



IOWA ADMINISTRATIVE BULLETIN

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Pages 1 to 84

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PREFACE

Preface

The Iowa Administrative Bulletin is published biweekly in pamphlet form 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 letters~~ indicate deleted material.

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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 2018

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
3	Friday, July 13, 2018	August 1, 2018
4	Friday, July 27, 2018	August 15, 2018
5	Friday, August 10, 2018	August 29, 2018

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the filing deadline 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 10, 2018, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Agenda published in the June 20, 2018, Iowa Administrative Bulletin.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

911 telephone systems, 10.2, 10.4(2), 10.7, 10.9, 10.13 Filed **ARC 3868C**..... 7/4/18

HUMAN SERVICES DEPARTMENT[441]

Appeals—filing on behalf of Medicaid member, withdrawal, continuation of assistance,

7.2(5), 7.5(2), 7.6(2), 7.8, 7.9 Filed **ARC 3871C** 7/4/18

Quality assurance assessment levels for nursing facilities, 36.6(2) Filed **ARC 3872C** 7/4/18

Statewide average private-pay cost of nursing facility services and average charges
and maximum rate for institutional care, 75.23(3), 75.24(3)“b”(1), (2) and (4)

Filed Emergency After Notice **ARC 3869C** 7/4/18

Statewide average charge for care in mental health institute, 75.24(3)“b”(3)

Filed Emergency After Notice **ARC 3870C** 7/4/18

Medicaid for employed people with disabilities—premiums, 75.1(39)“b”(3) Filed **ARC 3873C**..... 7/4/18

Settings for home- and community-based services (HCBS) provision to Medicaid members,

amendments to chs 77, 78, 83 Filed **ARC 3874C**..... 7/4/18

INSPECTIONS AND APPEALS DEPARTMENT[481]

Economic assistance fraud bureau, rescind ch 74 Filed **ARC 3875C** 7/4/18

IOWA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM[495]

Bona fide retirement for newly elected officials, 11.5(1) Notice **ARC 3885C**..... 7/4/18

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Physical therapists and physical therapist assistants, occupational therapists and occupational

therapy assistants—licensure, continuing education, 200.6, 203.3(2), 206.8 Filed **ARC 3876C** 7/4/18

REGENTS BOARD[681]

Regent admission index—change in calculation, 1.1(2) Notice **ARC 3867C** 7/4/18

Traffic and parking at universities, amendments to ch 4 Filed **ARC 3877C**..... 7/4/18

TRANSPORTATION DEPARTMENT[761]

Automated traffic enforcement on the primary road system, rescind ch 144 Notice **ARC 3864C**..... 7/4/18

Highway bridge program for cities and counties; swapping of surface transportation block

grant funds, amendments to chs 161, 162 Filed **ARC 3878C**..... 7/4/18

Reimbursable services and supplies, 174.3(1)“a” Filed **ARC 3879C** 7/4/18

Driver’s license issuance, amendments to ch 605 Notice **ARC 3865C** 7/4/18

Driver’s licenses for undercover law enforcement officers, amendments to ch 625 Notice **ARC 3866C**..... 7/4/18

Aeronautics and aviation vertical infrastructure—correction of citations, amendments to chs

700, 710, 715 to 717 Filed **ARC 3880C** 7/4/18

Railroad transportation and safety, amendments to chs 800, 810, 813 Filed **ARC 3881C**..... 7/4/18

Notification of railroad accidents/incidents, amendments to ch 802 Filed **ARC 3882C** 7/4/18

Railroad revolving loan and grant fund program, amendments to ch 822 Filed **ARC 3883C**..... 7/4/18

WORKERS’ COMPENSATION DIVISION[876]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

Payroll tax tables, 8.8 Filed **ARC 3884C**..... 7/4/18

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 Jim Carlin
43 Arlington Road
Sioux City, Iowa 51106

Senator Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Senator Mark Costello
37265 Rains Avenue
Imogene, Iowa 51645

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

Senator Pam Jochem
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Des Moines, Iowa 50317

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

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Oskaloosa, Iowa 52577

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

DENTAL BOARD[650]

Unauthorized practice by dental hygienist; public health supervision; name and address changes, use of silver diamine fluoride, 10.4 to 10.6, 16.2(2) IAB 6/20/18 ARC 3849C	Board Office, Suite D 400 S.W. Eighth St. Des Moines, Iowa	July 13, 2018 2 p.m.
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HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

Adoption of hazard mitigation plan and disaster recovery plan, 9.3, 9.4 IAB 6/20/18 ARC 3846C	Cyclones Conference Room, Suite 500 7900 Hickman Rd. Windsor Heights, Iowa	July 10, 2018 11 a.m.
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INTERIOR DESIGN EXAMINING BOARD[193G]

Registration; continuing education, 2.2(1), 2.3, 2.4, 3.1, 3.2(3) IAB 6/20/18 ARC 3841C	Board Office, Suite 350 200 E. Grand Ave. Des Moines, Iowa	July 10, 2018 9 a.m.
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TRANSPORTATION DEPARTMENT[761]

Automated traffic enforcement on the primary road system, rescind ch 144 IAB 7/4/18 ARC 3864C	Administration Building Third Floor Conference Room 800 Lincoln Way Ames, Iowa	July 26, 2018 10 a.m. (If requested)
Driver's license issuance, amendments to ch 605 IAB 7/4/18 ARC 3865C	Department of Transportation Motor Vehicle Division 6310 SE Convenience Boulevard Ankeny, Iowa	July 26, 2018 1 p.m. (If requested)
Driver's licenses for undercover law enforcement officers, amendments to ch 625 IAB 7/4/18 ARC 3866C	Department of Transportation Motor Vehicle Division 6310 SE Convenience Boulevard Ankeny, Iowa	July 26, 2018 2 p.m. (If requested)

UTILITIES DIVISION[199]

Complaint procedures, amendments to ch 6 IAB 6/20/18 ARC 3850C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	July 24, 2018 1 to 2:30 p.m.
Civil penalties, amendments to ch 8 IAB 6/20/18 ARC 3851C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	July 24, 2018 2:30 to 4 p.m.
Inmate calling rates, 22.19(8) IAB 5/9/18 ARC 3773C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	July 10, 2018 1 to 3 p.m.
Evaluation of management efficiency of rate-regulated utilities, amendments to ch 29 IAB 6/20/18 ARC 3852C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	July 24, 2018 9 to 11 a.m.

The following list will be updated as changes occur.

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

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

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

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ARC 3885C**IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]****Notice of Intended Action****Proposing rule making related to bona fide retirement and providing an opportunity for public comment**

The Iowa Public Employees' Retirement System (IPERS) hereby proposes to amend Chapter 11, "Application for, Modification of, and Termination of Benefits," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 97B.4 and 97B.15.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 97B.52A.

Purpose and Summary

Sentences concerning bona fide retirement for newly elected officials were inadvertently deleted from subrule 11.5(1) in IPERS' most recent rule making (**ARC 3684C**, IAB 3/14/18). This proposed rule making restores sentences on this subject. Specifically, IPERS adds the following language as an unnumbered paragraph in 11.5(1):

"The bona fide retirement period will be waived if the member has been elected to public office which term begins during the normal four-month bona fide retirement period. This includes elected officials who shall be covered under this chapter as defined in Iowa Code section 97B.1A. This waiver does not apply if the member was an elected official who was reelected to the same position for another term."

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

IPERS-covered retirees will be allowed to serve as newly elected officials before they have completed a bona fide retirement period.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition IPERS for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by IPERS no later than 4:30 p.m. on July 24, 2018. Comments should be directed to:

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

Gregg Schochenmaier
Iowa Public Employees' Retirement System
7401 Register Drive
P.O. Box 9117
Des Moines, Iowa 50306-9117
Email: gsch@ipers.org

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend subrule 11.5(1) as follows:

11.5(1) *Bona fide retirement—general.* To receive retirement benefits, a member under the age of 70 must officially leave employment with all IPERS-covered employers, give up all rights as an employee, and complete a period of bona fide retirement. A period of bona fide retirement means four or more consecutive calendar months for which the member qualifies for monthly retirement benefit payments. The qualification period begins with the member's first month of entitlement for retirement benefits as approved by IPERS. A member may not return to covered employment before filing a completed application for benefits. Notwithstanding the foregoing, the continuation of group insurance coverage at employee rates for the remainder of the school year for a school employee who retires following completion of services by that individual shall not cause that person to be in violation of IPERS' bona fide retirement requirements.

A member will not be considered to have a bona fide retirement if the member is a school or university employee and returns to work with the employer after the normal summer vacation. In other positions, temporary or seasonal interruption of service which does not terminate the period of employment does not constitute a bona fide retirement. A member also will not be considered to have a bona fide retirement if the member has, prior to or during the member's first month of entitlement, entered into verbal or written arrangements with the employer to return to employment after the expiration of the four-month bona fide retirement period.

Effective July 1, 1990, a school employee will not be considered terminated if, while performing the normal duties, the employee performs for the same employer additional duties which take the employee beyond the expected termination date for the normal duties. Only when all the employee's compensated duties cease for that employer will that employee be considered terminated.

The bona fide retirement period shall be waived for an elected official covered under Iowa Code section 97B.1A(8)“a”(1), and for a member of the general assembly covered under Iowa Code section 97B.1A(8)“a”(2), when the elected official or legislator notifies IPERS of the intent to terminate IPERS coverage for the elective office and, at the same time, terminates all other IPERS-covered employment prior to the issuance of the retirement benefit. Such an elected official or legislator may remain in the elective office and receive an IPERS retirement without violating IPERS' bona fide retirement rules. If

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

such elected official or legislator terminates coverage for the elective office and also terminates all other IPERS-covered employment but is then reemployed in covered employment, and has not received a retirement as of the date of hire, the retirement shall not be made. Furthermore, if such elected official or legislator is reemployed in covered employment, the election to revoke IPERS coverage for the elective position shall remain in effect, and the elected official or legislator shall not be eligible for new IPERS coverage for such elected position. The prior election to revoke IPERS coverage for the elected position shall also remain in effect if such elected official or legislator is reelected to the same position without an intervening term out of office.

The bona fide retirement period will be waived if the member has been elected to public office which term begins during the normal four-month bona fide retirement period. This includes elected officials who shall be covered under this chapter as defined in Iowa Code section 97B.1A. This waiver does not apply if the member was an elected official who was reelected to the same position for another term.

Effective July 1, 2000, a member does not have a bona fide retirement until all employment with covered employers, including employment which is not covered under this chapter, is terminated for at least one month, and the member does not return to covered employment for an additional three months. In order to receive retirement benefits, the member must file a completed application for benefits before returning to any employment with a covered employer.

Effective July 1, 2018, a member will not have a bona fide retirement if the member enters into a verbal or written arrangement to perform duties for the member's former employer(s) as an independent contractor prior to or during the member's first month of entitlement or performs any duties for the member's former employer(s) as an independent contractor prior to receiving four months of retirement benefits.

ARC 3867C

REGENTS BOARD[681]

Notice of Intended Action

Proposing rule making related to regent admission index and providing an opportunity for public comment

The Board of Regents hereby proposes to amend Chapter 1, "Admission Rules Common to the Three State Universities," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 262.9(3).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 262.9(3).

Purpose and Summary

Currently, two formulas are utilized to calculate the Regent Admission Index (RAI). The RAI is used to determine whether a graduate of an Iowa high school will be automatically admitted to a Regent institution of higher education. The primary formula uses ACT score, high school class rank, GPA, and number of courses completed in core subject areas. The alternative formula uses ACT score, GPA, and number of courses completed in core subject areas. A growing number of high schools no longer assign a class rank. The Regents' Inter-Institutional Admissions Study Team reviewed the two formulas for calculating the RAI and recommended that beginning with students applying for admission for the Summer 2020 term, the alternative formula (ACT, GPA, and core courses) be the only formula used to calculate the RAI. This amendment will eliminate the use of the primary formula effective with admissions for the Summer 2020 term.

REGENTS BOARD[681](cont'd)

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to rule 681—19.18(17A).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on July 24, 2018. Comments should be directed to:

Aimee Claeys
Board of Regents
11260 Aurora Avenue
Urbandale, Iowa 50322-7905
Fax: 515.281.6420

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend subrule 1.1(2) as follows:

1.1(2) Admission criteria.

~~a. — Effective for students who seek admission prior to fall 2009. Graduates of approved Iowa high schools who have the subject matter background required by each university and who rank in the upper one-half of their graduating class will be admitted to any regent university. Applicants who are not in the upper one-half of their graduating class may, after an individual review of their academic and test records, and at the discretion of the admissions officers:~~

- ~~(1) Be admitted unconditionally;~~
- ~~(2) Be admitted conditionally;~~
- ~~(3) Be required to enroll for a tryout period during a preceding summer session, or~~
- ~~(4) Be denied admission.~~

REGENTS BOARD[681](cont'd)

b. a. Effective for students who seek admission in fall 2009 and thereafter. Effective for students who seek admission in fall 2009 and thereafter through spring 2020.

(1) ~~Decisions on admission to a regent university are based on the following four factors: performance on standardized tests (SAT Reasoning Test or ACT); high school grade point average (GPA); high school percentile rank in class (when available); and number of high school courses completed in the core subject areas. A primary regent admission index (RAI) will be calculated for each freshman applicant using the formula below when the high school has provided a class rank. For purposes of calculating the primary RAI, the ACT composite score has a top value of 36 (SAT scores will be converted to ACT composite equivalents), high school rank is expressed as a percentile with 99 percent as the top value, high school GPA is expressed on a four-point scale, and number of high school courses completed in the core subject areas is expressed in terms of years or fractions of years of study.~~

$$\text{RAI} = \frac{(2 \times \text{ACT composite score})}{\text{rank expressed as a percentile}} + \frac{(1 \times \text{high school grade point average})}{\text{completed in the core subject areas}} + \frac{(20 \times \text{high school grade point average})}{\text{completed in the core subject areas}} + \frac{(5 \times \text{number of high school courses completed in the core subject areas})}{\text{completed in the core subject areas}}$$

~~NOTE: For purposes of calculating the primary regent admission index, the ACT composite score has a top value of 36 (SAT scores will be converted to ACT composite equivalents); high school rank is expressed as a percentile with 99 percent as the top value; high school GPA is expressed in a four-point scale; and number of high school courses completed in the core subject areas is expressed in terms of years or fractions of years of study.~~

~~(2) Graduates of approved Iowa high schools who have the subject matter background required by each university and who meet the regent admission index of 245 required for automatic admission will be admitted to any regent university. Applicants who do not meet the regent admission index of 245 for automatic admission or for whom a regent admission index cannot be calculated may, after an individual review of their academic and test records, and at the discretion of the admissions officers:~~

- ~~1. Be admitted unconditionally;~~
- ~~2. Be admitted conditionally;~~
- ~~3. Be required to enroll for a tryout period during a preceding summer session, or~~
- ~~4. Be denied admission.~~

~~The regent universities recognize that the traditional measures of academic performance do not adequately describe some students' potential for success. Therefore, the regent universities strongly encourage all interested students to apply for admission. Applicants who feel their academic record is not an accurate reflection of their potential for success are encouraged to provide supplemental information explaining their circumstances, in addition to the application, academic transcripts, and test scores.~~

~~NOTE: For purposes of calculating the alternative regent admission index, the ACT composite score has a top value of 36 (SAT scores will be converted to ACT composite equivalents); high school GPA is expressed on a four-point scale; and number of high school courses completed in the core subject areas is expressed in terms of years or fractions of years of study.~~

~~(2) An alternative RAI will be calculated for each freshman applicant using the equation identified in paragraph 1.1(2) "b" when the high school has not provided a class rank.~~

b. Effective for students who seek admission in summer 2020 and thereafter. An alternative regent admission index (RAI) RAI will be calculated for each freshman applicant using the equation below when the high school has not provided a class rank. For purposes of calculating the RAI, the ACT composite score has a top value of 36 (SAT scores will be converted to ACT composite equivalents), high school GPA is expressed on a four-point scale, and number of high school courses completed in the core subject areas is expressed in terms of years or fractions of years of study.

$$\text{RAI} = \frac{(3 \times \text{ACT composite score})}{\text{grade point average}} + \frac{(30 \times \text{high school grade point average})}{\text{completed in the core subject areas}} + \frac{(5 \times \text{number of high school courses completed in the core subject areas})}{\text{completed in the core subject areas}}$$

REGENTS BOARD[681](cont'd)

c. Freshman applicants from Iowa high schools who have an RAI of at least 245 and who meet the minimum ~~number of high school courses required by~~ requirements of the regent universities will qualify for automatic admission to any of the three regent universities. Freshman applicants who have an RAI below 245 may also be admitted to a specific regent university; however, each regent university will review these applications on an individual basis, and admission decisions will be specific to each institution.

ARC 3864C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to automated traffic enforcement and providing an opportunity for public comment

The Department of Transportation hereby proposes to rescind Chapter 144, “Automated Traffic Enforcement on the Primary Road System,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 307.12.

State or Federal Law Implemented

This rule making does not implement a state or federal law but instead rescinds rules determined by the Iowa Supreme Court to be beyond the Department’s rule-making authority.

Purpose and Summary

On April 27, 2018, the Iowa Supreme Court, in Case No.17-0686, *City of Des Moines, City of Muscatine and City of Cedar Rapids v. Iowa DOT*, ruled that the Department did not have the statutory authority to adopt or enforce the rules set forth in Chapter 144. Consistent with this ruling, the Department proposes to rescind this chapter.

Fiscal Impact

The Department is unable to determine the fiscal impact of rescinding this chapter. Individual cities and counties will determine whether and to what extent they maintain existing automated traffic enforcement systems and locations or add new systems or locations.

Jobs Impact

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

Waivers

A waiver provision is not included in this rule making because the Department is rescinding the chapter.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on July 24, 2018. Comments should be directed to:

TRANSPORTATION DEPARTMENT[761](cont'd)

Tracy George
 Department of Transportation
 DOT Rules Administrator, Strategic Communications and Policy
 800 Lincoln Way
 Ames, Iowa 50010
 Email: tracy.george@iowadot.us

Public Hearing

A public hearing to hear requested oral presentations will be held as follows:

July 26, 2018
 10 a.m.

Department of Transportation
 Administration Building
 Third Floor Conference Room
 800 Lincoln Way
 Ames, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George, the Department's rules administrator, and advise of specific needs.

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Rescind and reserve **761—Chapter 144.**

ARC 3865C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to driver's licenses and providing an opportunity for public comment

The Department of Transportation hereby proposes to amend Chapter 605, "License Issuance," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 321.196.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 321.182, 321.189 and 321.196.

TRANSPORTATION DEPARTMENT[761](cont'd)

Purpose and Summary

The Department is proposing to update Chapter 605 to incorporate amendments that align with existing legal authority and Department practice and to eliminate outdated or irrelevant requirements or options and accommodate modern electronic procedures.

The proposed amendments update the physical description related to eye color to align with eye color selections that already exist in the electronic license issuance system and strike outdated language related to the fee for a replacement license issued when a person no longer needs a license marked “under 18” or “under 21.” Previously, Iowa Code section 321.189(6) set the replacement fee for this type of license at \$1; however, the statute has since been amended to set the replacement fee at \$10.

The Department is proposing to simplify the address change process to clarify that an address change may be completed online at the Department’s website or at a driver’s license kiosk and to no longer require that a person renewing a driver’s license produce two forms of proof to notify the Department of a residential address change. The proposed amendments also allow the renewal of a person’s driver’s license within 180 days prior to the expiration date of the license, which provides more convenience and flexibility to the renewal process.

Finally, the proposed amendments expand the list of who can take advantage of the online license renewal option by allowing a person with a “J” restriction that corresponds directly to a “7” (minor’s school license), “Y” (intermediate license) or “I” (ignition interlock required) restriction on the back of the person’s driver’s license to be able to renew the license online because these combinations of restrictions do not affect the person’s eligibility to renew the license online.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on July 24, 2018. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Strategic Communications and Policy
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

A public hearing to hear requested oral presentations will be held as follows:

TRANSPORTATION DEPARTMENT[761](cont'd)

July 26, 2018
1 p.m.

Department of Transportation
Motor Vehicle Division
6310 SE Convenience Boulevard
Ankeny, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George, the Department's rules administrator, and advise of specific needs.

