal;

ITEM 9. Amend subrule 64.4(3) as follows:

64.4(3) The posted license shall accurately reflect the current status of the intermediate care facility for the ~~mentally retarded~~ intellectually disabled. (III)

ITEM 10. Amend subrule 64.4(6) as follows:

64.4(6) The facility shall have in effect a transfer agreement with one or more hospitals sufficiently close to the facility to make feasible the transfer between them of residents and their records. (III) Any facility which does not have such an agreement in effect but has attempted in good faith to enter into such an agreement with a hospital shall be considered to have such an agreement so long as it is in the

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

public interest and essential to ensuring intermediate care facility for the ~~mentally-retarded~~ intellectually disabled services for eligible persons in the community.

ITEM 11. Amend rule 481—64.5(135C) as follows:

481—64.5(135C) Notifications required by the department. The department shall be notified:

64.5(1) Within 48 hours, by letter, any reduction or loss of direct care professional or dietary staff lasting more than seven days which places the staffing ratio of the intermediate care facility for the ~~mentally-retarded~~ intellectually disabled below that required for licensing. No additional residents shall be admitted until the minimum staffing requirements are achieved; (III)

64.5(2) Of any proposed change in the intermediate care facility for the ~~mentally-retarded's~~ intellectually disabled's functional operation or addition or deletion of required services; (III)

64.5(3) Thirty days before addition, alteration, or new construction is begun in the intermediate care facility for the ~~mentally-retarded~~ intellectually disabled, or on the premises; (III)

64.5(4) Thirty days in advance of closure of the intermediate care facility for the ~~mentally-retarded~~ intellectually disabled; (III)

64.5(5) Within two weeks of any change in administrator; (III)

64.5(6) When any change in the category of license is sought; (III)

64.5(7) Prior to the purchase, transfer, assignment, or lease of an intermediate care facility for the ~~mentally-retarded~~ intellectually disabled, the licensee shall:

- a. Inform the department of the pending sale, transfer, assignment, or lease of the facility; (III)
- b. Inform the department of the name and address of the prospective purchaser, transferee, assignee, or lessee at least 30 days before the sale, transfer, assignment, or lease is completed; (III)
- c. Submit a written authorization to the department permitting the department to release all information of whatever kind from the department's files concerning the licensee's intermediate care facility for the ~~mentally-retarded~~ intellectually disabled to the named prospective purchaser, transferee, assignee, or lessee. (III)

64.5(8) Pursuant to the authorization submitted to the department by the licensee prior to the purchase, transfer, assignment, or lease of an intermediate care facility for the ~~mentally-retarded~~ intellectually disabled, the department shall, upon request, send or give copies of all recent licensure surveys and of any other pertinent information relating to the facility's licensure status to the prospective purchaser, transferee, assignee, or lessee; costs for such copies shall be paid by the prospective purchaser.

ITEM 12. Amend paragraph **64.17(7)“b”** as follows:

b. If a resident has a temporary absence from a facility for therapeutic reasons as approved by a physician or qualified ~~mental-retardation~~ intellectual disabilities professional, the facility shall ask if the resident or responsible party wishes that the bed be held open. This request shall be documented in the resident's record, including the response. The bed shall be held open at least 30 days per year, and the facility shall receive payment for the absent periods in accordance with the provisions of the contract. The required holding during temporary absences for therapeutic reasons is limited to 30 days per year. (II)

ITEM 13. Rescind and reserve rule **481—64.59(135C)**.

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[Published 5/29/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/29/13.

ARC 0749C

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy hereby amends Chapter 10, "Controlled Substances," Chapter 22, "Unit Dose, Alternative Packaging, and Emergency Boxes," and Chapter 23, "Long-Term Care Pharmacy Practice," Iowa Administrative Code.

The amendments authorize a pharmacy other than a facility's primary provider pharmacy to provide to the facility to meet the needs of the facility's patients an emergency/first dose drug supply containing those drugs and products not stocked or available from the primary provider pharmacy. This additional supply may include, but is not limited to, parenteral or compounded drug products. The amendments also provide that a multidose container of a drug removed from the emergency drug supply for administration to a patient be labeled with a patient-specific label within 24 hours of initial administration or that an appropriately labeled drug order be dispensed and delivered by the provider pharmacy. The record requirements for controlled substances destroyed in a long-term care facility and for previously dispensed controlled substances destroyed by a pharmacy are amended to require the recording of the dispensing pharmacy or other source of the controlled substance and the prescription number or other unique identification assigned to the prescription.

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

Notice of Intended Action was published in the March 20, 2013, Iowa Administrative Bulletin as **ARC 0652C**. The Board received no written comments regarding the proposed amendments. The adopted amendments are identical to those published under Notice.

The amendments were approved during the April 24, 2013, meeting of the Board of Pharmacy.

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

These amendments are intended to implement Iowa Code sections 124.301, 155A.13, and 155A.15.

These amendments will become effective on July 3, 2013.

The following amendments are adopted.

