



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

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CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2014

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
2	Wednesday, July 2, 2014	July 23, 2014
3	Friday, July 18, 2014	August 6, 2014
4	Friday, August 1, 2014	August 20, 2014

PLEASE NOTE:

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, July 8, 2014, at 9 a.m. in Room 22, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Procurement, 1.2(5), 117.3(3), 117.7(4), 117.15, 118.7(2) Filed **ARC 1485C** 6/11/14
 Personnel records; human resources—veteran preference, compliance with statute and collective bargaining agreements, clarification of practice, amendments to chs 4, 44, 52 to 54, 57, 60, 63, 64 Notice **ARC 1503C** 6/11/14

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Restricted use pesticide classifications, 45.30 Filed **ARC 1508C** 6/25/14
 Elimination of ownership requirement for eligibility as Iowa-registered stallion, 62.1, 62.10(1), 62.12(3), 62.13, 62.20(1), 62.23, 62.30(1), 62.33 Notice **ARC 1513C** 6/25/14

ARCHITECTURAL EXAMINING BOARD[193B]

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Description of organization, 1.1(4), 1.2 to 1.4 Filed **ARC 1505C** 6/25/14
 Registration; renewal of certificates of registration, 2.3(4), 2.5(1), 2.6, 2.7, 2.8(1), 2.10 to 2.12 Notice **ARC 1501C** 6/11/14
 Registration—retired status, 2.5, 2.11 Filed **ARC 1504C** 6/25/14
 Continuing education; transition provisions, ch 3 Notice **ARC 1500C** 6/11/14

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]“umbrella”

Rule-making notifications; update of commission address, 2.4(3), 2.5, 2.6(2), 2.11(1), 3.1, 3.3(3), 3.5, 3.6(2) Filed **ARC 1490C** 6/11/14
 Iowa grant program—priority for grants, 27.1(7)“b” Filed **ARC 1491C** 6/11/14

ECONOMIC DEVELOPMENT AUTHORITY[261]

Iowa tourism grant program, ch 42 Filed **Emergency After Notice** **ARC 1493C** 6/11/14

EDUCATION DEPARTMENT[281]

Appeal procedures for federal programs, 6.23 Notice **ARC 1498C** 6/11/14
 School buses, amendments to ch 44 Filed **ARC 1489C** 6/11/14
 Child development coordinating council, amendments to ch 64 Filed **ARC 1488C** 6/11/14
 Educational support programs for parents of at-risk children, amendments to ch 67 Filed **ARC 1487C** 6/11/14
 Supplementary weighting—whole-grade sharing and operational services, 97.1, 97.5, 97.7 Notice **ARC 1499C**, also Filed **Emergency** **ARC 1486C** 6/11/14

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Water quality certification for reissued regional permit 7 and for other nationwide and regional permits, 61.2(2)“g” Filed **ARC 1495C** 6/11/14

HUMAN SERVICES DEPARTMENT[441]

Appeals—definition of “aggrieved person”; appeal of proposed decision by department, 7.1, 7.6(6) Notice **ARC 1515C** 6/25/14
 Family investment program (FIP)—ineligibility period for participants who access benefits at prohibited location, acceptance of insurance, 7.9(6), 40.22, 40.23, 40.27(3), 41.23(5), 41.25(11), 41.27(1), 41.30(3) Filed **ARC 1478C** 6/11/14
 Medicaid for employed people with disabilities—premiums, 75.1(39)“b”(3) Filed **ARC 1482C** 6/11/14
 Increase in average statewide private-pay cost of nursing facility services and of charges for institutional care, 75.23(3), 75.24(3)“b” Filed **Emergency After Notice** **ARC 1484C** 6/11/14
 Decrease in statewide maximum Medicaid rate for ICF/IDs, 75.24(3)“b”(2) Filed **Emergency After Notice** **ARC 1483C** 6/11/14
 Medicaid—legal representative as paid provider of funded services to members, 78.34, 78.37, 78.38, 78.41, 78.43, 78.46, 79.1(2), 79.9 Notice **ARC 1510C** 6/25/14
 Medicaid—pharmacy professional dispensing fee, 79.1(8) Filed **ARC 1481C** 6/11/14

INSPECTIONS AND APPEALS DEPARTMENT[481]

Health care facilities and CNA training programs—verification of conviction or record of founded abuse; plan of correction, 50.9, 50.10(7) Notice **ARC 1502C** 6/11/14
 Special classification within residential care facilities—memory care, 57.7 Filed **ARC 1476C** 6/11/14
 Respite care services, 69.39 Notice **ARC 1511C** 6/25/14

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Federal occupational safety and health standards for mechanical power presses—adoption

by reference, 10.20 Filed **ARC 1509C** 6/25/14**PUBLIC EMPLOYMENT RELATIONS BOARD[621]**

Electronic document management system, amend chs 1 to 3, 6, 7, 9 to 11; adopt ch 16

Notice **ARC 1507C** 6/25/14**PUBLIC HEALTH DEPARTMENT[641]**Immunization registry—addition of health screening information, 7.1, 7.11, 7.12 Filed **ARC 1477C** 6/11/14

Physical protection of category 1 and category 2 quantities of radioactive material, adopt ch

37; amend chs 38 to 40 Filed **ARC 1479C** 6/11/14State mechanical code, ch 61 Filed **ARC 1494C** 6/11/14Medical residency training state matching grants program, ch 108 Filed **ARC 1480C** 6/11/14**RACING AND GAMING COMMISSION[491]**

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Organization and operation; forms; first-aid room, 1.2, 1.5, 5.4(4) Filed **ARC 1506C** 6/25/14**REVENUE DEPARTMENT[701]**

Filing of property assessment appeal, 71.21(6)

Notice **ARC 1497C**, also Filed Emergency **ARC 1496C** 6/11/14**STATE PUBLIC DEFENDER[493]**

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Claims for services, amendments to chs 1, 4, 7, 12 to 14 Filed **ARC 1512C** 6/25/14Attorney qualifications; contracts, 11.2, 11.3, 11.4(1), 11.5 to 11.8, 11.11(1) Filed **ARC 1514C** 6/25/14**VOLUNTEER SERVICE, IOWA COMMISSION ON[817]**Retired and senior volunteer program (RSVP), 7.1(1), 7.4(1), 7.5 Amended Notice **ARC 1492C** 6/11/14**ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS**

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

Senator Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Representative Lisa Heddens
4115 Wembley Avenue
Ames, Iowa 50010

Senator Thomas Courtney
2609 Clearview
Burlington, Iowa 52601

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

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

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

Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001

Representative Jeff Smith
1006 Brooks North Lane
Okoboji, Iowa 51355

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

Representative Guy Vander Linden
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Governor's Ex Officio Representative
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Des Moines, Iowa 50319
Telephone (515)281-5211

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Personnel records; human resources—veteran preference, compliance with statute and collective bargaining agreements, clarification of practice, amendments to chs 4, 44, 52 to 54, 57, 60, 63, 64 IAB 6/11/14 ARC 1503C	Room 8, A Level Hoover State Office Bldg. Des Moines, Iowa	July 1, 2014 9 to 10 a.m.
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ARCHITECTURAL EXAMINING BOARD[193B]

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Continuing education; transition provisions, ch 3 IAB 6/11/14 ARC 1500C	Board Offices, Suite 350 200 E. Grand Ave. Des Moines, Iowa	July 1, 2014 9 a.m.

EDUCATION DEPARTMENT[281]

Appeal procedures for federal programs, 6.23 IAB 6/11/14 ARC 1498C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	July 1, 2014 1 to 2 p.m.
Supplementary weighting—whole-grade sharing and operational services, 97.1, 97.5, 97.7 IAB 6/11/14 ARC 1499C (See also ARC 1486C)	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	July 1, 2014 2 to 3 p.m.

VOLUNTEER SERVICE, IOWA COMMISSION ON[817]

Retired and senior volunteer program (RSVP), 7.1(1), 7.4(1), 7.5 IAB 6/11/14 ARC 1492C	Central First Floor Conference Room 200 E. Grand Ave. Des Moines, Iowa	July 8, 2014 1 to 1:30 p.m.
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The following list will be updated as changes occur.

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

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

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

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ARC 1513C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 99D.22(5), the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 62, “Registration of Iowa-Foaled Horses and Iowa-Whelped Dogs,” Iowa Administrative Code.

The requirement that 51 percent of an Iowa-registered stallion be owned by Iowa residents for purposes of determining eligibility for registration as an Iowa thoroughbred, quarter horse, or standardbred stallion was eliminated in 2014 Iowa Acts, Senate File 2185. The proposed amendments eliminate the 51 percent Iowa ownership requirement from the stallion qualification and application procedure and from the application information form. The proposed amendments also rescind the definition of “bona fide Iowa resident,” which requires a person to reside in Iowa for six months prior to the date of registration of the stallion, and eliminate related provisions.

Any interested persons may make written suggestions or comments on the proposed amendments on or before July 15, 2014. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to Margaret.Thomson@IowaAgriculture.gov.

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

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

These amendments are intended to implement 2014 Iowa Acts, Senate File 2185.

The following amendments are proposed.

ITEM 1. Rescind the definition of “Bona fide Iowa resident” in rule **21—62.1(99D)**.

ITEM 2. Amend rule **21—62.1(99D)**, definition of “Owner of a thoroughbred stallion,” as follows:
“Owner of a thoroughbred stallion,” “owner of a standardbred stallion” or “owner of a quarter horse stallion” means ~~a bona fide Iowa resident~~ the person who owns at least 51 percent of a thoroughbred, standardbred or quarter horse stallion for one service season or more.

ITEM 3. Rescind and reserve subrule **62.10(1)**.

ITEM 4. Amend subrule 62.12(3) as follows:

62.12(3) ~~If 51 percent of the new ownership is a bona fide Iowa resident(s) and owner(s) wishes~~ to qualify the stallion as an Iowa stallion, then the new owner(s) must submit an application for an Iowa Stallion Eligibility Certificate; along with a copy of the bill of sale and meet all other department requirements.

ITEM 5. Amend rule **21—62.13(99D)**, numbered paragraph “5,” as follows:

5. Statement that ~~a minimum of 51 percent of the stallion is owned by a bona fide resident(s) of Iowa, and that~~ the stallion will not stand for service any place outside the state of Iowa during the calendar year in which the foal is conceived;

ITEM 6. Rescind and reserve subrule **62.20(1)**.

ITEM 7. Amend rule **21—62.23(99D)**, numbered paragraph “5,” as follows:

5. Statement that ~~a minimum of 51 percent of the stallion is owned by a bona fide resident(s) of Iowa, and that~~ the stallion will not stand for service any place outside the state of Iowa before August 1 of the calendar year in which the foal is conceived;

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

ITEM 8. Rescind and reserve subrule **62.30(1)**.

ITEM 9. Amend rule **21—62.33(99D)**, numbered paragraph “5,” as follows:

5. Statement that ~~a minimum of 51 percent of the stallion is owned by a bona fide resident(s) of Iowa, and that~~ the stallion will not stand for service any place outside the state of Iowa before August 1 of the calendar year in which the foal is conceived;

ARC 1515C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services proposes to amend Chapter 7, “Appeals and Hearings,” Iowa Administrative Code.

The Department has new programs that have been implemented or will be implemented in the future. When a new program is established, administrative rules found in 441—Chapter 7 regarding appeals and hearings must be updated to reflect changes pertaining to the new programs. The Department is required to ensure that constituents have access to due process if they are dissatisfied with a decision made by the Department. These amendments update the definition of “aggrieved person” to ensure those individuals affected by adverse action have the right to an appeal.

Specifically, the proposed amendments update the definition of “aggrieved person” as follows:

1. A reference to the Iowa Health and Wellness Plan is added in numbered paragraph “3.” Individuals who apply for or are denied benefits under this plan may be eligible to receive an appeal hearing if they meet the definition of an aggrieved person. The proposed amendment makes that clear.

2. Numbered paragraph “7,” pertaining to providers, is revised to include social service providers:

- Whose applications or reapplications for licensure were issued as provisional licenses when the providers believed they should have received full licenses, or

- Whose licenses were issued for a limited time frame.

3. Numbered paragraph “9,” pertaining to mental health and developmental disabilities, is revised due to the April 1, 2014, implementation of the Autism Support Program. The adverse actions that may be taken by the Department for this program have been added, which will allow individuals affected by an adverse action the right to file an appeal regarding these actions.

Finally, the time frame that the Department has to request an appeal of the proposed decision is not clear in the current rules and has caused some confusion. Subrule 7.16(6) is updated to clarify the time frame that the Department has to request an appeal of the proposed decision.

Any interested person may make written comments on the proposed amendments on or before July 15, 2014. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 5th Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not include waiver provisions because the amendments confer benefits on those affected and are generally required by federal law that does not allow for waivers. Individuals may request a waiver under the Department’s general rule on exceptions at 441—1.8(17A,217).

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

These amendments are intended to implement Iowa Code section 217.6.

The following amendments are proposed.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend rule **441—7.1(17A)**, definition of “Aggrieved person,” as follows:

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

1. and 2. No change.
3. For medical assistance, healthy and well kids in Iowa, IowaCare, the Iowa Health and Wellness Plan, family planning services, and waiver services, a person (see numbered paragraph “7” for providers):
 - Whose request to be given an application was denied.
 - Whose application has been denied or has not been acted on in a timely manner.
 - Whose eligibility has been terminated, suspended or reduced.
 - Who has been notified that there will be a reduction in the level of benefits or services the person is eligible to receive.
 - Who has received a determination of the amount of medical expenses that must be incurred to establish income eligibility for the medically needy program or a determination of income for the purposes of imposing any premiums, enrollment fees or cost sharing.
 - Who has been notified that the level of services provided by a nursing facility is not needed based on a preadmission screening and resident review (PASRR) evaluation.
 - Who has been notified that level of care requirements have not been met.
 - Who has been aggrieved by a failure to take into account the appellant’s choice in assignment to a coverage group.
 - Who contests the effective date of assistance or services.
 - Who contests the amount or effective date of health insurance premium payments, healthy and well kids in Iowa premium payments, Medicaid for employed people with disabilities premium payments, IowaCare premium payments, or the spenddown amount under the medically needy program.
 - Who contests the amount of client participation.
 - Whose claim for payment or prior authorization has been denied.
 - Who has been notified that the reconsideration process has been exhausted and who remains dissatisfied with the outcome.
 - Who has received notice from the medical assistance hotline that services not received or services for which an individual is being billed are not payable by medical assistance.
 - Who has been notified that an overpayment of benefits has been established and repayment is requested.
 - Who has been denied requested nonemergency medical transportation services by the broker designated by the department pursuant to rule 441—78.13(249A) and has exhausted the grievance procedures established by the broker pursuant to 441—subrule 78.13(7).
4. to 6. No change.
7. For providers, a person or entity:
 - Whose license, certification, registration, approval, or accreditation has been denied or revoked or has not been acted on in a timely manner.
 - Whose claim for payment or request for prior authorization of payment has been denied in whole or in part and who states that the denial was not made according to department policy. Providers of Medicaid services must accept reimbursement based on the department’s methodology.
 - Whose contract as a Medicaid patient manager has been terminated.
 - Who has been subject to the withholding of a payment to recover a prior overpayment or who has received an order to repay an overpayment pursuant to 441—subrule 79.4(7).
 - Who has been notified that the managed care reconsideration process has been exhausted and who remains dissatisfied with the outcome.
 - Whose application for child care quality rating has not been acted upon in a timely fashion, who disagrees with the department’s quality rating decision, or whose certificate of quality rating has been revoked.
 - Who has been subject to an adverse action related to the Iowa electronic health record incentive program pursuant to rule 441—79.16(249A).

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Who, as a managed care organization (MCO) provider or Iowa plan contractor when acting on behalf of a member, has a dispute regarding payment of claims.
- Who has been notified that an application or reapplication for licensure was issued as a provisional license.
- Who has been notified that a license has been issued for a limited time.
- 8. No change.
- 9. For mental health and ~~developmental disabilities~~ disability services, a person:
 - Whose application for state payment under 441—Chapter 153, Division IV, has been denied or has not been acted upon in a timely manner.
 - Who has been notified that there will be a reduction or cancellation of services under the state payment program.
 - Whose request to be given an application was denied.
 - Whose eligibility has been terminated, suspended or reduced.
 - Who has been notified that there will be a reduction in the level of benefits or services the person is eligible to receive.
 - Who contests the effective date of assistance or services.
 - Who has been notified that the reconsideration process has been exhausted and who remains dissatisfied with the outcome.
 - Who contests the amount or effective date of cost-sharing requirements for the autism support program.
 - Whose service authorization requests for applied behavioral analysis services have been denied or reduced.
- 10. to 13. No change.