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **605.2(3)“a”** as follows:

a. The licensee's eye color using these abbreviations: Blk-black, Blu-blue, Bro-brown, Dic-dichromatic, Gry-gray, Grn-green, Haz-hazel, ~~and~~ Pnk-pink and Unk-unknown.

ITEM 2. Amend paragraph **605.2(6)“b”** as follows:

b. ~~Beginning January 15, 2013, a~~ A driver's license that is not issued as a REAL ID license as defined in 761—601.7(321) may be marked as required by 6 CFR 37.71 and any subsequent guidance issued by the U.S. Department of Homeland Security.

ITEM 3. Amend rule **761—605.4(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.180 ~~as amended by 2015 Iowa Acts, House File 635, section 50,~~ and 321.189.

ITEM 4. Amend rule **761—605.5(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code chapter 321A and sections 321.178, 321.180 ~~as amended by 2015 Iowa Acts, House File 635, section 50,~~ 321.180A, 321.180B, 321.188 ~~as amended by 2015 Iowa Acts, House File 635, section 53,~~ 321.189, 321.193, 321.194, 321.215, 321J.4, and 321J.20.

ITEM 5. Amend subrule 605.11(3) as follows:

605.11(3) Fee. The fee to replace a license is \$10. ~~Anything in this rule, notwithstanding the fee for replacement of a license under paragraphs 605.11(2)“f” and 605.11(2)“g,” shall be as set forth in Iowa Code subsection 321.189(6).~~

ITEM 6. Amend subrule 605.12(1) as follows:

605.12(1) A licensee shall notify the department of a change in the licensee's mailing address within 30 days of the change. Notice shall be given by:

a. Submitting the address change in writing to ~~the office of driver services, Driver and Identification Services, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204;~~ or

b. Completing the address change on the department's website at www.iowadot.gov or at a driver's license kiosk; or

~~*b. c.* Appearing in person to change the mailing address at any driver's license examination station service center.~~

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 7. Amend subrule 605.15(2), introductory paragraph, as follows:

605.15(2) Procedure. The licensee shall apply for an extension by submitting Form 430027 to the department. The form may be obtained from and submitted to a driver's license ~~examination station~~ service center. The licensee may also apply by letter to the address in ~~761—600.2(17A)~~; paragraph 605.12(1)“a.”

ITEM 8. Amend subrule 605.16(2) as follows:

605.16(2) Request for retention of record. A person with a military extension may request that the department retain the record of license issuance for the duration of the extension or reenter the record if it has been removed from department records. The request may be made by letter or by using Form 430081. The letter or Form 430081 shall be signed by the person's commanding officer to verify the military service and shall be submitted to the department at the address in ~~761—600.2(17A)~~; paragraph 605.12(1)“a.”

ITEM 9. Amend rule 761—605.25(321) as follows:

761—605.25(321) License renewal.

605.25(1) No change.

605.25(2) A valid license may be renewed ~~30~~ within 180 days before the expiration date. If this is impractical, the department for good cause may renew a license earlier.

605.25(3) No change.

605.25(4) If the licensee's current residential address, name, date of birth, or sex designation has changed since the previous license was issued, the licensee shall comply with the following:

a. Current residential address. The licensee shall ~~comply with the requirements of 761—subrule 601.5(3) to establish a change of~~ notify the department to establish the current residential address.

b. to d. No change.

605.25(5) and **605.25(6)** No change.

605.25(7) The department may determine means or methods for electronic renewal of a driver's license.

a. No change.

b. Notwithstanding any other provision of this subrule to the contrary, the department may accept an electronic renewal application if the license contains a single “J” restriction accompanied by a “7,” “I” or “Y” restriction.

~~*b. c.*~~ The department reserves the right to deny electronic renewal and to require the applicant to personally apply for renewal at a driver's license ~~examination station~~ service center if it appears to the department that the applicant may have a physical or mental condition that may impair the applicant's ability to safely operate a motor vehicle, even if the applicant otherwise meets the criteria in 605.25(7)“a.”

~~*e. d.*~~ An applicant who has not previously been issued a driver's license that is compliant with the REAL ID Act of 2005, 49 U.S.C. Section 30301 note, as further defined in 6 CFR Part 37 (a REAL ID license) may not request a REAL ID driver's license by electronic renewal.

This rule is intended to implement Iowa Code sections 321.186 and 321.196 ~~as amended by 2013 Iowa Acts, House File 355, section 1,~~ the REAL ID Act of 2005 (49 U.S.C. Section 30301 note), and 6 CFR Part 37.

ARC 3866C**TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action****Proposing rule making related to undercover driver's licenses and providing an opportunity for public comment**

The Department of Transportation hereby proposes to amend Chapter 625, "Driver's Licenses for Undercover Law Enforcement Officers," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 321.189A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 80G.3 and 321.189A and 6 CFR Part 37.

Purpose and Summary

The Department is proposing to update Chapter 625 to incorporate amendments that align with existing legal authority and Department practice and to eliminate outdated or irrelevant requirements or options.

The office name and address are corrected to accurately identify the Bureau of Investigation and Identity Protection as the office responsible for the review associated with the issuance of undercover licenses under this chapter, and the amendments clarify that an investigation of an application for an undercover driver's license will consist of verification of the applicant's employment with the sponsoring law enforcement agency and will no longer include a check of a fictitious social security number as those numbers are no longer being used.

The process of issuing a driver's license to an undercover law enforcement officer is amended to align the rule with the current practice of requiring an applicant to appear at the Motor Vehicle Division headquarters in Ankeny, Iowa, in order to be issued the initial undercover driver's license; to clarify that the requirements of rule 761—601.5(321), related to proofs submitted with an application, are waived in conformance with the authority in the federal REAL ID regulations in 6 CFR Part 37 for issuance of credentials to undercover law enforcement officers; and to rescind rule 761—625.4(321), relating to renewal of an undercover driver's license, and move the content of that rule to new subrule 625.3(3). An undercover driver's license may not be renewed, but a new application may be submitted and, if accepted, the Department may issue a new undercover license for an individual who continues to meet the undercover license criteria.

Finally, the proposed amendments add cross references to Iowa Code section 80G.3, which relates to the confidential treatment of undercover law enforcement records, and to 6 CFR Part 37, which relates to the documentation required for issuance of a credential to undercover law enforcement officers in accordance with the federal REAL ID regulations.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

TRANSPORTATION DEPARTMENT[761](cont'd)

Waivers

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on July 24, 2018. Comments should be directed to:

Tracy George
 Department of Transportation
 DOT Rules Administrator, Strategic Communications and Policy
 800 Lincoln Way
 Ames, Iowa 50010
 Email: tracy.george@iowadot.us

Public Hearing

A public hearing to hear requested oral presentations will be held as follows:

July 26, 2018	Department of Transportation
2 p.m.	Motor Vehicle Division
	6310 SE Convenience Boulevard
	Ankeny, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George, the Department's rules administrator, and advise of specific needs.

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **625.2(1)“e”** as follows:

e. Be submitted to the ~~office of driver services at the address in rule 761—600.2(17A)~~ Bureau of Investigation and Identity Protection, Iowa Department of Transportation, 6310 SE Convenience Blvd., Ankeny, Iowa 50021.

ITEM 2. Amend subrule 625.2(2) as follows:

625.2(2) All applications shall be investigated by the department. An investigation shall include, but not be limited to, a 50-state check of the fictitious name and, ~~if provided, fictitious social security number~~ verification of the applicant's employment with the sponsoring law enforcement agency.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 3. Amend rule 761—625.3(321) as follows:

761—625.3(321) Issuance.

625.3(1) To obtain an undercover license after the application is approved, the applicant must appear at ~~a driver's license examination station that has record capabilities~~ the Motor Vehicle Division offices, Iowa Department of Transportation, 6310 SE Convenience Blvd., Ankeny, Iowa, with all applicable documents necessary for the issuance of an undercover license.

625.3(2) A two-year license will be issued. The applicant must pay all fees and meet all requirements for the class of license applied for, except that ~~761—subrule 601.5(1)~~ rule 761—601.5(321) is waived in accordance with the provisions in 6 CFR Part 37.

625.3(3) An undercover license may not be renewed. The department may issue a subsequent new undercover license to an applicant who submits a new application and continues to meet the requirements of rule 761—625.2(321).

ITEM 4. Rescind and reserve rule **761—625.4(321)**.

ITEM 5. Amend subrule 625.6(1) as follows:

625.6(1) Applications, forms and other records of the department that establish the true identity of an applicant or licensee under this chapter are confidential public records under Iowa Code sections 22.7, 80G.3 and 321.189A. The fictitious license information itself is not confidential, except as provided in Iowa Code section 321.11.

ITEM 6. Amend **761—Chapter 625**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 22.7, 80G.3 and 321.189A, and 6 CFR Part 37.

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 Katie Averill, Superintendent of Banking Ronald L. Hansen, and Auditor of State Mary Mosiman has established today the following rates of interest for public obligations and special assessments. The usury rate for June is 4.50%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

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

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

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

New official state interest rates, effective June 9, 2018, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TREASURER OF STATE(cont'd)

TIME DEPOSITS

7-31 days	Minimum .15%
32-89 days	Minimum .15%
90-179 days	Minimum .35%
180-364 days	Minimum .45%
One year to 397 days	Minimum .60%
More than 397 days	Minimum .85%

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 3869C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Rule making related to average cost of nursing facility services and average charges and maximum Medicaid rate for institutional care

The Human Services Department hereby amends Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4.

Purpose and Summary

This rule making amends subrule 75.23(3) to increase the statewide average cost of nursing facility services to a private-pay person. The figure is being revised to reflect the increase in the cost of private-pay rates for nursing facility care in Iowa. The change is not related to rates paid by Medicaid for nursing facility care.

The figure is used to determine the period of ineligibility when an applicant or recipient transfers assets for less than fair market value. When assets are transferred to attain or maintain Medicaid eligibility, the individual may be ineligible for Medicaid payment of long-term care services for a period of time. The period of ineligibility is determined by dividing the amount transferred by the statewide average cost of nursing facility services to a private-pay person.

The Department conducted a survey of the freestanding nursing facilities, hospital-based skilled facilities, and special population facilities in Iowa to update the statewide average cost for nursing facilities. The average monthly private-pay cost of nursing facility services increased from \$6,269.63 to \$6,447.54.

This rule making also amends subparagraphs 75.24(3)“b”(1), (2) and (4) to adjust the average charges for nursing facilities and psychiatric medical institutions for children (PMICs) and to update the maximum Medicaid rate for intermediate care facilities for persons with an intellectual disability (ICF/IDs). These figures are used to determine the disposition of the income of a medical assistance income trust (MAIT).

Nursing facility amounts are not related to the rates paid by Medicaid for nursing facility care. For this purpose, the Department’s survey for statewide average private-pay charges at the nursing facility level of care included only the freestanding nursing facilities in Iowa. Hospital-based skilled facilities and special populations units were not included in the survey since recipients are allowed to use the average cost of the specialized care.

The average charges for PMICs are based on the average statewide charge to a private-pay resident of a psychiatric medical institution for children.

The increases in these amounts will allow additional individuals to qualify for medical assistance by decreasing the period of ineligibility for a transfer of assets and allowing additional individuals to qualify for medical assistance with MAITs because the income limit at which all income assigned to a MAIT is considered to be available for Medicaid eligibility purposes is increased.

The average statewide charge to a resident of a mental health institute (MHI) is addressed in a separate rule making (see ARC 3870C, IAB 7/4/18).

HUMAN SERVICES DEPARTMENT[441](cont'd)

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 25, 2018, as **ARC 3760C**. No public comments were received. No changes from the Notice have been made.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the Department also finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on July 1, 2018, because the amendments confer a benefit on the public. The average costs, average charges, and maximum Medicaid rate are increased, allowing more individuals to be eligible by decreasing the period of ineligibility due to transfer of assets and allowing more individuals to be eligible with a MAIT.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on June 13, 2018.

Fiscal Impact

An increase in the statewide average cost used to determine the period of ineligibility for long-term care services due to a transfer of assets may increase Medicaid expenditures because the period of ineligibility for transfers will be shorter. Given the marginal nature of this change, coupled with the level of income required in order to be impacted, any fiscal impact would be minimal.

The change in the average statewide charges and maximum Medicaid rate used for disposition of MAITs may increase Medicaid expenditures by allowing more individuals to become eligible by establishing a MAIT. Given the marginal nature of this change, coupled with the level of income required in order to be impacted, any fiscal impact would be minimal.

Jobs Impact

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

Waivers

These amendments do not contain waiver provisions because they confer a benefit. Everyone should be subject to the same amounts set by this rule making. Individuals may request an exception pursuant to the Department's general rule on exceptions to policy at rule 441—1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making became effective on July 1, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 75.23(3) as follows:

75.23(3) *Period of ineligibility.* The number of months of ineligibility shall be equal to the total cumulative uncompensated value of all assets transferred by the individual (or the individual's spouse) on or after the look-back date specified in subrule 75.23(2), divided by the statewide average private-pay

HUMAN SERVICES DEPARTMENT[441](cont'd)

rate for nursing facility services at the time of application. The department shall determine the average statewide cost to a private-pay resident for nursing facilities and update the cost annually. For the period from July 1, ~~2017~~ 2018, through June 30, ~~2018~~ 2019, this average statewide cost shall be ~~\$6,269.63~~ \$6,447.54 per month or ~~\$206.24~~ \$212.09 per day.

ITEM 2. Amend paragraph **75.24(3)“b,”** introductory paragraph, as follows:

b. A trust established for the benefit of an individual if the trust is composed only of pension, social security, and other income to the individual (and accumulated income of the trust), and the state will receive all amounts remaining in the trust upon the death of the individual up to the amount equal to the total medical assistance paid on behalf of the individual. For disposition of trust amounts pursuant to Iowa Code sections 633C.1 to 633C.5, the average statewide charges and Medicaid rates for the period from July 1, ~~2017~~ 2018, to June 30, ~~2018~~ 2019, shall be as follows:

ITEM 3. Amend subparagraphs **75.24(3)“b”(1), (2) and (4)** as follows:

(1) The average statewide charge to a private-pay resident of a nursing facility is ~~\$5,829~~ \$6,005 per month.

(2) The maximum statewide Medicaid rate for a resident of an intermediate care facility for persons with an intellectual disability is ~~\$29,240~~ \$31,529 per month.

(4) The average statewide charge to a private-pay resident of a psychiatric medical institution for children is ~~\$7,999~~ \$9,088 per month.

[Filed Emergency After Notice 6/13/18, effective 7/1/18]

[Published 7/4/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/18.

ARC 3870C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Rule making related to average charge for care in a mental health institute

The Human Services Department hereby amends Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4 and 42 U.S.C. Section 1396p(c) and (d).

Purpose and Summary

This rule making updates administrative rules to adjust the average charge for care in mental health institutes (MHIs). The average charge for care in MHIs is used to determine the disposition of the income of a medical assistance income trust (MAIT) and is based on Medicaid rates because Medicaid is the primary payer of the services.

The decrease in this amount may cause fewer individuals who reside in an MHI to be able to qualify for medical assistance with MAITs because the income limit at which all income assigned to a MAIT is considered to be available for Medicaid eligibility purposes is decreased.

The statewide average private-pay charge for nursing facility care and for psychiatric medical institutions for children (PMICs) and the maximum Medicaid rate for intermediate care facilities for

HUMAN SERVICES DEPARTMENT[441](cont'd)

persons with an intellectual disability (ICF/IDs) are addressed in a separate rule making (see **ARC 3869C**, IAB 7/4/18).

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 25, 2018, as **ARC 3761C**. No public comments were received. No changes from the Notice have been made.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the Department finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on July 1, 2018, because this change confers a benefit to the public. The amendment brings the Department into compliance with federal regulations in 42 U.S.C. Section 1396p(c) and (d).

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on June 13, 2018.

Fiscal Impact

This rule making has a fiscal impact of less than \$100,000 annually or \$500,000 over five years to the State of Iowa. The decrease in this amount may cause fewer individuals who reside in an MHI to qualify for medical assistance with MAITs because the income limit at which all income assigned to a MAIT is considered to be available for Medicaid eligibility purposes is decreased. However, the change will have a minimal impact, as the decrease is small.

Jobs Impact

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

Waivers

This amendment does not contain waiver provisions because everyone should be subject to the same amounts set by this rule. Individuals may request an exception pursuant to the Department’s general rule on exceptions to policy at 441—1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making became effective on July 1, 2018.

The following rule-making action is adopted:

HUMAN SERVICES DEPARTMENT[441](cont'd)

Amend subparagraph **75.24(3)“b”(3)** as follows:

(3) The average statewide charge to a resident of a mental health institute is ~~\$29,312~~ \$27,667 per month.

[Filed Emergency After Notice 6/13/18, effective 7/1/18]

[Published 7/4/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/18.

ARC 3868C**HOMELAND SECURITY AND EMERGENCY
MANAGEMENT DEPARTMENT[605]****Adopted and Filed****Rule making related to the 911 network**

The Department of Homeland Security and Emergency Management hereby amends Chapter 10, “911 Telephone Systems,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 34A.22 and 2018 Iowa Acts, House File 2254, section 11.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 34A as amended by 2018 Iowa Acts, House File 2254.

Purpose and Summary

The amendments implement 2018 Iowa Acts, House File 2254. The amendments provide for the elimination of the wireline 911 network and the merging of that associated 911 traffic onto the Next Generation 911 Network. Additionally, the amendments create a public safety answering point (PSAP) shared technology service for those answering points wishing to access 911 call processing equipment in a host remote environment. Thirdly, the amendments do not alter the surcharge funding streams related to the wireline surcharge and the emergency communications surcharge local PSAP pass-through percentage. Finally, the consolidation grants remain in place while also removing the spending limitation that had been in place on the Emergency Communications Service Fund.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 9, 2018, as **ARC 3778C**. A public hearing was held on May 29, 2018, at 11 a.m. in the Cyclones Conference Room, Suite 500, 7900 Hickman Road, Windsor Heights, Iowa. No one attended the public hearing. No public comments were received. Two changes from the Notice have been made. In two instances in Item 5, the word “Network” was added to the phrase “NG911 Implementation and Operations Plan” for consistency.

Adoption of Rule Making

This rule making was adopted by the Department on June 13, 2018.

Fiscal Impact

This rule making has a fiscal impact to the State of Iowa. The Department is estimated to spend \$10.6 million to merge networks and create the shared service environment. With 100 percent PSAP participation, this process will create an annual savings of \$6.6 million in expenses for the local 911 service boards and PSAPs.

Jobs Impact

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

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on August 8, 2018.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definitions in rule **605—10.2(34A)**:

"911 call processing equipment" means equipment owned by the department that functions in a host remote environment, provides 911 call processing functionality to public safety answering points, and utilizes the next generation 911 network. "911 call processing equipment" includes but is not limited to computer aided dispatch, voice logging recorders, mapping, and emergency medical dispatch.

"911 call processing equipment provider" means a vendor or vendors selected by the department to provide 911 call processing equipment.

"911 call transport provider" means a vendor or vendors selected by the department to deliver aggregated wireline 911 call traffic to the next generation 911 network and from the next generation 911 network to public safety answering points.

"Next generation 911 network service provider" means a vendor or vendors selected by the department to provide next generation 911 network functionality.

ITEM 2. Amend rule **605—10.2(34A)**, definitions of "911 service plan," "Next generation 911 network," and "Voice over internet protocol service" as follows:

"911 service plan" means a plan, produced by a joint 911 service board, which includes the information required by Iowa Code subsection 34A.2(2) as ~~enacted~~ amended by ~~2017~~ 2018 Iowa Acts, ~~Senate File 500, section 3~~ House File 2254, section 2.

"Next generation 911 network" means an internet protocol-enabled system that enables the public to transmit digital information to public safety answering points and is responsible for the delivery of all 911 messages within the state. "Next generation 911 network" replaces enhanced 911 and ~~that~~ includes but is not limited to 911 voice and nonvoice messages generated by originating service providers, ESInet, GIS, cybersecurity, and other system components.

"Voice over internet protocol service" means a service to which all of the following apply:

1. The service provides real-time, two-way voice communications transmitted using internet protocol ~~and~~ or a successor protocol.
2. and 3. No change.