ITEM 1. Amend subrule 10.18(3) as follows:

10.18(3) *Previously dispensed controlled substances.* Controlled substances dispensed to or for a patient and subsequently requiring destruction due to discontinuance of the drug, death of the patient, or other reasons necessitating destruction may be destroyed or otherwise disposed of by a pharmacist in witness of one other responsible adult pursuant to this subrule. All licenses and registrations issued to the pharmacy, the pharmacist, and any individual witnessing the destruction or other disposition shall not be subject to sanctions relating to controlled substances at the time of the destruction or disposition. The individuals involved in the destruction or other disposition shall not have been subject to any criminal, civil, or administrative action relating to violations of controlled substances laws, rules, or regulations within the past five years. The pharmacist in charge shall be responsible for designating pharmacists authorized to participate in the destruction or other disposition pursuant to this subrule. The authorized pharmacist shall prepare and maintain in the pharmacy a readily retrievable record of the destruction or other disposition, which shall be clearly marked to indicate the destruction or other disposition of noninventory or patient drugs. The record shall include, at a minimum, the following:

a. ~~Source~~ The source of the controlled substance (patient identifier or administering practitioner, if applicable, prescription number or other unique identification number, and date of return);

b. The name, strength, and dosage form of the substance;

c. The quantity returned and destroyed or otherwise disposed of;

d. The date the substance is destroyed or otherwise disposed of;

e. The signatures or other unique identification of the pharmacist and the witness;

f. The name and address of the dispensing pharmacy or practitioner if the controlled substance was not dispensed by the pharmacy completing the destruction.

PHARMACY BOARD[657](cont'd)

ITEM 2. Amend subrule 22.7(1) as follows:

22.7(1) *Emergency/first dose drug supplies.* ~~All contents~~ Contents of the emergency/first dose drug supply shall be provided by ~~one~~ a primary provider pharmacy designated by the facility, and the drug supply shall be available to meet the needs of all patients of the facility, without penalty or discrimination. If the primary provider pharmacy does not supply or is unable to supply all drugs and products needed for the emergency care of facility patients, a second provider pharmacy may provide an emergency/first dose drug supply consisting only of drugs and products not stocked or available from the primary provider pharmacy including, but not limited to, parenteral or compounded drug products. The provider ~~pharmacy~~ pharmacies shall be properly registered with the federal Drug Enforcement Administration (DEA) and the board and shall be currently licensed by the board. The provider pharmacist or pharmacists, the consultant pharmacist, the director of nursing of the facility, and the medical director of the facility, or their respective designees, shall jointly determine and prepare a list of drugs necessary for prompt use in patient care that will be available in ~~the~~ each emergency/first dose drug supply. Drugs shall be listed by identity and quantity, shall be limited to drugs necessary to meet the emergency needs of the patients served, and shall be periodically reviewed pursuant to policy. Careful patient planning should be a cooperative effort between the ~~pharmacy~~ pharmacies and the facility to make drugs available, and ~~this supply~~ emergency/first dose drug supplies shall only be used for emergency or unanticipated needs. The intent of the emergency/first dose drug supply is not to relieve a pharmacy of the responsibility for timely provision of a patient's routine drug needs and is not intended to relieve any provider pharmacy from the provider pharmacy's responsibility to provide 24-hour services to facility patients; the intent is to ensure that a supply of drugs is available to each patient in case of urgent need. The drugs in ~~the~~ emergency/first dose drug supply supplies are the responsibility of the respective provider pharmacy and, therefore, shall not be used or altered in any way except as provided in this rule.

ITEM 3. Amend subrule 22.7(5) as follows:

22.7(5) *Removal of drugs.* A drug shall be removed from the emergency/first dose drug supply only pursuant to a valid prescription order and by authorized personnel or by the provider pharmacist. The patient's dispensing pharmacy shall be notified, prior to the administration of a second dose, that a drug was administered to a specific patient. Upon notification, the dispensing pharmacist shall perform drug use review to assess the appropriateness of the drug therapy for the patient. If the emergency/first dose drug supply contains a multidose package of a drug product that is removed from the supply for administration of one or more doses of the product to a patient and if following that administration the package contains one or more additional doses of the drug product and if the prescriber authorizes continuation of the drug product for that patient, the provider pharmacy shall complete either of the following processes.

a. Prepare and affix to the multidose package a label in compliance with rule 657—23.11(124,155A). The label shall be prepared and affixed to the package within 24 hours of administration of the emergency dose or doses.

b. Dispense, pursuant to a valid prescription order and in compliance with rule 657—23.11(124,155A), an appropriately labeled supply of the drug for the patient. The new prescription shall be delivered to the facility within 24 hours of administration of the emergency dose or doses.

ITEM 4. Amend rule 657—23.5(124,155A) as follows:

657—23.5(124,155A) *Emergency drugs.* A supply of emergency drugs may be provided by one or more long-term care ~~pharmacy~~ provider pharmacies to the facility pursuant to rule 657—22.7(124,155A).

23.5(1) *Emergency medication order—pharmacist review.* When an emergency drug is provided pursuant to rule 657—22.7(124,155A), the medication order shall be reviewed by the resident's dispensing pharmacist prior to the administration of a second dose.

23.5(2) *Other emergency drugs and devices.* In addition to ~~an~~ one or more emergency ~~box~~ boxes or stat drug ~~box~~ boxes, a long-term care facility staffed by one or more persons licensed to administer drugs may maintain a stock of intravenous fluids, irrigation fluids, heparin flush kits, medicinal gases, sterile

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water and saline, and prescription devices. Such stock shall be limited to a listing to be determined by the provider pharmacist in consultation with the consultant pharmacist and the medical director and director of nursing of the facility.