ITEM 2. Amend subrule 7.16(6) as follows:

7.16(6) *Appeal of the proposed decision by the department.* The appeals advisory committee acts as an initial screening device for the director and may recommend that the director review a proposed decision. That recommendation is not binding upon the director, and the director may decide to review a proposed decision without that committee's recommendation.

A request by the department for director's review of the proposed decision must be made in writing. The written request must be submitted to the appeals section in person or submitted through an electronic delivery method, such as electronic mail or facsimile, within ten calendar days of the date on which the proposed decision was sent. The day after the proposed decision is sent is the first day of the time period within which a request for director's review must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

When the director grants a review of a proposed decision on the department's request, the appeals section shall notify all other parties to the appeal of the review and send a copy of the request to all other parties. All other parties shall be provided ten calendar days from the date of notification to submit further written arguments or objections for consideration upon review.

Written arguments or objections must be mailed or submitted in person to the appeals section or submitted through an electronic delivery method, such as electronic mail, submission of an online form, or facsimile.

The day after the notification is sent is the first day of the time period within which a response to the department's request for review must be filed. When the time limit for responding falls on a holiday or a weekend, the time will be extended to the next workday.

ARC 1510C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4 and 2014 Iowa Acts, Senate File 2320, the Department of Human Services proposes to amend Chapter 78, “Amount, Duration, and Scope of Medical and Remedial Services,” and Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

Subrule 79.9(7) went into effect January 1, 2014, to prohibit a legal representative from being a paid provider of Medicaid-funded services. 2014 Iowa Acts, Senate File 2320, section 1, directs the Department to adopt rules allowing a legal representative to be paid for providing services under a home- and community-based services waiver consumer-directed attendant care (CDAC) agreement or under a consumer choices option (CCO) employment agreement. These amendments will allow a legal representative to be a paid provider of service when providing individual CDAC or CCO services to a member the representative legally represents. These amendments also set the following service delivery parameters for the legal representative when the representative is a paid provider, as required by 2014 Iowa Acts, Senate File 2320:

- Ensuring wages that are fair and reasonable for the service being provided;
- Limiting the amount of service to 40 hours per week (i.e., no overtime pay allowed); and
- Requiring that a contingency plan be in place to ensure services will be provided when the legal representative is unavailable to provide scheduled services due to illness or other unexpected event.

Any interested person may make written comments on the proposed amendments on or before July 15, 2014. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 5th Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

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

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

These amendments are intended to implement Iowa Code section 249A.4 and 2014 Iowa Acts, Senate File 2320.

The following amendments are proposed.

ITEM 1. Amend paragraph **78.34(7)“a”** as follows:

a. Service planning.

(1) The member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall:

(1) 1. Select the individual or agency that will provide the components of the attendant care services.

(2) 2. Determine with the selected provider what components of attendant care services the provider shall perform, subject to confirmation by the service worker or case manager that those components are consistent with the assessment and are authorized covered services.

(3) 3. Complete, sign, and date Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement, to indicate the frequency, scope, and duration of services (a description of each service component and the time agreed on for that component). The case manager or service worker and provider shall also sign the agreement.

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~(4)~~ 4. Submit the completed agreement to the service worker or case manager. The agreement shall be part of the member's service plan and shall be kept in the member's records, in the provider's records, and in the service worker's or case manager's records. Any service component that is not listed in the agreement shall not be payable.

(2) Whenever a legal representative acts as a provider of consumer-directed attendant care as allowed by 441—paragraph 79.9(7) “b,” the following shall apply:

1. The payment rate for the legal representative must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department;

2. The legal representative may not be paid for more than 40 hours of service per week; and

3. A contingency plan must be established in the member's service plan to ensure service delivery in the event the legal representative is unable to provide services due to illness or other unexpected event.

ITEM 2. Amend paragraph **78.34(13)“g”** as follows:

g. *Budget authority.* The member shall have authority over the individual budget authorized by the department to perform the following tasks:

(1) No change.

(2) Determine the amount to be paid for services. Reimbursement rates shall be consistent with rates paid by others in the community for the same or substantially similar services. Reimbursement rates for the independent support broker and the financial management service are subject to the limits in 441—subrule 79.1(2). The reimbursement rate for a member's legal representative who provides services to the member as allowed by 441—paragraph 79.9(7) “b” must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department.

(3) Schedule the provision of services. Whenever a member's legal representative provides services to the member as allowed by 441—paragraph 79.9(7) “b,” the legal representative may not be paid for more than 40 hours of service per week and a contingency plan must be established in the member's service plan to ensure service delivery in the event the legal representative is unable to provide services due to illness or other unexpected event.

(4) and (5) No change.

ITEM 3. Amend paragraph **78.37(15)“a”** as follows:

a. *Service planning.*

(1) The member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall:

~~(1)~~ 1. Select the individual, agency or assisted living facility that will provide the components of the attendant care services.

~~(2)~~ 2. Determine with the selected provider what components of attendant care services the provider shall perform, subject to confirmation by the service worker or case manager that those components are consistent with the assessment and are authorized covered services.

~~(3)~~ 3. Complete, sign, and date Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement, to indicate the frequency, scope, and duration of services (a description of each service component and the time agreed on for that component). The case manager or service worker and provider shall also sign the agreement.

~~(4)~~ 4. Submit the completed agreement to the service worker or case manager. The agreement shall be part of the member's service plan and shall be kept in the member's records, in the provider's records, and in the service worker's or case manager's records. Any service component that is not listed in the agreement shall not be payable.

~~(5)~~ (2) Assisted living agreements with Iowa Medicaid members must specify the services to be considered covered under the assisted living occupancy agreement and those CDAC services to be covered under the elderly waiver. The funding stream for each service must be identified.

(3) Whenever a legal representative acts as a provider of consumer-directed attendant care as allowed by 441—paragraph 79.9(7) “b,” the following shall apply:

HUMAN SERVICES DEPARTMENT[441](cont'd)

1. The payment rate for the legal representative must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department;

2. The legal representative may not be paid for more than 40 hours of service per week; and

3. A contingency plan must be established in the member's service plan to ensure service delivery in the event the legal representative is unable to provide services due to illness or other unexpected event.

ITEM 4. Amend paragraph **78.37(16)“g”** as follows:

g. *Budget authority.* The member shall have authority over the individual budget authorized by the department to perform the following tasks:

(1) No change.

(2) Determine the amount to be paid for services. Reimbursement rates shall be consistent with rates paid by others in the community for the same or substantially similar services. Reimbursement rates for the independent support broker and the financial management service are subject to the limits in 441—subrule 79.1(2). The reimbursement rate for a member's legal representative who provides services to the member as allowed by 441—paragraph 79.9(7) “b” must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department.

(3) Schedule the provision of services. Whenever a member's legal representative provides services to the member as allowed by 441—paragraph 79.9(7) “b,” the legal representative may not be paid for more than 40 hours of service per week and a contingency plan must be established in the member's service plan to ensure service delivery in the event the legal representative is unable to provide services due to illness or other unexpected event.

(4) and (5) No change.

ITEM 5. Amend paragraph **78.38(8)“a”** as follows:

a. *Service planning.*

(1) The member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall:

(1) 1. Select the individual or agency that will provide the components of the attendant care services.

(2) 2. Determine with the selected provider what components of attendant care services the provider shall perform, subject to confirmation by the service worker or case manager that those components are consistent with the assessment and are authorized covered services.

(3) 3. Complete, sign, and date Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement, to indicate the frequency, scope, and duration of services (a description of each service component and the time agreed on for that component). The case manager or service worker and provider shall also sign the agreement.

(4) 4. Submit the completed agreement to the service worker or case manager. The agreement shall be part of the member's service plan and shall be kept in the member's records, in the provider's records, and in the service worker's or case manager's records. Any service component that is not listed in the agreement shall not be payable.

(2) Whenever a legal representative acts as a provider of consumer-directed attendant care as allowed by 441—paragraph 79.9(7) “b,” the following shall apply:

1. The payment rate for the legal representative must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department;

2. The legal representative may not be paid for more than 40 hours of service per week; and

3. A contingency plan must be established in the member's service plan to ensure service delivery in the event the legal representative is unable to provide services due to illness or other unexpected event.

ITEM 6. Amend paragraph **78.38(9)“g”** as follows:

g. *Budget authority.* The member shall have authority over the individual budget authorized by the department to perform the following tasks:

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) No change.

(2) Determine the amount to be paid for services. Reimbursement rates shall be consistent with rates paid by others in the community for the same or substantially similar services. Reimbursement rates for the independent support broker and the financial management service are subject to the limits in 441—subrule 79.1(2). The reimbursement rate for a member's legal representative who provides services to the member as allowed by 441—paragraph 79.9(7) "b" must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department.

(3) Schedule the provision of services. Whenever a member's legal representative provides services to the member as allowed by 441—paragraph 79.9(7) "b," the legal representative may not be paid for more than 40 hours of service per week and a contingency plan must be established in the member's service plan to ensure service delivery in the event the legal representative is unable to provide services due to illness or other unexpected event.

(4) and (5) No change.

ITEM 7. Amend paragraph **78.41(8)"a"** as follows:

a. Service planning.

(1) The member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall:

~~(1) 1.~~ Select the individual or agency that will provide the components of the attendant care services.

~~(2) 2.~~ Determine with the selected provider what components of attendant care services the provider shall perform, subject to confirmation by the service worker or case manager that those components are consistent with the assessment and are authorized covered services.

~~(3) 3.~~ Complete, sign, and date Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement, to indicate the frequency, scope, and duration of services (a description of each service component and the time agreed on for that component). The case manager or service worker and provider shall also sign the agreement.

~~(4) 4.~~ Submit the completed agreement to the service worker or case manager. The agreement shall be part of the member's service plan and shall be kept in the member's records, in the provider's records, and in the service worker's or case manager's records. Any service component that is not listed in the agreement shall not be payable.

(2) Whenever a legal representative acts as a provider of consumer-directed attendant care as allowed by 441—paragraph 79.9(7) "b," the following shall apply:

1. The payment rate for the legal representative must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department;

2. The legal representative may not be paid for more than 40 hours of service per week; and

3. A contingency plan must be established in the member's service plan to ensure service delivery in the event the legal representative is unable to provide services due to illness or other unexpected event.

ITEM 8. Amend paragraph **78.41(15)"g"** as follows:

g. Budget authority. The member shall have authority over the individual budget authorized by the department to perform the following tasks:

(1) No change.

(2) Determine the amount to be paid for services. Reimbursement rates shall be consistent with rates paid by others in the community for the same or substantially similar services. Reimbursement rates for the independent support broker and the financial management service are subject to the limits in 441—subrule 79.1(2). The reimbursement rate for a member's legal representative who provides services to the member as allowed by 441—paragraph 79.9(7) "b" must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) Schedule the provision of services. Whenever a member's legal representative provides services to the member as allowed by 441—paragraph 79.9(7) "b," the legal representative may not be paid for more than 40 hours of service per week and a contingency plan must be established in the member's service plan to ensure service delivery in the event the legal representative is unable to provide services due to illness or other unexpected event.

(4) and (5) No change.

ITEM 9. Amend paragraph **78.43(13)"a"** as follows:

a. *Service planning.*

(1) The member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall:

(1) 1. Select the individual or agency that will provide the components of the attendant care services.

(2) 2. Determine with the selected provider what components of attendant care services the provider shall perform, subject to confirmation by the service worker or case manager that those components are consistent with the assessment and are authorized covered services.

(3) 3. Complete, sign, and date Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement, to indicate the frequency, scope, and duration of services (a description of each service component and the time agreed on for that component). The case manager or service worker and provider shall also sign the agreement.

(4) 4. Submit the completed agreement to the service worker or case manager. The agreement shall be part of the member's service plan and shall be kept in the member's records, in the provider's records, and in the service worker's or case manager's records. Any service component that is not listed in the agreement shall not be payable.

(2) Whenever a legal representative acts as a provider of consumer-directed attendant care as allowed by 441—paragraph 79.9(7) "b," the following shall apply:

1. The payment rate for the legal representative must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department;

2. The legal representative may not be paid for more than 40 hours of services per week; and

3. A contingency plan must be established in the member's service plan to ensure service delivery in the event the legal representative is unable to provide services due to illness or other unexpected event.

ITEM 10. Amend paragraph **78.43(15)"g"** as follows:

g. *Budget authority.* The member shall have authority over the individual budget authorized by the department to perform the following tasks:

(1) No change.

(2) Determine the amount to be paid for services. Reimbursement rates shall be consistent with rates paid by others in the community for the same or substantially similar services. Reimbursement rates for the independent support broker and the financial management service are subject to the limits in 441—subrule 79.1(2). The reimbursement rate for a member's legal representative who provides services to the member as allowed by 441—paragraph 79.9(7) "b" must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department.

(3) Schedule the provision of services. Whenever a member's legal representative provides services to the member as allowed by 441—paragraph 79.9(7) "b," the legal representative may not be paid for more than 40 hours of service per week and a contingency plan must be established in the member's service plan to ensure service delivery in the event the legal representative is unable to provide services due to illness or other unexpected event.

(4) and (5) No change.

ITEM 11. Amend paragraph **78.46(1)"a"** as follows:

a. *Service planning.*

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) The member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall:

~~(1)~~ 1. Select the individual or agency that will provide the components of the attendant care services.

~~(2)~~ 2. Determine with the selected provider what components of attendant care services the provider shall perform, subject to confirmation by the service worker or case manager that those components are consistent with the assessment and are authorized covered services.

~~(3)~~ 3. Complete, sign, and date Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement, to indicate the frequency, scope, and duration of services (a description of each service component and the time agreed on for that component). The case manager or service worker and provider shall also sign the agreement.

~~(4)~~ 4. Submit the completed agreement to the service worker or case manager. The agreement shall be part of the member's service plan and shall be kept in the member's records, in the provider's records, and in the service worker's or case manager's records. Any service component that is not listed in the agreement shall not be payable.

(2) Whenever a legal representative acts as a provider of consumer-directed attendant care as allowed by 441—paragraph 79.9(7) “b,” the following shall apply:

1. The payment rate for the legal representative must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department;

2. The legal representative may not be paid for more than 40 hours of service per week; and

3. A contingency plan must be established in the member's service plan to ensure service delivery in the event the legal representative is unable to provide services due to illness or other unexpected event.

ITEM 12. Amend paragraph **78.46(6)“g”** as follows:

g. Budget authority. The member shall have authority over the individual budget authorized by the department to perform the following tasks:

(1) No change.

(2) Determine the amount to be paid for services. Reimbursement rates shall be consistent with rates paid by others in the community for the same or substantially similar services. Reimbursement rates for the independent support broker and the financial management service are subject to the limits in 441—subrule 79.1(2). The reimbursement rate for a member's legal representative who provides services to the member as allowed by 441—paragraph 79.9(7) “b” must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department.

(3) Schedule the provision of services. Whenever a member's legal representative provides services to the member as allowed by 441—paragraph 79.9(7) “b,” the legal representative may not be paid for more than 40 hours of service per week and a contingency plan must be established in the member's service plan to ensure service delivery in the event the legal representative is unable to provide services due to illness or other unexpected event.

(4) and (5) No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 13. Amend subrule **79.1(2)**, provider category “HCBS waiver service providers,” numbered paragraphs “15” and “32” to “34,” as follows:

Provider category	Basis of reimbursement	Upper limit
15. Consumer-directed attendant care provided by:		
Agency (other than an elderly waiver assisted living program)	Fee agreed upon by member and provider	Effective 7/1/13, provider’s rate in effect 6/30/13 plus 3%, converted to a 15-minute rate. If no 6/30/13 rate: \$5.30 per 15-minute unit, not to exceed \$122.62 per day.
Assisted living program (for elderly waiver only)	Fee agreed upon by member and provider	Effective 7/1/13, provider’s rate in effect 6/30/13 plus 3%, converted to a 15-minute rate. If no 6/30/13 rate: \$5.30 per 15-minute unit, not to exceed \$122.62 per day.
Individual	Fee agreed upon by member and provider	Effective 7/1/13, \$3.54 per 15-minute unit, not to exceed \$82.53 per day. <u>When an individual who serves as a member’s legal representative provides services to the member as allowed by 79.9(7) “b,” the payment rate must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department.</u>
32. Self-directed personal care	Rate negotiated by member	Determined by member’s individual budget. <u>When an individual who serves as a member’s legal representative provides services to the member as allowed by 79.9(7) “b,” the payment rate must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department.</u>
33. Self-directed community supports and employment	Rate negotiated by member	Determined by member’s individual budget. <u>When an individual who serves as a member’s legal representative provides services to the member as allowed by 79.9(7) “b,” the payment rate must be based on the skill level of the legal</u>

HUMAN SERVICES DEPARTMENT[441](cont'd)

34. Individual-directed goods
and services

Rate negotiated by member

representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department.