ITEM 3. Amend subrule 10.4(2) as follows:

10.4(2) The 911 service plan shall, at a minimum, encompass the entire county, unless a waiver is granted by the director. Each plan shall include:

a. to *g.* No change.

~~*h.*—Identification of the agency responsible for management and supervision of the 911 emergency telephone communication system.~~

i. h. A statement of recurring and nonrecurring costs to be incurred by the joint 911 service board. These costs shall be limited to costs directly attributable to the provision of 911 service.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

~~j. i.~~ The total number of telephone access lines by a telephone company or companies having points of presence within the 911 service area and the number of this total that is exempt from surcharge collection as provided in rule 605—10.9(34A) and Iowa Code subsection 34A.7(3).

~~k. j.~~ If applicable, a schedule for implementation of the plan throughout the 911 service area. A joint 911 service board may decide not to implement 911 service.

~~l. k.~~ The total property valuation in the 911 service area.

~~m. l.~~ Maps of the 911 service area showing:

- (1) The jurisdictional boundaries of all law enforcement agencies serving the area.
- (2) The jurisdictional boundaries of all firefighting districts and companies serving the area.
- (3) The jurisdictional boundaries of all ambulance and emergency medical service providers operating in the area.

~~(4) Telephone exchange boundaries and the location of telephone company central offices, including those located outside but serving the service area.~~

~~(5) (4)~~ The location of PSAP(s) within the service area.

~~n. m.~~ A block drawing for each telephone central office within the service area showing the method by which the 911 call will be delivered to the PSAP(s).

~~o. n.~~ A plan to migrate to an internet protocol-enabled next generation network.

ITEM 4. Amend rule 605—10.7(34A) as follows:

605—10.7(34A) Wireless NG911 Network Implementation and Operations Plan. Each joint 911 service board, the department of public safety, the 911 communications council, and ~~wireless communications~~ originating service providers shall cooperate with the 911 program manager in preparing the Wireless NG911 Network Implementation and Operations Plan for statewide implementation of ~~wireless~~ NG911 service.

10.7(1) Plan specifications. The Wireless NG911 Network Implementation and Operations Plan shall include, at a minimum, the following information:

~~1. a.~~ Maps showing the geographic location within the county of each PSAP that receives ~~wireless~~ 911 ~~telephone~~ emergency calls.

~~2. b.~~ A list of all public safety answering points within the state of Iowa.

~~3. c.~~ A set of guidelines for determining eligible cost as set forth in Iowa Code section 34A.7A.

~~4. d.~~ A schedule for the implementation and maintenance of the next generation 911 ~~systems to provide enhanced wireless 911 phase I and phase II service~~ network.

~~e.~~ A schedule for the implementation, maintenance and cost sharing of 911 call processing equipment.

10.7(2) Adoption by reference. The “Wireless NG911 Network Implementation and Operations Plan,” effective ~~August 30, 2015~~ July 1, 2018, and available from the Homeland Security and Emergency Management Department, 7900 Hickman Road, Suite 500, Windsor Heights, Iowa, or at the Law Library in the Capitol Building, Des Moines, Iowa, is hereby adopted by reference effective ~~December 30, 2015~~ August 8, 2018.

ITEM 5. Amend rule 605—10.9(34A) as follows:

605—10.9(34A) 911 emergency communications fund.

10.9(1) and 10.9(2) No change.

10.9(3) Moneys in the fund shall be expended and distributed in the following manner and order of priority:

a. An amount as appropriated by the general assembly to the department shall be allocated to the director and program manager for implementation, support, and maintenance of the functions of the director and program manager and to employ the auditor of state to perform an annual audit of the 911 emergency communications fund.

b. The program manager shall allocate to each joint 911 service board and to the department of public safety a minimum of \$1,000 per calendar quarter for each ~~public safety answering point (PSAP)~~

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

~~PSAP within the service area of the department of public safety or joint 911 service board that has submitted an annual written request to the program manager. The written request shall be made with the Request for Wireless 911 Funds form contained in the Wireless NG911 Implementation and Operations Plan. The request is due to the program manager by May 15, or the next business day, of each year.~~

(1) The amount allocated under paragraph 10.9(3) "b" shall be 60 percent of the total amount of surcharge generated per calendar quarter. The minimum amount allocated to the department of public safety and the joint 911 board shall be \$1,000 per PSAP operated by the respective authority.

(2) Additional funds shall be allocated as follows:

1. Sixty-five percent of the total dollars available for allocation shall be allocated in proportion to the square miles of the 911 service area to the total square miles in this state.

2. Thirty-five percent of the total dollars available for allocation shall be allocated in proportion to the wireless 911 calls taken at the PSAP in the 911 service area to the total number of wireless 911 calls originating in this state.

(3) The funds allocated in paragraph 10.9(3) "b" shall be used by the PSAPs for costs related to the receipt and disposition of 911 calls.

c. The program manager shall allocate 10 percent of the total amount of surcharge generated per calendar quarter to wireless carriers to recover their costs to deliver wireless E911 phase I services as defined in the Federal Communications Commission (FCC) Docket 94-102 and further defined in the FCC's letter to King County, Washington, dated May 7, 2001. If this allocation is insufficient to reimburse all wireless carriers for the wireless service provider's eligible expenses, the program manager shall allocate a prorated amount to each wireless carrier equal to the percentage of the provider's eligible expenses as compared to the total eligible expenses for all wireless carriers for the calendar quarter during which expenses were submitted. When prorated expenses are paid, the remaining unpaid expenses shall no longer be eligible for payment under paragraph 10.9(3) "c." This allocation is for the period beginning July 1, 2013, and ending June 30, 2026.

~~d. The program manager shall reimburse communications service providers on a calendar quarter basis for carriers' eligible expenses for transport costs between the wireless selective router and the PSAPs related to the delivery of wireless E911 phase 1 services and the integration of an internet protocol-enabled next generation 911 network as specified in the Wireless NG911 Implementation and Operations Plan. The program manager may also provide grants to the joint 911 service boards and the department of public safety for the purpose of developing and maintaining GIS data to be used in support of the next generation 911 network. The program manager shall provide a notice of availability of such grants and provide guidance and application forms on the department's Web site, www.homelandsecurity.iowa.gov.~~

~~e. d.~~ 911 call delivery costs and GIS grants.

(1) The program manager shall reimburse ~~wireline carriers~~ next generation 911 network service providers, 911 call processing equipment providers, 911 call transport providers, and third-party 911 automatic location information database providers on a quarterly basis for the costs of maintaining and upgrading the next generation 911 components and functionalities beyond the input to the 911 selective router, including the 911 selective router network functionality, 911 call processing equipment, 911 call transport from the next generation 911 network to public safety answering points and from the wireless originating service provider network to the next generation 911 network, and the automatic location information database.

(2) The program manager may also provide grants to joint 911 service boards and the department of public safety for the purpose of developing and maintaining GIS data to be used in support of the next generation 911 network. The program manager shall provide guidelines, application forms, and notice of the availability of such grants on the department's website, www.homelandsecurity.iowa.gov.

~~f. e.~~ The department may, in a reserve account established within the 911 emergency communications fund, credit each fiscal year an amount of up to 12½ percent of the annual emergency communications service surcharge collected pursuant to rule 605—10.8(34A) and the prepaid wireless 911 surcharge collected pursuant to rule 605—10.17(34A). However, the moneys contained in such reserve account shall not exceed 12½ percent of the total surcharges collected for each fiscal year.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

Moneys credited to the reserve account shall only be used by the department for the purpose of repairing or replacing equipment in the event of a catastrophic equipment failure, as determined by the director.

~~g.f.~~ If moneys remain in the fund after all obligations are fully paid under paragraphs 10.9(3) "a," "b," "c," "d," and "e," and "f," an amount of up to \$7,000,000 shall, for the fiscal year beginning July 1, 2017, and ending June 30, 2018, remaining funds shall be expended and distributed in the following priority order:

(1) The director, in consultation with the program manager and the 911 communications council, may provide grants for nonrecurring costs to the department of public safety or joint 911 service board operating a PSAP agreeing to consolidate. For purposes of this subparagraph, "consolidate" means the consolidation of all PSAP systems, functions, 911 service areas, and physical facilities of two or more PSAPs, resulting in responsibility by the consolidated PSAP for all call answering and dispatch functions for the combined 911 service area. Such a grant to a PSAP shall not exceed one-half of the projected cost of consolidation, or \$200,000, whichever is less. The department of public safety or joint 911 service board wishing to apply for such funds shall complete an the Intent to Consolidate Application form prior to December 1, 2017. ~~The form can be found on the department's Web site website, www.homelandsecurity.iowa.gov.~~ Such applications shall provide a detailed consolidation plan and demonstrate that the proposed project shall be completed prior to June 30, 2018 timeline.

(2) The program manager, in consultation with the 911 communications council, shall allocate an amount, not to exceed \$100,000 per fiscal year, for development of public awareness and educational programs related to the use of 911 by the public; for educational programs for personnel responsible for the maintenance, operation, and upgrading of local 911 systems; and for the expenses of members of the 911 communications council for travel, monthly meetings, and training, provided, however, that the members have not received reimbursement funds for such expenses from another source.

(3) The program manager shall allocate an equal amount of moneys to each PSAP for the following costs:

1. Costs related to the receipt and disposition of 911 calls, including hardware and software for an Internet protocol-enabled next generation 911 network as specified in the Wireless NG911 Network Implementation and Operations Plan.

2. Local costs related to access the statewide interoperable communications system pursuant to Iowa Code section 29C.23.

(4) Any moneys remaining in the fund at the end of each fiscal year shall not revert to the general fund of the state but shall remain available for the purposes of the fund.

~~10.9(4)~~ Payments to local communications service providers next generation 911 network service providers, 911 call processing equipment providers, 911 call transport providers, and third-party 911 automatic location identification database providers shall be made quarterly, based on original, itemized claims or invoices presented within 20 days of the end of the calendar quarter. Claims or invoices not submitted within 20 days of the end of the calendar quarter are not eligible for reimbursement and may not be included in future claims and invoices. Payments to providers shall be made in accordance with these rules and the State Accounting Policy and Procedures Manual.

~~10.9(5)~~ Local communications service providers Next generation 911 network service providers, 911 call processing equipment providers, 911 call transport providers, and third-party 911 automatic location identification database providers shall be reimbursed for only those items and services that are defined as eligible in the Wireless NG911 Network Implementation and Operations Plan and when initiation of service has been ordered and authorized by the 911 program manager.

~~10.9(6)~~ If it is found that an overpayment has been made to an entity, the 911 program manager shall attempt recovery of the debt from the entity by certified letter. Due diligence shall be documented and retained at the homeland security and emergency management department. If resolution of the debt does not occur and the debt is at least \$50, the homeland security and emergency management department will then utilize the income offset program through the department of revenue. Until resolution of the debt has occurred, the homeland security and emergency management department may withhold future payments to the entity.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

ITEM 6. Amend rule 605—10.13(34A) as follows:

605—10.13(34A) Limitations on use of funds. Surcharge moneys in the 911 service fund may be used to pay recurring and nonrecurring costs including, but not limited to, ~~network equipment~~ 911 call processing equipment, internet and telephone access, software, database, addressing, initial training, and other start-up, capital, and ongoing expenditures. 911 surcharge moneys shall be used only to pay costs directly attributable to the provision of 911 telephone systems and services and may include costs directly attributable to the receipt and disposition of the 911 call.

[Filed 6/13/18, effective 8/8/18]

[Published 7/4/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/18.

ARC 3871C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to filing and withdrawal of appeals

The Human Services Department hereby amends Chapter 7, “Appeals and Hearings,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 217.6.

Purpose and Summary

Federal regulations allow providers and authorized representatives to file an appeal on behalf of a Medicaid member for managed care appeals when the member has given the member's express written consent. These amendments implement the use of Form 470-5526, Authorized Representative for Managed Care Appeals, to obtain the member's consent.

These amendments also allow child abuse and dependent adult abuse appeals to be withdrawn on the record before an administrative law judge or in writing and signed by the appellant or the appellant's legal counsel. Previously, withdrawal requests could only be made in writing. This change provides better access to due process for the Department's clients.

Federal regulations allow assistance to continue for managed care organization health care services when certain criteria are met. Currently, rule 441—7.9(17A) indicates that assistance only continues if it is for the original period covered by the original authorization. The first use of the term “original” in the rule is a duplication, and it is being removed for clarification purposes.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 9, 2018, as **ARC 3783C**.

The Department received comments from one respondent during the public comment period. A summary of the comments and the Department's response are as follows:

Comments: The respondent argued that the proposed change regarding use of Form 470-5526 to obtain the written consent of the Medicaid member for an appeal appears to add barriers to due process and rights to an appeal. The respondent stated that if the form is not returned, then no state fair hearing

HUMAN SERVICES DEPARTMENT[441](cont'd)

is granted. The respondent argued that the requirement to use a specific form or no hearing is granted is overly restrictive and requested that the language be changed from “shall” to “may.” The respondent stated that by making this minor change, the concern of adding barriers to a Medicaid member’s due process rights would be alleviated.

The respondent also suggested adding language to the proposed rule stating that the Department will notify the provider or authorized representative of any defect related to the absence of the form, provide Form 470-5526 to the provider or authorized representative and provide an opportunity to cure before denying a state fair hearing. The respondent did not have an issue with the use of the form, only with the requirement that Form 470-5526 shall be used, and that if the form is not used, the member’s rights to a state fair hearing will be denied.

The respondent also argued that not all Medicaid providers will have access to Form 470-5526 or be aware of the requirement of its use, and that there is no information in the proposed rule regarding how the Department will communicate the required use of Form 470-5526 to Medicaid members or providers and legal representatives. The respondent expressed concern that there will be a sharp decline in Medicaid members proceeding to state fair hearings because of this requirement.

Department response: Federal regulations at 42 CFR 438.402(c)(1)(ii) allow a provider or authorized representative to file an appeal on a member’s behalf “with written consent of the enrollee.” There is no requirement in the regulations of how that consent is presented other than to be “in writing,” and this gives each state the flexibility to determine how to obtain consent.

Currently, there is no standard protocol for obtaining member consent. It quickly became evident that providers were not appropriately obtaining the member’s consent at the time of the appeal.

Providers and authorized representatives have struggled with obtaining member consent. The managed care organizations developed their own form to obtain consent, but the provider or authorized representative often would complete the form and not obtain the member’s consent. Providers or authorized representatives have submitted standard releases, consents to treatment, or authorization to release medical records believing this would document the member’s consent. The Department has also been contacted by providers and authorized representatives requesting a document that can be used to obtain member consent.

For these reasons the Department created Form 470-5526. The managed care organizations and the Department will utilize this form to obtain member consent in a consistent manner. Federal regulations have always required written consent from the member. The proposed regulations require the use of the form, which will be available on the Department website. Also, providers and the managed care organizations will be notified of the requirement through an informational provider letter.

Because the managed care organization is required to obtain the member’s written consent on Form 470-5526 for the first-level appeal process with the managed care organization, the Department intends to obtain a copy of that consent form from the managed care organization when a state fair hearing request is filed. The respondent was concerned that the use of the form would decrease the number of appeals that were eligible for a state fair hearing. The Department disagrees with this concern.

On multiple occasions, the managed care organizations and the Department have had to delay due process rights to members because the member’s consent was not adequately obtained. By adding the requirement that consent be obtained on Form 470-5526, the Department is ensuring the member is truly authorizing the provider or authorized representative to file an appeal on the member’s behalf.

If there is an instance where member consent was not obtained by the managed care organization during the first-level appeal process and the provider or authorized representative was not previously given an opportunity to provide member consent, the Department will give the provider or authorized representative this opportunity before a state fair hearing request is denied. The Appeals Section already follows this process and will continue to do so in the future. As this is an internal process, it does not need to be identified in the rules. The Department will not amend the rule making as requested.

No changes from the Notice have been made.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on June 13, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. These rules will streamline existing processes and provide better access to due process for the Department's clients.

Jobs Impact

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

Waivers

These amendments do not include waiver provisions because they 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 rule 441—1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on August 8, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph 7.2(5)“b” as follows:

b. If a provider or authorized representative is acting on behalf of a member by filing this type of appeal, the member's written consent to appeal must be submitted on Form 470-5526, Authorized Representative for Managed Care Appeals, with the appeal request. If the appeal is filed verbally, the managed care organization or agency is responsible for obtaining the member's written consent for the provider or authorized representative.

ITEM 2. Amend paragraph 7.5(2)“a” as follows:

a. One of the following issues is appealed:

(1) to (17) No change.

(18) ~~An MCO~~ A provider or an authorized representative, for a managed care appeal, fails to submit a document Form 470-5526, Authorized Representative for Managed Care Appeals, providing the member's approval of the request for appeal.

(19) to (22) No change.

ITEM 3. Amend subrule 7.6(2) as follows:

7.6(2) *Authorized representation or responsible party.* Persons may be represented for purposes of this chapter by an authorized representative or an individual, ~~or~~ organization, ~~or~~ provider recognized by the department as acting responsibly for an applicant or beneficiary pursuant to policy governing a particular program (hereinafter referred to as a “responsible party”), unless otherwise specified by statute or federal regulations.

a. The designation of an authorized representative must be in writing and include the signature of the person designating the authorized representative. Medicaid members may appoint an authorized representative or provider to act on their behalf during the appeals process regarding an adverse benefit determination made by a managed care organization by signing Form 470-5526, Authorized

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Representative for Managed Care Appeals. Legal documentation of authority to act on behalf of a person, such as a court order establishing legal guardianship or a power of attorney, shall serve in place of a signed designation by the person.

b. No change.

c. A provider or staff member or volunteer of an organization serving as an authorized representative or responsible party must ~~sign an agreement~~ affirm that such provider, staff member or volunteer will adhere to the regulations in Part 431, Subpart F, of 42 CFR Chapter IV and in 45 CFR 155.260(f) (relating to confidentiality of information), § 447.10 of 42 CFR Chapter IV (relating to the prohibition against reassignment of provider claims as appropriate for a health facility or an organization acting on the facility's behalf), as well as other relevant state and federal laws concerning conflict of interest and confidentiality of information.

d. to f. No change.

g. Designations of authorized representatives, legal documentation of authority to act on behalf of a person, and modifications or terminations of designations or legal authority may be submitted ~~online via the department's Web site~~, by mail, by electronic mail, by facsimile transmission or in person.

~~h. For purposes of this rule, the department shall accept electronic, including telephonically recorded, signatures and handwritten signatures transmitted by facsimile or other electronic transmission.~~

i. h. Designations of authorized representatives, legal documentation of authority to act on behalf of a person, and modifications or terminations of designations or legal authority previously submitted to the department that comply with the requirements of this rule will continue to apply for purposes of appeals, consistent with their terms.

ITEM 4. Amend paragraph **7.8(1)“e”** as follows:

e. A Medicaid provider or an authorized representative requesting a hearing on behalf of the member regarding an adverse benefit determination made by a managed care organization must have the prior express written consent of the member or the member's lawfully appointed guardian, ~~except when appealing a medical assistance eligibility determination on Form 470-5526, Authorized Representative for Managed Care Appeals.~~ Legal documentation of authority to act on behalf of a person, such as a court order establishing legal guardianship or a power of attorney, shall serve in place of a signed designation by the person. No hearing will be granted unless the provider submits a document providing the member's consent to the request for a hearing.

ITEM 5. Amend subrule 7.8(8) as follows:

7.8(8) *Withdrawal.* When the appellant desires to voluntarily withdraw an appeal, the worker, the presiding officer, or the appeals section shall accept a request from the appellant to withdraw the appeal by telephone, in writing or in person. A written request may be submitted in person, by mail or through an electronic delivery method, such as electronic mail, submission of an online form, or facsimile. The appellant may use Form 470-0492 or 470-0492(S), Request for Withdrawal of Appeal, for this purpose. For child abuse and dependent adult abuse appeals, the request to withdraw an appeal must be made on the record before an administrative law judge or in writing and signed by the appellant or the appellant's legal counsel.

ITEM 6. Amend subparagraph **7.9(5)“a”(4)** as follows:

(4) The ~~original~~ period covered by the original authorization has not expired; and

ITEM 7. Amend paragraph **7.9(6)“d”** as follows:

d. The ~~original~~ period covered by the original authorization has expired; or

[Filed 6/13/18, effective 8/8/18]

[Published 7/4/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/18.