ITEM 5. Amend subrule 23.21(1) as follows:

23.21(1) *Destruction in the facility.* In facilities staffed by one or more persons licensed to administer drugs, a licensed health care professional (pharmacist, registered nurse, licensed practical nurse) may destroy controlled substances in witness of one other responsible adult. The professional destroying or otherwise disposing of the drug shall prepare and maintain a readily retrievable record of the destruction or other disposition which shall be clearly marked to indicate the destruction or other disposition of resident drugs. The record shall include, at a minimum, the following:

- a. Resident name and unique identification or number assigned by the dispensing pharmacy to the prescription;
- b. The name, strength, and dosage form of the substance;
- c. The quantity destroyed or otherwise disposed of;
- d. The date the substance is destroyed or otherwise disposed of;
- e. The signature or uniquely identifying initials or other unique identification of the professional and the witness;
- f. The name and address of the dispensing pharmacy or the dispensing practitioner.

[Filed 4/30/13, effective 7/3/13]

[Published 5/29/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/29/13.

ARC 0754C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 139A.3, the Department of Public Health hereby amends Chapter 1, "Reportable Diseases, Poisonings and Conditions, and Quarantine and Isolation," Iowa Administrative Code.

This amendment provides an exemption for health care providers and hospitals from reporting communicable and infectious disease laboratory results if the health care provider or hospital ensures that the laboratory performing the analysis provides a report containing the required information to the Department. Health care providers and hospitals that do not perform their own laboratory tests which yield reportable disease results will benefit from this amendment in that the providers and hospitals will not need to incur significant costs associated with electronic laboratory reporting (ELR) to the Department for the purpose of sending a duplicate report that the Department has already received. Also, Meaningful Use requirements call for eligible hospitals and critical access hospitals to accomplish information system-to-system communication. There is no consideration of one important reporting facet of hospital business practice: whether or not a hospital actually performs the laboratory test or sends it out to another laboratory facility. If a hospital performs the laboratory work, the hospital should comply with the Meaningful Use objective and report laboratory results. However, if the hospital does not perform the work and the performing laboratory reports results back to both the facility, which the laboratory would do naturally, and to the Department, which the laboratory should do to comply with existing legal requirements, then the additional effort and cost of implementing ELR from the requesting (but not performing) hospital so that it is capable of reporting a duplicate result to the Department provides zero benefit.

Notice of Intended Action was published in the April 3, 2013, Iowa Administrative Bulletin as **ARC 0672C**. No comments were received. The adopted amendment is identical to the one published under Notice.

The State Board of Health adopted this amendment on May 8, 2013.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

After analysis and review of this rule making, the impact on jobs is anticipated to be minimal.

This amendment is intended to implement Iowa Code section 139A.3.

This amendment will become effective on July 3, 2013.

The following amendment is adopted.

Amend paragraph **1.4(1)“a”** as follows:

a. Health care providers, hospitals, clinical laboratories, and other health care facilities are required to report cases of reportable communicable and infectious diseases. Health care providers and hospitals are exempted from reporting communicable and infectious disease laboratory results if the health care provider or hospital ensures that the laboratory performing the analysis provides a report containing the required information to the department.

[Filed 5/8/13, effective 7/3/13]

[Published 5/29/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/29/13.

ARC 0755C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 141A.2(2), the Department of Public Health hereby amends Chapter 11, “Acquired Immune Deficiency Syndrome (AIDS),” Iowa Administrative Code.

The rules in Chapter 11 describe procedures and programs related to HIV/AIDS, including laboratory certification, training programs, notification and testing of exposed persons, and the AIDS Drug Assistance Program (ADAP). These amendments for the Iowa ADAP provide updated and consistent language, an expansion of program definitions, and a clear delineation between program components.

Notice of Intended Action was published in the March 20, 2013, Iowa Administrative Bulletin as **ARC 0650C**. No comments were received. These amendments are identical to those published under Notice.

The State Board of Health adopted these amendments on May 8, 2013.

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

These amendments are intended to implement Iowa Code section 141A.3.

These amendments will become effective on July 3, 2013.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definitions of “Deductible,” “Health insurance assistance program,” “Medication assistance program” and “Payer of last resort” in rule **641—11.84(141A)**:

“*Deductible*” means an amount of money that an insured person must pay out of pocket before any benefits from the health insurance policy can be used.

“*Health insurance assistance program*” means a component of ADAP that purchases health insurance and pays insurance premiums, copayments for medications, and deductibles for eligible enrollees in ADAP.

“*Medication assistance program*” means a component of ADAP that provides medications directly to eligible enrollees in ADAP.

“*Payer of last resort*” means a requirement to coordinate services and seek payment from all other sources before Ryan White funds are used.

ITEM 2. Amend the following definitions in rule **641—11.84(141A)**:

“*ADAP advisory committee*” means the committee appointed by the bureau of ~~disease prevention and immunization~~ HIV, STD, and hepatitis to provide advice and technical assistance to the department regarding the ADAP program.

“*AIDS drug assistance program*” or “*ADAP*” means the Iowa AIDS drug assistance program administered by the bureau of ~~disease prevention and immunization~~ HIV, STD, and hepatitis within the

PUBLIC HEALTH DEPARTMENT[641](cont'd)

department and includes two components, the medication assistance program and the health insurance assistance program.

“*Bureau*” means the bureau of ~~disease prevention and immunization~~ HIV, STD, and hepatitis within the department.

“*Family Household income*” means the combined gross earned and unearned income of all individuals within the ~~family unit~~ household.