Determined by member's individual budget. When an individual who serves as a member's legal representative provides services to the member as allowed by 79.9(7) "b," the payment rate must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department.

ITEM 14. Amend subrule 79.9(7) as follows:

79.9(7) Incorrect payment.

a. ~~Medical~~ Except as provided in paragraph 79.9(7) "b," medical assistance funds are incorrectly paid whenever a ~~person~~ an individual who provided the service to the member for which the department paid was at the time service was provided the parent of a minor child, spouse, or legal representative of the member.

b. Notwithstanding paragraph 79.9(7) "a," medical assistance funds are not incorrectly paid when an individual who serves as a member's legal representative provides services to the member under a home and community-based services waiver consumer-directed attendant care agreement or under a consumer choices option employment agreement in effect on or after December 31, 2013. For purposes of this paragraph, "legal representative" means a person, including an attorney, who is authorized by law to act on behalf of the medical assistance program member but does not include the spouse of a member or the parent or stepparent of a member aged 17 or younger.

ITEM 15. Amend rule 441—79.9(249A), implementation sentence, as follows:

This rule is intended to implement Iowa Code section 249A.4 and 2014 Iowa Acts, Senate File 2320.

ARC 1511C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 231C.3(1), the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 69, "Assisted Living Programs," Iowa Administrative Code.

The amendment permits assisted living programs to provide respite care services and sets forth the requirements for providing such services.

The Department does not believe that the proposed amendment poses a financial hardship on any regulated entity or individual.

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

Any interested person may make written suggestions or comments on the proposed amendment on or before July 15, 2014. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to David.Werning@dia.iowa.gov.

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

This amendment is intended to implement Iowa Code section 231C.3(1).

The following amendment is proposed.

Adopt the following **new** rule 481—69.39(231C):

481—69.39(231C) Respite care services. “Respite care services” means an organized program of temporary supportive care provided for 24 hours or more to a person in order to relieve the usual caregiver of the person from providing continual care to the person. “Respite care tenant” means a tenant receiving respite care services. An assisted living program which chooses to provide respite care services must meet the following requirements related to respite services and must be certified as an assisted living program.

69.39(1) *Length of stay.* Respite care shall be provided for no more than 30 consecutive days and for a total of no more than 60 days in a consecutive 12-month period. The 12-month period begins on the first day of the respite care tenant’s stay in the program.

69.39(2) *No separate certificate.* An assisted living program that chooses to provide respite care services is not required to obtain a separate certificate or pay a certification fee.

69.39(3) *Assessment.* The program nurse shall conduct an assessment of the respite care tenant prior to the respite care tenant’s stay. The assessment shall be documented and shall include, at a minimum:

- a. Safety and supervision needs;
- b. Medical needs;
- c. Dietary needs; and
- d. Bowel and bladder function.

69.39(4) *Written direction to staff.* The program nurse shall provide written direction to staff concerning the needs of the respite care tenant based on the assessment conducted pursuant to subrule 69.39(3).

69.39(5) *Involuntary discharge.* A respite care tenant may be involuntarily discharged. Rule 481—69.24(231C) shall not apply. The program shall make proper arrangements for the welfare of the respite care tenant prior to involuntary discharge, including notification of the respite care tenant’s family or legal representative.

69.39(6) *Contract.* The program shall have a contract with each respite care tenant. The contract shall, at a minimum, include the following:

- a. The time period during which the tenant will be considered to be receiving respite care services, not to exceed 30 consecutive days.
- b. A description of all fees, charges, and rates for respite care services, and any additional and optional services and their related costs.
- c. A statement that a respite care tenant may be involuntarily discharged. Rule 481—69.24(231C) shall not apply.
- d. Identification of the party responsible for payment of fees and identification of the respite care tenant’s legal representative, if any.
- e. A statement that all respite care tenant information shall be maintained in a confidential manner to the extent required under state and federal law.
- f. The refund policy, if applicable.
- g. A statement regarding billing and payment procedures.

69.39(7) *Admission as tenant.*

- a. A respite care tenant shall not be considered an admission to the program.
- b. A respite care tenant shall be included in the program’s census.
- c. The program shall not enter into multiple 30-day contracts with a respite care tenant in order to lengthen the respite care tenant’s stay in the program.

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

d. If a respite care tenant remains in the program beyond 30 consecutive days and is eligible for admission, the department shall consider the person a tenant in the program. The program shall follow all requirements for admission to the program.

69.39(8) *Level of care criteria.* Respite care tenants must meet the criteria found in subrule 69.23(1) for admission and retention of tenants. Respite care services shall not be provided by an assisted living program to persons requiring a level of care which is higher than the level of care the program is certified to provide.

69.39(9) *Accessibility by the department.* The department shall have the same access to respite care records as provided in 481—subrule 67.10(2).

ARC 1507C**PUBLIC EMPLOYMENT RELATIONS BOARD[621]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 20.6(5) and section 20.24 as amended by 2014 Iowa Acts, House File 2172 (effective July 1, 2014), the Public Employment Relations Board hereby gives Notice of Intended Action to amend Chapter 1, “General Provisions,” Chapter 2, “General Practice and Hearing Procedures,” Chapter 3, “Prohibited Practice Complaints,” Chapter 6, “Negotiations and Negotiability Disputes,” Chapter 7, “Impasse Procedures,” Chapter 9, “Administrative Remedies,” Chapter 10, “Declaratory Orders,” and Chapter 11, “State Employee Appeals of Grievance Decisions and Disciplinary Actions,” and to adopt new Chapter 16, “Electronic Document Management System,” Iowa Administrative Code.

In 2014, the General Assembly passed and the Governor signed 2014 Iowa Acts, House File 2172, a bill for an Act providing for the use of an electronic filing and notice system by the Public Employment Relations Board, to become effective July 1, 2014. The Act directs that the Board, by rule, establish an electronic filing system for the filing or service of any notice or other document required or permitted to be filed with or served on or by the Board and specifically authorizes the Board to require the filing or service of documents through the system. Accordingly, the Board has drafted and proposes in Item 13 the adoption of new Chapter 16, which contains rules that govern the use of the new system and are modeled in substantial part on the Iowa Court Rules pertaining to the use of the judicial branch electronic document management system. Items 1 through 12 consist of conforming, clarifying and related amendments to existing rules where references to the electronic filing system, the provisions of new Chapter 16 or related supplemental or clarifying provisions are necessary or appropriate.

Neither new Chapter 16 nor the amendments to existing rules provide for a waiver of their terms, but are instead subject to the Board’s general waiver provisions found at rule 621—1.9(17A,20).

Any interested person may make written suggestions or comments on this proposed rule making on or before July 15, 2014. Written suggestions or comments should be directed to Michael G. Cormack, Chairperson, Public Employment Relations Board, 510 E. 12th Street, Des Moines, Iowa 50319; or Mike.Cormack@iowa.gov.

Persons who wish to convey their views orally should contact the office of the Public Employment Relations Board by telephone at (515)281-4414 or in person at the Board’s office at the address noted above. Requests for a public hearing must be received by July 15, 2014.

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

These amendments are intended to implement Iowa Code section 20.24 as amended by 2014 Iowa Acts, House File 2172.

The following amendments are proposed.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

ITEM 1. Adopt the following **new** subrules 1.6(8) to 1.6(11):

1.6(8) “*Adjudicatory proceeding*” means a contested case, a proceeding that may culminate in a contested case, a petition for declaratory order, a petition for expedited resolution of a negotiability dispute, or any other proceeding which may require the board or its designee to issue a decision, order, or ruling.

1.6(9) “*Confidential information*” means information excluded from public access by federal or state law or administrative rule, court rule, court or administrative order, or case law.

1.6(10) “*Jurisdictional deadline*” means a deadline set by rule or statute that the board may not extend or change.

1.6(11) “*Protected information*” means personal information, the nature of which warrants protection from unlimited public access, including:

- a. Social security numbers.
- b. Financial account numbers.
- c. Dates of birth.
- d. Names of minor children.
- e. Individual taxpayer identification numbers.
- f. Personal identification numbers.
- g. Other unique identifying numbers.

ITEM 2. Adopt the following **new** rule 621—1.10(20):

621—1.10(20) Agency record and files.

1.10(1) *Agency record.* The official agency record for all adjudicatory proceedings includes the following:

- a. Electronic files maintained in the agency’s electronic document management system;
- b. Paper documents maintained by the agency in paper form when permitted by the board’s order; and
- c. Exhibits and other materials filed with or delivered to and maintained by the agency as part of the case file.

1.10(2) *Paper case files.* Except as otherwise provided in the agency’s rules or directed by the board, the agency will not maintain paper case files in adjudicatory proceedings filed on or after January 1, 2015.

ITEM 3. Amend subrule 2.12(1) as follows:

2.12(1) *Attendance of witnesses.* The board, an administrative law judge, or an arbitrator selected pursuant to Iowa Code section 20.22 shall issue subpoenas to compel the attendance of witnesses and the production of relevant records upon written application of any party filed with the ~~presiding officer~~ agency prior to the hearing ~~or oral motion at the hearing~~. ~~The party requesting subpoenas shall serve the subpoenas and notify the presiding officer in writing prior to hearing, or orally at the time of hearing, of application shall specify~~ the names and addresses of the witnesses or the person or party having possession of the requested documents and shall list with specificity the records or other items sought. The requested subpoenas may be provided electronically to a registered user of the electronic document management system. ~~Where a~~ A motion to quash a subpoena may be filed, and when the subpoena has been served more than seven days prior to the hearing, ~~a party may move to quash the subpoena the motion shall be filed not less than three days prior to the hearing. Subpoenas for production of records shall list with specificity the items sought for production and the name and address of the person or party having possession or control thereof. A written motion to quash subpoenas may be filed with the presiding officer issuing the subpoenas, and the moving party shall serve copies upon all parties of record.~~

ITEM 4. Amend rule 621—2.13(20) as follows:

621—2.13(20) Form and redaction of documents. All documents, ~~other than forms provided by the board,~~ which relate to any proceeding before the ~~board~~ agency should be typewritten and bear the docket number of the proceeding to which it relates. Such documents may be single- or double-spaced at the option of the submitting party. It is the responsibility of the filer to ensure that confidential or protected

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

information is omitted or redacted from documents before the documents are filed, unless the confidential or protected information is required by statute or rule to be included or is material to the proceeding. The agency will not review filings to determine whether appropriate omissions or redactions have been made.

ITEM 5. Amend rule 621—2.15(20) as follows:

621—2.15(20) Service of pleadings and other papers.

2.15(1) Service—upon whom made. Whenever under these rules nonelectronic service is required or permitted to be made upon a person or party, such service shall be as follows:

- a. Upon any city, or board, commission, council or agency thereof, by serving the mayor or city clerk.
- b. Upon any county, or office, board, commission or agency thereof, by serving the county auditor or the chairperson of the county board of supervisors.
- c. Upon any school district, school township, or school corporation by serving the presiding officer or secretary of its governing body.
- d. Upon the state of Iowa, or board, commission, council, office or agency thereof, by serving the governor or the director of ~~personnel~~ the department of administrative services.
- e. Upon the state judicial department by serving the state court administrator.
- f. Upon any other governing body by serving its presiding officer, clerk or secretary.
- g. Upon an employee organization by serving the person designated by the employee organization to receive service pursuant to 621—subrule 8.2(2), or, by service upon the president or secretary of the employee organization.
- h. Upon any other person by serving that person or that person's attorney of record.

2.15(2) Service—how made. Except as provided in rules 621—3.4(20) and 621—5.7(20) and subrule 2.12(3) and 621—subrule 4.2(2), whenever nonelectronic service of any document is permitted or required by these rules, ~~require service upon any person or party~~ the service shall be sufficient if made by ordinary mail. If the document served is an initial filing in a proceeding, the serving party shall also serve with the document an agency-approved information sheet regarding mandatory electronic filing.

2.15(3) Proof of service. Where personal service or service is by ~~restricted~~ certified or ordinary mail or personal service is permitted or required by these rules, the serving party shall ~~forward~~ file the ~~return receipt or return of personal service to~~ or certified mail return receipt with the ~~board for filing agency~~. Where service by ordinary mail is permitted under these rules, the serving party shall include the following or a substantially similar certificate on the original document filed with the board:

“I hereby certify that on _____ I sent a copy of the foregoing matter to
(date)

the following parties of record or their representatives at the addresses indicated, by depositing same in a United States mail receptacle with sufficient postage affixed.

(Signed) _____”

(party or representative)

Unless excepted by 621—subrule 16.4(2), proof of service shall be filed electronically in accordance with 621—Chapter 16.

ITEM 6. Amend rule 621—2.18(20) as follows:

621—2.18(20) Delivery of decisions and orders. Decisions and orders of the board or administrative law judge shall be ~~delivered to the parties by ordinary mail~~ filed and served in accordance with 621—Chapter 16.

ITEM 7. Amend rule 621—3.4(20) as follows:

621—3.4(20) Service of complaint. The complainant shall, within a reasonable time following the filing of a complaint, serve the respondent(s) with a copy of the complaint in the manner of an original notice or by ~~restricted~~ certified mail, return receipt requested. Such service shall be upon the person designated

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

for service by 621—subrule 2.15(1), and the complainant shall file proof thereof with the board agency in accordance with 621—subrules 2.15(3) and 16.10(1).

ITEM 8. Amend subrule 6.3(2) as follows:

6.3(2) Expedited resolution. In the event that a negotiability dispute arises between the employer and the certified employee organization, either party may petition the board agency for expedited resolution of the dispute. The petition shall set forth the material facts of the dispute; ~~and the precise question of negotiability submitted for resolution, and certificate of service upon the other party.~~ The petitioner shall promptly serve the other party with a copy of the petition and file proof thereof with the agency in accordance with 621—subrules 2.15(3) and 16.10(1). Unless the dispute is resolved ~~by the board~~ prior to the arbitration hearing, the parties shall present evidence on all items to the arbitrator, including the item which is the subject of the negotiability dispute. A negotiability dispute raised at the arbitration hearing shall be upon written objection to the submission of the proposal to the arbitrator. The objection shall request the arbitrator to seek a negotiability ruling from the board agency regarding the proposal or state that the objecting party will file a petition for resolution of the dispute ~~with the board~~, which petition shall be filed within five days of the making of the objection. Arbitrators shall rule on all items submitted to them including the item which is the subject of the negotiability dispute, unless explicitly stayed by the board. Arbitration awards issued prior to the final determination of the negotiability dispute will be contingent upon that determination.

ITEM 9. Amend subrule 7.6(1) as follows:

7.6(1) Objections. Any objection by a party to mediation or the conduct of arbitration proceedings which will not be completed by the applicable deadline for completion of impasse procedures shall be filed with the ~~board and served upon the other party~~ agency in accordance with rule 621—16.4(20). ~~Such filing and service shall take place~~ The objecting party shall promptly serve the other party with a copy of the objection and file proof thereof with the agency in accordance with 621—subrules 2.15(3) and 16.10(1). The objection shall be filed and served no later than 10 days after the filing with the ~~board~~ agency of the request for mediation or arbitration to which the objection refers. For purposes of this rule, a single-party request for mediation which is filed more than 120 days prior to the applicable deadline for completion of impasse procedures or a request for arbitration which is filed prior to the filing period specified in subrule 7.5(1) shall be deemed filed on the first day of that filing period. Failure to file an objection in a timely manner may constitute waiver of such objection, in which case the applicable deadline for completion of impasse procedures shall not apply.

ITEM 10. Amend subrule 9.2(1) as follows:

9.2(1) Notice of appeal. An appeal to the board from a proposed decision of an administrative law judge in a contested case proceeding shall be commenced within 20 days of the filing of the proposed decision by filing a written notice of appeal with the board agency in accordance with rule 621—16.4(20). ~~The appealing party shall serve a copy of the notice upon all opposing parties as provided in rule 621—2.15(20), or by ordinary mail upon the parties' attorneys of record promptly serve all other parties with a copy of the notice and file proof thereof with the agency in accordance with rule 621—16.10(20).~~

ITEM 11. Amend subrule 10.2(9) as follows:

10.2(9) A certificate of service of the petition upon any persons or entities required to be served with a copy by rule 621—10.7(17A,20). Service of the petition and proof thereof shall be in accordance with 621—subrules 2.15(3) and 16.10(1).

ITEM 12. Rescind subrule **11.4(3).**

ITEM 13. Adopt the following new 621—Chapter 16:

CHAPTER 16
ELECTRONIC DOCUMENT MANAGEMENT SYSTEM

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

621—16.1(20) Effective date and scope. This chapter governs the filing of all documents in adjudicatory proceedings before the agency that are filed on or after [effective date of this chapter]. This chapter also governs the filing of all documents in adjudicatory proceedings converted to electronic proceedings upon the board's order. To the extent the rules in this chapter are inconsistent with any other administrative rule of the board, the rules in this chapter shall govern.

