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)

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.

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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.

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

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)

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

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~~ 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 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)

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]
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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.

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

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)**.

[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 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.

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

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.

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]
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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

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);

~~*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 ~~12~~ 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;

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/mm^3 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]
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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).

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.

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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.

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.

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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 IOWAccess 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

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

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

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:

Average county CSR rating for cropland	80 CSR
50% of average cropland CSR	40 CSR
Example of non-cropland soil 11b CSR rating	58 CSR
Non-cropland CSR points to be adjusted	58 – 40 = 18 CSR points
5-year average rent for non-irrigated cropland	$163.60
5-year average rent for pasture land	$48.30
Percent difference (rounded)	1 – ($48.30/$163.60) = 70%
Apply the percent difference to points to be adjusted	18 CSR points × (1 – .70) = 5.40 adjusted CSR points
Adjusted CSR non-cropland	40 + 5.40 = 45.40 adjusted CSR points

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