ARC 3872C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed****Rule making related to assessment levels for nursing facilities**

The Human Services Department hereby amends Chapter 36, “Facility Assessments,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4 and 2015 Iowa Acts, chapter 137 (Senate File 505).

Purpose and Summary

This rule making amends the assessment level for nursing facilities effective July 1, 2015. The assessment level was changed at the rebase of nursing facility costs on July 1, 2015. Providers were notified of the assessment level with Information Letter 1610 dated February 3, 2016. Providers have been remitting the amounts. This rule making ensures that the rules reflect current practice.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 9, 2018, as **ARC 3785C**. The Department received no comments during the public comment period. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on June 13, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

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Effective Date

This rule making will become effective on September 1, 2018.

The following rule-making action is adopted:

Amend subrule 36.6(2) as follows:

36.6(2) Assessment level. Effective July 1, 2012, the assessment level for each nursing facility shall be determined on an annual basis and shall be effective for the state fiscal year.

a. Effective July 1, ~~2011~~ 2015, nursing facilities with 46 or fewer licensed beds are required to pay a quality assurance assessment of ~~\$1~~ \$1.36 per non-Medicare patient day. Effective with assessment for the state fiscal year beginning July 1, 2012, the number of licensed beds on file with the department of inspections and appeals as of May 1 of each year shall be used to determine the assessment level for the following state fiscal year.

b. ~~Nursing~~ Effective July 1, 2015, nursing facilities designated as continuing care retirement centers (CCRCs) by the insurance division of the Iowa department of commerce are required to pay a quality assurance assessment of ~~\$1~~ \$1.36 per non-Medicare patient day. Effective with assessment for the state fiscal year beginning July 1, 2012, continuing care retirement center designations as of May 1 of each year shall be used to determine the assessment level for the following state fiscal year.

c. ~~Nursing~~ Effective July 1, 2015, nursing facilities with annual Iowa Medicaid patient days of 26,500 or more are required to pay a quality assurance assessment of ~~\$1~~ \$1.36 per non-Medicare patient day. Effective with assessment for the state fiscal year beginning July 1, 2012, the annual number of Iowa Medicaid patient days reported in the most current cost report submitted to the Iowa Medicaid enterprise as of May 1 of each year shall be used to determine the assessment level for the following state fiscal year.

d. ~~All~~ Effective July 1, 2015, all other nursing facilities are required to pay a quality assurance assessment of ~~\$5.26~~ \$7.13 per non-Medicare patient day.

[Filed 6/13/18, effective 9/1/18]

[Published 7/4/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/18.

ARC 3873C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to Medicaid for employed people with disabilities

The Human Services Department hereby amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4.

Purpose and Summary

This amendment adjusts the federal poverty level (FPL) increments used to assess premiums for applicants and recipients under the Medicaid for Employed People with Disabilities (MEPD) program with income over 150 percent of the FPL.

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Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 28, 2018, as **ARC 3704C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on June 13, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. With the exception of premium amounts at the very high end of the income scale, MEPD premiums are not changing. Currently, there are no MEPD members with gross individual income higher than 550 percent of the FPL. For these reasons, there is no fiscal impact.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on August 8, 2018.

The following rule-making action is adopted:

Amend subparagraph **75.1(39)“b”(3)** as follows:

(3) Premiums shall be assessed as follows:

IF THE INCOME OF THE APPLICANT IS ABOVE:	THE MONTHLY PREMIUM IS:
150% of Federal Poverty Level	\$34
165% of Federal Poverty Level	\$47
180% of Federal Poverty Level	\$56
200% of Federal Poverty Level	\$66
225% of Federal Poverty Level	\$77
250% of Federal Poverty Level	\$89
300% of Federal Poverty Level	\$112
350% of Federal Poverty Level	\$137
400% of Federal Poverty Level	\$161
450% of Federal Poverty Level	\$186

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IF THE INCOME OF THE APPLICANT IS ABOVE:	THE MONTHLY PREMIUM IS:
550% of Federal Poverty Level	\$232
650% of Federal Poverty Level	\$280
750% of Federal Poverty Level	\$329
850% of Federal Poverty Level	\$389
1000% of Federal Poverty Level	\$467
1150% of Federal Poverty Level	\$547
1300% of Federal Poverty Level	\$631
1480% of Federal Poverty Level	\$729
1530% of Federal Poverty Level	\$746
1550% of Federal Poverty Level	\$768
1590% of Federal Poverty Level	\$778
1660% of Federal Poverty Level	\$812
1740% of Federal Poverty Level	\$852

[Filed 6/13/18, effective 8/8/18]

[Published 7/4/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/18.

ARC 3874C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to settings for home- and community-based services

The Human Services Department hereby amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," and Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4, 42 CFR Section 441.301(c), and 42 CFR Section 441.710.

Purpose and Summary

The Centers for Medicare and Medicaid Services (CMS) has issued regulations that define the residential and nonresidential settings in which it is permissible for states to provide and pay for Medicaid home- and community-based services (HCBS). The purpose of the CMS regulations is to ensure that individuals receive Medicaid HCBS in settings that are integrated in and support full access to the greater community. These regulations also aim to ensure that individuals have a free choice of where they live and who provides services to them, as well as to ensure that individual rights are not restricted. While providing Medicaid HCBS in institutional settings has never been allowed, these new regulations clarify that HCBS may not be provided in settings that have the qualities of an institution. The federal regulations were effective March 17, 2014, with an initial five-year transition time period for all HCBS providers to be in full compliance with the regulations or lose federal HCBS funding for

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services provided in the setting. Due to the complexity of the changes required for full compliance, CMS extended the implementation time period by three years on May 9, 2017. The State has until March 17, 2022, to demonstrate full compliance with the HCBS settings regulations.

As part of a statewide transition plan developed to transition HCBS services to meet the federal regulations, CMS required the State of Iowa to complete a full assessment of the administrative rules in the Iowa Administrative Code for compliance with the federal regulations. These amendments make changes to the Department's administrative rules necessary for full compliance with federal regulations as cited above.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 9, 2018, as **ARC 3784C**.

The Department received comments from two respondents. A summary of the comments and the Department's responses are as follows:

Comment 1: The respondent stated that the proposed changes are based on 42 CFR Section 441.301(c) and 42 CFR Section 441.710 and that those sections both require that the following conditions be met in any HCBS setting that is a provider-owned or controlled residential setting:

The unit or dwelling is a specific physical space that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the state, county, city, or other designated entity. For the settings in which landlord tenant laws do not apply, the state must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

The respondent stated that this language is not reflected in the Department's proposed regulations and that these protections are important to individuals receiving HCBS waiver services in provider-owned or controlled residential settings because these settings do not afford protections against involuntary discharge in the way that nursing homes do, for example. The respondent requested that the language and concepts from these CFR regulations with regard to protections against eviction be reflected in the proposed regulation.

Department response 1: The Department agrees with the respondent's comment and has amended the definition of "Provider-owned or controlled setting" to be in compliance with the federal references. The following sentences have been added to this definition found in Item 2:

"The unit or dwelling is a specific physical space that can be owned, rented, or occupied under a legally enforceable agreement by the member receiving services, and the member has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the state, county, city, or other designated entity. For the settings in which landlord tenant laws do not apply, the state must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS member and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law."

Comment 2: The respondent identified issues with what the Department terms the "HCBS settings rule," new subrule 77.25(5), found in Item 4. Implementation of the settings rule forbids HCBS settings from being institutional in nature or located in the same building, on the grounds of, or adjacent to entities that are institutional in nature, such as nursing facilities and hospitals. The respondent fears that the HCBS settings rule may restrict, instead of expand, certain HCBS programs. In addition, the respondent stated that the settings rule may have an impact on elderly waiver recipients' ability to receive services. Finally, the respondent stated that the purchase of a new building or the buying of a new location for services to meet the settings rule is prohibitive. The respondent asked that further guidance be put into this rule making to give providers more clarity in the site-specific review process.

Department response 2: The CMS states that the intent of the HCBS settings rule is to ensure that members accessing HCBS services are receiving those services in integrated community settings and

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not in institutional settings or settings presumed to be institutional in nature. Settings that are presumed to be institutional are not prohibited from providing HCBS services, but must take additional steps to ensure that the settings meet the intent of the settings rule.

The Department believes that the HCBS settings rule in the rule making give all residential and nonresidential providers the criteria needed for compliance with the HCBS settings. Due to the diversity of settings where services from each of the seven HCBS waivers and state plan habilitation services are provided in the state, the rules in the Iowa Administrative Code cannot detail the specifics needed for compliance in individual provider settings.

All settings where residential and nonresidential services are provided require oversight by the HCBS Quality Oversight Unit. The Quality Oversight Unit uses the Provider Self-Assessment as the foundation of HCBS settings compliance. The Self-Assessment is used by a provider and the assigned HCBS Specialist to look at the provider-specific setting(s) and review for compliance with the rules. The HCBS Specialist works with the provider on compliance within individual settings and is available to provide technical assistance as needed.

As such, the Department has not made any changes to the HCBS settings rule based on the respondent's comments and will continue to use the HCBS Self-Assessment and Quality Oversight review process to work with providers on individual setting compliance issues.

The words "of access" were added to Items 12 and 16 for consistency throughout the rule making.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on June 13, 2018.

Fiscal Impact

This rule making's fiscal impact to the State of Iowa cannot be determined. Issues with a specific provider setting or services that do not meet the settings guidelines would cause cost increases. These increases could be due to a member's change in services, such as a switch to supported employment, and to changes in staffing ratios within the services. The settings rules will also require that more services be provided in community-based settings. There will be increased provider costs involving transportation and smaller staff-to-member ratios when providers take members into the community with some type of regularity. CMS did not offer any increase in rates for services in conjunction with the new settings requirements. It is also difficult to quantify the number of members affected or how soon cost increases will be realized. Therefore, the fiscal impact cannot be determined.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on August 8, 2018.

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The following rule-making actions are adopted:

ITEM 1. Amend rule 441—77.25(249A), introductory paragraph, as follows:

441—77.25(249A) Home- and community-based habilitation services. To be eligible to participate in the Medicaid program as an approved provider of home- and community-based habilitation services, a provider shall meet the general requirements in subrules 77.25(2), 77.25(3), ~~and 77.25(4)~~, and 77.25(5) and shall meet the requirements in the subrules applicable to the individual services being provided.

ITEM 2. Adopt the following new definition of “Provider-owned or controlled setting” in subrule **77.25(1)**:

“*Provider-owned or controlled setting*” means a setting where the HCBS provider owns the property where the member resides, leases the property from a third party, or has a direct or indirect financial relationship with the property owner that impacts either the care provided to or the financial conditions applicable to the member. The unit or dwelling is a specific physical space that can be owned, rented, or occupied under a legally enforceable agreement by the member receiving services, and the member has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the state, county, city, or other designated entity. For the settings in which landlord tenant laws do not apply, the state must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS member and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.

ITEM 3. Renumber subrules **77.25(5)** to **77.25(9)** as **77.25(6)** to **77.25(10)**.

ITEM 4. Adopt the following new subrule 77.25(5):

77.25(5) Residential and nonresidential settings. Effective March 17, 2022, all home- and community-based services (HCBS), whether residential or nonresidential, shall be provided in integrated, community-based settings that support full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS. Settings shall optimize individual initiative, autonomy, and independence in making life choices, including but not limited to daily activities, physical environment, and with whom to interact.

a. Nursing facilities, institutions for mental diseases, intermediate care facilities for persons with an intellectual disability, and hospitals are not considered integrated, community-based settings.

b. Any HCBS setting that is located in a building that is also a publicly or privately operated facility, identified in paragraph 77.25(5) “*a*,” that provides inpatient treatment or in a building on the grounds of, or immediately adjacent to, a public institution, identified in paragraph 77.25(5) “*a*,” or any setting that has the effect of isolating members receiving Medicaid HCBS from the broader community will be presumed to be a setting that has the qualities of an institution unless the department conducts a site-specific review and determines otherwise.

c. Residential services may be provided in provider-owned or controlled settings. In provider-owned or controlled residential settings:

(1) The member selects the setting from among setting options, including non-disability-specific settings and an option for a private unit in a residential setting.

(2) The setting options are identified and documented in the person-centered service plan and are based on the member’s needs, preferences, and resources available for room and board.

(3) Members have choices regarding services and supports received and who provides them.

(4) Members are assured the rights of privacy, dignity, respect, and freedom from coercion and undue restraint.

(5) Services and supports shall optimize, but not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to daily activities, physical environment, and with whom to interact.

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(6) Each member shall be afforded privacy in the member's sleeping and living unit. Living unit entrance doors and bedroom doors may be locked by the member, and only appropriate staff shall have keys. Staff access to keys must be identified in the member's person-centered plan.

(7) Members shall have a choice of roommates in that setting.

(8) Members shall have the freedom to furnish and decorate their sleeping or living areas as desired as permitted by any operative lease or other agreement.

(9) Members shall have the freedom and support to control their own schedules and activities and shall have access to food at any time.

(10) Members may have visitors of their choosing at any time.

(11) The setting shall be physically accessible to the member.

ITEM 5. Amend rule 441—77.30(249A), introductory paragraph, as follows:

441—77.30(249A) HCBS health and disability waiver service providers. HCBS health and disability waiver services shall be rendered by a person who is at least 16 years old (except as otherwise provided in this rule) and is not the spouse of the member served or the parent or stepparent of a member aged 17 or under. People who are 16 or 17 years old must be employed and supervised by an enrolled HCBS provider unless they are employed to provide self-directed personal care services through the consumer choices option. A person hired for self-directed personal care services need not be supervised by an enrolled HCBS provider. A provider hired through the consumer choices option for independent support brokerage, self-directed personal care, individual-directed goods and services, or self-directed community support and employment is not required to enroll as a Medicaid provider. The following providers shall be eligible to participate in the Medicaid HCBS health and disability waiver program if they meet the standards in subrule 77.30(18) and the integrated, community-based settings standards in subrule 77.25(5) and also meet the standards set forth below for the service to be provided:

ITEM 6. Amend rule 441—77.33(249A), introductory paragraph, as follows:

441—77.33(249A) HCBS elderly waiver service providers. HCBS elderly waiver services shall be rendered by a person who is at least 16 years old (except as otherwise provided in this rule) and is not the spouse of the consumer served or the parent or stepparent of a consumer aged 17 or under. People who are 16 or 17 years old must be employed and supervised by an enrolled HCBS provider unless they are employed to provide self-directed personal care services through the consumer choices option. A person hired for self-directed personal care services need not be supervised by an enrolled HCBS provider. A person hired through the consumer choices option for independent support brokerage, self-directed personal care, individual-directed goods and services, or self-directed community support and employment is not required to enroll as a Medicaid provider. The following providers shall be eligible to participate in the Medicaid HCBS elderly waiver program if they meet the standards in subrule 77.33(22) and the integrated, community-based settings standards in subrule 77.25(5) and also meet the standards set forth below for the service to be provided:

ITEM 7. Amend rule 441—77.34(249A), introductory paragraph, as follows:

441—77.34(249A) HCBS AIDS/HIV waiver service providers. HCBS AIDS/HIV waiver services shall be rendered by a person who is at least 16 years old (except as otherwise provided in this rule) and is not the spouse of the consumer served or the parent or stepparent of a consumer aged 17 or under. People who are 16 or 17 years old must be employed and supervised by an enrolled HCBS provider unless they are employed to provide self-directed personal care services through the consumer choices option. A person hired for self-directed personal care services need not be supervised by an enrolled HCBS provider. A person hired through the consumer choices option for independent support brokerage, self-directed personal care, individual-directed goods and services, or self-directed community support and employment is not required to enroll as a Medicaid provider. The following providers shall be eligible to participate in the Medicaid HCBS AIDS/HIV waiver program if they meet the standards in

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subrule 77.34(14) and the integrated, community-based settings standards in subrule 77.25(5) and also meet the standards set forth below for the service to be provided:

ITEM 8. Amend rule 441—77.37(249A) as follows:

441—77.37(249A) Home- and community-based services intellectual disability waiver service providers. Providers shall be eligible to participate in the Medicaid HCBS intellectual disability waiver program if they meet the requirements in this rule and the subrules applicable to the individual service.

The standards in subrule 77.37(1) apply only to providers of supported employment, respite providers certified according to subparagraph 77.37(15)“a”(8), and providers of supported community living services that are not residential-based. The standards and certification processes in subrules 77.37(2) through 77.37(7) and 77.37(9) through 77.37(12) apply only to supported employment providers and non-residential-based supported community living providers.

The requirements in subrule 77.37(13) apply to all providers. EXCEPTION: A person hired through the consumer choices option for independent support brokerage, self-directed personal care, individual-directed goods and services, or self-directed community support and employment is not required to enroll as a Medicaid provider and is not subject to the review requirements in subrule 77.37(13). Also, services must be rendered by a person who is at least 16 years old (except as otherwise provided in this rule) and is not the spouse of the consumer served or the parent or stepparent of a consumer aged 17 or under. People who are 16 or 17 years old must be employed and supervised by an enrolled HCBS provider unless they are employed to provide self-directed personal care services through the consumer choices option. A person hired for self-directed personal care services need not be supervised by an enrolled HCBS provider. Consumer-directed attendant care and interim medical monitoring and treatment providers must be at least 18 years of age.

The integrated, community-based settings standards in subrule 77.25(5) apply to all HCBS intellectual disability waiver service providers.

77.37(1) to 77.37(32) No change.

This rule is intended to implement Iowa Code section 249A.4.

ITEM 9. Amend rule 441—77.39(249A) as follows:

441—77.39(249A) HCBS brain injury waiver service providers. Providers shall be eligible to participate in the Medicaid brain injury waiver program if they meet the requirements in this rule and the subrules applicable to the individual service. Beginning January 1, 2015, providers initially enrolling to deliver BI waiver services and each of their staff members involved in direct consumer service must have completed the department’s brain injury training modules one and two within 60 days from the beginning date of service provision, with the exception of staff members who are certified through the Academy of Certified Brain Injury Specialists (ACBIS) as a certified brain injury specialist (CBIS) or certified brain injury specialist trainer (CBIST), providers of home and vehicle modification, specialized medical equipment, transportation, personal emergency response, financial management, independent support brokerage, self-directed personal care, individual-directed goods and services, and self-directed community supports and employment. Providers enrolled to provide BI waiver services and each of their staff members involved in direct consumer service on or before December 31, 2014, shall be deemed to have completed the required training.

Services shall be rendered by a person who is at least 16 years old (except as otherwise provided in this rule) and is not the spouse of the consumer served or the parent or stepparent of a consumer aged 17 or under. People who are 16 or 17 years old must be employed and supervised by an enrolled HCBS provider unless they are employed to provide self-directed personal care services through the consumer choices option. A person hired for self-directed personal care services need not be supervised by an enrolled HCBS provider. A person hired through the consumer choices option for independent support brokerage, self-directed personal care, individual-directed goods and services, or self-directed community support and employment is not required to enroll as a Medicaid provider and is not subject

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to review under subrule 77.39(11). Consumer-directed attendant care and interim medical monitoring and treatment providers must be at least 18 years of age.

In addition, behavioral programming, supported community living, and supported employment providers shall meet the outcome-based standards set forth below in subrules 77.39(1) and 77.39(2) evaluated according to subrules 77.39(8) to 77.39(10), and the requirements of subrules 77.39(3) to 77.39(7). Respite providers shall also meet the standards in subrule 77.39(1).

The integrated, community-based settings standards in subrule 77.25(5) apply to all HCBS brain injury waiver service providers.

77.39(1) to 77.39(30) No change.

This rule is intended to implement Iowa Code section 249A.4.

ITEM 10. Amend rule 441—77.41(249A), introductory paragraph, as follows:

441—77.41(249A) HCBS physical disability waiver service providers. Providers shall be eligible to participate in the Medicaid physical disability waiver program if they meet the requirements in this rule and the subrules applicable to the individual service. Enrolled providers shall maintain the certification listed in the applicable subrules in order to remain eligible providers. The integrated, community-based settings standards in subrule 77.25(5) apply to all HCBS physical disability waiver service providers.

ITEM 11. Amend rule 441—77.46(249A), introductory paragraph, as follows:

441—77.46(249A) HCBS children's mental health waiver service providers. HCBS children's mental health waiver services shall be rendered by provider agencies that meet the general provider standards in subrule 77.46(1) and the integrated, community-based settings standards in subrule 77.25(5) and also meet the standards in subrules 77.46(2) to 77.46(5) that are specific to the waiver services provided. A provider that is approved for the same service under another HCBS Medicaid waiver shall be eligible to enroll for that service under the children's mental health waiver.