621—16.2(20) Definitions.

"Electronic filing" means the electronic transmission of a document to the electronic document management system together with the production and transmission of a notice of electronic filing.

"Electronic record" means a record, file, or document created, generated, sent, communicated, received, or stored by electronic means.

"Electronic service" means the electronic transmission of a link where the registered users who are entitled to receive notice of the filing may view and download filed documents.

"Nonelectronic filing" means a process by which a paper document or other nonelectronic item is filed with the agency.

"Notice of electronic filing" means a document generated by the electronic document management system when a document is electronically filed.

"PDF" means an electronic document filed in a portable document format which is readable by the free Adobe® Acrobat® Reader.

"Public access terminal" means a computer located at the agency's offices where the public may view, print, and electronically file documents.

"Registered user" means an individual who can electronically file documents and electronically view and download files through the use of a username and password.

"Remote access" means a registered user's ability to electronically search, view, copy, or download electronic documents in an electronic record without the need to physically visit the agency's offices.

"Signature" means a registered user's username and password accompanied by one of the following:

1. *"Digitized signature"* means an embeddable image of a person's handwritten signature;
2. *"Electronic signature"* means an electronic symbol ("*/s/*" or "*/registered user's name/*") executed or adopted by a person with the intent to sign; or
3. *"Nonelectronic signature"* means a handwritten signature applied to an original document that is then scanned and electronically filed.

621—16.3(20) Registration, username, and passwords.

16.3(1) Registration.

a. *Registration required.* All individuals filing documents or viewing or downloading documents filed in an adjudicatory proceeding must register as a registered user of the electronic document management system.

b. *How to register.* To register, individuals must complete the registration process located at <https://perb.iowa.gov/efiling> and obtain a username and password for the electronic document management system.

c. *Registration complete.* When the registration process is completed, the registered user will be designated a username and password and the registered user may utilize the electronic document management system.

d. *Changing passwords.* Once registered, the user may change the user's password. If the registered user believes the security of an existing password has been compromised, the registered user must change the password immediately. The agency may require password changes periodically.

e. *Changes in registered user's contact information.* If a registered user's e-mail address, mailing address, or telephone number changes, the user must promptly make the necessary changes to the registered user's information contained in the electronic document management system. The registered user shall promptly give notice of changes in contact information to any nonregistered party in every active proceeding in which the registered user is a party.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

f. Duties of registered user. Each registered user shall ensure that the user's e-mail account information is current, that the account is monitored regularly, and that e-mail notices sent to the account are timely opened.

g. Canceling registration. Withdrawal from participation in the electronic document management system cancels the registered user's profile but does not authorize nonelectronic filing of documents and is not a withdrawal from a proceeding.

16.3(2) Use of username and password. A registered user is responsible for all documents filed with the user's username and password unless proven by clear and convincing evidence that the registered user did not make or authorize the filing.

16.3(3) Username and password security. If a username or password is lost, misappropriated, misused, or compromised, the registered user of that username/password shall notify the agency promptly.

16.3(4) Denial of access. The agency may refuse to allow an individual to electronically file or download information in the electronic document management system due to misuse, fraud or other good cause.

621—16.4(20) Mandatory electronic filing and exceptions.

16.4(1) Electronic filing mandatory. Unless otherwise required or authorized by these rules, all documents in adjudicatory proceedings commenced on or after January 1, 2015, must be filed using the agency's electronic document management system.

16.4(2) Exceptions.

a. A show of interest submitted in a representative certification, combined bargaining unit determination or reconsideration/representative certification, or decertification proceeding shall not be filed electronically.

b. Any item that is not capable of being filed in an electronic format shall be filed in a nonelectronic format.

c. Upon a showing of exceptional circumstances that it is not feasible for an individual to file documents by electronic means, the board may excuse the individual from electronic filing in a particular proceeding.

d. All filings in proceedings initially filed prior to January 1, 2015, unless converted to an electronic proceeding by board order shall not be filed electronically.

16.4(3) What constitutes filing. The electronic transmission of a document to the electronic document management system consistent with the procedures specified in these rules, together with the production and transmission of a notice of electronic filing, constitutes filing of the document.

16.4(4) Electronic file stamp. Electronic documents are officially filed when affixed with an electronic file stamp. Filings so endorsed shall have the same force and effect as documents time-stamped in a nonelectronic manner.

16.4(5) E-mail or fax. E-mailing or faxing a document to the agency will not generate a notice of electronic filing and does not constitute electronic filing of the document unless otherwise ordered by the agency.

16.4(6) Public access terminal. At least one public access terminal shall be maintained at the agency's office.

621—16.5(20) Filing of paper documents.

16.5(1) Conversion of paper documents filed. If the agency allows a party to file paper documents in accordance with paragraph 16.4(2) "c," the agency will convert the filed documents to an electronic format viewable to registered users of the electronic document management system.

16.5(2) Form of paper documents. Each document must be printed on only one side and be delivered to the agency with no tabs, staples, or permanent clips, but may be organized with paperclips, clamps, or some other type of temporary fastener or may be delivered to the agency in an appropriate file folder.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

16.5(3) *Return of copies by mail.* If a party wants a document filed in paper form to be returned by mail, the party must deliver to the agency a self-addressed envelope, with proper postage, large enough to accommodate the returned document.

621—16.6(20) Date and time of filing.

16.6(1) *Date of filing.* An electronic filing may be made any day of the week, including holidays and weekends, and any time of the day the electronic document management system is available.

16.6(2) *Time of filing.* A document is timely filed if it is filed before midnight on the date the filing is due.

621—16.7(20) Signatures.

16.7(1) *Registered user.* A username and password accompanied by a digitized, electronic, or nonelectronic signature serve as the registered user's signature on all electronically filed documents.

16.7(2) *Documents requiring oaths, affirmations or verifications.* Any document filed requiring a signature under oath or affirmation or with verification may be signed electronically or nonelectronically but shall be filed electronically.

16.7(3) *Format.* Any filing requiring a signature must be signed, with either a nonelectronic signature (actual signature scanned), an electronic signature (the symbol “/s/” or “/registered user's name/”), or a digitized signature (an inserted image of a handwritten signature). The following information about the person shall be included under the person's signature:

- a. Name;
- b. Name of firm, certified employee organization, or governmental agency;
- c. Mailing address;
- d. Telephone number; and
- e. E-mail address.

16.7(4) *Multiple signatures.* By filing a document containing multiple signatures, the registered user confirms that the content of the document is acceptable to all persons signing the document and all such persons consent to having their signatures appear on the document.

621—16.8(20) Format and redaction of electronic documents. All documents must be converted to a PDF format before they are filed in the electronic document management system. Prior to filing any document, the registered user shall ensure that confidential and protected information is redacted in accordance with rule 621—2.13(20).

621—16.9(20) Exhibits and other attachments. Any attachments to a filing, such as an exhibit, shall be uploaded and electronically attached to the filing.

621—16.10(20) Service.

16.10(1) *Initial filing.* An initial filing in a proceeding shall be served upon other parties nonelectronically in the manner specified in rule 621—2.15(20). The document being served must be accompanied by an agency-approved information sheet regarding mandatory electronic filing. Unless exempted by subrule 16.4(2), proof of service of the initial filing shall be electronically filed.

16.10(2) *Subsequent filings.* All subsequent filings shall be electronically served via the electronic document management system, unless a party to the proceeding is exempted from electronically filing documents by subrule 16.4(2). If a party is so exempted, all documents filed by all parties to the proceeding shall be served in accordance with rule 621—2.15(20).

16.10(3) *Proof of service of nonelectronic filings.*

- a. Parties filing pursuant to paragraph 16.4(2) “b” shall file a proof of service electronically.
- b. Parties filing pursuant to the exceptional circumstances provision in paragraph 16.4(2) “c” must attach a nonelectronic proof of service to the filing.
- c. Parties to a proceeding initially filed prior to January 1, 2015, must attach a nonelectronic proof of service to their nonelectronic filings.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

16.10(4) *Electronic service and distribution of electronic filings.*

a. When a document is electronically filed, it will be served through the electronic document management system to all parties to the adjudicatory proceeding who are registered users. No other service is required unless ordered by the agency.

b. Notices of electronic filing will continue to be sent to registered users appearing or intervening in a proceeding until they have filed a withdrawal of appearance.

16.10(5) *Agency-generated documents.*

a. Electronic filing and service. All agency-generated documents issued in adjudicatory proceedings governed by this chapter shall be electronically filed and served.

b. Paper copies. The agency shall not mail paper copies of any documents absent approval by the board.

621—16.11(20) Discovery. Parties shall file a notice with the agency when a notice of deposition or a discovery request or response is served on another party. The notice filed with the agency shall include the date, manner of service, and the names and addresses of the persons served. Other discovery materials shall not be filed unless ordered by the presiding officer.

621—16.12(20) Transcripts, briefs and exhibits.

16.12(1) *Transcripts.* If a hearing or oral argument is transcribed, the transcript shall be made available to registered users electronically after final agency action.

16.12(2) *Briefs.* Briefs and memoranda shall be electronically filed.

16.12(3) *Exhibits.* A party's exhibits admitted into evidence at a hearing shall be electronically filed by the party not later than the date ordered by the presiding officer or board.

These rules are intended to implement Iowa Code section 20.24 as amended by 2014 Iowa Acts, House File 2172.

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions JoAnn Johnson, Superintendent of Banking James M. Schipper, and Auditor of State Mary Mosiman have established today the following rates of interest for public obligations and special assessments. The usury rate for June is 4.75%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

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

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

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

TREASURER OF STATE(cont'd)

New official state interest rates, effective June 10, 2014, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

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

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

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

ARC 1508C**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 206.19(2), the Department of Agriculture and Land Stewardship hereby amends Chapter 45, "Pesticides," Iowa Administrative Code.

This amendment updates a reference for restricted use pesticide classifications.

Notice of Intended Action for this amendment was published in the Iowa Administrative Bulletin on April 30, 2014, as **ARC 1452C**. A public hearing was held on May 20, 2014, pursuant to Iowa Code section 206.19. No comments were received from the public. This amendment is identical to that published under Notice.

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

This amendment is intended to implement Iowa Code section 206.20.

This amendment will become effective July 30, 2014.

The following amendment is adopted.

Amend rule 21—45.30(206) as follows:

21—45.30(206) Restricted use pesticides classified. Pesticide products containing active ingredients classified as restricted use are limited to use by or under the direct supervision of a certified applicator. The pesticide use classification as promulgated by the United States Environmental Protection Agency in 40 CFR, Section ~~162.34~~ 152.160-175, revised as of ~~July 1, 1983~~ May 4, 1988, is hereby adopted in its entirety by this reference.

This rule is intended to implement Iowa Code section 206.20.

[Filed 6/4/14, effective 7/30/14]

[Published 6/25/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/25/14.

ARC 1505C**ARCHITECTURAL EXAMINING BOARD[193B]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby amends Chapter 1, "Description of Organization," Iowa Administrative Code.

The rules in Chapter 1 describe the organization of the Architectural Examining Board. These amendments update the titles of the staff and the mailing address of the Board and allow for an electronic roster of persons who have failed to renew their registrations.

Notice of Intended Action was published in the December 25, 2013, Iowa Administrative Bulletin as **ARC 1251C**. A public hearing was held on January 14, 2014. No one attended the public hearing, and no comments were received. The adopted amendments are identical to those published under Notice.

These amendments were adopted during the March 26, 2014, meeting of the Architectural Examining Board.

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

These amendments are intended to implement Iowa Code chapter 544A.

These amendments will become effective July 30, 2014.

The following amendments are adopted.

ITEM 1. Amend subrule 1.1(4) as follows:

1.1(4) ~~Administrative secretary~~ Board administrator. The ~~division~~ professional licensing and regulation bureau may employ ~~an administrative secretary~~ a board administrator who will maintain all necessary records of the board and perform all duties in connection with the operation of the board

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

office. The ~~division administrator~~ bureau chief or designee shall sign vouchers for payment of board obligations.

ITEM 2. Amend rule 193B—1.2(544A,17A) as follows:

193B—1.2(544A,17A) Office of the board. The mailing address of the board shall be: Iowa Architectural Examining Board, ~~1918 S.E. Hulsizer, Ankeny, Iowa 50021~~ 200 E. Grand Avenue, Suite 350, Des Moines, Iowa 50309.

ITEM 3. Amend rule 193B—1.3(544A,17A) as follows:

193B—1.3(544A,17A) Meetings. Meetings of the board are regularly scheduled for the second Tuesday of January, March, May, July, September, and November. Meetings may be postponed, canceled, or rescheduled by the president for the convenience of the board. Board members shall be informed of meetings by the ~~administrative secretary~~ board administrator in writing at least one week before the scheduled date of the meeting.

ITEM 4. Amend rule 193B—1.4(544A,17A) as follows:

193B—1.4(544A,17A) Certificates. Certificates issued to successful applicants shall contain the registrant's name, state registration number and the signatures of the board president, vice president and secretary. All registrations are renewable biennially on July 1, with registrants whose last names begin with the letters A-K renewing in even-numbered years and registrants whose last names begin with the letters L-Z renewing in odd-numbered years as provided in rule 193B—2.5(17A,272C,544A).

The board shall ~~give notice by certified mail, return receipt requested, to the holder of a certificate~~ maintain an electronic roster of those holders of certificates of registration who has have failed to renew. The certificate of registration may be reinstated in accord with rule 193B—2.4(544A,17A).

[Filed 5/28/14, effective 7/30/14]

[Published 6/25/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/25/14.

ARC 1504C

ARCHITECTURAL EXAMINING BOARD[193B]

Adopted and Filed

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

The rules in Chapter 2 describe the process for registration and renewal of certificates of registration to authorize the practice of architecture in Iowa. These amendments remove the biennial renewal requirement and fee for those registrants in retired status.

Notice of Intended Action was published in the January 8, 2014, Iowa Administrative Bulletin as **ARC 1282C**. A public hearing was held on January 28, 2014. No one attended the public hearing, and no comments were received. The adopted amendments are identical to those published under Notice.

These amendments were adopted during the March 26, 2014, meeting of the Architectural Examining Board.

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

These amendments are intended to implement Iowa Code chapter 544A.

These amendments will become effective July 30, 2014.

The following amendments are adopted.

ITEM 1. Amend paragraph **2.5(2)“c”** as follows:

c. Permitted practices. A person may, while registered as inactive, perform for a client, business, employer, government body, or other entity those services which may lawfully be provided by a person to

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

whom a certificate of registration has never been issued. Such services may be performed as long as the person does not in connection with such services use the title “architect” or any other title restricted for use only by architects pursuant to Iowa Code section 544A.15 (with or without additional designations such as “inactive” or “retired”). Restricted titles may be used only by active architects who are subject to continuing education requirements to ensure that the use of such titles is consistently associated with the maintenance of competency through continuing education.

ITEM 2. Amend subrule 2.5(3) as follows:

2.5(3) Retired status. A person ~~registered as retired~~ who held a registration as an architect and who does not reasonably expect to return to the workforce in any capacity for which a certificate of registration is required due to bona fide retirement or disability may apply to the board for retired status and, if granted, may use the title “architect retired” in the context of non-income-producing personal activities. If the board determines an applicant is eligible, the retired status would become effective on the first scheduled registration renewal date. Applicants do not need to reinstate an expired registration to be eligible for retired status. Applicants may apply for retired status on forms provided by the board. The board will not provide a refund of biennial registration fees if an application for retired status is granted in a biennium in which the applicant has previously paid the biennial fees for either active or inactive status. Persons registered in retired status are exempt from the renewal requirement.

a. Affirmation. ~~The renewal~~ retired status application form shall contain a statement in which the applicant affirms that the applicant will not engage in any of the practices in Iowa that are listed in Iowa Code section 544A.16 without first complying with all rules governing reinstatement to active status. A person in retired status may reinstate to active status at any time pursuant to rule 193B—2.8(544A).

b. Renewal. ~~A person registered as retired may renew the person’s certificate of registration on the biennial schedule described in rule 193B—2.5(17A,272C,544A). This person shall be exempt from the continuing education requirements and will be charged a reduced renewal fee as provided in rule 193B—2.11(544A,17A). A retired certificate of registration shall lapse if not timely renewed. However, the board will accept an otherwise sufficient renewal application that is untimely if the board receives the application and late fee within 30 days of the date of expiration.~~

b. Permitted practices. Persons registered in retired status may engage in the practices identified in paragraph 2.5(2)“c.” Such persons may also provide services as technical experts before a court, including prelitigation preparation, discovery, and testimony, on matters directly related to architectural services provided by such persons prior to registering with the board in retired status.

c. Exemption. A person whose registration as an architect has been placed on probation, suspended, revoked, or voluntarily surrendered in connection with a disciplinary investigation or proceeding shall not be eligible for retired status unless, upon appropriate application, the board first reinstates the registration to good standing.