“*Family-unit Household*” means a group of individuals residing together who are related by birth, marriage, or adoption; or an individual who does not reside with any other individual to whom the individual is related by birth, marriage, or adoption.

“*Iowa AIDS ADAP formulary*” means the list of drugs approved for use in the ADAP program by the bureau upon recommendation of the ADAP advisory committee.

ITEM 3. Amend rule 641—11.85(141A) as follows:

641—11.85(141A) Purpose. The AIDS drug assistance program is a state-administered program that provides certain HIV/AIDS medications to eligible low-income individuals diagnosed with HIV or AIDS if adequate funding is available for administration of the program. There are two components to the Iowa AIDS drug assistance program: the medication assistance program and the health insurance assistance program. The AIDS drug assistance program is authorized under ~~Title II of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act~~ Part B of Title XXVI of the Public Health Service (PHS) Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Public Law 111-87). This legislation requires that the Ryan White program, including the AIDS drug assistance program, be the payer of last resort for HIV-related services. ~~The AIDS drug assistance program will cease to provide medications when available funding is exhausted or terminated.~~ ADAP is not an entitlement program and does not create a right to assistance. In the event that funding is exhausted or terminated or there are changes in state or federal guidelines, programs, or regulations that impact funding available to ADAP, the department reserves the right to close enrollment, cease to provide medication assistance or health insurance assistance, or alter eligibility criteria until such time that funding is again sufficient.

ITEM 4. Renumber current rules **641—11.86(141A)** and **641—11.87(141A)** as **641—11.87(141A)** and **641—11.88(141A)**.

ITEM 5. Adopt the following new rule 641—11.86(141A):

641—11.86(141A) Ensuring payer of last resort. To ensure that ADAP is the payer of last resort, the Iowa Medicaid enterprise shall grant the department access to client-level information for persons enrolled in Medicaid.

ITEM 6. Amend renumbered rules 641—11.87(141A) and 641—11.88(141A) as follows:

641—11.87(141A) Eligibility requirements.

11.87(1) An applicant is eligible to participate in ~~ADAP~~ the ADAP medication assistance program if the applicant:

- a. Applies for enrollment in ADAP on a form provided by the department;
- b. Has no ~~or inadequate~~ health insurance to cover the cost of the drugs that are or may become available from ADAP;
- c. ~~Is not fully covered under the Iowa Medicaid program~~ currently being prescribed a drug on the ADAP formulary;
- d. Has an annual gross family household income that is less than or equal to 200 percent of the poverty level as determined by the most recent federal poverty guidelines published annually by the United States Department of Health and Human Services for the size of the household (this income shall be determined after a \$500 work-related ~~deduction~~ allowance is deducted from the monthly gross salary of an employed person with HIV/AIDS);

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~~e.~~ Has liquid assets, not including major residence, household furnishings, and one vehicle, valued at less than \$10,000;

~~f.~~ e. Has a medical diagnosis of HIV infection or AIDS or is an unborn infant or an infant under 18 months of age who has an HIV-infected mother; and

~~g.~~ f. Is a resident of Iowa.

11.87(2) An applicant is eligible to participate in the ADAP health insurance assistance program if the applicant:

a. Applies for enrollment in ADAP on a form provided by the department;

b. Has creditable health insurance coverage;

c. Is currently being prescribed a drug on the ADAP formulary;

d. Has an annual gross household income that is less than or equal to 400 percent of the poverty level as determined by the most recent federal poverty guidelines published annually by the United States Department of Health and Human Services for the size of the household;

e. Has a medical diagnosis of HIV infection or AIDS or is an unborn infant or an infant under 18 months of age who has an HIV-infected mother; and

f. Is a resident of Iowa.

11.87(2) 11.87(3) For purposes of ~~paragraph 11.86(1)“d,”~~ paragraphs 11.87(1)“d” and 11.87(2)“d,” an individual may report annual family household income by using actual family household income for the most recent 12 months or by using estimated annual family household income determined by multiplying the current monthly family household income by 12.

641—11.88(141A) Enrollment process.

11.88(1) The department shall review each completed application and shall determine enrollment based upon applicant eligibility, the date on which the application was completed, and the availability of funds. When the department determines that an applicant is eligible for enrollment, the applicant may be enrolled for ~~42~~ six months commencing with the date of the determination or may be enrolled for a shorter time period at the discretion of the department.

11.88(2) An applicant shall provide the department with all requested information and shall execute any consent forms or releases of information necessary for the department to verify eligibility.

~~**11.88(3)** The department shall review eligibility annually after enrollment unless one of the following events occurs within the 12-month period to end eligibility:~~

~~a.~~ The enrolled individual dies;

~~b.~~ The enrolled individual is determined eligible and enrolled to fully receive medical services through a third-party payer;

~~c.~~ The enrolled individual's annual family income increases to an amount above 200 percent of the poverty level; or

~~d.~~ The enrolled individual establishes residency outside the state of Iowa.

~~**11.88(4)** An applicant must submit a renewal application form on an annual basis, accompanied by all information requested by the department.~~

ITEM 7. Renumber current rules **641—11.88(141A)**, **641—11.89(141A)**, **641—11.90(141A)** and **641—11.91(141A)** as **641—11.90(141A)**, **641—11.91(141A)**, **641—11.92(141A)** and **641—11.93(141A)**, respectively.

ITEM 8. Adopt the following new rule **641—11.89(141A)**:

641—11.89(141A) Discontinuation of services.