ITEM 12. Amend rule 441—78.27(249A), introductory paragraph, as follows:

441—78.27(249A) Home- and community-based habilitation services. Payment for habilitation services will only be made to providers enrolled to provide habilitation through the Iowa Medicaid enterprise. Effective March 17, 2022, payment shall only be made for services provided to members in integrated, community-based settings that support full access of members receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

ITEM 13. Amend subrule **78.27(1)**, definition of "Comprehensive service plan," as follows:

"Comprehensive service plan" means an individualized, person-centered, and goal-oriented plan of services written in language understandable by the member using the service and developed collaboratively by the member and the case manager.

ITEM 14. Amend paragraph **78.27(4)"a"** as follows:

a. Development. A comprehensive service plan or treatment plan shall be developed for each member receiving home- and community-based habilitation services based on the member's current assessment and shall be reviewed on an annual basis.

(1) The case manager or the integrated health home care coordinator shall establish an interdisciplinary team ~~for~~ as selected by the member or the member's legal representative. The team shall include the case manager or integrated health home care coordinator and the member and, if applicable, the member's legal representative, the member's family, the member's service providers, and others directly involved with the member.

(2) With assistance from the member and the interdisciplinary team, the case manager or integrated health home care coordinator shall identify the member's services based on the member's needs, the availability of services, and the member's choice of services and providers.

(3) to (8) No change.

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(9) The initial comprehensive service plan or treatment plan and annual updates to the comprehensive service plan or treatment plan must be approved by the IME medical services unit in ISIS before services are implemented. Services provided before the approval date are not payable. The written comprehensive service plan or treatment plan must be completed, signed and dated by the case manager, or integrated health home care coordinator, ~~or service worker~~ within 30 calendar days after plan approval.

(10) No change.

ITEM 15. Amend paragraph **78.27(8)“b”** as follows:

b. Setting. Day habilitation shall take place in a community-based, nonresidential setting ~~settings~~ separate from the member's residence. ~~Services shall not be provided in the member's home. When the member lives in a residential care facility of more than 16 beds, day habilitation services provided in the facility are not considered to be provided in the member's home if the services are provided in an area apart from the member's sleeping accommodations.~~

ITEM 16. Amend rule 441—78.34(249A), introductory paragraph, as follows:

441—78.34(249A) HCBS ill and handicapped waiver services. Payment will be approved for the following services to members eligible for HCBS ill and handicapped waiver services as established in 441—Chapter 83 and as identified in the member's service plan. Effective March 17, 2022, payment shall only be made for services provided in integrated, community-based settings that support full access of members receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

ITEM 17. Amend subparagraph **78.34(8)“d”(4)** as follows:

(4) Interim medical monitoring and treatment services shall be provided ~~only~~ in the following settings that are approved by the department as integrated, community-based settings: the member's home; ~~in~~ a registered child development home; ~~in~~ a licensed child care center, residential care facility, or adult day care facility; or during the time when the member is being transported to and from school.

ITEM 18. Reletter paragraphs **78.34(14)“c”** and **“d”** as **78.34(14)“d”** and **“e.”**

ITEM 19. Adopt the following new paragraph **78.34(14)“c”**:

c. All rights restrictions must be implemented in accordance with 441—subrule 77.25(4). The member service plan or treatment plan shall include documentation of:

- (1) Any restrictions on the member's rights, including the rights of privacy, dignity, respect, and freedom from coercion and restraint.
- (2) The need for the restriction.
- (3) The less intrusive methods of meeting the need that have been tried but did not work.
- (4) Either a plan to restore those rights or written documentation that a plan is not necessary or appropriate.
- (5) Established time limits for periodic reviews to determine if the restriction is still necessary or can be terminated.
- (6) The informed consent of the member.
- (7) An assurance that the interventions and supports will cause no harm to the member.
- (8) A regular collection and review of data to measure the ongoing effectiveness of the restriction.

ITEM 20. Amend rule 441—78.37(249A), introductory paragraph, as follows:

441—78.37(249A) HCBS elderly waiver services. Payment will be approved for the following services to members eligible for the HCBS elderly waiver services as established in 441—Chapter 83 and as identified in the member's service plan. Effective March 17, 2022, payment shall only be made for services provided in integrated, community-based settings that support full access of members receiving Medicaid HCBS to the greater community, including opportunities to seek employment and

HUMAN SERVICES DEPARTMENT[441](cont'd)

work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

ITEM 21. Reletter paragraphs **78.37(19)“c”** and **“d”** as **78.37(19)“d”** and **“e.”**

ITEM 22. Adopt the following **new** paragraph **78.37(19)“c”**:

c. All rights restrictions must be implemented in accordance with 441—subrule 77.25(4). The member service plan or treatment plan shall include documentation of:

- (1) Any restrictions on the member’s rights, including the rights of privacy, dignity, respect, and freedom from coercion and restraint.
- (2) The need for the restriction.
- (3) The less intrusive methods of meeting the need that have been tried but did not work.
- (4) Either a plan to restore those rights or written documentation that a plan is not necessary or appropriate.
- (5) Established time limits for periodic reviews to determine if the restriction is still necessary or can be terminated.
- (6) The informed consent of the member.
- (7) An assurance that the interventions and supports will cause no harm to the member.
- (8) A regular collection and review of data to measure the ongoing effectiveness of the restriction.

ITEM 23. Amend rule 441—78.38(249A), introductory paragraph, as follows:

441—78.38(249A) HCBS AIDS/HIV waiver services. Payment will be approved for the following services to members eligible for the HCBS AIDS/HIV waiver services as established in 441—Chapter 83 and as identified in the member’s service plan. Effective March 17, 2022, payment shall only be made for services provided in integrated, community-based settings that support full access of members receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

ITEM 24. Reletter paragraphs **78.38(10)“c”** and **“d”** as **78.38(10)“d”** and **“e.”**

ITEM 25. Adopt the following **new** paragraph **78.38(10)“c”**:

c. All rights restrictions must be implemented in accordance with 441—subrule 77.25(4). The member service plan or treatment plan shall include documentation of:

- (1) Any restrictions on the member’s rights, including the rights of privacy, dignity, respect, and freedom from coercion and restraint.
- (2) The need for the restriction.
- (3) The less intrusive methods of meeting the need that have been tried but did not work.
- (4) Either a plan to restore those rights or written documentation that a plan is not necessary or appropriate.
- (5) Established time limits for periodic reviews to determine if the restriction is still necessary or can be terminated.
- (6) The informed consent of the member.
- (7) An assurance that the interventions and supports will cause no harm to the member.
- (8) A regular collection and review of data to measure the ongoing effectiveness of the restriction.

ITEM 26. Amend rule 441—78.41(249A), introductory paragraph, as follows:

441—78.41(249A) HCBS intellectual disability waiver services. Payment will be approved for the following services to members eligible for the HCBS intellectual disability waiver as established in 441—Chapter 83 and as identified in the member’s service plan. Effective March 17, 2022, payment shall only be made for services provided in integrated, community-based settings that support full access of members receiving Medicaid HCBS to the greater community, including opportunities to seek

HUMAN SERVICES DEPARTMENT[441](cont'd)

employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

ITEM 27. Amend subparagraph **78.41(9)“d”(4)** as follows:

(4) Interim medical monitoring and treatment services shall be provided ~~only~~ in the following settings that are approved by the department as integrated, community-based settings: the member's home; ~~in~~ a registered child development home; ~~in~~ a licensed child care center, residential care facility, or adult day care facility; or during the time when the member is being transported to and from school.

ITEM 28. Reletter paragraphs **78.41(16)“c”** and **“d”** as **78.41(16)“d”** and **“e.”**

ITEM 29. Adopt the following **new** paragraph **78.41(16)“c”**:

c. All rights restrictions must be implemented in accordance with 441—subrule 77.25(4). The member service plan or treatment plan shall include documentation of:

- (1) Any restrictions on the member's rights, including the rights of privacy, dignity, respect, and freedom from coercion and restraint.
- (2) The need for the restriction.
- (3) The less intrusive methods of meeting the need that have been tried but did not work.
- (4) Either a plan to restore those rights or written documentation that a plan is not necessary or appropriate.
- (5) Established time limits for periodic reviews to determine if the restriction is still necessary or can be terminated.
- (6) The informed consent of the member.
- (7) An assurance that the interventions and supports will cause no harm to the member.
- (8) A regular collection and review of data to measure the ongoing effectiveness of the restriction.

ITEM 30. Amend rule 441—78.43(249A), introductory paragraph, as follows:

441—78.43(249A) HCBS brain injury waiver services. Payment shall be approved for the following services to members eligible for the HCBS brain injury waiver services as established in 441—Chapter 83 and as identified in the member's service plan. Effective March 17, 2022, payment shall only be made for services provided in integrated, community-based settings that support full access of members receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

ITEM 31. Amend subparagraph **78.43(14)“d”(4)** as follows:

(4) Interim medical monitoring and treatment services shall be provided ~~only~~ in the following settings that are approved by the department as integrated, community-based settings: the member's home; ~~in~~ a registered child development home; ~~in~~ a licensed child care center, residential care facility, or adult day care facility; or during the time when the member is being transported to and from school.

ITEM 32. Reletter paragraphs **78.43(16)“c”** and **“d”** as **78.43(16)“d”** and **“e.”**

ITEM 33. Adopt the following **new** paragraph **78.43(16)“c”**:

c. All rights restrictions must be implemented in accordance with 441—subrule 77.25(4). The member service plan or treatment plan shall include documentation of:

- (1) Any restrictions on the member's rights, including the rights of privacy, dignity, respect, and freedom from coercion and restraint.
- (2) The need for the restriction.
- (3) The less intrusive methods of meeting the need that have been tried but did not work.
- (4) Either a plan to restore those rights or written documentation that a plan is not necessary or appropriate.
- (5) Established time limits for periodic reviews to determine if the restriction is still necessary or can be terminated.

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- (6) The informed consent of the member.
- (7) An assurance that the interventions and supports will cause no harm to the member.
- (8) A regular collection and review of data to measure the ongoing effectiveness of the restriction.

ITEM 34. Amend rule 441—78.46(249A), introductory paragraph, as follows:

441—78.46(249A) Physical disability waiver service. Payment shall be approved for the following services to members eligible for the HCBS physical disability waiver as established in 441—Chapter 83 and as identified in the member's service plan. Effective March 17, 2022, payment shall only be made for services provided in integrated, community-based settings that support full access of members receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

ITEM 35. Reletter paragraphs **78.46(7)“c”** and **“d”** as **78.46(7)“d”** and **“e.”**

ITEM 36. Adopt the following **new** paragraph **78.46(7)“c”**:

c. All rights restrictions must be implemented in accordance with 441—subrule 77.25(4). The member service plan or treatment plan shall include documentation of:

- (1) Any restrictions on the member's rights, including the rights of privacy, dignity, respect, and freedom from coercion and restraint.
- (2) The need for the restriction.
- (3) The less intrusive methods of meeting the need that have been tried but did not work.
- (4) Either a plan to restore those rights or written documentation that a plan is not necessary or appropriate.
- (5) Established time limits for periodic reviews to determine if the restriction is still necessary or can be terminated.
- (6) The informed consent of the member.
- (7) An assurance that the interventions and supports will cause no harm to the member.
- (8) A regular collection and review of data to measure the ongoing effectiveness of the restriction.

ITEM 37. Amend rule 441—78.52(249A), introductory paragraph, as follows:

441—78.52(249A) HCBS children's mental health waiver services. Payment will be approved for the following services to members eligible for the HCBS children's mental health waiver as established in 441—Chapter 83 and as identified in the member's service plan. Effective March 17, 2022, payment shall only be made for services provided in integrated, community-based settings that support full access of members receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

ITEM 38. Reletter paragraphs **78.52(1)“c”** and **“d”** as **78.52(1)“d”** and **“e.”**

ITEM 39. Adopt the following **new** paragraph **78.52(1)“c”**:

c. All rights restrictions must be implemented in accordance with 441—subrule 77.25(4). The member service plan or treatment plan shall include documentation of:

- (1) Any restrictions on the member's rights, including the rights of privacy, dignity, respect, and freedom from coercion and restraint.
- (2) The need for the restriction.
- (3) The less intrusive methods of meeting the need that have been tried but did not work.
- (4) Either a plan to restore those rights or written documentation that a plan is not necessary or appropriate.
- (5) Established time limits for periodic reviews to determine if the restriction is still necessary or can be terminated.

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- (6) The informed consent of the member.
- (7) An assurance that the interventions and supports will cause no harm to the member.
- (8) A regular collection and review of data to measure the ongoing effectiveness of the restriction.

ITEM 40. Amend rule **441—83.1(249A)**, definition of “Service plan,” as follows:

“*Service plan*” means a ~~written consumer-centered~~ person-centered, outcome-based plan of services ~~developed using an interdisciplinary process, which is written by the member’s case manager with input and direction from the member and~~ which addresses all relevant services and supports being provided. It may involve more than one provider. The service plan is developed by the interdisciplinary team, which includes the member and, if appropriate, the member’s legal representative, member’s family, service providers, and others directly involved with the member.

ITEM 41. Amend rule **441—83.21(249A)**, definition of “Service plan,” as follows:

“*Service plan*” means a ~~written consumer-centered~~ person-centered, outcome-based plan of services ~~developed using an interdisciplinary process, which is written by the member’s case manager with input and direction from the member and~~ which addresses all relevant services and supports being provided. It may involve more than one provider. The service plan is developed by the interdisciplinary team, which includes the member and, if appropriate, the member’s legal representative, member’s family, service providers, and others directly involved with the member.

ITEM 42. Amend rule **441—83.41(249A)**, definition of “Service plan,” as follows:

“*Service plan*” means a ~~written consumer-centered~~ person-centered, outcome-based plan of services ~~developed using an interdisciplinary process, which is written by the member’s case manager with input and direction from the member and~~ which addresses all relevant services and supports being provided. It may involve more than one provider. The service plan is developed by the interdisciplinary team, which includes the member and, if appropriate, the member’s legal representative, member’s family, service providers, and others directly involved with the member.

ITEM 43. Amend rule **441—83.60(249A)**, definition of “Service plan,” as follows:

“*Service plan*” means a ~~written consumer-centered~~ person-centered, outcome-based plan of services ~~developed using an interdisciplinary process, which is written by the member’s case manager with input and direction from the member and~~ which addresses all relevant services and supports being provided. It may involve more than one provider. The service plan is developed by the interdisciplinary team, which includes the member and, if appropriate, the member’s legal representative, member’s family, service providers, and others directly involved with the member.

ITEM 44. Amend rule **441—83.81(249A)**, definition of “Service plan,” as follows:

“*Service plan*” means a ~~written consumer-centered~~ person-centered, outcome-based plan of services ~~developed using an interdisciplinary process, which is written by the member’s case manager with input and direction from the member and~~ which addresses all relevant services and supports being provided. It may involve more than one provider. The service plan is developed by the interdisciplinary team, which includes the member and, if appropriate, the member’s legal representative, member’s family, service providers, and others directly involved with the member.

ITEM 45. Amend rule **441—83.101(249A)**, definition of “Service plan,” as follows:

“*Service plan*” means a ~~written consumer-centered~~ person-centered, outcome-based plan of services ~~developed using an interdisciplinary process which is written by the member’s case manager with input and direction from the member and~~ which addresses all relevant services and supports being provided. It may involve more than one provider. The service plan is developed by the interdisciplinary team, which includes the member and, if appropriate, the member’s legal representative, member’s family, service providers, and others directly involved with the member.

ITEM 46. Amend rule **441—83.121(249A)**, definition of “Service plan,” as follows:

“*Service plan*” means a ~~written, consumer-centered~~ person-centered, outcome-based plan of services ~~developed by the consumer’s interdisciplinary team that is written by the member’s case manager with input and direction from the member and~~ that addresses all relevant services and supports

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being provided. The service plan may involve more than one provider. The service plan is developed by the interdisciplinary team, which includes the member and, if appropriate, the member's legal representative, member's family, service providers, and others directly involved with the member.

[Filed 6/13/18, effective 8/8/18]

[Published 7/4/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/18.

ARC 3875C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Rule making related to economic assistance fraud bureau

The Inspections and Appeals Department hereby rescinds Chapter 74, "Economic Assistance Fraud Bureau," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 10A.104 and 10A.401 to 10A.403.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 10A.104 and 10A.401 to 10A.403.

Purpose and Summary

This adopted rule making is the result of a comprehensive review of the Department's Investigations Division rules. Another rule making (published as **ARC 3792C**, IAB 5/9/18) combines the content of current Chapter 74 with that of Chapter 72 to create a new chapter that more clearly and accurately describes the work of the Investigations Division's Economic Fraud Control Bureau. Therefore, current Chapter 74 is obsolete and unnecessary.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 9, 2018, as **ARC 3779C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on June 13, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on August 8, 2018.

The following rule-making action is adopted:

Rescind and reserve **481—Chapter 74**.

[Filed 6/13/18, effective 8/8/18]

[Published 7/4/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/18.

ARC 3876C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rule making related to physical therapist and occupational therapist supervision

The Board of Physical and Occupational Therapy hereby amends Chapter 200, "Licensure of Physical Therapists and Physical Therapist Assistants," Chapter 203, "Continuing Education for Physical Therapists and Physical Therapist Assistants," and Chapter 206, "Licensure of Occupational Therapists and Occupational Therapy Assistants," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapters 148A and 148B and Iowa Code sections 147.76 and 272C.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 148A and 148B.

Purpose and Summary

The amendments revise the supervision requirements for physical therapy and occupational therapy, add requirements for physical therapy and occupational therapy supervision by telehealth, revise the limit on the number of physical therapist assistants who can be supervised by a physical therapist, remove the maximum of physical therapist delegation based on the patient's health care residency or admission status, add new requirements for the minimum frequency of a physical therapist's interaction with a client and revise the continuing education requirements for supervising physical therapy students for clinical education.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 25, 2018, as **ARC 3762C**. A public hearing was held on May 15, 2018, at 8 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building, Des Moines, Iowa. Two individuals attended and were in support of the amendments. One comment was received in support of the amendments. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on June 8, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Professional Licensure Division are subject to the waiver provisions accorded under 645—Chapter 18.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on August 8, 2018.

The following rule-making actions are adopted:

ITEM 1. Rescind rule 645—200.6(272C) and adopt the following **new** rule in lieu thereof:

645—200.6(147) Delegation by a supervising physical therapist. A supervising physical therapist may delegate the performance of physical therapy services to a physical therapist assistant only if done in accordance with the statutes and rules governing the practice of physical therapy. A physical therapist assistant may assist in the practice of physical therapy only to the extent allowed by the supervising physical therapist. The supervisory requirements stated in this rule are minimal. It is the professional responsibility and duty of the supervising physical therapist to provide the physical therapist assistant with more supervision if deemed necessary in the supervising physical therapist's professional judgment.

200.6(1) Supervision requirements. A supervising physical therapist who delegates the performance of physical therapy services to a physical therapist assistant shall provide supervision to the physical therapist assistant at all times when the physical therapist assistant is providing delegated physical therapy services. Supervision means that the physical therapist shall be readily available on site or telephonically anytime the physical therapist assistant is providing physical therapy services so that the physical therapist assistant may contact the physical therapist for advice, assistance, or instruction.

200.6(2) Functions that cannot be delegated. The following are functions that only a physical therapist may provide and that cannot be delegated to a physical therapist assistant:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- a. Interpretation of referrals;
- b. Initial physical therapy evaluation and reevaluations;
- c. Identification, determination, or modification of patient problems, goals, and plans of care;
- d. Final discharge evaluation and establishment of a discharge plan;
- e. Delegation of and instruction in the physical therapy services to be rendered by a physical therapist assistant or unlicensed assistive personnel including, but not limited to, specific tasks or procedures, precautions, special problems, and contraindicated procedures; and
- f. Timely review of documentation, reexamination of the patient, and revision of the plan of care when indicated.