ITEM 3. Amend rule 193B—2.11(544A,17A) as follows:

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

Examination fees:

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

Initial registration fee	\$ 50
(plus \$5 per month until renewal)	
Reciprocal application and registration fee	\$200
Biennial renewal fee	\$200

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

Biennial renewal fee (inactive)	\$100
Biennial renewal fee (retired) Retired status	\$50 <u>None</u>
Reinstatement of lapsed individual registration (per month)	\$ 25
Duplicate wall certificate fee	\$ 50
Late renewal fee	\$ 25
(for renewals postmarked on or after July 1 and before July 31)	

[Filed 5/28/14, effective 7/30/14]

[Published 6/25/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/25/14.

ARC 1509C**LABOR SERVICES DIVISION[875]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 88.5, the Labor Commissioner hereby amends Chapter 10, "General Industry Safety and Health Rules," Iowa Administrative Code.

The amendment adopts by reference changes to federal occupational safety and health standards. The changes to the federal standards revise existing language pertaining to mechanical power presses in general industry workplaces. The U.S. Occupational Safety and Health Administration found that taken as a whole, the revisions do not impose any more stringent requirements on employers than the existing language; that the revisions reduce unnecessary paperwork; and that the revisions increase employee protection.

The principal reasons for adoption of this amendment are to implement legislative intent, protect the safety and health of Iowa workers, and make Iowa's regulations current and consistent with federal regulations. Pursuant to Iowa Code subsection 88.5(1) and 29 CFR 1953.5, Iowa must adopt changes to the federal occupational safety and health standards.

Notice of Intended Action was published in the April 30, 2014, Iowa Administrative Bulletin as **ARC 1440C**. No public comment was received on the proposed amendment. This amendment is identical to the amendment published under Notice of Intended Action.

No variance procedures are included in this rule. Variances procedures are set forth in 875—Chapter 5.

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

This amendment is intended to implement Iowa Code section 88.5 and 29 CFR 1953.5.

This amendment shall become effective on July 30, 2014.

The following amendment is adopted.

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

78 Fed. Reg. 69549 (November 20, 2013)

[Filed 6/4/14, effective 7/30/14]

[Published 6/25/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/25/14.

ARC 1506C

RACING AND GAMING COMMISSION[491]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby amends Chapter 1, "Organization and Operation," and Chapter 5, "Track, Gambling Structure, and Excursion Gambling Boat Licensees' Responsibilities," Iowa Administrative Code.

Item 1 modifies term limits for the chairperson.

Item 2 updates the edition of Robert's Rules of Order Newly Revised to the most current edition.

Item 3 removes the reduced fee for subsequent applications.

Item 4 modifies the catchwords of subrule 1.5(6) for consistency.

Item 5 clarifies the required fee for the manufacturers and distributors license application.

Item 6 adopts new subrules to provide specificity for applications submitted.

Item 7 clarifies required certification for first-aid personnel.

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on April 2, 2014, as **ARC 1393C**. A public hearing took place on April 22, 2014. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice.

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

These amendments are intended to implement Iowa Code chapters 99D and 99F.

These amendments will become effective July 30, 2014.

The following amendments are adopted.

ITEM 1. Amend paragraph **1.2(1)"b"** as follows:

b. The racing and gaming commission consists of five members. The membership shall elect a chairperson and vice-chairperson in July of each year. No chairperson shall serve more than ~~two~~ four consecutive one-year full terms.

ITEM 2. Amend paragraph **1.2(3)"e"** as follows:

e. Cases not covered by this rule shall be governed by the ~~2000~~ most recent edition of Robert's Rules of Order Newly Revised.

ITEM 3. Amend subrule 1.5(1) as follows:

1.5(1) *Racing, gambling structure, or excursion gambling boat license application.* This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the facility, and description of proposed operation. The form may include other information the commission deems necessary to make a decision on the license application. The qualified nonprofit corporation and the boat operator, if different than the qualified nonprofit corporation, shall pay a nonrefundable application fee in the amount of \$25,000 to offset the commission's cost for processing the application ~~in the amount of \$25,000. The fee shall be \$5,000 for each subsequent application involving the same operator and the same qualified sponsoring organization.~~ Additionally, the applicant shall remit an investigative fee of \$30,000 to the department of public safety to do background investigations as required by the commission. The department of public safety shall bill the applicant/licensee for additional fees as appropriate and refund any unused portion of the investigative fee within 90 days after the denial or operation begins.

ITEM 4. Amend subrule 1.5(6) as follows:

1.5(6) ~~*Application for season*~~ *Season approvals.* This form shall contain, at a minimum, a listing of the department heads and racing officials, minimum purse, purse supplements for Iowa-breds, grading system (greyhound racing only), schedule and wagering format, equipment, security plan, certification, and any other information the commission deems necessary for approval. This request must be submitted 45 days prior to the meet. Any changes to the items approved by the commission

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shall be requested in writing by the licensee and subject to the written approval of the administrator or commission representative before the change occurs.

ITEM 5. Amend subrule 1.5(7) as follows:

1.5(7) *Manufacturers and distributors license application.* This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the applicant, and description of proposed operation. The form may include other information the administrator deems necessary to make a decision on the license application. A license fee of \$1,000 for a distributor's license and a license fee of \$250 for a manufacturer's license shall accompany this application. (Refer to 491—Chapter 11 for additional information.)

ITEM 6. Adopt the following **new** subrules 1.5(8) and 1.5(9):

1.5(8) *Advance deposit wagering license application.* This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the applicant, and description of proposed operation. The form may include other information the administrator deems necessary to make a decision on the license application. A license fee of \$1,000 shall accompany this application. (Refer to 491—Chapter 8 for additional information.)

1.5(9) *Asset/stock purchase form for commission approval.* This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the applicant, and description of proposed operation. The form may include other information the administrator deems necessary to make a decision.

ITEM 7. Rescind subrule 5.4(4) and adopt the following **new** subrule in lieu thereof:

5.4(4) *First-aid room.*

a. During all hours of operation, each licensee shall equip and maintain adequate first-aid facilities and have, at a minimum, one employee trained in CPR, first aid, and the use of the automated external defibrillator (AED). During live racing at racetracks and while excursion gambling boats are cruising, the licensee shall have present either a physician, a physician assistant, a registered nurse, a licensed practical nurse, a paramedic, or an emergency medical technician.

b. All individuals specified under paragraph 5.4(4)“a” must be currently licensed or certified, including active status, in accordance with the requirements of the Iowa department of public health.

c. Each licensee is required to have a properly functioning and readily accessible AED at the licensee's facility.

[Filed 6/2/14, effective 7/30/14]

[Published 6/25/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/25/14.

ARC 1512C

STATE PUBLIC DEFENDER[493]

Adopted and Filed

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender hereby adopts amendments to Chapter 1, “Administration,” Chapter 4, “Public Records and Fair Information Practices,” Chapter 7, “Definitions,” Chapter 12, “Claims for Indigent Defense Services,” Chapter 13, “Claims for Other Professional Services,” and Chapter 14, “Claims for Attorney Fees in 600A Terminations,” Iowa Administrative Code.

These amendments establish a number of safeguards in response to the improper billing practices of some indigent defense contract attorneys. These safeguards include setting a maximum number of aggregate hours that an attorney can bill in a day, requiring more detailed itemized time and

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expense reimbursement records, establishing additional documentation requirements for claims of attorneys whose contracts were canceled for improper billing practices, and clarifying the prohibition on other improper practices, such as standardized billing, estimated billing, and duplicative mileage reimbursements. The amendments also make other technical and substantive revisions to the claims-processing procedures of the State Public Defender as the result of a comprehensive review of the State Public Defender's administrative rules and the joint Lean Kaizen event with the Department of Inspections and Appeals.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 30, 2014, as **ARC 1437C**.

A public hearing was held on May 20, 2014, at 2:30 p.m. in Conference Room 424, Fourth Floor, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa. Interested persons also had the opportunity to make written suggestions or comments on the proposed amendments on or before May 20, 2014.

A number of comments were received from indigent defense contract attorneys. Most of these comments raised concerns pertaining to the provision regarding the required billing increment for attorney fee itemizations and the provisions specifying when substitute counsel would be allowed. The State Public Defender considered all comments and has modified these amendments in response to some of the concerns expressed. These amendments differ from those published under Notice of Intended Action. The incremental billing provisions have been changed to clarify when activities must be separately itemized and when they must be aggregated for billing purposes. The provisions specifying when substitute counsel is allowed for court proceedings have been changed to provide that substitute counsel is allowed for any court proceeding in which an attorney has a legitimate conflict except for a trial or any other hearing when the court determines that the court-appointed attorney's personal appearance is required. Other technical corrections were also made.

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

These amendments are intended to implement Iowa Code chapters 13B, 600A, and 815.

These amendments will become effective July 30, 2014.

The following amendments are adopted.

ITEM 1. Amend paragraph **1.3(3)“e”** as follows:

e. Coordinating the provision of legal representation of all indigents under arrest or charged with a crime, on appeal in criminal cases, in a proceeding to obtain postconviction relief when ordered to do so by the court, against whom a contempt action is pending, in proceedings under Iowa Code chapter 229A, in juvenile cases under Iowa Code ~~chapter~~ chapters 232 and 600A, or in probation or parole violations under Iowa Code chapter 908;

ITEM 2. Amend paragraphs **4.13(2)“f”** to **“h”** as follows:

f. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. ~~422.44~~ 1.503, the rules of evidence, the Code of Professional Responsibility, and case law. ~~Attorney work product includes an itemization of work performed on an interim indigent defense fee claim form or claims resulting from a mistrial.~~

g. Criminal investigative reports. (Iowa Code section 22.7(5))

h. A claim for compensation and reimbursement for legal assistance and supporting documents submitted to the state public defender for payment of costs incurred in the legal representation of an indigent person pursuant to Iowa Code section 13B.4B, except as disclosure is authorized under that section.

~~*h. i.*~~ *i.* Any other records considered confidential by law.

ITEM 3. Amend subrule 4.14(1) as follows:

4.14(1) By authority of Iowa Code chapter 13B, the appellate defender division maintains information and records relating to criminal and postconviction relief cases that are being appealed. Records contain names and identifying numbers of persons involved in these cases. Case information is stored in a data processing system and may be compared with information in any data processing

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system. By authority of Iowa Code section 910A.13, the names of child victims shall not be disclosed. Confidential juvenile records under Iowa Code section 232.147 shall not be disclosed except as otherwise permitted by law. Presentence investigation reports in the possession of the appellate defender are confidential records pursuant to Iowa Code section 901.4.

ITEM 4. Adopt the following new definition of “Returned fee claim letter” in rule **493—7.1(13B,815)**:

“Returned fee claim letter” means a letter in which the state public defender returns the claim and notifies the claimant as to the reason the claim was returned.

ITEM 5. Amend rule **493—7.1(13B,815)**, definition of “Written,” as follows:

“Written” as used in these rules may include electronically transmitted communication ~~to the extent permitted by rules of the state public defender~~ except where a statute or rule expressly requires an original signature, mailing or any other special form of delivery other than electronic transmission.

ITEM 6. Rescind the definitions of “Clerical activities,” “Date of service,” “Timely claim” and “Travel time” in rule **493—7.1(13B,815)**.

ITEM 7. Amend subrule 12.1(3) as follows:

12.1(3) The Iowa Code requires the state public defender to approve only those indigent defense fee claims that are reasonable and appropriate under applicable statutes. In exercising this duty, the state public defender publishes rules and makes judgments considering what is statutorily permitted, fair for claimants, fair for indigent clients (who, by law, are required to reimburse the state for the costs of their defense to the extent they are reasonably able to pay such costs), and consistent with good stewardship of public appropriations.

ITEM 8. Amend subrule 12.2(1) as follows:

12.2(1) Required claim documents. Court-appointed attorneys shall submit written indigent defense fee claims to the state public defender for review, approval and payment. These claims shall include the following:

a. A completed fee claim on a form promulgated by the state public defender. Adult fee claims, including all trial-level criminal and postconviction relief proceedings, misdemeanor appeals to district court, ~~postconviction relief~~ and applications for discretionary review or applications for interlocutory appeals to the Iowa supreme court, must be submitted on an Adult form. Juvenile fee claims, including petitions on appeal and applications for interlocutory appeals, must be submitted on a Juvenile form. Appellate fee claims, including claims for all criminal and postconviction relief appeals, work performed after the granting of an application for discretionary review or for interlocutory appeal, ~~or if~~ and work performed after full briefing is ordered following a juvenile petition on appeal, must be submitted on an Appellate form. The claim forms may be downloaded from the state public defender Web site: <http://spd.iowa.gov>. ~~Claims submitted that do not comply with the instructions on the Web site may be returned to the claimant for additional information and resubmission.~~

b. A copy of all orders appointing the attorney to the case.

(1) The appointment order must be signed by the court and either dated by the court or have a legible file-stamp.

(2) If, at the time of appointment, the attorney does not have a contract to represent indigent persons in the type of case and the county in which the action is pending, the appointment order must include either a finding that no attorney with a contract to represent indigent persons in that specific type of case and that county is available or a finding that the state public defender was consulted and consented to the appointment.

(3) Claims for probation or parole violations and contempt actions are considered new cases, and the attorney must submit a copy of an appointment order for these ~~claims~~ cases. Appointment orders in parole violation cases ~~to which the attorney was appointed on or after May 5, 2005~~, must also contain the following findings:

1. The alleged parole violator requests appointment of counsel;
2. The alleged parole violator is indigent as defined in Iowa Code section 815.9;

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3. The alleged parole violator, because of lack of skill or education, would have difficulty in presenting the alleged violator's version of a disputed set of facts, particularly when presentation requires the examining or cross-examining of witnesses or the offering or dissecting of complex documentary evidence; and

4. The alleged parole violator has a colorable claim that the alleged violation has not been committed, or there are substantial reasons which justify or mitigate the violation and make revocation inappropriate.

(4) If the venue is changed in a juvenile case, an order appointing the attorney in the new county must be submitted.

(5) ~~An~~ A new appointment order is not necessary for trial counsel to request or resist an interlocutory appeal or an application for discretionary review.

(6) A new appointment order is not necessary to pursue or respond to a juvenile petition on appeal if the attorney was properly appointed to represent the client in juvenile court. If the original trial counsel withdraws or is removed from the case, the new appellate counsel must attach an order appointing the attorney for the appeal.

~~(6)~~ (7) An appointment order is not necessary if the state public defender determines the appointment order is unnecessary.

c. A copy of any application and court order authorizing the attorney to exceed the attorney fee limitations.

d. A copy of any court order that affects the amount to be paid or the client's right to counsel.

e. A copy of the dispositional order, the order granting a motion to withdraw prior to disposition, procedendo, or other court order documenting the "date of service" for the claim.

~~e.~~ f. An itemization detailing all work performed on the case for which the attorney seeks compensation and all expenses incurred for which the attorney seeks reimbursement.

(1) The itemization must separately state the date and amount of time spent on each activity. Time may must be reported in either tenths or hundredths of an hour on the itemization but must be recorded in tenths of an hour on the claim form. Time listed in hundredths of an hour on the claim form will be reduced to the nearest tenth of an hour. Time shall be rounded to the nearest tenth of an hour. For example, an attorney spending ten minutes performing an activity shall bill 0.2 hours, while an attorney spending seven minutes performing an activity shall bill 0.1 hours. The time spent on each activity must be separately itemized, except that one or more activities on the same day, each taking less than 0.1 hours, must be aggregated together with other activities so that the aggregate amount billed is at least 0.1 hours. If an attorney performs only a single activity taking less than 0.1 hours for a client on a day, the attorney may bill 0.1 hours regardless of the precise length of time spent on the activity. If an attorney performs multiple related activities on the same day, such as multiple e-mail or telephone exchanges, the activities must be aggregated together if separately itemizing the activities would result in claiming more time than the attorney actually spent performing the activities.

(2) The itemization shall separately designate time claimed for in-court time, out-of-court time, paralegal time and travel time.

(3) If another attorney performed any of the work, the itemization shall specify the name of the attorney performing each activity. It is permissible to use initials representing the name, so long as an explanation is provided as to the full name for each set of initials with the itemization.

~~(3)~~ (4) The itemization must be in chronological order.