11.89(1) The department shall review eligibility semiannually after enrollment unless one of the following events occurs within the six-month period to end eligibility:

a. The enrolled individual dies;

b. The enrolled individual is determined eligible and enrolled to fully receive medical services through a third-party payer and is able to fully pay the insurance deductibles and copayments;

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- c. The enrolled individual's annual household income increases to an amount above the respective ADAP component's income guidelines;
- d. The enrolled individual establishes residency outside the state of Iowa;
- e. The enrolled individual does not request drugs within a 90-day period; or
- f. The enrolled individual is placed in an institution such as a nursing home, state prison, or jail for more than 30 days.

11.89(2) An applicant must submit renewal documentation on a semiannual basis, accompanied by all information requested by the department.

ITEM 9. Amend renumbered paragraph **11.90(1)“b”** as follows:

- b. Are on the Iowa AIDS ADAP formulary.

ITEM 10. Amend renumbered subrule 11.91(2) as follows:

11.91(2) The department shall place names on the waiting list ~~in the following order:~~ in chronological order based upon the date of receipt of a completed application by the department.

~~a.—Women who have been diagnosed with HIV infection or AIDS and who are pregnant shall be placed on the waiting list with priority over all other applicants.~~

~~b.—Applicants who are already on medications shall be placed on the waiting list with priority over all applicants listed in paragraphs “c” and “d.”~~

~~c.—HIV medication naïve patients shall be placed on the waiting list in the following order with priority over all applicants listed in paragraph “d”:~~

~~(1) CD4 count of < 200 cells/mm³ regardless of viral load.~~

~~(2) New opportunistic (HIV-related) infection or malignancy.~~

~~(3) Asymptomatic and CD4 count of 200-350 and viral load > 55,000 copies/ml.~~

~~(4) Asymptomatic and CD4 count of > 350. If viral load is > 55,000, a documented fall in CD4 counts on three measurements of at least 15 percent of first measurement (i.e., 500 on first test must drop to less than or equal to 425).~~

~~d.—All other applicants shall be placed on the waiting list in chronological order based upon the date of receipt of a completed application by the department.~~

ITEM 11. Amend renumbered subrule 11.91(3) as follows:

11.91(3) To verify that applicants on the waiting list continue to meet ADAP eligibility requirements, the department shall require applicants on the waiting list to submit reapplication forms ~~annually~~ semiannually.

ITEM 12. Adopt the following new subrule 11.91(4):

11.91(4) The department shall remove applicants from the waiting list in the chronological order in which their completed applications were approved, provided all updates were received by the department.

ITEM 13. Amend renumbered rule 641—11.93(141A) as follows:

641—11.93(141A) Confidentiality. The ADAP application and all information received or maintained by the department in connection with ~~the ADAP program~~ shall be considered confidential information in accordance with Iowa Code section 141A.9.

[Filed 5/8/13, effective 7/3/13]

[Published 5/29/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/29/13.

ARC 0756C**PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 135.25, the Department of Public Health hereby amends Chapter 140, "Emergency Medical Services System Development Grants Fund," Iowa Administrative Code.

The rules in Chapter 140 describe the process to apply for and receive the Department's emergency medical services (EMS) system development grants. These amendments eliminate a requirement that the funds be awarded competitively, which will remove barriers that local applicants currently experience and improve the accessibility to these grants. Appropriate audit protections are taken to ensure funds are expended in an appropriate manner. The Department consulted with the state Emergency Medical Services Advisory Council, which voted in favor of recommending these amendments to the Director of Public Health.

The changes to definitions within these amendments are intended to bring Chapter 140 into compliance with EMS regulatory definitions found in other existing Department rules.

Notice of Intended Action was published in the March 20, 2013, Iowa Administrative Bulletin as **ARC 0654C**. Two comments were received, one from the service director of a local ambulance service and one from a representative of a local emergency management association. Both commenters requested the additional option of processing the funds through the local board of health. As a result, the phrase "or local boards of health" was added in the introductory paragraph of rule 641—140.4(135).

The State Board of Health adopted these amendments on May 8, 2013.

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

These amendments are intended to implement Iowa Code section 135.25.

These amendments will become effective on July 3, 2013.

The following amendments are adopted.

ITEM 1. Rescind the definitions of "Applicant" and "Emergency medical care personnel" in rule **641—140.1(135)**.

ITEM 2. Amend the following definitions in rule **641—140.1(135)**:

~~"Ambulance service" means any privately or publicly owned service program which utilizes ambulances in order to provide patient transportation and emergency medical services~~ ambulance service as defined in 641—132.1(147A).

~~"CEHs" means continuing education hours which are based upon a minimum of 50 minutes of training per hour~~ CEH as defined in 641—131.1(147A).

~~"Continuing education" means training approved by the department which is obtained by a certified emergency medical care provider to maintain, improve, or expand relevant skills and knowledge and to satisfy renewal of certification requirements~~ continuing education as defined in 641—131.1(147A).

~~"EMS Emergency medical care provider" means an individual who has been trained to provide emergency and nonemergency medical care at the first responder, EMT-basic, EMT-intermediate, EMT-paramedic, paramedic specialist or other certification levels recognized by the department before 1984 and who has been issued a certificate by the department~~ emergency medical care provider as defined in 641—131.1(147A).