200.6(3) *Physical therapist responsibilities.* At all times, the supervising physical therapist shall be responsible for the physical therapy plan of care and for all physical therapy services provided, including all physical therapy services delegated to a physical therapist assistant. In addition, the supervising physical therapist shall:

- a. Be responsible for the evaluation and development of a plan of care for use by the physical therapist assistant; and
- b. Not delegate a physical therapy service that exceeds the competency or skill set of the physical therapist assistant; and
- c. Ensure that a physical therapist assistant holds an active physical therapist assistant license issued by the board; and
- d. Ensure that a physical therapist assistant is aware of how the supervising physical therapist can be contacted telephonically when the physical therapist is not providing on-site supervision; and
- e. Arrange for an alternate physical therapist to provide supervision when the physical therapist has scheduled or unscheduled absences during time periods in which a physical therapist assistant will be providing delegated physical therapy services; and
- f. Ensure that a physical therapist assistant is informed when a patient's plan of care is transferred to a different supervising physical therapist; and
- g. Directly participate in physical therapy services upon the physical therapist assistant's request for a reexamination, when a change in the plan of care is needed, prior to any planned discharge, and in response to a change in the patient's medical status; and
- h. Hold regularly scheduled meetings with the physical therapist assistant to evaluate the physical therapist assistant's performance, assess the progress of a patient, and make changes to the plan of care as needed. The frequency of meetings should be determined by the supervising physical therapist based on the needs of the patient, the supervisory needs of the physical therapist assistant, and any planned discharge. The supervising physical therapist shall provide direction and instruction to the physical therapist assistant that are adequate to ensure the safety and welfare of the patient.

200.6(4) *Physical therapist assistant responsibilities.* A physical therapist assistant shall only provide physical therapy services under the supervision of a physical therapist. In addition, the physical therapist assistant shall:

- a. Only provide physical therapy services that have been delegated by the supervising physical therapist; and
- b. Only provide physical therapy services that are within the competency and skill set of the physical therapist assistant; and
- c. Consult the supervising physical therapist if the physical therapist assistant believes that any procedure is not in the best interest of the patient; and
- d. Contact the supervising physical therapist regarding any change or lack of change in a patient's condition that may require assessment by the supervising physical therapist; and
- e. Refer inquiries that require interpretation to the supervising physical therapist; and
- f. Ensure that the identification of the supervising physical therapist is included in the documentation for any visit when physical therapy services were provided by the physical therapist assistant; and
- g. Only sign a treatment record if the provision of physical therapy services was done in accordance with the statutes and rules governing the practice of a physical therapist assistant.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

200.6(5) Ratio. A physical therapist shall determine the number of physical therapist assistants who can be supervised safely and competently and shall not exceed that number; but in no case shall a physical therapist supervise more than four physical therapist assistants per calendar day. A physical therapist assistant who performs any delegated physical therapy services on behalf of the supervising physical therapist on a particular day shall be counted in determining the maximum ratio, regardless of the location of the physical therapist assistant or the number of patients treated.

200.6(6) Minimum frequency of direct participation by a supervising physical therapist. A supervising physical therapist shall use professional judgment to determine how frequently the physical therapist needs to directly participate in physical therapy services when delegating to a physical therapist assistant, the frequency of which shall be based on the needs of the patient. Direct participation can occur through an in-person or telehealth visit. The supervising physical therapist shall ensure that the patient record clearly indicates which visits included direct participation by the supervising physical therapist. The following are the minimum standards, which are expected to be exceeded when dictated by the supervising physical therapist's professional judgment, for the required frequency of direct participation by the supervising physical therapist when physical therapy services involve delegation to a physical therapist assistant:

a. Hospital inpatient and skilled nursing. For hospital inpatients and skilled nursing patients, a supervising physical therapist must directly participate in physical therapy services a minimum of once per calendar week. A calendar week is defined as Sunday through Saturday.

b. All other settings. In all other settings, a supervising physical therapist must directly participate in the provision of physical therapy services at least every eighth visit or every 30 calendar days, whichever comes first.

200.6(7) Unlicensed assistive personnel. A physical therapist is responsible for patient care provided by unlicensed assistive personnel under the physical therapist's supervision. A physical therapist is responsible for ensuring the qualifications of any unlicensed assistive personnel and shall maintain written documentation of their education or training. Unlicensed assistive personnel may assist a physical therapist assistant in the delivery of physical therapy services only if the physical therapist assistant maintains in-sight supervision of the unlicensed assistive personnel and the physical therapist assistant is primarily and significantly involved in the patient's care. Unlicensed assistive personnel shall not provide independent patient care unless each of the following standards is satisfied:

a. The physical therapist has direct participation in the patient's treatment or evaluation, or both, each treatment day;

b. Unlicensed assistive personnel may provide independent patient care only while under the on-site supervision of the physical therapist;

c. Documentation made in a physical therapy record by unlicensed assistive personnel shall be cosigned by the physical therapist; and

d. The physical therapist provides periodic reevaluation of any unlicensed assistive personnel's performance in relation to the patient.

ITEM 2. Amend subparagraph **203.3(2)“a”(4)** as follows:

(4) Directly supervising students for clinical education ~~if the physical therapist or physical therapist assistant who is supervising is an American Physical Therapy Association Advanced Credentialed Clinical Instructor and~~ if the student students being supervised ~~is~~ are from an accredited physical therapist or physical therapist assistant program and ~~is~~ are participating in a full-time clinical experience (defined as approximately 40 hours per week, ranging from 1 to 18 weeks). One hour will be awarded for every 160 contact hours of supervision. A maximum of 8 hours for a physical therapist and 4 hours for a physical therapist assistant may be awarded per biennium. The physical therapist or physical therapist assistant must have documentation from the accredited educational program indicating the number of hours spent supervising a student.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 3. Amend paragraphs **206.8(2)“a”** and **“b”** as follows:

a. Provide supervision to a licensed OTA, OT limited permit holder and OTA limited permit holder anytime occupational therapy services are rendered. Supervision may be provided on site or through the use of telecommunication or other technology.

b. ~~Provide on-site supervision or supervision by telecommunication as long as the occupational therapy services are rendered in accordance with the provisions of subrule 206.8(5). Ensure that every licensed OTA, OT limited permit holder and OTA limited permit holder being supervised is aware of who the supervisor is and how the supervisor can be contacted anytime occupational therapy services are rendered.~~

ITEM 4. Amend subrule 206.8(5) as follows:

206.8(5) ~~The Minimum frequency of OT interaction. At a minimum, an OT must directly participate in treatment including direct face-to-face patient contact, either in person or through a telehealth visit, every twelfth visit or 60 calendar days, whichever comes first, for all patients regardless of setting and must document each visit. The occupational therapist shall participate at a higher frequency when the standard of care dictates.~~

ITEM 5. Amend paragraph **206.8(6)“a”** as follows:

a. The occupational therapy assistant:

(1) to (6) No change.

(7) ~~Shall have on-site or immediate telecommunicative supervision as long as the occupational therapy services are rendered in accordance with the provisions of subrule 206.8(5) Shall be supervised by an occupational therapist, either on site or through the use of telecommunication or other technology, at all times when occupational therapy services are being rendered;~~

(8) May receive supervision from any number of occupational therapists; and

(9) ~~Shall maintain documentation of supervision on a daily basis that shall be available for review upon request of the board~~ Shall record on every patient chart the name of the OTA’s supervisor for each treatment session.

[Filed 6/11/18, effective 8/8/18]

[Published 7/4/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/18.

ARC 3877C

REGENTS BOARD[681]

Adopted and Filed

Rule making related to traffic and parking at universities

The Board of Regents hereby amends Chapter 4, “Traffic and Parking at Universities,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 262.9, 262.69 and 805.8A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 262.9.

Purpose and Summary

The amendment in Item 1 revises the definition of “bicycle” to include an electric/battery-powered bicycle with a motor of less than 750 watts. The amendment in Item 2 revises subrule 4.30(4) regarding

REGENTS BOARD[681](cont'd)

parking privileges for persons with disabilities to clarify the requirements for obtaining a permit to park in facilities designated for use by persons with disabilities. The amendment in Item 3 revises subrule 4.31(2) regarding sanctions by increasing the monetary sanction imposed for certain violations of parking rules.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 14, 2018, as **ARC 3670C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on June 7, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board of Regents for a waiver of the discretionary provisions, if any, pursuant to rule 681—19.18(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on August 8, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule **681—4.2(262)**, definition of "Bicycle," as follows:

"Bicycle" means any wheeled vehicle which has two or three wheels and fully operable pedals and which is not self-propelled and which is a traditional bicycle designed solely to be pedaled by the rider. An electric/battery-powered bicycle designed not only to be pedaled by the rider but also propelled by an electric motor of less than 750 watts (one horsepower) may be treated as a bicycle and may be parked at bicycle racks.

ITEM 2. Amend subrule 4.30(4) as follows:

4.30(4) Persons with disabilities. Persons with disabilities will be granted parking privileges in parking facilities designated for use by persons with disabilities. ~~Persons with disabilities may apply for special parking privileges for up to six months upon issuance of a letter by the director of student health service, or the director's designee; rehabilitation counselor, student counseling service; or by a personal physician, indicating the character, extent, probable duration of the disability, and certifying the need for special parking. After an initial six months, a faculty or staff member or a student~~ Persons must present a currently valid department of transportation parking permit for persons with disabilities

REGENTS BOARD[681](cont'd)

to ~~renew~~ obtain the campus permit. Parking facilities designated for persons with disabilities shall be so regulated all hours of all days.

ITEM 3. Amend subrule 4.31(2) as follows:

4.31(2) Sanction. Reasonable monetary sanctions may be imposed for violation of these rules. The amount of the sanction approved by the board of regents, state of Iowa, is as follows:

<u>Offenses</u>	<u>Sanctions for Each Offense</u>
Altering, forging or counterfeiting any parking permit (4.30(5))	\$150
Unauthorized possession and use of a parking permit (4.30(5))	\$150
Failure to comply with signs regulating campus traffic flow (681—4.27(262))	\$30
Driving on campus walks or lawns (4.27(6), 4.27(8))	\$30
Driving on closed streets (4.27(3))	\$30
Driving on bike paths (4.27(7))	\$30
Access to restricted areas by means other than established gate openings (4.29(5))	\$30
Moving or driving around a barricade (4.29(5))	\$30
Improper use of gate card (681—4.29(262))	\$20
Illegal parking (4.29(7))	\$40 <u>\$50</u>
Improper parking (4.29(7))	\$15 <u>\$25</u>
Overtime parking at meters (4.29(2))	\$10 <u>\$15</u>
Parking without an appropriate permit in a reserved lot or space (681—4.29(262))	\$30 <u>\$50</u>
Improper affixing or failure to display a permit (681—4.28(262))	\$5
Failure to purchase a parking receipt (4.29(2))	\$10 <u>\$15</u>
Improper parking in a space or stall designated for persons with disabilities (681—4.29(262), 4.30(4))	\$200
Failure to display a current bicycle registration (4.28(4))	\$5
Bicycle improperly parked (4.29(9))	\$7.50
Improper use of roller skates, roller blades or skateboard (4.27(9))	\$25
All other violations	\$15

Violations that continue for more than one hour may receive additional sanctions.

Sanctions may be assessed against the owner or operator of the vehicle involved in each violation or against any person in whose name the vehicle is registered or parking privileges have been granted and may be charged to the violator's university account. Sanctions may be added to student tuition bills or may be deducted from student deposits or from the salaries or wages of employees or from other funds in the possession of the university.

[Filed 6/7/18, effective 8/8/18]

[Published 7/4/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/18.

ARC 3878C**TRANSPORTATION DEPARTMENT[761]****Adopted and Filed****Rule making related to highway bridge program and surface transportation block grant program**

The Department of Transportation hereby amends Chapter 161, “Federal-Aid Highway Bridge Program,” and Chapter 162, “Surface Transportation Block Grant Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 307.12 and 307A.2(4).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 307.44 and 313.4(1).

Purpose and Summary

The Department is amending Chapters 161 and 162 to add language stating that primary road funds may be swapped with Surface Transportation Block Grant (STBG) funds allocated to cities and counties for road and bridge construction projects. The highway bridge program is funded through STBG funds. These amendments are necessary to make the rules consistent with 2017 Iowa Acts, chapter 13, which amended Iowa Code section 313.4(1) and allows for the swap of STBG funds.

The following list explains the additional amendments to Chapters 161 and 162:

- Amend the title of Chapter 161 by striking “federal-aid” and adding “for cities and counties.” The change in the title is being made to clarify that the highway bridge program is for cities and counties and that with the addition of the swap language, the funds will no longer be federal aid.
- Strike “federal-aid” within rule 761—161.1(307) for consistency.
- Amend rules 761—161.2(307) and 761—162.2(307) to add references to the Department’s website where additional information may be found about the swap process.
- Amend rule 761—161.3(307) to add the words “Block Grant” to the name of the Surface Transportation Program and to amend the wording of the federal citation for consistency.
- Amend the implementation sentences within both chapters to add references to Iowa Code section 313.4(1). The implementation sentence for Chapter 162 is also amended to strike the reference to 2016 Iowa Acts, Senate File 2320, and to add a reference to Iowa Code section 307.44 for consistency.
- Correct the parenthetical implementation statutes of existing rules within Chapter 162 to reference Iowa Code chapter 307 and to strike the reference to 2016 Iowa Acts, Senate File 2320.

Iowa Code section 313.4(1)“c” allows the Transportation Commission to allocate money from the primary road fund to be swapped. The Transportation Commission approved the amendments to Chapters 161 and 162 at its June 12, 2018, meeting.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 9, 2018, as **ARC 3777C**. No public comments or requests for oral presentations were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department and the Transportation Commission on June 13, 2018.

TRANSPORTATION DEPARTMENT[761](cont'd)

Fiscal Impact

2017 Iowa Acts, chapter 13, amended Iowa Code section 313.4(1)“c” to increase efficiency and reduce project costs. The Department is implementing this legislation, and because it is early in the implementation stage, swap projects have not yet been constructed. Therefore, a fiscal impact cannot be determined, but the Department believes the impact will be positive.

Jobs Impact

After analysis and review of this rule making, the Department has determined that these amendments may have a positive impact on private sector jobs and employment opportunities in Iowa. These amendments will result in cost savings that will in turn be reinvested into additional construction projects throughout the state. The additional projects should increase the number of jobs for the contracting and consulting industry.

Waivers

Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on August 8, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend **761—Chapter 161**, title, as follows:

~~FEDERAL-AID~~ HIGHWAY BRIDGE PROGRAM FOR CITIES AND COUNTIES

ITEM 2. Amend rule 761—161.1(307) as follows:

761—161.1(307) Purpose. The purpose of these rules is to establish requirements for the counties’ and cities’ ~~federal-aid~~ highway bridge program, in accordance with Iowa Code section 307.44.

ITEM 3. Amend rule 761—161.2(307) as follows:

761—161.2(307) ~~Contact information~~ Information. ~~Questions regarding~~ Information relating to this chapter may be directed to obtained from the Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; or on the department’s website at www.iowadot.gov.

ITEM 4. Amend rule 761—161.3(307) as follows:

761—161.3(307) Source of funds. The Surface Transportation Block Grant Program established in ~~Section 133 of Title 23 of the United States Code~~ 23 U.S.C. Section 133 provides for the use of federal funds to replace or rehabilitate public road bridges. The department, in consultation with county and city officials through their representative organizations, has dedicated a portion of these funds for replacement and rehabilitation of city and county bridges.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 5. Renumber rule **761—161.4(307)** as **761—161.5(307)**.

ITEM 6. Adopt the following new rule 761—161.4(313):

761—161.4(313) Swapping of funds. Surface Transportation Block Grant funds allocated to city and county road or bridge construction projects may be swapped with primary road funds in accordance with Iowa Code section 313.4(1).

ITEM 7. Amend **761—Chapter 161**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section~~ sections 307.44 and 313.4(1).

ITEM 8. Amend rule 761—162.1(86GA,SF2320), parenthetical implementation statute, as follows:

761—162.1(86GA,SF2320 307) Purpose.

ITEM 9. Amend rule 761—162.2(86GA,SF2320) as follows:

761—162.2(86GA,SF2320 307) Contact information Information. Information relating to this chapter may be obtained from the Office of Program Management, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1661; or on the department's website at www.iowadot.gov.

ITEM 10. Amend rule 761—162.3(86GA,SF2320), parenthetical implementation statute, as follows:

761—162.3(86GA,SF2320 307) Source of funds.

ITEM 11. Amend rule 761—162.4(86GA,SF2320), parenthetical implementation statute, as follows:

761—162.4(86GA,SF2320 307) Administration of funds.

ITEM 12. Renumber rule **761—162.4(307)** as **761—162.5(307)**.

ITEM 13. Adopt the following new rule 761—162.4(313):

761—162.4(313) Swapping of funds. Surface Transportation Block Grant funds allocated to city and county road or bridge construction projects may be swapped with primary road funds in accordance with Iowa Code section 313.4(1).

ITEM 14. Amend **761—Chapter 162**, implementation sentence, as follows:

These rules are intended to implement ~~2016 Iowa Acts, Senate File 2320, section 4~~ Iowa Code sections 307.44 and 313.4(1).

[Filed 6/13/18, effective 8/8/18]

[Published 7/4/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/18.

ARC 3879C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to reimbursable services and supplies

The Department of Transportation hereby amends Chapter 174, "Reimbursable Services and Supplies," Iowa Administrative Code.

TRANSPORTATION DEPARTMENT[761](cont'd)

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 307.12.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 307.12.

Purpose and Summary

This amendment concerns the list of the reimbursable services and supplies that counties and cities may request from the Department and pertains to structural analysis. The Department is clarifying paragraph 174.3(1)“a” because it was unclear as written.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 9, 2018, as **ARC 3776C**. No public comments or requests for oral presentations were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on June 13, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on August 8, 2018.

The following rule-making action is adopted:

Amend paragraph **174.3(1)“a”** as follows:

a. Structural analysis: The department will provide standards, an initial load-rating analysis for standard bridge types issued by the department. The department will provide a detailed field inspection of

TRANSPORTATION DEPARTMENT[761](cont'd)

an existing or proposed structure to determine condition or load-carrying capacity and advise on capacity calculations.

[Filed 6/13/18, effective 8/8/18]

[Published 7/4/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/18.

ARC 3880C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to aviation vertical infrastructure

The Department of Transportation hereby amends Chapter 700, "Aeronautics Administration," Chapter 710, "Airport Improvement Program," Chapter 715, "Air Service Development Program," Chapter 716, "Commercial Service Vertical Infrastructure Program," and Chapter 717, "General Aviation Vertical Infrastructure Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 307.12 and 328.12.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 8.57(5), 17A.3 and 328.12.

Purpose and Summary

The Department is correcting the spelling of "website" and the link to the Department's website address in Chapters 700, 710, 715, 716, and 717. The Department is also amending Chapters 716 and 717 to correct citations to Iowa Code section 8.57(5) since this section was amended and renumbered. These corrections are included within the definition of "vertical infrastructure" in rules 761—716.2(328) and 761—717.2(328) and within both chapters' implementation sentences.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 25, 2018, as **ARC 3755C**. No public comments or requests for oral presentations were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on June 12, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

TRANSPORTATION DEPARTMENT[761](cont'd)

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on August 8, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 761—700.2(17A) as follows:

761—700.2(17A) Information and forms. Program information, forms and application instructions are available on the department's ~~Web site~~ [website](#) at ~~www.iowadot.gov/aviation~~ [www.iowadot.gov](#). Requests for such materials or assistance may also be made by calling the office of aviation at (515)239-1048. Submission of application materials shall be made according to the annual application instructions included in the application materials. The office of aviation mailing address is: Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

This rule is intended to implement Iowa Code section 17A.3.

ITEM 2. Amend rule 761—710.3(17A) as follows:

761—710.3(17A) Information and forms. Program information, forms and application instructions are available on the department's ~~Web site~~ [website](#) at ~~www.iowadot.gov/aviation~~ [www.iowadot.gov](#). Requests for such materials or assistance may also be made by calling the office of aviation at (515)239-1048. Submission of application materials shall be made according to the annual application instructions included in the application materials. The office of aviation mailing address is: Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

This rule is intended to implement Iowa Code section 17A.3.