(5) If the attorney seeks reimbursement for expenses incurred, the itemization must separately state each expense incurred, including any specific information required by rule 493—12.8(13B).

(4) (6) The itemization must be typed in at least 10-point type on 8½" × 11" paper.

~~(5) If the itemization does not indicate the date of the disposition of the case, a copy of the dispositional order must be attached to the claim.~~

f. g. If the attorney was privately retained to represent the client prior to appointment, a copy of any representation agreement, written notice of the dollar amount paid to the attorney, and an itemization of services performed and how any funds provided were spent during the period prior to the court

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appointment. The state public defender will review the amount paid and hours spent before and after the court appointment in determining the appropriate attorney compensation on the claim.

ITEM 9. Rescind subrule 12.2(2) and adopt the following **new** subrule in lieu thereof:

12.2(2) *Failure to submit required documents.* Submitted claims for which the entire claim form has not been properly completed or which do not include the documents required by subrule 12.2(1) may be returned to the attorney for additional information and resubmission within the time required by paragraph 12.2(3)“d.” If the attorney fails to submit all the required documentation to support a claim, the state public defender may request additional information or may deny all or a portion of the claim.

ITEM 10. Rescind subrule 12.2(3) and adopt the following **new** subrule in lieu thereof:

12.2(3) *Timely claims required.* Claims submitted prior to the date of service shall be returned to the claimant unpaid and may be resubmitted to the state public defender after the date of service. Claims that are not submitted within 45 days of the date of service as defined in this subrule shall be denied as untimely unless the delay in submitting the claim is excused by paragraph 12.2(3)“f.” Attorney fees and expenses that are submitted on a claim denied as untimely under this subrule may be resubmitted on a subsequent claim that is timely submitted with respect to a subsequent date of service in the same case. For purposes of this subrule, a probation, parole, or contempt proceeding is not the “same case” as the underlying proceeding.

a. *Adult claims.* For adult claims, “date of service” means the date of filing of an order indicating that the case was dismissed or the client was acquitted or sentenced, the date of a final order in a postconviction relief case, the date of mistrial, the date on which a warrant was issued for the client, or the date of a court order authorizing the attorney’s withdrawal from a case prior to the date of a dismissal, acquittal, sentencing, mistrial or the issuance of a warrant. The filing of a notice of appeal is not a date of service. If a motion for reconsideration is filed, the date on which the court rules on that motion is the date of service. For interim adult claims authorized by subrule 12.3(3) or 12.3(4), the date of service is the last day on which the attorney claimed time on the itemization of services.

b. *Juvenile claims.* For juvenile claims, “date of service” means the date of filing of an order as a result of the dispositional hearing or most recent postdispositional hearing that occurs while the client is still an active party in the case, the date on which the client ceased to be a party, the date of a court order authorizing the attorney’s withdrawal from a case prior to the filing of the final ruling with respect to the client, the date jurisdiction is waived to adult court, the date on which the venue is changed, the date of dismissal, or the file-stamped date of a procedendo resulting from a petition on appeal. The date of a family drug court meeting, family team meeting, staffing, or foster care review board hearing is not a date of service.

c. *Appellate claims.* For appellate claims, “date of service” means the date on which the case was dismissed, the date of a court order authorizing the attorney’s withdrawal prior to the filing of the proof brief, the date on which the proof brief was filed, or the date on which the procedendo was issued.

d. *Notices of action and returned claims.* For claims of any type that are filed as a result of a notice of action letter or a returned fee claim letter, “date of service” means the date of the notice of action letter or returned fee claim letter. But a claim that is denied as untimely does not become timely merely because it was resubmitted within 45 days of a returned fee claim letter. A timely claim returned to the attorney for additional information shall continue to be deemed timely only if resubmitted with the required information within 45 days of being returned by the state public defender.

e. *Court orders.* For claims of any type that are filed as a result of a court order after hearing for review of the fee claim, “date of service” means the file-stamped date of the order.

f. *Exceptions to the 45-day rule.* The state public defender may in the state public defender’s sole discretion approve a claim that was not submitted within 45 days of the date of service only if the delay in submitting the claim was caused by one of the following circumstances:

- (1) The death of the attorney;
- (2) The death of the spouse of the attorney, a child of the attorney, or an employee of the attorney who was responsible for assisting in the preparation of the attorney’s fee claims;

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(3) A serious illness, injury, or other medical condition that prevents the attorney from working for more than 3 consecutive days and occurs in the last 5 days before the expiration of the 45-day period for timely claims;

(4) The attorney's need to care for the attorney's spouse or child with a serious illness, injury, or other medical condition that prevents the spouse or child from working, attending school, or performing other regular daily activities for more than 3 consecutive days and occurs in the last 5 days before the expiration of the 45-day period for timely claims.

Any claim submitted pursuant to subparagraph (1) must be submitted within 45 days of the death of the attorney. Any claim submitted pursuant to subparagraph (2) must be submitted within 30 days of the death that caused the delay. Any claim submitted pursuant to subparagraph (3) or (4) must be submitted within 15 days of the end of the illness, injury, or medical condition that caused the delay. An attorney claiming an exception to the 45-day rule shall submit with the claim a letter explaining the applicable exception and written documentation supporting the exception.

ITEM 11. Rescind subrule 12.2(4) and adopt the following **new** subrule in lieu thereof:

12.2(4) Valid appointment required. Claims for compensation from an attorney appointed as counsel or guardian ad litem may be denied if the attorney was appointed contrary to Iowa Code section 814.11 or 815.10. Claims for which court-appointed counsel at state expense is not statutorily authorized or which are not payable from the indigent defense fund created by Iowa Code section 815.11 shall be denied.

a. Appellate appointments. Claims for compensation from an attorney whose appointment as counsel or guardian ad litem at the appellate level does not comply with Iowa Code section 814.11 shall be denied.

b. Trial-level designations. Claims by an attorney whose appointment in a case as counsel or guardian ad litem at the trial level was made on or after July 1, 2009, shall be denied if the state public defender filed a designation effective at the time of the appointment designating a local public defender, nonprofit corporation, or attorney to represent indigent persons in that type of case in the county in which the case was filed, unless the appointment order and any supporting documentation submitted with the claim demonstrate that:

(1) The state public defender's designee and any successor designee have withdrawn from the case or have been offered and declined to take the case; or

(2) The state public defender's designee and any successor designee would have withdrawn from or would have declined to take the case had the appointment been offered.

c. Trial-level contract attorney preference. Claims by an attorney whose appointment in a case as counsel or guardian ad litem at the trial level was made on or after February 1, 2012, shall be denied unless:

(1) At the time of the appointment, the attorney had a contract with the state public defender to represent indigent persons in that specific type of case and that county in which the action was pending; or

(2) The appointment order includes a specific finding that no attorney with a contract to represent indigent persons in that specific type of case and that county in which the action was pending is available or a finding that the state public defender was consulted and consented to the appointment; or

(3) After the appointment, the attorney entered into a contract with the state public defender, or amended the attorney's existing contract, to represent indigent persons in the specific type of case and the county in which the action was pending, in which case only the portion of the claim for the services performed prior to the effective date of the contract shall be denied.

ITEM 12. Rescind subrule 12.2(5) and adopt the following **new** subrule in lieu thereof:

12.2(5) Scope of appointment. Claims shall only be paid for services rendered and expenses incurred within the scope of the attorney's court appointment. Any other fees or expenses claimed shall be denied.

a. Services prior to appointment. Claims for services rendered or expenses incurred prior to the effective date of the attorney's appointment are not payable within the scope of the attorney's appointment and shall be denied.

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b. Representation of parents after termination of parental rights. Claims for services rendered or expenses incurred by an attorney for representing a parent in a child in need of assistance case or termination of parental rights case for work performed after the date on which the termination of that parent's parental rights becomes final, either on appeal or because no appeal was taken, are not payable within the scope of the attorney's appointment and shall be denied.

c. Guardian ad litem for children over the age of 18. Claims for services rendered or expenses incurred by a guardian ad litem for a child who is aged 18 or older and involved in a juvenile court proceeding are only within the scope of appointment if the court enters an order appointing the guardian ad litem for the limited purposes of continuing a relationship with the child and to provide advice to the child relating to the child's transition plan under Iowa Code section 232.2 beyond the child's eighteenth birthday. The appointment shall end on the date a court order relieving the guardian ad litem of further duties or the date of a court order closing the juvenile case, whichever occurs first, and claims for services rendered or expenses incurred after such date shall be denied. Neither a parent nor guardian of the child in interest is entitled to court-appointed counsel during the post-age 18 transition period.

ITEM 13. Rescind subrule 12.2(6) and adopt the following **new** subrule in lieu thereof:

12.2(6) Rate of compensation. Claims for compensation in excess of the applicable rate of compensation established by rule 493—12.4(13B,815) or in the attorney's contract with the state public defender are not payable and shall be reduced to the applicable rate of compensation.

ITEM 14. Rescind subrule 12.2(7) and adopt the following **new** subrule in lieu thereof:

12.2(7) Excessive claims. The amount of a claim for services provided or expenses incurred that is excessive shall be reduced by the state public defender to an amount which is not excessive. Only reasonable and necessary compensation and expenses will be approved for payment.

ITEM 15. Rescind subrule 12.2(8) and adopt the following **new** subrule in lieu thereof:

12.2(8) Review of claims after contract termination for improper billing practices. A claim submitted by an attorney whose contract with the state public defender is terminated for improper billing practice shall be paid only to the extent that the claim is supported by authentic, independent, written documentation originating from sources other than the attorney, even if such a claim would otherwise be payable under this chapter. Any portion of a claim for a service performed or expense incurred that is not independently verified by such documentation is not payable under the contract and shall be denied.

a. Acceptable documentation. Independent, written documentation that may support a claim for services performed or expenses incurred by the attorney includes, but is not limited to:

(1) Affidavits of clients, witnesses, prosecutors, service providers, department of human services staff, court staff, or other persons who can verify that the attorney performed a service for a specific length of time on a specific day. Affidavits from employees of the attorney or the attorney's firm, family members of the attorney, or other attorneys within the same law firm as the attorney are not independent documentation and are insufficient to confirm a claim for a service performed or expense incurred.

(2) Court orders or other documents in the court file that verify the attorney's attendance at a court proceeding, as well as the date, time, duration, and location of the proceeding.

(3) Deposition transcripts and other records of the certified shorthand reporter that verify the attorney's attendance at a deposition, as well as the date, time, duration, and location of the deposition.

(4) Records of a jail or correctional facility that document the date, time, and duration of visits, telephone calls, or videoconferencing sessions with clients or witnesses in custody in the facility.

(5) Records of a telecommunication provider that verify the length of telephone calls, long-distance expenses, or fax expenses.

(6) Records of an online legal research service that document the date, time, duration, and nature of legal research performed.

(7) Calculations from mapping software, such as MapQuest or Google Maps, of the distance traveled to a location where a verified service was provided.

(8) Original printed receipts for expenses incurred.

b. Pending claims. Any claims submitted by an attorney that have not yet been approved by the state public defender when the attorney's contract with the state public defender is terminated for

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improper billing practices shall be returned to the attorney. The attorney may resubmit any claim returned in its entirety, or a portion thereof, within the time required by paragraph 12.2(3)“d,” with the additional documentation required by this subrule confirming all time and expenses claimed on the itemization. The resubmitted claim shall be reviewed consistent with the requirements of this subrule. Any claim not resubmitted within the time required by paragraph 12.2(3)“d” shall be denied.

c. *Court review.* An attorney whose claim is denied or reduced pursuant to this subrule may seek court review of the state public defender’s action on that claim by filing a motion for court review as provided for by rule 493—12.9(13B,815). But if the attorney has sought review of the state public defender’s decision to terminate the attorney’s contract for improper billing practices, the court shall stay proceedings on the attorney’s motion until the attorney has exhausted all administrative remedies, final judgment has been entered in any judicial review action under Iowa Code chapter 17A, and any appeal of such judgment is decided. The final judgment of any judicial review action under Iowa Code chapter 17A regarding the termination of the attorney’s contract conclusively determines the applicability of this subrule. If the attorney fails to seek judicial review of the state public defender’s decision to terminate the attorney’s contract, the state public defender’s notice to the attorney that the state public defender is terminating the attorney’s contract for improper billing practices is conclusive evidence that this subrule applies, and the attorney may not challenge the termination decision or the applicability of this subrule in the motion for review of the state public defender’s action on the fee claim under rule 493—12.9(13B,815).

ITEM 16. Rescind subrule 12.2(9) and adopt the following new subrule in lieu thereof:

12.2(9) Approval of claims. Claims shall be forwarded to the department for final processing and payment only after the state public defender has determined that payment of the claim is appropriate under this chapter and under Iowa law. No payments shall be made from the indigent defense fund except with the authorization of the state public defender.

ITEM 17. Rescind subrules **12.2(10)** to **12.2(14)**.

ITEM 18. Amend rule 493—12.3(13B,815) as follows:

493—12.3(13B,815) Interim claims. Claims will be paid at the earlier of the conclusion of the case unless one of the following applies: or when legal representation of the client under the original court appointment is concluded, except as provided for in subrule 12.3(1), 12.3(2), 12.3(3), or 12.3(4).

12.3(1) Juvenile cases. An initial claim for services in a juvenile case may be submitted after the dispositional hearing, if any. Subsequent claims may be submitted after each court hearing held in the case. A court hearing does not include family drug court, family team meetings, staffings or foster care review board hearings.

12.3(2) Appellate cases. A claim for work performed ~~to date by an attorney having an appellate contract with the state public defender~~ may be submitted in appellate cases after the filing of the attorney’s proof brief. A subsequent claim may be submitted at the conclusion of the case after the procedendo is filed.

12.3(3) ~~Specific cases~~ Class A felonies. Interim claims in Class A felony cases may be submitted once every three months, with the first claim submitted at least 90 days following the effective date of the attorney’s appointment.

12.3(4) ~~Change of employment.~~ ~~If an attorney is changing law firms, the attorney may submit a claim to end billing at one firm and start billing at the new firm. If payments are to be made to someone other than the law firm which the attorney is leaving, both the attorney and the law firm must advise the state public defender in writing that the attorney is leaving the firm and where the payments should be made.~~

12.3(5) 12.3(4) Other cases. In all other cases, claims filed prior to the conclusion of the case will not be paid except with prior written consent of the state public defender.

12.3(5) Change of employment. A change of employment is not a basis for submitting an interim claim. An attorney changing firms must wait to submit a claim until the conclusion of the case unless the attorney withdraws from the case or subrule 12.3(1), 12.3(2), or 12.3(3) applies. Because indigent

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defense contracts are with the attorney and not with the law firm, the state public defender shall send payments to whatever person or law firm the departing attorney directs.

12.3(6) *Approval of interim claims.* Approval of any interim claims shall not affect the right of the state public defender to review subsequent claims or the aggregate amount of the claims submitted.

ITEM 19. Rescind and reserve subrule **12.4(3)**.

ITEM 20. Rescind rule 493—12.5(13B,815) and adopt the following **new** rule in lieu thereof:

493—12.5(13B,815) Payable attorney time.

12.5(1) *Maximum daily hours.* An attorney appointed as counsel or guardian ad litem must not perform services for indigent persons or submit claims to the state public defender for payment for such services for more than 12 hours of the attorney's time in any calendar day except as provided in this subrule.

a. An attorney may perform services for indigent persons and submit claims to the state public defender for payment for such services for more than 12 hours and less than or equal to 16 hours in a calendar day if and only if the attorney is in trial or other contested court hearing lasting more than one day or the attorney is preparing for such a trial or hearing that will be occurring within the next seven days.

b. If an attorney performs services for indigent persons and submits claims to the state public defender for payment for such services for more than 12 hours and less than or equal to 16 hours in a calendar day, the attorney shall include with each claim form submitted to the state public defender that claims time for that date, even if the amount claimed on that claim form is less than 12 hours, a letter specifying the total hours worked for indigent persons, any additional time billed to other private clients on that date or certifying that no other time was billed to any other client, and explaining the need to work more than 12 hours.

c. Any time claimed by an attorney appointed as counsel or guardian ad litem in excess of 12 hours on a calendar day, except as permitted by this subrule, and any time claimed in excess of 16 hours on a calendar day, shall not be paid. If the time is claimed on multiple claims, the most recently submitted claim claiming time on a particular calendar day shall be reduced so as not to pay more than the maximum authorized daily hours. If more than the maximum authorized amount is inadvertently paid by the state public defender, the attorney shall reimburse the state public defender upon written notice of the improper payment.

12.5(2) *Standardized and estimated billing prohibited.* All time submitted on the itemization of services must be the actual time worked providing services to the client. Attorneys are prohibited from using standardized billing estimates for tasks, such as billing 0.1 for every page of a document reviewed or 0.2 for every e-mail sent or received, or 1.0 hour for every court proceeding. Attorneys must also not use standardized billing for cases, such as billing the same set of standard tasks in every case regardless of whether the task was actually performed.