~~"Nontransport service" means any privately or publicly owned rescue or first response service program which does not provide patient transportation (except when no ambulance is available or in a disaster situation) and utilizes only first response vehicles to provide emergency medical care at the scene of an emergency~~ nontransport service as defined in 641—132.1(147A).

~~"Service program" means any 24-hour emergency medical care ambulance service or nontransport service that has received authorization by the department~~ service program as defined in 641—131.1(147A).

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 3. Amend rule 641—140.4(135) as follows:

641—140.4(135) County EMS system development grants. Grants for EMS system development proposals at the regional, county, and local level are available through a ~~competitive selection grant~~ process from the department to county boards of supervisors or local boards of health for equipment, training, and support of infrastructure needs as identified in the countywide EMS strategic plan and the department system standards. County boards of supervisors or local boards of health may not take any administrative fee from these funds to support their work under this rule. County recipients of funds may subcontract work under this agreement to a county EMS association. Funds for training will be used to train members of a service program that provides service on a regular basis to residents of the county being funded. Funds for equipment require a \$1 match of regional, county, or local funds for each \$1 of EMS system development grant funds.

140.4(1) Eligible costs. Costs which are eligible for EMS system development grant expenditures as defined in the request for proposal (RFP) include:

a. Training.

(1) Reimbursement for initial training tuition, fees and materials up to an amount that is the lowest fee charged by the training entity following successful completion of an EMS course. Practical and written examination fees may also be included.

(2) Payment of continuing education tuition, fees and materials. Education provided by an EMS service program for the general public is an allowable expense.

(3) Payment for EMS training aids.

b. Other equipment as defined by the RFP.

c. Infrastructure support.

(1) Development and enhancement of EMS systems.

(2) Office equipment and supplies necessary to coordinate a countywide EMS system.

(3) Personnel services for staffing to provide countywide continuous quality improvement and medical direction.

The title to any EMS equipment purchased with these funds shall not lie with the department, but shall be determined by the county ~~EMS association~~.

140.4(2) No change.

[Filed 5/8/13, effective 7/3/13]

[Published 5/29/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/29/13.

ARC 0750C

REAL ESTATE COMMISSION[193E]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 543B.9 and 543B.18, the Real Estate Commission hereby amends Chapter 17, "Approval of Schools, Courses, and Instructors," Iowa Administrative Code.

The amendment to subrule 17.5(1) expands the current scope of continuing education course topics.

The amendment was requested and brought before the Real Estate Commission by an approved real estate education provider. The Real Estate Commission adopts the amendment with no objection from any Commission member.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0628C** on March 6, 2013. No comments were received from the public concerning the proposed amendment. This amendment is identical to that published under Notice.

The amendment was adopted by the Real Estate Commission on May 2, 2013.

This amendment has no fiscal impact on the state of Iowa.

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

REAL ESTATE COMMISSION[193E](cont'd)

This amendment is intended to implement Iowa Code section 272C.1.

This amendment shall become effective on July 3, 2013.

The following amendment is adopted.

Amend subrule 17.5(1) as follows:

17.5(1) The commission will consider courses in the following areas to be acceptable for approval:

a. to n. No change.

o. Market analysis; ~~and~~

p. Real estate market procedures; and

q. Technology and the practice of real estate.

[Filed 5/3/13, effective 7/3/13]

[Published 5/29/13]

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ARC 0770C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby amends Chapter 71, "Assessment Practices and Equalization," Iowa Administrative Code.

The subject matter of rule 701—71.3(421,428,441) is the valuation of agricultural real estate. The amendment to this rule requires the assessor to adjust non-cropland in distributing agricultural productivity valuation to each parcel. The adjustment shall be applied to non-cropland with a corn suitability rating that is greater than 50 percent of the average corn suitability rating for cropland for the county.

This amendment is adopted to address the lack of uniformity in the distribution of agricultural productivity value at a parcel level across the state of Iowa. The amendment to subrule 71.3(1) adds a requirement that the assessor adjust non-cropland in distributing agricultural valuation to each parcel and provides an example of the calculation used to compute the adjustment required under this subrule. The amendment also allows a taxpayer to apply to the county for the adjustment to non-cropland beginning with the 2014 assessment and until the county's full implementation of this subrule.

Notice of Intended Action for this amendment was published in the Iowa Administrative Bulletin on March 20, 2013, as **ARC 0653C**. This amendment is identical to the amendment published under Notice of Intended Action.

The Department has determined that the amendment may necessitate additional expenditures in the amount of \$5,000 to \$15,000 per county for those counties with digital parcels. For the five to seven counties without digital parcels, the amendment may necessitate additional expenditures in the amount of up to \$100,000 but possibly a greater amount. The Department has also identified that IOWAaccess grants and other funding sources may be available to assist counties in implementation.

An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0659C** on April 3, 2013, to schedule a public hearing on April 26, 2013, and to amend the preamble statement regarding public expenditures.

On Monday, April 22, 2013, prior to the public hearing, the Department received a comment regarding the example in subrule 71.3(1) for calculation of non-tillable land adjustment. The commenter pointed out that the previous adjustment on non-tillable land in the commenter's county was 50 percent across the board, but the proposed amendment increased the adjustment.