ITEM 3. Amend subrule 715.3(3) as follows:

715.3(3) Program information, instructions and application forms may be obtained from the department's ~~Web site~~ [website](#) at ~~www.iowadot.gov/aviation~~ [www.iowadot.gov](#). Requests for such materials or assistance may also be made by calling the office of aviation at (515)239-1689. Submission of application materials shall be made according to the annual application instructions included in the application materials. The office of aviation mailing address is: Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 4. Amend rule **761—716.2(328)**, definition of "Vertical infrastructure," as follows:

"Vertical infrastructure" means the same as defined in Iowa Code section ~~8.57B~~ [8.57\(5\)](#).

ITEM 5. Amend rule 761—716.3(328) as follows:

761—716.3(328) Information and forms. Program information, instructions, and forms are available on the department's ~~Web site~~ [website](#) at ~~www.iowadot.gov/aviation~~ [www.iowadot.gov](#). Requests for such materials or assistance may also be made by calling the office of aviation at (515)239-1048. Submission of application materials shall be made according to the annual application instructions included in the application materials. The office of aviation mailing address is: Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 6. Amend **761—Chapter 716**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~8.57B~~ [8.57\(5\)](#) and 328.12.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 7. Amend rule **761—717.2(328)**, definition of “Vertical infrastructure,” as follows:
 “*Vertical infrastructure*” means the same as defined in Iowa Code section ~~8.57B~~ 8.57(5).

ITEM 8. Amend rule 761—717.3(328) as follows:

761—717.3(328) Information and forms. Program information, instructions, and application forms may be obtained from the department’s ~~Web site~~ website at ~~www.iowadot.gov/aviation~~ www.iowadot.gov. Requests for such materials or assistance may also be made by calling the office of aviation at (515)239-1048. Submission of application materials shall be made according to the annual application instructions included in the application materials. The office of aviation mailing address is: Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 9. Amend **761—Chapter 717**, implementation sentence, as follows:
 These rules are intended to implement Iowa Code sections ~~8.57B~~ 8.57(5) and 328.12.

[Filed 6/12/18, effective 8/8/18]

[Published 7/4/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/18.

ARC 3881C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to railroad transportation and safety

The Department of Transportation hereby amends Chapter 800, “Items of General Application for Railroads,” Chapter 810, “Railroad Safety Standards,” and Chapter 813, “Close-Clearance Warning Signs Along Railroad Tracks,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 307.12, 327F.13, 327F.39 and 327G.24.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 307.26, 321.449A, 327C.2, 327C.4, 327C.38, 327C.41, 327F.13, 327F.39 and 327G.24.

Purpose and Summary

The amendments to Chapter 800 correct a due date for annual reports, update the adoption date of a federal regulation, and provide a source for federal citations. The following list further explains the amendments to the chapter:

- Item 1 changes the due date for railroad annual reports from “no later than March 31” to “on or before April 1,” which makes the deadline in subrules 800.4(1) and 800.4(2) consistent with the reporting deadline railroads must meet under 49 Code of Federal Regulations (CFR) Part 1241. This item also corrects the implementation sentence for rule 761—800.4(327C) by striking Iowa Code sections 327C.28 and 327C.43 because they are unnecessary.
- Item 2 adopts the current CFR dated October 1, 2017, for 49 CFR Part 1152. Iowa Code section 327G.24 requires the Department to adopt rules consistent with the Surface Transportation Board’s Abandonment and Discontinuance of Rail Lines and Rail Transportation promulgated under United States Code, Title 49, and found in 49 CFR Part 1152.
- Item 3 adds a new rule 761—800.21(327G) that provides sources where the federal citations may be found.

TRANSPORTATION DEPARTMENT[761](cont'd)

The amendments to Chapter 810 update the adoption date of a federal regulation, provide a source for the federal citation, add a new rule which concerns worker transportation rest periods and make changes for clarity and consistency. The following list further explains the amendments to the chapter:

- Item 4 adopts the current CFR dated October 1, 2017, for 49 CFR Part 213. Iowa Code section 327C.4 requires the Department to inspect railroads' track for safe operations. To accomplish this, the Department is a member of the Federal Railroad Administration (FRA) State Rail Safety Participation Program, which provides some benefits to states in training and technical proficiency in understanding and applying federal standards. The FRA's track safety standards set out standards for track safety applicable to all railroads nationwide and are found in 49 CFR Part 213.

- Item 4 also adds new subrule 810.1(2) to provide sources where the federal regulations may be found and updates the rule's implementation sentence by striking Iowa Code section 327C.2 because it is unnecessary.

- Item 5 amends rule 761—810.5(327F), which concerns heating systems within motor vehicles used to transport railroad workers. The amendments make the reporting procedure for a violation more consistent with new rule 761—810.6(327F) and revise the rule for clarity.

- Item 6 adopts new rule 761—810.6(327F). This new rule implements Iowa Code section 327F.39, which sets out the enforcement for a violation of railroad worker transportation company drivers' allowable hours of service. Certain railroads contract with railroad worker transportation companies to transport rail crews to and from work locations on a railroad, often to remote locations and at all hours. The railroad worker transportation companies normally use motor vehicles of a size smaller than those that fall under federal regulations for motor carriers. To cover this gap and ensure the safety of railroad workers being transported, Iowa Code section 321.449A establishes requirements for the allowable time that a railroad worker transportation company driver can be on duty and the driver's required rest periods, similar to federal regulations for motor carriers, and Iowa Code section 327F.39 prohibits both railroad transportation companies and railroad companies from requiring a driver to violate Iowa Code section 321.449A and requires the Department to make, enter, and serve upon the owner of the motor vehicle an order as necessary to protect the safety of workers transported in the motor vehicle. To implement Iowa Code sections 321.449A and 327F.39, new rule 761—810.6(327F) states that violations of Iowa Code section 321.449A are to be reported to the Department and describes how the Department will handle that report and any possible violation, including issuance of a decision and any necessary orders.

- Items 5 and 6 both provide that potential violations of motor vehicle requirements for the transportation of railroad workers may be investigated by the director of the Office of Rail Transportation or the director's designee, which may include peace officers in the Office of Motor Vehicle Enforcement. These provisions are intended to ensure the prompt and effective investigation of potential violations by recognizing that the Office of Rail Transportation has limited staff to conduct investigations and that peace officers serving as motor vehicle enforcement officers are well-positioned and trained to conduct inspections regarding motor vehicle equipment requirements and driver hours of service requirements.

The amendment to Chapter 813 in Item 7 updates the Department's website reference to be consistent with changes made in other chapters of the Department's rules. The Department's main website address is used instead of a more specific link that may change.

Proposed federal regulations are published in the Federal Register (FR) to allow a period for public comment, and after adoption, the final regulations are published in the FR. To ensure the consistency required by statute, the Department adopts the specified parts of 49 CFR as adopted by the Surface Transportation Board and the FRA.

The following list provides a specific description of the amendments to the federal regulations that have become final and effective from September 30, 2016, to October 1, 2017, and that affect 761—Chapters 800 and 813:

Amendment to the Surface Transportation Board Abandonment Regulations

Part 1152 (FR Vol. 82, No. 127, Pages 30997-31008, 07-05-2017)

This final rule amends the Surface Transportation Board's regulations to change its rules pertaining to offers of financial assistance to improve the process and protect it against abuse. The rule amendment

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requires a party making an offer of financial assistance (purchase or subsidy) during a railroad abandonment proceeding to formally express intent of an offer and prove itself preliminarily financially responsible. Effective date: July 29, 2017.

Amendment to the FRA's Track Safety Standards

Part 213 (FR Vol. 82, No. 62, Pages 16127-16136, 04-03-2017 and FR Vol. 82, No. 70, Page 17765, 04-13-2017)

Both final rules amend the civil penalties for a violation of a federal railroad safety law, FRA safety regulation or order as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. Effective dates: April 3, 2017, and April 13, 2017.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 25, 2018, as **ARC 3756C**. No public comments or requests for oral presentations were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on June 12, 2018.

Fiscal Impact

The fiscal impact cannot be determined. The federal regulations adopted by this rule-making action were subject to fiscal impact review by either the FRA or the Surface Transportation Board when enacted and were determined not to be cost-prohibitive.

Jobs Impact

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

Waivers

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on August 8, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 761—800.4(327C) as follows:

761—800.4(327C) Annual reports.

800.4(1) A railroad company submitting an annual report to the Surface Transportation Board under 49 CFR Part 1241 shall submit a copy of this report to the department ~~no later than March 31~~ on or before April 1 following the close of the calendar year. Included with this report shall be a "State Statistics" report which shall include the following: annual data on additions and deletions of mileage within the state; mileage operated within the state at the end of the year; railway operating revenues earned within

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the state; statistics on rail line operations within the state including locomotive unit-miles, car-miles and ton-miles; revenue freight carried within the state by commodity class; and a freight density map showing gross ton-miles for the railroad company's system within the state.

800.4(2) A railroad company not required to submit an annual report to the Surface Transportation Board under 49 CFR Part 1241 shall submit an annual report to the department on Form 010030 ~~no later than March 31~~ on or before April 1 following the close of the calendar year.

This rule is intended to implement Iowa Code sections ~~327C.28, 327C.38, and 327C.41~~ and 327C.43.

ITEM 2. Amend subrule 800.20(1) as follows:

800.20(1) 49 CFR Part 1152 contains the regulations governing the abandonment and discontinuance of railroad lines and rail transportation under 49 U.S.C. 10903 et seq. This part also contains the regulations and procedures for the acquisition or use of railroad rights-of-way proposed for abandonment for interim trail use and rail banking pursuant to 16 U.S.C. 1247(d).

For the purpose of this rule, this part is adopted as of October 1, ~~2002~~ 2017.

ITEM 3. Adopt the following new rule 761—800.21(327G):

761—800.21(327G) Federal citations. Copies of the federal code or regulations cited in this chapter are available from the state law library or online at www.gpo.gov.

This rule is intended to implement Iowa Code section 327G.24.

ITEM 4. Amend rule 761—810.1(327C) as follows:

761—810.1(327C) Track safety standards.

810.1(1) Standards. The department adopts the railroad track safety standards contained in 49 CFR Part 213 (October 1, ~~2002~~ 2017).

810.1(2) Obtaining copies of regulations. Copies of the federal regulations are available from the state law library or online at www.gpo.gov.

This rule is intended to implement Iowa Code sections 307.26, ~~327C.2,~~ and 327C.4.

ITEM 5. Amend rule 761—810.5(327F) as follows:

761—810.5(327F) Worker transportation motor vehicle equipment.

810.5(1) No change.

810.5(2) Report procedure.

a. A person shall report an alleged violation in writing to the responsible railroad company at its corporate headquarters.

b. If within 30 days the railroad company does not respond or if the response is unsatisfactory, the person may report the alleged violation to the department at the following address: Office of Rail Transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

~~*b. c.*~~ *c.* The report ~~shall be written and~~ shall include the date, time, weather conditions and all facts pertinent to the alleged violation. The report shall also include a copy of the railroad's response or, if the railroad failed to respond, proof of the date the report was submitted to the railroad.

~~*e. d.*~~ *d.* The ~~department~~ director of the office of rail transportation or the director's designee may request additional information from the person submitting the report, the railroad worker transportation company or the railroad.

e. The director of the office of rail transportation or the director's designee, which may include peace officers in the office of motor vehicle enforcement, may investigate the alleged violation.

f. The director of the office of rail transportation or the director's designee shall issue a decision within 20 days after the report is received by the department of receipt of the report or 20 days after receipt of the requested additional information is received. The decision may include any order as necessary to enforce the requirements of Iowa Code section 327F.39, as set forth in Iowa Code section 327F.39(6).

g. The department shall notify the person and the railroad of the decision, ~~which is the final decision of the department.~~

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h. The decision is final agency action.

This rule is intended to implement Iowa Code section 327F.39.

ITEM 6. Adopt the following **new** rule 761—810.6(327F):

761—810.6(327F) Worker transportation rest periods.

810.6(1) Requirements. A railroad worker transportation company and railroad worker transportation company driver shall comply with the rest period requirements of Iowa Code sections 321.449A and 327F.39(5).

810.6(2) Report procedure.

a. A person shall report an alleged violation in writing to the department at the following address: Office of Rail Transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

b. The report shall include the date, time, circumstances and any evidence of an alleged violation, and the name and contact information of the driver employed by the railroad worker transportation company or the railroad worker transportation company alleged to require a driver to violate the provisions of Iowa Code section 321.449A or 327F.39(5).

c. The director of the office of rail transportation or the director's designee may request additional information from the driver, railroad worker transportation company or railroad.

d. The director of the office of rail transportation or the director's designee, which may include peace officers in the office of motor vehicle enforcement, may investigate the alleged violation.

e. The director of the office of rail transportation or the director's designee shall issue a decision within 60 days of receipt of the report or 60 days after receipt of the requested additional information. The decision may include any order as necessary to enforce the requirements of Iowa Code section 327F.39, as set forth in Iowa Code section 327F.39(6).

f. The department shall notify the driver and the railroad worker transportation company of the decision.

g. The decision is final agency action.

This rule is intended to implement Iowa Code sections 321.449A and 327F.39.

ITEM 7. Amend subrule 813.10(4) as follows:

813.10(4) Form 291303 is available on the department's ~~Internet Web site~~ website at <http://www.iowadot.gov/forms/index.htm> www.iowadot.gov or from the office of rail transportation.

[Filed 6/13/18, effective 8/8/18]

[Published 7/4/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/18.

ARC 3882C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to notification of railroad accidents and incidents

The Department of Transportation hereby amends Chapter 802, "Reporting of Railroad Accidents/Incidents," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 307.12.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 327C.37 and 327C.41.

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Purpose and Summary

This rule making clarifies and expands the notification to the Department for certain railroad accidents and incidents. Timely notification of certain railroad accidents and incidents allows the Department's Office of Rail Transportation to respond to immediate public safety risks as well as to identify emerging safety issues or trends that may need attention.

The following list further explains the amendments:

- The title of Chapter 802, "Reporting of Railroad Accidents/Incidents," is changed to "Notification of Railroad Accidents/Incidents." The word "reporting" is replaced with "notification" and the word "report" is replaced with "notice" within rule 761—802.2(327C). These changes were made within this chapter to be more consistent with language in Iowa Code section 327C.37 and to clarify that the Department needs to be notified of an accident or incident.

- Iowa Code section 327C.37 requires corporations operating railroads to immediately notify the Department of an injury or death. For clarity on what is meant by "immediately," rule 761—802.2(327C) is amended to state that a railroad accident or incident must be reported to the Department within four hours of the accident or incident. Iowa Code section 327C.41 requires all common carriers subject to Iowa Code chapter 327D to notify the Department when the Department determines the notification is necessary and reasonable. The following are the notification changes that the Department determined are necessary and reasonable:

- Written reports no longer need to be submitted for railroad employee injuries because employee safety is outside the realm of the Department's responsibility. A Federal Railroad Administration form (FRA F 6180.55 — Railroad Injury and Illness Summary) that was used for this notification is stricken from subrule 802.1(2).

- The criteria for notification of railroad accidents and incidents to the Department are expanded to include information beyond just injuries and fatalities. The added criteria include:

- ◇ Information on derailments of ten or more cars or a derailment in which any number of cars or locomotives are not upright. This information may prompt the Department's track inspectors to take a closer look at the safety of the track structure where these incidents occur, often before cleanup is completed.

- ◇ Notification of derailment or other incident involving railroad passenger trains. This information may also trigger an investigation and is included due to the added risk to passengers in the event of an accident or incident and the associated media attention.

- ◇ Any release or potential release of hazardous materials will trigger a railroad or local response to the hazard, and the Department should be made aware of this incident and response as a part of the Department's safety oversight.

- ◇ Damage to any public or private transportation infrastructure not owned by the railroad. This criterion was added as the result of a past rail incident that damaged a highway bridge. The railroad had difficulty knowing whom to notify and how to notify the appropriate highway officials about the damage after normal business hours. Notifications are now made to the Department's Traffic Management Center, which is staffed year-round, 24 hours a day, including legal holidays. The Traffic Management Center has extensive contacts with highway officials and can facilitate any notifications of nonrailroad infrastructure damage as a result of a rail accident or incident.

The specific information included in the notification has also been clarified to provide a clearer picture of the accident or incident to Department personnel. This rule making will provide the Department with more complete and useful information to meet the Department's objective of protecting public safety and ensuring a safe rail infrastructure. The Office of Rail Transportation will have timely information on the nature and severity of an accident or incident and be able to act or prepare accordingly. Reporting rail accidents and incidents to the Department's Traffic Management Center allows personnel to determine whether there are primary highway impacts that should be included on www.511ia.org, the Department's notification to the public of highway incidents or delays, or if local highway officials should be notified. The notification also allows Department personnel to prepare for possible media inquiries that may occur as a result of an accident or incident. Depending upon the type or severity of an accident or incident, the

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notification will also allow Department personnel to notify other agencies or officials that may need to be aware of or respond to the accident or incident.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 25, 2018, as **ARC 3757C**. No public comments or requests for oral presentations were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Transportation Department on June 12, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on August 8, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend **761—Chapter 802**, title, as follows:

REPORTING NOTIFICATION OF RAILROAD ACCIDENTS/INCIDENTS

ITEM 2. Amend subrule 802.1(2) as follows:

802.1(2) Forms. This rule applies to the following Federal Railroad Administration forms:

FRA F 6180.54 — Rail Equipment Accident/Incident Report

~~FRA F 6180.55 — Railroad Injury and Illness Summary~~

FRA F 6180.57 — Rail-Highway Grade Crossing Accident/Incident Report

ITEM 3. Amend rule 761—802.2(327C) as follows:

761—802.2(327C) ~~Immediate reporting~~ Notification of personal injury or death railroad accidents/incidents.

802.2(1) Accidents or incidents requiring notification. Any accident/incident involving train movement which results in ~~personal injury requiring hospitalization or in death~~ any of the following shall be reported ~~immediately~~ within four hours of the accident/incident to the department:

a. Fatality.

b. Personal injury requiring hospitalization.

c. Derailment of ten or more rail cars and locomotives.

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- d. Derailment of any number of cars or locomotives when one or more are not upright.
 - e. Derailment or other incident involving a railroad passenger train.
 - f. Release or potential release of hazardous materials that presents a risk or potential risk to public safety including injury, fatality, evacuation or shelter-in-place of persons.
 - g. Damage to public or private transportation infrastructure not owned by the involved railroad.
- ~~802.2(1)~~ **802.2(2)** *Content of immediate report notice.* The ~~immediate report notice~~ of an accident/incident shall provide the date and time it occurred, the nearest city, the location as accurately as possible, the number of fatalities or injuries, the train(s) involved, the nature and cause insofar as known, the name of the individual filing the report, and the name of the railroad involved., at a minimum, the following information:
- a. Name of the railroad involved.
 - b. Name and contact information of the individual calling to file the notice.
 - c. Date and time the accident/incident occurred.
 - d. Location of the accident/incident, described as accurately as possible, including the nearest city and the U.S. DOT crossing identification number or railroad milepost.
 - e. Description of the accident/incident.
 - f. Impact on motor vehicle travel, if known.
 - g. Number of injuries and fatalities.
 - h. Hazardous materials involved in the incident and actions taken in the event of a release.
 - i. Number of rail cars derailed.

~~802.2(2)~~ **802.2(3)** *Method of immediate reporting notification.* During normal business hours the ~~immediate report~~ The notice shall be filed with the office of rail transportation made to the department's traffic management center by telephone at (515)239-1140 (515)237-3300 (open year-round, 24 hours a day, including legal holidays). At other times, the report shall be filed with the office of motor carrier services of the motor vehicle division of the department by telephone at (515)243-2478.

This rule is intended to implement Iowa Code ~~section~~ sections 327C.37 and 327C.41.

[Filed 6/13/18, effective 8/8/18]

[Published 7/4/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/18.

ARC 3883C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to railroad revolving loan and grant fund program

The Department of Transportation hereby amends Chapter 822, "Railroad Revolving Loan and Grant Fund Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 307.12.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 327H.20A.