12.5(3) *Nonbillable time.* The following activities are not reasonable and necessary legal services for the indigent client, and therefore time and expenses for such activities are not payable under the attorney's appointment and shall be denied:

a. Clerical work, including but not limited to opening and closing files; making photocopies; opening or sending mail; sending cover letters; transmitting copies of documents to a client, another party or clerk of court; sending faxes; picking up or delivering documents; drafting internal file memos; giving instructions to support staff; or billing;

b. Preparation of motions to withdraw from a case, and other time related to withdrawing from a case, when the withdrawal is made in order to retire from the practice of law, discontinue or reduce indigent defense representation, pursue another job, or is otherwise for the attorney's personal benefit;

c. Overhead, including time spent managing the operations of the attorney's law practice, office lease payments, or support staff salaries;

d. Preparation of the fee claim, itemization of services, or other time-keeping activities;

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e. Preparation of an application or proposed order to exceed the fee limitations, court time obtaining such an order, or review of the order granting or denying the application;

f. Preparation of a motion for judicial review of the state public defender's action on an attorney fee claim, preparation for or attendance at a hearing on such a motion, review of an order granting or denying the motion, preparation of appellate briefs or other documents in an appeal of such a court order, preparation for or participation in oral arguments in the appeal, or review of an appellate decision regarding such a court order.

12.5(4) *Travel time.* Time spent by an attorney or guardian ad litem traveling is only payable when the travel is reasonable and necessary to represent the indigent client and the attorney or guardian ad litem is traveling:

- a.* To and from the scene of a crime in a criminal case or juvenile delinquency proceeding;
- b.* To and from the location of a pretrial hearing, trial, or posttrial hearing in a criminal case if the venue has been changed from the county in which the crime occurred or if the location of the court hearing has been changed, without changing venue, to a different county for the convenience of the court;
- c.* To and from the place of incarceration of a client in a postconviction relief case, criminal appeal, or postconviction relief appeal;
- d.* To and from the place of detention of a client in a juvenile delinquency or criminal case if the place of detention is located outside the county in which the action is pending;
- e.* To and from the location of the placement of a child in a juvenile case if the guardian ad litem is required by statute to visit the placement and the placement is located in Iowa, but outside the county in which the case is pending;
- f.* To and from the location of the placement of a child in a juvenile case if the guardian ad litem is required by statute and court order to visit the placement and the placement is outside the state of Iowa;
- g.* To and from the location of a family team meeting, if the place of the meeting is located outside the county in which the action is pending and the court approves that the location of the meeting is appropriate;
- h.* To and from a court of appeals or supreme court argument;
- i.* To and from the location where the deposition of an expert witness is being taken; or
- j.* To other locations for which travel authorization is obtained from the state public defender.

12.5(5) *Substitute counsel time.* Work performed by substitute counsel on behalf of an attorney appointed as counsel or guardian ad litem is payable only as provided for under this subrule. The appointed attorney is at all times personally responsible for the representation of the client and must ensure that substitute counsel is qualified to perform the work directed and that the client is effectively represented at all times. The appointed attorney is responsible for compensating substitute counsel. Claims for payment directly by substitute counsel or claims for payment by the appointed attorney that are inconsistent with this subrule shall be denied.

a. Court time. An attorney appointed as counsel or guardian ad litem must handle all court appearances unless the appointed attorney has an unavoidable scheduling conflict, illness, or other personal emergency, in which case the matter may be covered by substitute counsel. Unless substitute counsel appears for the sole purpose of alerting the court of the appointed attorney's unavailability and requesting a continuance, substitute counsel may not cover for the appointed attorney at a trial in any criminal, juvenile, or postconviction relief case, or in any other hearing in which the court determines that the appointed attorney's personal participation is required. Substitute counsel may never cover for oral arguments in appellate cases.

b. Out-of-court time. Substitute counsel must not perform out-of-court legal services, except that substitute counsel may perform out-of-court legal services to prepare for handling a payable court appearance, and in a juvenile case, substitute counsel may attend a department of human services staffing or family team meeting if appointed counsel has an unavoidable scheduling conflict, illness, or other personal emergency. Time spent by substitute counsel that duplicates work performed by the appointed attorney and time spent receiving direction from or conferencing with the appointed attorney is not payable.

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c. *Exceptional circumstances.* Substitute counsel may be used in situations that would otherwise be impermissible if the state public defender concludes that use of such substitute counsel would be in the best interest of the client and the administration of justice and provides prior written consent to the appointed attorney.

d. *Supervisory time.* Time spent by the appointed attorney directing, reviewing, or correcting the work of substitute counsel is not payable.

e. *Qualification of substitute counsel.* Unless the state public defender has given prior written consent to use the attorney as substitute counsel, substitute counsel must have an active contract with the state public defender to perform indigent defense services, although the contract need not cover the type of case or county of the case for which the claim is submitted.

f. *Inapplicability to co-counsel in Class A felonies.* The previous paragraphs of this subrule do not apply to a co-counsel who is separately appointed in a Class A felony. Each separately appointed co-counsel in a Class A felony shall submit a separate indigent defense fee claim that claims only the work actually performed by the appointed attorney submitting the claim. The use of substitute counsel is not permissible in a Class A felony in which co-counsel has been separately appointed.

ITEM 21. Rescind subrule 12.6(3) and adopt the following **new** subrule in lieu thereof:

12.6(3) Appellate cases. Except as otherwise provided in this rule with respect to simple misdemeanor appeals to the district court and juvenile petitions on appeal, there is no fee limitation established for appellate cases. Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

ITEM 22. Amend subrule 12.8(1) as follows:

12.8(1) The state public defender shall reimburse the attorney for the following out-of-pocket expenses incurred by the attorney in the case to the extent that the expenses are reasonable and necessary:

a. Mileage for automobile travel at the rate of ~~35~~ 39 cents per mile. The number of miles driven ~~must be listed in the itemization of services and~~ each day shall be separately itemized on the itemization of services, specifying the date of the travel, the origination and destination locations, the total number of miles traveled that day and, if it is not otherwise clear from the itemization, the purpose of the travel. If the travel is to perform services for multiple clients on the same trip, the mileage must be split proportionally between each client and the itemization must note the manner in which the mileage is split. The total miles traveled for the case shall also be listed on the claim form. Other forms of transportation costs incurred by the attorney ~~will~~ may be reimbursed only with prior approval from the state public defender.

b. The actual cost of lodging, limited by the state-approved rate, is reimbursed only if the attorney is entitled to be paid for travel time for the travel associated with the lodging and the attorney is required to be away from home overnight. An itemized receipt showing the expenses incurred must be attached to the claim form.

c. The actual cost of meals, limited by the state-approved rate, is reimbursed only if the attorney is entitled to be paid for travel time for the travel associated with these meals. An itemized receipt showing the expenses incurred must be attached to the claim form.

d. Necessary photocopying at the attorney's office at the rate of 10 cents per copy. The number of copies made each day must be listed separately itemized in the itemization of services. The total number of copies must also be listed ~~or~~ on the claim form.

e. Ordinary and necessary postage, toll calls, collect calls, and parking for the actual cost of these expenses. Toll and collect calls will be reimbursed at 10 cents per minute or the actual cost. A receipt for the actual cost ~~of the toll or collect call~~ must be attached to the claim form. A statement from a correctional facility or jail detailing a standard rate for such calls shall constitute a receipt for purposes of this paragraph. For parking in excess of \$2, a receipt must be attached to the claim form. Claims for the cost of a parking ticket ~~will~~ shall be denied. Unless a receipt is provided, any postage, toll calls, collect calls, or parking shall be separately itemized on the itemization of services, specifying the date

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on which the expense was incurred and, if it is not otherwise clear from the itemization, the purpose of the expense.

f. Receiving faxes in the attorney's office at the rate of 10 cents per page. There is no direct cost reimbursement for sending a fax unless there is a toll charge associated with it. Any fax charges claimed shall be separately itemized on the itemization of services, specifying the date on which the expense was incurred and, if it is not otherwise clear from the itemization, the purpose of the expense.

g. The actual cost of photocopying or faxing for which the attorney must pay an outside vendor. A receipt for the actual cost must be attached to the claim form.

h. Other claims for expenses such as process service, medical records, DVDs, CDs, videotapes, and film photographic printing will be reimbursed for the actual cost. A receipt or invoice from an outside vendor must be attached to the claim form.

i. Other specific expenses for which prior approval by the state public defender is obtained.

ITEM 23. Amend subrule 12.9(1) as follows:

12.9(1) *Motions for court review.* Court review of the action of the state public defender is initiated by the filing of a motion with the trial court requesting the review. The following conditions shall apply to all such motions:

a. The motion must be filed with the court within 20 days of the action of the state public defender. This time limit is jurisdictional and will not be extended by the filing of another claim, submitting a letter or e-mail requesting reconsideration, or obtaining a court order affecting the amount of the claim.

b. The motion must set forth each and every ground on which the attorney intends to rely in challenging the action of the state public defender.

c. The motion must have attached to it a complete copy of the claim, together with the notice of action or returned fee claim letter that the attorney seeks to have reviewed.

d. A copy of all documents filed must be provided to the state public defender.

e. It is unnecessary for the state public defender to file any response to the motion.

ITEM 24. Amend paragraph **12.9(2)“f”** as follows:

f. If a ruling is entered modifying the state public defender's action on the claim, the attorney must file a new claim with the state public defender within 45 days of the date of the court's order modifying the state public defender's action on the claim. A copy of the court's ruling and the original claim form and supporting documents must be attached to the claim form. The “date of service” on the claim form for such a claim is the date of the court's order.

ITEM 25. Adopt the following **new** subrule 12.9(4):

12.9(4) *Other court orders.* Any court order entered after the state public defender has taken action on a claim that affects that claim is void unless the state public defender is first notified and given an opportunity to be heard.

ITEM 26. Amend rule 493—12.10(13B,815) as follows:

493—12.10(13B,815) *Payment errors.* If an error resulting in an overpayment or double payment of a claim is discovered by the attorney, by the state public defender, by the department, or otherwise, the claimant shall reimburse the indigent defense fund for the amount of the overpayment. An overpayment shall be paid by check. The check, made payable to the “Treasurer, State of Iowa,” together with a copy of the payment voucher containing the overpayment or double payment, shall be mailed to the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. ~~The attorney shall notify the clerk of court of the overpayment or double payment.~~

ITEM 27. Adopt the following **new** paragraph **13.2(1)“d”**:

d. Timely claims required. Claims for services are timely if submitted to the state public defender for payment within 45 days of completion of services in the case. Claims that are not timely shall be denied.

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ITEM 28. Amend paragraph **13.2(2)“d”** as follows:

~~d. Claims for services completed before September 1, 2007, are timely if submitted to the state public defender for payment before October 15, 2007. Timely claims required. Claims for services completed after August 31, 2007, are timely if submitted to the state public defender for payment within 45 days of completion of services in the case. Claims that are not timely submitted shall be denied.~~

ITEM 29. Rescind paragraph **13.2(2)“e.”**

ITEM 30. Amend subparagraph **13.2(4)“b”(3)** as follows:

(3) Itemization of services. If the transcript is for a deposition, the itemization must include the ~~including~~ date of deposition, persons deposed, arrival and departure time at the deposition, number of pages and the cost per page, travel time and listing of any other charges. If the transcript is for an audio or video recording, the itemization must include a description of the recording being transcribed, the length of the recording transcribed, the number of pages and the cost per page, and a listing of any other charges.

ITEM 31. Amend subparagraphs **13.2(4)“d”(1) to (3), (6) and (7)** as follows:

(1) Hourly rate when no transcript ordered. Fees for attending depositions when no transcript is ordered will be paid at the rate of \$45 per hour for the actual time the certified shorthand reporter is present at the depositions including setup and takedown of equipment. If multiple witnesses are deposed in a deposition session on a single day, this hourly rate shall only apply if no transcript is ordered for any of the witnesses. If the transcript is ordered for some of the witnesses, the hourly rate when a transcript is ordered shall apply for the entire deposition session.

(2) Hourly rate when transcript ordered. Fees for attending depositions when a transcript is ordered will be paid at the rate of \$35 per hour for the actual time the certified shorthand reporter is present at the depositions including setup and takedown of equipment. Fees for performing a transcription of an audio or video recording will be paid at the rate of \$35 per hour for the actual length of the recording transcribed.

(3) Travel time. Fees for travel time will be paid at the rate of \$15 per hour for travel outside of the county of the certified shorthand reporter's office location. Travel time within the county of the certified shorthand reporter's office location will not be paid. No travel time is payable for the delivery of a transcript or related to the transcription of an audio or video recording.

(6) Cancellation fees. No cancellation fees will be paid as long as the certified shorthand reporter is given notice of cancellation at least 24 hours before the time scheduled for a deposition. If the deposition is canceled with less than 24 hours' notice, a fee for two hours or the actual time that the certified shorthand reporter is present at the site of the deposition including setup and takedown of equipment, whichever is greater, is payable at the rate set forth in subparagraph 13.2(4)“d”(1). A certified shorthand reporter is deemed to have been given notice of cancellation when an attorney or representative of the attorney delivers notice of a cancellation to the e-mail address provided by the certified shorthand reporter or leaves a message on voicemail or with a representative of the certified shorthand reporter at the telephone number provided by the certified shorthand reporter, not when the certified shorthand reporter actually hears or reads the message. No cancellation fee will be paid related to the transcription of an audio or video recording.

(7) Minimum time. One hour minimum, exclusive of travel time, will be paid for a deposition or transcription of an audio or video recording that takes less than one hour.

ITEM 32. Amend paragraph **13.2(4)“e”** as follows:

~~e. Timely claims required.~~ Claims for services are timely if submitted to the state public defender for payment within 45 days of the date on which services are completed. For depositions, services are completed on the date the deposition transcript is delivered or on the date of disposition of the case if no transcript is ordered, whichever date is earlier. For trial transcripts or transcripts of an audio or video recording, services are completed on the date the ~~trial~~ transcript is delivered. Claims that are not timely shall be denied.

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ITEM 33. Amend rule 493—13.5(13B,815) as follows:

493—13.5(13B,815) Payment errors. If an error resulting in an overpayment or double payment of a claim is discovered by the claimant, by the state public defender, by the department, or otherwise, the claimant shall reimburse the indigent defense fund for the amount of the overpayment. An overpayment or double payment shall be repaid by check. The check, made payable to “Treasurer, State of Iowa,” together with a copy of the payment voucher containing the overpayment or double payment, shall be mailed to the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083. ~~The claimant shall notify the clerk of court of the overpayment or double payment.~~

ITEM 34. Rescind the definition of “Timely claim” in rule **493—14.2(13B,600A,815)**.

ITEM 35. Amend rule 493—14.5(13B,600A,815) as follows:

493—14.5(13B,600A,815) Claims for attorney fees. ~~Claims for attorney fees shall be submitted on Juvenile claim forms.~~ Except as provided in this rule chapter, claims for attorney fees for representing the respondent in proceedings for termination of parental rights cases under Iowa Code chapter 600A shall be reviewed by the state public defender in the same manner as provided in 493—Chapter 12.

14.5(1) Claim forms. Claims for services provided at the trial level shall be submitted on a Juvenile claim form. Claims for services provided on appeal shall be submitted on an Appellate claim form. ~~For cases to which the attorney was appointed on or after May 5, 2005, the order of appointment must contain the following additional findings:~~

- ~~a. The respondent requests appointment of counsel;~~
- ~~b. Both the petitioner, or the person on whose behalf the petition is filed, and the respondent are indigent, unless the petitioner is a private child-placing agency as defined in Iowa Code section 238.2, in which case the petitioner need not be indigent;~~
- ~~c. The respondent, because of lack of skill or education, would have difficulty in presenting the respondent’s version of a disputed set of facts, particularly when presentation requires the examining or cross-examining of witnesses or the offering or dissecting of complex documentary evidence; and~~
- ~~d. The respondent has a colorable defense to the termination of parental rights, or there are substantial reasons that make termination of parental rights inappropriate.~~

14.5(2) Required documents. ~~For cases to which the attorney was appointed on or after May 5, 2005, in~~ In addition to the other requirements provided in 493—Chapter 12, the attorney shall submit a copy of both the petitioner’s and respondent’s financial affidavit and any order of the juvenile court determining that the state public defender rather than the petitioner is responsible for payment of the respondent’s attorney fees must accompany the claim.

14.5(3) The provisions for review of the state public defender’s action provided in 493—Chapter 12 shall apply to claims submitted under this chapter.