The Department's response is that the purpose of the amendment is to provide for greater uniformity across counties. This amendment is intended to provide a consistent and uniform method of adjustment for non-cropland corn suitability ratings (CSRs). Actual practice today has resulted in counties that have a variety of adjustments while other counties provide no adjustments. The stakeholders engaged in the Executive Order 80 process arrived at an adjustment that addresses the problem inherent in

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high CSRs on non-cropland while recognizing that low CSRs on non-cropland are already fair. The stakeholders involved in the Executive Order 80 process included the Iowa Association of Assessors, Iowa Cattlemen's Association, Iowa Corn Growers Association, Farm Bureau, Iowa Natural Heritage Foundation, Iowa Soybean Association, and a farmer representative. The resultant adjustment calculation stems from many hours of discussion, compromise, and recognition of many opinions pertaining to the appropriateness of adjustments.

On Tuesday, April 23, 2013, the Department received a comment regarding assessors' ability to determine what land is non-tillable ground based on aerial photography or USDA Farm Service Agency (FSA) land layers. The commenter believes that taxpayers should obtain an adjustment through an annual filing and approval process. The commenter suggested that in this manner, the applicant decides what land is to be considered non-cropland, not the assessor, and that this would be a more equitable process.

The Department's response is that such a process would be an onerous burden for taxpayers as well as for assessors and would lead to a greater degree of inconsistency and inequity than already exists. Most other property tax adjustments require taxpayers to apply only once and then notify the assessor if the situation changes. In addition, the Department contends that removing an assessor's discretion completely from the determination of what constitutes non-cropland would be problematic in the long run and would not contribute to the goal of uniformity. The stakeholder group ultimately decided that this adjustment should be determined by the assessor and that taxpayers should not have to apply annually.

The Department of Revenue held a public hearing on April 26, 2013, in the Hoover State Office Building; 21 individuals were in attendance. At the public hearing, the Department received comments from 13 interested parties. A complete transcript of the hearing can be found on the Department's Web site at <http://www.iowa.gov/tax/locgov/agstakeholders.html>.

Four of the interested parties commented about the interim applications for adjustment to non-cropland prior to full implementation. Their concern was that the adjustment cannot be made with confidence until the amendment is fully implemented. Additionally, they expressed concerns that the interim application would lead to a lack of uniformity within a county. Finally, these interested parties expressed concern about the strain on resources it would cause to require a county to make interim adjustments while the county is trying to acquire the tools and information needed for full implementation. All four interested parties stated they were in support of the amendment in general, but were concerned that it is not fair that not every taxpayer would get an adjustment because the taxpayer would have to proactively apply for it.

The Department recognizes that it may be difficult for assessors to implement adjustments prior to full implementation of the amendment. Although not all participants in the Executive Order 80 stakeholder group process completely agreed with every aspect of the amendment, their recommendations arose from the process as outlined and designed; that is, the recommendations are a compromise agreed to by all stakeholders. The stakeholder group, in general, recommended a process to allow interested taxpayers to apply for an adjustment until the county can fully implement the adjustment process. In fact, comments from other interested parties supported the interim adjustments, particularly when a county currently does not perform any kind of an adjustment for non-cropland. Approximately 50 percent of Iowa counties are already providing some type of adjustments for various land or soil conditions, but the remaining counties do not. Speaking in support of the application process for an interim adjustment, one commenter noted that this methodology is no different from the process that exists today for various property tax credits, such as the homestead credit and the military credit. It is reasonable to expect that if a taxpayer wants to receive a tax credit or, in this case, an adjustment on the value of the taxpayer's non-cropland, the taxpayer can and should take the initiative to apply for such a benefit. By law, taxpayers should pay only the tax that is due on the value of their land. An interim process to allow for an adjustment to non-cropland supports this premise.

Five interested parties communicated their concerns about the present inequity described above; that is, that there are many counties that do not allow adjustments of any kind for non-cropland. All five of these individuals spoke in support of the amendment and in support of the interim adjustment. Several comments were made that the amendment provides for a fairer and more equitable treatment of non-cropland than currently exists. Of these interested parties, the Iowa Farm Bureau Federation

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representative spoke in support of the Executive Order 80 process and the results of the stakeholders' findings, including the application for adjustment in the interim period until full implementation of the amendment by counties is completed.

Another interested party's comments related to the single adjustment for all non-cropland. The interested party's concern was that not all non-cropland parcels should be discounted in the same amount. The Department's response is that the amendment includes a specific methodology that incorporates CSRs and recognizes the overall problem of high CSRs that cause non-cropland to be valued the same as cropland. The "discount" or adjustment is based on the relative comparison of cropland CSR points and non-cropland CSR points in a given county. This standardized approach better achieves the overall goal of uniformity and equity in assessments statewide. It provides a consistent method for all assessors to use that incorporates the unique soil compositions within each county.

The Ringgold County Assessor commented about the cost of implementing this amendment for the five to seven counties without a GIS system as well as the time and effort necessary to implement this amendment. While cost is a concern, the Department has identified possible funding sources for which counties could apply. The Department believes IOWAccess grants hold great potential for counties to fund GIS projects. The purpose of the IOWAccess revolving fund is to create and provide a service to citizens of the state that will serve as a gateway for one-stop electronic access to governmental information, transactions, and services at state, county, and local levels. In this role, the fund supports agency and municipal proposals for funding of electronic projects. Since the Department and the stakeholder committee recommend the use of GIS electronic technology in implementing this amendment, these funds could potentially be available for counties to pursue. Additionally, equity, fairness, and transparency in assessments and valuation are part of what the Iowa Code requires for Iowa taxpayers. Funding information and applications for IOWAccess grants can be found at <http://iowaccess.iowa.gov/>.