Purpose and Summary

Chapter 822 provides the guidelines under which the Railroad Revolving Loan and Grant Funds are awarded and administered. This rule making reflects changes that have been identified to improve the

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process to provide fiscally sound financial assistance for rail projects, speed project completion and increase accountability. Some of the specific drivers of the changes include:

- In 2011, a portion of the appropriation for the Railroad Revolving Loan and Grant Fund Program was made available for rail port planning studies. The Department found that feasibility and planning studies increased the quality of projects that were later submitted by ensuring that there were demand and cost justification for the projects to move forward and, in some cases, not to move forward. Planning grants, especially for more speculative rail port projects, help future potential applicants have a more realistic understanding of the potential benefits and risks of an infrastructure project and result in better quality projects for applicants and a better use of limited state funding if or when an applicant is awarded a grant or loan for an infrastructure project.

- The Federal Railroad Administration approached the Department about developing an agreement to assist railroads in accessing available federal loans, which require certain out-of-pocket expenses. States are encouraged to participate in these expenses. Eligibility of loan development costs, whether through a private or federal source for otherwise qualifying projects, will be another way to leverage limited state funds while meeting the objective of encouraging rail development and improvements.

- Adding an allowance for an advance eligibility exemption to maintain the eligibility of costs if funding is later awarded allows applicants, with approval, to complete certain preliminary project activities (such as clearing and grading). Allowing these preparatory activities before an agreement is reached prevents the possible loss of a construction season in project completion. Faster project completion benefits the awardee and the Department, and the terms of the exemption protect the Department from risk.

- The Department has had a number of projects which have been stalled or delayed, leaving funds obligated but unused. Adding time frames for each step of the process following an award is expected to mitigate delays in utilizing funding. This change will result in more timely completion of projects and, particularly in the case of loans, establish a repayment schedule more rapidly, making better use of limited state funds to support rail development.

- Some applications pledge that the project will create or retain a certain number of jobs and are scored on that criterion. This rule making formalizes the process for verification of those claims and defines acceptable performance. If an applicant fails to meet acceptable performance in the creation of jobs, a repayment of the funds will be requested. This requirement builds in accountability for the recipients of awards and protects the state's investment by ensuring that development associated with the award occurs.

The following list explains each amendment:

Item 1 amends rule 761—822.1(327H) to include the purpose of the program so that the introduction and purpose are included in the same rule. Item 4 rescinds rule 761—822.4(327H), the current rule which describes the purpose of the program. Item 1 also updates the citation to Iowa Code section 327H.20A to remove an unnecessary reference to 2009 Iowa Acts.

Item 2 amends rule 761—822.2(327H) regarding definitions. The definition of “rail facilities” is amended to include transload yards, railroad bridges, railroad scales and other railroad infrastructure to address common questions received from potential applicants on what is included as a “rail facility.” A new definition of “rail port” is added. In 2011, a special appropriation was made to assist in the development of rail ports. Grants under this appropriation were administered by the program manager under revised guidelines. The amendment formalizes the definition of a rail port for later inclusion as an eligible project for this program (Item 7).

Item 3 amends rule 761—822.3(327H) to state that program information and application forms are available on the Department's website and that completed applications shall be submitted as directed in the application materials. The telephone number for the Office of Rail Transportation is also corrected. The applications on the Department's website are designed to be computer fillable and include an email link for submitting applications to the program manager. This process benefits both the applicant and the program manager in storing, retrieving, and archiving digital files.

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Items 4 and 5 rescind and reserve rules 761—822.4(327H) and 761—822.6(327H). As stated above, part of rule 761—822.4(327H) is revised and incorporated into rule 761—822.1(327H) to include both the introduction and the purpose of the rule. Rule 761—822.6(327H) concerning project criteria is rescinded, and the information is clarified and incorporated into rule 761—822.8(327H) in order to make program cost eligibility clearer to applicants.

Item 6 amends rule 761—822.7(327H) to clarify the responsibility of eligible applicants. A sole applicant or one of the applicants in a joint application must be fiscally responsible for any awarded grants or loans. Joint applications are encouraged. However, if a joint application is the recipient of an award, the designated party shall be the fiscal agent working with the Department. This would include fiscal responsibility throughout the project: agreements, project administration, and loan or default payments. Other arrangements for cost sharing or financial responsibility would need to be worked out between the joint applicants and not the Department. Similarly, the Department cannot transfer or assign fiscal responsibility to a party other than the applicant. Some past applicants have not clearly understood the financial responsibilities associated with an award. The amendment clarifies that complex multiparty agreements or the transfer of fiscal responsibility to a third party is not acceptable under this program.

Item 7 amends rule 761—822.8(327H), which explains eligible and ineligible project costs. The list of activities or items that are eligible for funding is expanded to include feasibility or planning studies. Studies have been found to be particularly beneficial for proposed developments of complex, speculative or rail port projects and are now an eligible cost. A legislative “set-aside” in 2011 allocated a portion of the Railroad Revolving Loan and Grant Fund Program appropriation for studies. Since that time, it has proven valuable to fund certain studies which can verify or refute the potential success and benefits of a proposed project, which can ultimately lead to better developments or discourage investments that are less likely to succeed. In addition, loan development costs that a Class II or III railroad may have in obtaining a loan for a project that would have otherwise qualified under this chapter are added to the list as a way to further leverage federal or private funding, as explained previously. The list of ineligible costs is amended to address questions frequently received from applicants about which costs are or are not eligible. Item 7 strikes feasibility studies from the list since they are now added as an eligible cost. Since the program is focused on economic development and improvement of the freight transportation system, other rail costs are clearly stated as ineligible, including facilities solely used for historical or tourist railroad activities; capital or operating costs associated with passenger rail, commuter rail or public transit; and acquisition or capital costs associated with recreational trails, which are often built upon abandoned railroad rights-of-way. Environmental studies and design and engineering costs are ineligible as stand-alone projects but are eligible as a part of a construction award under this program so that investments are targeted to completed infrastructure and not preparatory-only activities. Surface repair or replacement and crossing protection are ineligible as stand-alone projects because there are independent funding sources for those stand-alone improvements but are eligible if the improvement is a necessary part of a larger construction project. Item 7 also adds new subrule 822.8(3) pertaining to an advance eligibility exemption. An applicant may request a written advance eligibility exemption from the Department for specified costs incurred prior to an award or agreement, such as land acquisition, advance design costs, clearing and grubbing, i.e., activities preparatory to the installation of the rail infrastructure. If granted, the exemption will permit the specified eligible expenditure(s) by the applicant without jeopardizing the project’s eligibility for future funding approval. Granting an exemption shall not imply or guarantee that the Department will fund a subsequent application. An advance eligibility exemption must be requested and approved prior to the expenditure; any cost incurred before a written exemption is granted will be ineligible for reimbursement. Allowing these preparatory activities prevents the possible loss of a construction season in project completion. Faster project completion benefits both the awardee, who can derive the benefit from the improvement, and the Department in managing the fund balances and making the best use of limited funding.

Item 8 amends rule 761—822.10(327H) concerning project applications. Item 8 provides that applications may be submitted at any time and the Office of Rail Transportation will hold the applications until the next evaluation cycle, and that when sufficient funds are available, a notice of funding availability is published on the Department’s website. An email is sent to past applicants, railroads in

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Iowa, economic development professionals, cities, counties, municipal planning organizations, regional planning affiliations and others who have inquired about the program. The email announces the notice of funding availability and directs recipients to the website for complete information. The notice will include a deadline for applications and the approximate amount of funding available. Applications may be electronically submitted to the Department or sent to the Office of Rail Transportation. This item also requires a location map and a project plan or drawing to be submitted with the application. Item 8 also amends the justification needed for the project to require specific information which demonstrates the benefits the project will provide and a cost estimate for project construction or feasibility planning studies. If a loan is requested, the proposed loan term and interest rate are not needed on the application because loan terms are now determined by the Department and included in the program guidelines for an evaluation cycle. If the project is for a new or expanded development, a letter from the serving railroad(s) indicating the railroad(s) that will serve the planned development is required as part of the application to ensure that coordination with the railroad about the design and extent of the development has occurred and that the railroad's standards have been met in order to serve the facility.

Item 9 amends rule 761—822.11(327H) to clarify that the Department will request additional application information if necessary to understand the project. This item also states that projects involving job creation which do not meet 100 percent of the annual laborshed wage rate for their area will not be considered in order to ensure that any jobs created are “high-quality jobs” for the area of the project. Item 9 also changes the word “preserved” to “retained” to clarify that the Transportation Commission may review the number of new and retained jobs when deciding which projects will receive funding awards.

Item 10 renumbers rule 761—822.12(327H) as 761—822.13(327H).

Item 11 adopts new rule 761—822.12(327H) concerning award acceptance to formalize a recent addition to the process. In some cases, the Transportation Commission approves an award for less than the requested amount, and the 45-day award acceptance process allows an awardee the time to arrange additional funding or opt out of the award if additional funding to complete the project is unavailable. In other cases, hurdles to the project which threaten completion may have developed since the application process began. The addition of the award acceptance process within a specified period of time helps ensure that projects are ready to move forward without unnecessary delay.

Item 12 amends renumbered rule 761—822.13(327H) to provide additional information that must be included in the agreement. The agreement will specify the approved process for any consultant selection related to the project to ensure the selection meets the Department's standards. Loan repayment terms have always been a part of an agreement but were not previously stipulated in the rule. A requirement that the agreement be executed within 180 days following acceptance of the award was recently added to the agreements in order to move the project forward toward construction. Similarly, a project completion date has been added to minimize delays. Both the agreement and completion timelines can be extended for good cause. Since the program functions as a revolving fund, these timelines minimize the obligated but unused funds in the account and ensure that any loan repayments begin in a timely manner, making the best use of limited funding. Extended delays in agreement negotiations and delayed construction have been relatively common in the past, and the added timelines provide a tool to minimize these delays. This item also amends renumbered subrule 822.13(4), which spells out the remedies that can be taken for an unfulfilled project agreement. This amendment clarifies that the Commission (and not the Department) may revoke a funding commitment, require repayment or do both when an award recipient has not fulfilled the terms of the agreement. This amendment also provides the Commission recourse if a project does not meet requirements and increases accountability.

Item 13 amends the chapter's implementation sentence to remove an unnecessary reference to 2009 Iowa Acts.

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Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 25, 2018, as **ARC 3759C**. No public comments or requests for oral presentations were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on June 12, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on August 8, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 761—822.1(327H) as follows:

761—822.1(327H) Introduction and purpose. The railroad revolving loan and grant fund program provides funding in the form of loans and grants for railroad-related improvement projects ~~that~~. The purpose of the program is to spur economic development and job growth and provide benefits to Iowa through economic benefits derived from railroad transportation system or service improvements. The railroad revolving loan and grant fund is established in Iowa Code section 327H.20A as amended by 2009 Iowa Acts, Senate File 151, section 11, and is under the control of the department.

ITEM 2. Amend rule 761—822.2(327H) as follows:

761—822.2(327H) Definitions.

“Rail facilities” includes railroad main lines, branch lines, switching yards, sidings, rail connections, transload yards, intermodal yards, and highway grade separations, railroad bridges, railroad scales and other railroad infrastructure.

“Rail port” means a commercial or industrial development that has the potential to provide rail service to multiple users through shared rail infrastructure, including transload or intermodal yards.

ITEM 3. Amend rule 761—822.3(327H) as follows:

761—822.3(327H) Information. Information Program information and application forms are available on the department's website at www.iowadot.gov. Completed applications shall be submitted as

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directed in the application materials. Assistance may be obtained at the following address: Office of Rail Transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1140 (515)239-1066. ~~Completed applications shall be submitted to this address.~~

ITEM 4. Rescind and reserve rule ~~761—822.4(327H)~~.

ITEM 5. Rescind and reserve rule ~~761—822.6(327H)~~.

ITEM 6. Amend rule 761—822.7(327H) as follows:

761—822.7(327H) Applicant eligibility. A railroad company, railroad user, city, county, metropolitan planning organization, regional planning affiliation, or any other entity with an interest in a rail transportation improvement is eligible to apply for funding. The applicant shall be fiscally responsible for any awarded loans or grants. Joint applications are allowed and encouraged, but ~~the applicants shall designate one contact person~~ joint applications shall designate one entity that shall be fiscally responsible for any awarded loans or grants.

ITEM 7. Amend rule 761—822.8(327H) as follows:

761—822.8(327H) Eligible and ineligible project costs.

822.8(1) Eligible costs. Activities or items eligible for funding include, but are not limited to, the following:

- a. Modernization, upgrading or reconstruction of existing rail facilities or rail ports.
- b. Construction of new rail facilities or rail ports.
- c. and d. No change.
- e. Feasibility studies or planning studies for proposed projects that are otherwise eligible.
- f. Loan development costs that a Class II or III railroad may have in obtaining a loan for a project that would have otherwise qualified under this chapter.

822.8(2) Ineligible costs.

a. The following activities or items are ineligible for funding:

- ~~a. (1) Contract administration.~~
- ~~b. (2) Freight car or locomotive lease, purchase or repair.~~
- ~~c. Feasibility studies, environmental studies or major investment studies related to a railroad improvement project.~~
- ~~d. (3) Refinancing of a completed project that would have otherwise qualified under this chapter.~~
- (4) Facilities solely used for historical or tourist railroad activities.
- (5) Capital or operating costs associated with passenger rail, commuter rail or public transit.
- (6) Acquisition or capital costs associated with recreational trails.
- b. The following costs are ineligible unless the costs are part of a larger construction award under this program:

- (1) Design and engineering.
- (2) Environmental studies.
- (3) At-grade crossing surface repair or replacement.
- (4) Signals, gates or other crossing protection.

822.8(3) Advance eligibility exemption. No part of a project may be under construction prior to a signed and executed agreement. Certain preliminary costs may be eligible for an advance eligibility exemption, if the exemption is requested in writing and granted by the department in writing. If granted, an exemption will permit a specified expenditure by the applicant without jeopardizing the project's eligibility for future funding approval. Granting an exemption shall not imply or guarantee that the department will fund a subsequent application. An advance eligibility exemption must be requested and approved prior to the expenditure; any cost incurred before a written exemption is granted will be ineligible for reimbursement.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 8. Amend rule 761—822.10(327H) as follows:

761—822.10(327H) Project application.

822.10(1) *Submission.* Applications may be submitted at any time and will be held until the next evaluation cycle.

~~a.~~ The applicant shall submit an original and two copies of a project application to the address in rule 761—822.3(327H). A notice of funding availability will be published on the department's website when funding is available. The notice will include the approximate amount of funding available and a deadline for consideration of applications.

~~b.~~ An applicant shall submit the appropriate application on the prescribed forms either electronically to the email address included in the application or to the address in rule 761—822.3(327H).

~~b. c.~~ If an application is incomplete, department staff shall return the application to the applicant to be resubmitted when it is complete.

~~e. d.~~ An application may be withdrawn at any time after submission.

822.10(2) *Contents of application.* Each application shall contain the following:

a. No change.

b. A detailed description of the project proposed for funding, including a location map or sketch and a project plan or drawing.

c. The justification for the project, including the following information:

(1) No change.

(2) How the project will impact the local and state economies, including the number of new jobs to be created, the number of potential jobs that may be created and the number of jobs to be retained as a result of the project. Specific information demonstrating that the proposed project will provide benefits to Iowa in terms of direct economic development and job growth or retention or through economic transportation or other benefits derived from railroad transportation system or service improvements. Benefits are to be quantified whenever possible.

~~(3) The long-term growth and development potential of the area or industry to be supported and the direct and indirect economic, transportation, and environmental impacts of the project.~~

d. An itemized estimate of all project or planning study costs and the proposed match or cost sharing based on the requested funding. A detailed financial plan to explain the funding for the entire project should be included, along with any associated development costs.

e. and f. No change.

g. If loan funds are requested, ~~the proposed loan term and interest rate and~~ a detailed description of the applicant's ability to repay the loan. Department staff may require the applicant to provide audited financial statements for the past two years plus a current balance sheet and profit/loss statement for the entity that is to repay the loan. If the entity that is to repay the loan is a new entity, the applicant shall, instead, provide a pro forma balance sheet and pro forma profit/loss statement.

h. No change.

i. If the project is a new or expanded development, a letter from the serving railroad(s) indicating that the railroad(s) will serve the planned development.

ITEM 9. Amend rule 761—822.11(327H) as follows:

761—822.11(327H) Project evaluation and approval.

822.11(1) *Staff review.* Department staff shall review the contents of each application ~~for completeness~~ and request any additional information necessary to understand the scope and benefits of a project. Projects involving job creation which do not meet 100 percent of the annual laborshed wage rate for their area will not be considered. Department staff may visit the project site and may require the applicant to verify the information in the application. After department staff determines that the application is complete, the staff shall develop a funding recommendation and shall schedule the project for submission to the transportation commission for approval.

822.11(2) No change.

TRANSPORTATION DEPARTMENT[761](cont'd)

822.11(3) Commission approval. In making its decision to fund a project, the transportation commission may consider the railroad transportation service benefits of the project, the economic development benefits of the project, the applicant's total capital investment, the number of direct and indirect jobs to be created or ~~preserved~~ retained by the project, the financing requested, an analysis of public benefits versus public costs, and other potential impacts or benefits of the project.

ITEM 10. Renumber rule ~~761—822.12(327H)~~ as ~~761—822.13(327H)~~.

ITEM 11. Adopt the following new rule 761—822.12(327H):

761—822.12(327H) Award acceptance. After the transportation commission approves the project, department staff shall notify the applicant of the amount of the award. The applicant shall either accept or reject the award in writing within 45 days.

ITEM 12. Amend renumbered rule 761—822.13(327H) as follows:

761—822.13(327H) Project agreement and administration.

822.13(1) Agreement. After the ~~transportation commission has approved funding~~ applicant has accepted the award for a project, department staff shall negotiate and execute an agreement with the applicant. Department staff shall administer the agreement.

a. No change.

b. As applicable, the agreement shall address responsibilities for consultant selection, project design, right-of-way acquisition, contracting, construction and materials inspection; documentation required for reimbursement of project costs; loan repayment terms; audit requirements; and maintenance of the completed project.

c. The applicant shall execute the agreement within 180 days following the acceptance of the award. The applicant may request an extension, and department staff may approve an extension for good cause. Failure to execute an agreement within the specified time may result in forfeiture of the award.

822.13(2) and 822.13(3) No change.

822.13(4) Default Remedies for noncompliance with project agreement. ~~Department staff~~ The commission may revoke a funding commitment, ~~seek~~ require repayment of funds loaned or granted or take both actions if when the applicant ~~fails to fulfill~~ has not fulfilled the terms of the project agreement.

ITEM 13. Amend ~~761—Chapter 822~~, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 327H.20A ~~as amended by 2009 Iowa Acts, Senate File 151, section 11.~~

[Filed 6/13/18, effective 8/8/18]

[Published 7/4/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/18.

ARC 3884C

WORKERS' COMPENSATION DIVISION[876]

Adopted and Filed

Rule making related to payroll tax tables

The Workers' Compensation Commissioner hereby amends Chapter 8, "Substantive and Interpretive Rules," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 86.8.

WORKERS' COMPENSATION DIVISION[876](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 85.61(6).

Purpose and Summary

This amendment updates references to the tables which determine payroll taxes, as required by Iowa Code section 85.61(6).

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 9, 2018, as **ARC 3775C**. The rule was on the agenda for the Administrative Rules Review Committee meeting on June 12, 2018, and no questions or comments were received during the meeting. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Workers' Compensation Division on June 13, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. This amendment will have no impact on small business within the meaning of Iowa Code section 17A.4A.

Waivers

This amendment does not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers' Compensation Division rules.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on August 8, 2018.

The following rule-making action is adopted:

Amend rule 876—8.8(85,17A) as follows:

876—8.8(85,17A) Payroll tax tables. Tables for determining payroll taxes to be used for the period July 1, ~~2017~~ 2018, through June 30, ~~2018~~ 2019, are the tables in effect on July 1, ~~2017~~ 2018, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Internal Revenue Service, Employer's Supplemental Tax Guide, Publication 15-A [~~2016~~ 2018].)

2. Iowa Withholding Tax Guide. (Iowa Department of Revenue Iowa Withholding Tax Rate Tables [Effective April 1, 2006].)

WORKERS' COMPENSATION DIVISION[876](cont'd)

3. Social Security and Medicare withholding (FICA) at the rate of 7.65 percent. (Internal Revenue Service, Circular E, Employer's Tax Guide, Publication 15 [~~2016~~ 2018].)

This rule is intended to implement Iowa Code section 85.61(6).

[Filed 6/13/18, effective 8/8/18]

[Published 7/4/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/18.