14.5(4) If the petitioner or prospective parent is responsible for payment of the indigent respondent’s attorney fees and expenses, the state public defender does not receive, review, or pay the fee claim. Any such claim submitted to the state public defender will be returned to the attorney who submitted the claim.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 6/25/14.

ARC 1514C

STATE PUBLIC DEFENDER[493]

Adopted and Filed

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender hereby adopts amendments to Chapter 11, “Attorney Fee Contracts,” Iowa Administrative Code.

These amendments establish minimum qualification requirements for attorneys contracting with the State Public Defender to provide legal services to indigent persons. This change is intended to better ensure that all indigent persons are provided competent and effective counsel, while still providing new attorneys the opportunity to participate in the indigent defense system on less serious cases. The amendments also update provisions regarding the termination of contracts to permit termination on less than 30 days’ notice with the mutual consent of the parties and to authorize a review procedure for terminations on the basis of improper billing practices, and make several technical corrections to the chapter.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 30, 2014, as **ARC 1438C**.

A public hearing was held on May 20, 2014, at 1:30 p.m. in Conference Room 424, Fourth Floor, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa. Interested persons also had the opportunity to make written suggestions or comments on the proposed amendments on or before May 20, 2014.

A number of comments were received. Most concerns expressed were regarding the requirement of jury trial experience for attorneys contracting to represent persons in felony and postconviction relief cases. The State Public Defender considered all comments and has modified these amendments in response to some of the concerns raised. These amendments differ from those published under Notice of Intended Action. The jury-trial requirement has been removed for postconviction relief cases in subrule 11.3(3). In addition, an exception to the requirements for Class A and B felonies is created for attorneys who have previously tried a Class A or B felony case. And the requirement in subrules 11.3(4) and 11.3(5) that one of the listed judges or magistrates be a judge before whom the attorney tried a criminal trial has been removed.

After analysis and review of this rule making, no adverse impact on jobs has been found. The amendments were developed in collaboration with stakeholder groups to minimize any adverse impact on stakeholders.

These amendments are intended to implement Iowa Code chapter 13B.

These amendments will become effective July 30, 2014, but the contracting eligibility requirements of rule 493—11.3(13B) shall only apply after January 1, 2015.

The following amendments are adopted.

ITEM 1. Amend rule 493—11.2(13B) as follows:

493—11.2(13B) Contracts. An attorney may enter into a contract with the state public defender for the provision of legal services to indigent persons ~~at either the trial level or the appellate level. Nothing in this rule is intended to imply that an attorney may not have both a contract for trial court work and a contract for appellate work.~~

11.2(1) Eligibility. To be eligible to contract with the state public defender, an attorney must be licensed to practice law in the state of Iowa and must meet the minimum qualification requirements for contracting as set forth in rule 493—11.3(13B) for the types of cases for which the attorney is contracting.

11.2(2) Contract copy. A copy of an original contract is available from the Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087, by telephoning (515)242-6158, or on the Web at <http://spd.iowa.gov>.

11.2(3) Notice of contract opportunities. The state public defender will give notice to attorneys of the availability of contracts for indigent defense legal services in a manner reasonably calculated to make attorneys aware of the availability of the contracts.

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11.2(4) *Contract types.* Unless the attorney and state public defender agree in writing to a contract covering a different type of case, the contract shall cover one or more of the following categories of case types:

- a. Juvenile cases, including juvenile petitions on appeal;
- b. Appellate cases, including direct appeals of criminal cases, appeals from postconviction relief proceedings, and any other case for which counsel is statutorily authorized to be paid from the indigent defense fund at the trial level;
- c. Postconviction relief cases at the trial level;
- d. Class A and B felony cases at the trial level;
- e. Class C and D felony cases at the trial level, and Class A felony cases in which another attorney who meets the minimum requirements for such cases is also appointed as the lead counsel;
- f. Misdemeanor cases, probation and parole revocation cases, contempt proceedings, and any other adult criminal or civil cases for which counsel is statutorily authorized to be paid from the indigent defense fund at the trial level.

11.2(5) *Written approval required.* A contract can only be in force and effect when a contract acceptance form is signed by the contracting attorney and approved by the state public defender. The approved contract is only effective for those types of cases and those counties requested by the attorney and approved by the state public defender in writing on the acceptance and approval form, renewal form, or a subsequent written amendment. Nevertheless, a contract covering appellate cases is effective for all 99 counties.

11.2(6) *Independent contractor.* The contracting attorney shall be an independent contractor and shall not be an agent or employee of the state of Iowa. The attorney shall exercise the attorney's best independent professional judgment on behalf of clients to whom the attorney is assigned.

11.2(7) *Notification to clerks.* On a monthly basis, the state public defender shall notify the clerks of court in each county of those attorneys who have an approved contract for each type of case in each respective county.

11.2(8) *Contract terms.* A contract between the state public defender and an attorney shall cover, but is not limited to, the following subjects:

- a. The types of cases in which the attorney is to provide services;
- b. The counties in which the attorney is to provide services;
- c. The term of the contract and the responsibility of the attorney for provision of services in cases undertaken pursuant to the contract;
- d. Identification of the attorney who will perform legal representation under the contract;
- e. A prohibition against assignment of the obligations undertaken pursuant to the contract and a description of the manner in which temporary substitute counsel may be utilized;
- f. The qualifications of the contracting attorney to undertake legal representation pursuant to the contract;
- g. A description of the compensation to be paid and the manner of payment;
- h. A description of any expenses which may be provided under the contract;
- i. A description of the record-keeping and reporting requirements under the contract;
- j. A description of the manner in which the contract may be terminated;
- k. A description of the manner of disposition of ongoing obligations following termination of the contract.

11.2(9) *Compensation.* Unless the contract provides for a different rate or manner of payment, the attorney shall be compensated as set forth in rule 493—12.4(13B,815).

11.2(10) *Contract form.* Unless the attorney and state public defender agree in writing to vary the terms of the contract between them, the terms contained in the Indigent Defense Legal Services Contract No. 493-14 shall constitute the agreement between the parties for the provision of legal services.

11.2(11) *No guarantee of appointments.* An attorney under contract with the state public defender is not guaranteed any minimum number of court appointments. The process by which attorneys under contract with the state public defender are appointed to specific cases is governed by Iowa Code chapters

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814 and 815. The state public defender shall retain sole authority to determine the length of each contract or contract renewal.

ITEM 2. Rescind rule 493—11.3(13B) and adopt the following **new** rule in lieu thereof:

493—11.3(13B) Attorney minimum qualifications. To be eligible to contract with the state public defender for a type of case after January 1, 2015, the attorney must meet the minimum qualification requirements established by this rule for the particular type of case. Prior to contracting with the state public defender, an attorney shall certify the attorney's compliance with these requirements and, prior to renewal of the contract, shall certify compliance with any ongoing requirements. Satisfying these minimum requirements does not guarantee an attorney a contract with the state public defender. The state public defender retains the discretion to deny or terminate contracts if the state public defender determines that such action is in the best interests of the state.

11.3(1) Juvenile cases. To be eligible to contract to represent indigent persons in juvenile cases, including juvenile petitions on appeal, an attorney must be in compliance with Rule 8.36 of the Iowa Rules of Juvenile Procedure, regardless of whether the attorney seeks to represent parents or children or serve as guardian ad litem in juvenile court. An attorney contracting to represent indigent persons in juvenile cases must:

- a. Participate in three hours of continuing legal education related to juvenile court proceedings prior to contracting with the state public defender; and
- b. Continue to participate in three hours of continuing legal education related to juvenile court proceedings each year.

11.3(2) Appellate cases. To be eligible to contract to represent indigent persons in appellate cases, including direct appeals of criminal cases, appeals from postconviction relief proceedings, and appeals from any other case for which counsel is statutorily authorized to be paid from the indigent defense fund at the trial level, an attorney must:

- a. Participate in the basic criminal appeals training sponsored by the state public defender within one year of entering into the contract, unless the attorney has already handled a criminal appeal in Iowa state court; and
- b. Participate in three hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract.

11.3(3) Postconviction relief cases. To be eligible to contract to represent indigent persons in postconviction relief cases at the trial level, an attorney must:

- a. Have practiced criminal law or served as a judicial law clerk for two years or more in any state or federal court;
- b. Participate in five hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract and in the year prior to entering into the contract;
- c. Participate in a postconviction relief basic training sponsored by the state public defender prior to entering into the contract, unless the attorney has previously handled at least three postconviction relief proceedings to completion; and
- d. Provide the names of at least three judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent indigent persons in postconviction relief cases.

11.3(4) Class A and B felonies. To be eligible to contract to represent indigent persons in Class A and Class B felony cases at the trial level, an attorney must:

- a. Have practiced criminal law for four years or more in any state or federal court;
- b. Have tried at least five criminal jury trials to completion as lead counsel;
- c. Participate in five hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract and in the year prior to entering into the contract; and
- d. Provide the names of at least three judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent indigent persons in Class A and Class B felony cases.

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If an attorney satisfies the requirements for Class C and Class D felonies, the attorney may contract to serve as the second attorney representing an indigent person in a Class A felony in a case where the first appointed attorney meets these requirements. An attorney who does not meet all the requirements of this subrule but who has previously tried a Class A or Class B felony case to completion as lead counsel may provide the state public defender additional detail regarding the attorney's experience and qualifications and the circumstances preventing the attorney from meeting all the requirements and may be approved for contracting by the state public defender at the state public defender's sole discretion.

11.3(5) *Class C and D felonies.* To be eligible to contract to represent indigent persons in Class C and Class D felony cases at the trial level, an attorney must:

- a. Have practiced criminal law for two years or more in any state or federal court;
- b. Have tried at least one criminal jury trial to completion as lead counsel;
- c. Participate in five hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract and in the year prior to entering into the contract; and
- d. Provide the names of at least three judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent indigent persons in felony cases.

An attorney who has met all requirements except for the jury trial requirement set forth in paragraph 11.3(5) "b" may provide the state public defender additional detail regarding the attorney's experience and qualifications and the circumstances preventing the attorney from obtaining jury trial experience and may be approved for contracting by the state public defender at the state public defender's sole discretion.

11.3(6) *Misdemeanor and other cases.* To be eligible to contract to represent indigent persons in misdemeanor cases, probation and parole revocation cases, contempt proceedings, and any other adult criminal or civil cases for which counsel is statutorily authorized to be paid from the indigent defense fund at the trial level, an attorney must:

- a. Participate in the basic criminal defense training sponsored by the state public defender within one year of entering into the contract, unless the attorney already has an active indigent defense contract or has practiced criminal law for more than two years; and
- b. Participate in three hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract.

11.3(7) *Amended charges.* An attorney who is appointed to a case that is initially within the scope of the attorney's contract but is subsequently amended to contain more serious charges that are outside the scope of the attorney's contract shall request that the court authorize the attorney's withdrawal from the case and appoint an attorney with a contract that covers the amended charges in the county in which the action was pending unless the court determines that no such attorney with an applicable contract is available or the state public defender consents to the continued representation by the original attorney.

ITEM 3. Amend subrule 11.4(1) as follows:

11.4(1) The state public defender or a person designated by the state public defender may confer with judges, attorneys and others with knowledge of a potential contracting attorney's competence, effectiveness, trustworthiness, compliance with the minimum qualification requirements set forth in rule 493—11.3(13B), and ability to provide services to eligible individuals; and may conduct such additional investigation as deemed warranted in the sole discretion of the state public defender. The information received may be taken into consideration in determining whether it would be in the best interests of the state to enter into an initial or renewal contract with the potential contracting attorney.

ITEM 4. Rescind and reserve rule **493—11.5(13B)**.

ITEM 5. Amend rule 493—11.6(13B) as follows:

493—11.6(13B) Contract renewal. Prior to renewal of any contract, the state public defender may contact judges, attorneys, court personnel, and others to determine if any existing contract is being properly fulfilled and may conduct such additional investigation as is described in rule 493—11.4(13B). If the state public defender has determined that a contract renewal is in the best interests of the state, the state public defender may offer a new contract to the contracting attorney. The contracting attorney

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may accept the new contract by signing the contract renewal and returning it to the state public defender ~~within 30 days of the date on which the contract is submitted to the contracting attorney~~ prior to the date that the existing contract expires. If the contracting attorney does not sign and return the contract renewal, the contract shall terminate on its expiration date without regard to whether the contracting attorney receives any further notice. If a contracting attorney is not offered a contract renewal, the state public defender shall give the contracting attorney written notice of this action. The attorney may seek reconsideration of this decision in the manner prescribed in rule 493—11.9(13B).

ITEM 6. Amend subrule 11.7(2) as follows:

11.7(2) Termination for cause.

a. License suspension or revocation. A contract for indigent defense shall automatically terminate without notice upon the suspension or revocation of the attorney's license to practice law in the state of Iowa.

b. Default. The state public defender may issue a notice of default based on any of the grounds described in rule 493—11.8(13B). A notice of default shall state the grounds of default and, if feasible, request that the contracting attorney remedy the default within 10 days of the date of the notice. If the events triggering the notice of default continue to be evidenced more than 10 days beyond the date of written notice, the state public defender may immediately terminate the contract without further notice by issuing a notice of termination. An attorney may seek reconsideration of the state public defender's decision to terminate a contract based on the attorney's default in the manner described in rule 493—11.9(13B).

c. Improper billing practices. The state public defender may notify the attorney that the state public defender is considering the exercise of the state public defender's contract right to terminate the contract for improper billing practices. The notification shall explain the basis for the state public defender's concern and provide the attorney at least 14 days to provide a response. After consideration of the response, the state public defender may terminate the contract for improper billing practices if the state public defender determines that the attorney has engaged in a pattern of willful, intentional, reckless, or negligent submission of false fee claims. An attorney may seek reconsideration of the state public defender's decision to terminate a contract for improper billing practices in the manner described in rule 493—11.9(13B).

ITEM 7. Adopt the following **new** subrule 11.7(3):

11.7(3) Termination by mutual consent. Upon the mutual consent, confirmed in writing, of the state public defender and the contracting attorney, the contract may be terminated on less than 30 days' notice. Such termination may affect the entire contract or may relate solely to a particular county or geographical area or to a particular type of case.

ITEM 8. Amend rule 493—11.8(13B) as follows:

493—11.8(13B) Grounds to deny or terminate a contract. In determining whether the award, renewal, or termination of a contract is in the best interests of the state, the state public defender may take into consideration factors such as, but not limited to, the following:

1. The attorney's eligibility for contracting pursuant to rule 493—11.2(13B) for the type of case in which the attorney is to provide services or the attorney's failure to comply with such requirements;

~~1.~~ 2. The attorney's compliance with the terms of an existing or prior contract to represent indigent persons;

~~2.~~ 3. Any form of dishonesty or deception directed to judicial officials, the state public defender, indigent persons, other clients, or any other person in the practice of law;

~~3.~~ 4. Unprofessional or unethical conduct, or other act or omission that is or may be detrimental or harmful to indigent representation;

~~4.~~ 5. An attorney's failure to attend, or untimely attendance at, hearings, depositions, or other case-related proceedings;

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~~5.~~ 6. An attorney's failure to abide by a court order, applicable statutes or administrative rules governing indigent representation, or local or state rules of procedure applicable to the cases in which the attorney has been appointed;

~~6.~~ 7. Repetitive, willful, deceptive, unexplained or uncorrected errors in claims for fees;

~~7.~~ 8. Disciplinary action against a legal or other professional license or conviction of a crime in any jurisdiction when the disciplinary action or conviction implicates an attorney's honesty, trustworthiness, or competence to practice law, or is otherwise related to the practice of indigent defense;

~~8.~~ 9. Use of alcohol or controlled substances during court proceedings or in a manner impairing competent performance;

~~9.~~ 10. Judicial orders or rulings finding that an attorney engaged in untruthful, incompetent, unprofessional, or unethical behavior in the practice of indigent defense, submission of fee claims, or otherwise in the practice of law; or

~~10.~~ 11. Any other behavior implicating an attorney's competence, effectiveness, or trustworthiness in the practice of indigent defense.

ITEM 9. Amend subrule 11.11(1) as follows:

11.11(1) The final decision by the state public defender to deny an attorney's request to enter into an initial or renewal contract for indigent representation, ~~or to terminate such a contract for cause following issuance of a notice of default,~~ or to terminate such contract for improper billing practices is reviewable pursuant to Iowa Code chapter 17A.

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AGENCY	RULE	DELAY
Treasurer of State[781]	15.1 to 15.3, 15.5 [IAB 5/14/14, ARC 1464C]	Effective date of June 18, 2014, delayed 70 days by the Administrative Rules Review Committee at its meeting held June 10, 2014. [Pursuant to §17A.4(7)]