Another interested party's comments reiterated the cost concerns addressed by the Ringgold County Assessor. This individual commented that there is not a sufficient return on investment to support this proposal. Additionally, he was concerned that the entire productivity formula (model) is outdated and needs to be revised. The Department's response is that the productivity formula itself is not the issue this amendment addresses. Rather, this amendment addresses and supports the statutory requirement that assessors place emphasis upon the results of a modern soil survey in spreading the valuation among individual parcels pursuant to Iowa Code section 441.21(1)"f." Currently, the statute provides the only guidance regarding how to allocate the valuation to each parcel. As a result, there is a great degree of variety among counties as to how the valuation is spread to individual parcels. This situation is contrary to the Department's obligation to promote uniformity and is what has raised public concern and brought this issue to the forefront to begin with. The purpose of this amendment is to provide for a more uniform treatment of the distribution of the county aggregate productivity value to each agriculturally classified parcel.

Another interested party, speaking out against use of the interim application, referenced an Iowa Supreme Court case, *Naumann v. Iowa Prop. Assessment Appeal Bd.*, 791 N.W.2d 258 (Iowa 2010). The interested party contended that the case supports not utilizing an interim application because the Court held that it is not necessary to equalize agricultural property between counties. However, the Department's response is that in *Naumann*, the Court actually found that Iowa Code section 441.21(1)"d" does not apply to agriculturally classed property because agriculturally classed property is not valued based on a fair market value but rather upon a productivity value. Therefore, the interested party's citation of this case was misguided and inaccurate. The Court recognized that the Department equalizes aggregate productivity value between counties not through Iowa Code section 441.21(1)"d" but rather through Iowa Code sections 441.21(1)"g" and "e." This amendment does not address differences in productivity value by county. The land in each county innately varies in its level of productivity. Rather, the amendment addresses the existing differences in how assessors are spreading the productivity value from the aggregate level to each individual parcel. The amendment promotes a uniform methodology so that Iowa taxpayers can be assured that their parcel valuations in varying assessing jurisdictions were

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arrived at using uniform methods. In fact, it would be illogical for taxpayers to expect that parcels in different areas of the state would have the same value.

After analysis and review of this rule making, a positive impact on jobs could exist.

This amendment is intended to implement Iowa Code sections 441.17, 428.4, and 441.21.

This amendment will become effective July 3, 2013.

The following amendment is adopted.

Amend subrule 71.3(1) as follows:

71.3(1) Productivity.

a. In determining the productivity and net earning capacity of agricultural real estate, the assessor shall also use available data from Iowa State University, the United States Department of Agriculture (USDA) National Agricultural Statistics Service (NASS), the USDA Farm Service Agency (FSA), the Iowa department of revenue, or other reliable sources. The assessor shall also consider the results of a modern soil survey, if completed. The assessor shall determine the actual valuation of agricultural real estate within the assessing jurisdiction and spread distribute such valuation throughout the jurisdiction so that each parcel of real estate is assessed at its actual value as defined in Iowa Code section 441.21.

b. In distributing such valuation to each parcel under paragraph 71.3(1)“a,” the assessor shall adjust non-cropland. The adjustment shall be applied to non-cropland with a corn suitability rating (CSR) that is greater than 50 percent of the average CSR for cropland for the county. The adjustment shall be determined for each county based upon the five-year average difference in cash rent between non-irrigated cropland and pasture land as published by NASS. The assessor may utilize the USDA FSA-published Common Land Unit digital data or other reliable sources in determining non-cropland. Counties shall implement the adjustments under this paragraph on or before the 2017 assessment year. The department of revenue may, in a case involving hardship, extend the implementation of the adjustments required under this paragraph to the 2019 assessment year. No extension of time shall be granted unless the county makes a written request to the department of revenue for such action.

c. A taxpayer may apply to the county for the adjustment to non-cropland under paragraph 71.3(1)“b” beginning with the 2014 assessment and until the county’s full implementation of this subrule. Upon application, and subsequent approval by the assessor, the county assessor shall adjust non-cropland as provided in paragraph 71.3(1)“b.” Once a taxpayer applies for the adjustment, and upon approval, the assessor shall make the adjustment to the assessment year for which the application was submitted and until the county’s full implementation of this subrule, without the need to reapply for the adjustment.

d. EXAMPLE. The following is an example of the calculation used to compute adjustment on land determined to be non-cropland with a CSR that is greater than 50 percent of the average CSR for cropland for the county:

<u>Average county CSR rating for cropland</u>	<u>80 CSR</u>
<u>50% of average cropland CSR</u>	<u>40 CSR</u>
<u>Example of non-cropland soil 11b CSR rating</u>	<u>58 CSR</u>
<u>Non-cropland CSR points to be adjusted</u>	<u>58 – 40 = 18 CSR points</u>
<u>5-year average rent for non-irrigated cropland</u>	<u>\$163.60</u>
<u>5-year average rent for pasture land</u>	<u>\$48.30</u>
<u>Percent difference (rounded)</u>	<u>1 – (\$48.30/\$163.60) = 70%</u>
<u>Apply the percent difference to points to be adjusted</u>	<u>18 CSR points × (1 – .70) = 5.40 adjusted CSR points</u>
<u>Adjusted CSR non-cropland</u>	<u>40 + 5.40 = 45.40 adjusted CSR points</u>

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