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**223.2(2)** If tax has been imposed on the sales price of services performed on tangible personal property in another state at a rate that is less than the Iowa use tax rate, the purchaser will have to pay Iowa use tax at a rate measured by the difference between the Iowa use tax rate and the tax rate imposed in the state where the service was first used. (See Iowa Code section 423.22.) There is no local option use tax.

EXAMPLE: An Iowa resident first uses the results of services performed on tangible personal property in another state and pays that state's 5 percent sales tax to that state. The Iowa resident returns to Iowa to use the tangible personal property on which the service was performed. Iowa's use tax rate on the services performed on the tangible personal property is 6 percent. The resident must remit to the department 1 percent use tax; no local option use tax is due. If, on the other hand, the other state's sales tax rate is equal to or greater than Iowa's use tax rate, the Iowa resident does not have to remit use tax to the department on the services performed on tangible personal property.

**701—223.3(423) First use of services performed on tangible personal property.**

**223.3(1)** *First use of services performed on tangible personal property defined.* A service performed on tangible personal property is a service that changes some aspect of the property, such as its appearance or function. Services with respect to tangible personal property, but not necessarily performed on tangible personal property, such as inspection and appraisal, are not addressed in this rule. Except as otherwise provided in the agreement or the rules adopted by the governing board, a service performed on tangible personal property is first used at, and sourced to, the location where the customer receives, regains possession of, or can potentially make first use of, whether or not actually used, the tangible personal property on which the seller performed the service. In general, this is the location where the tangible personal property is returned to the purchaser or the purchaser's donee.

**223.3(2)** *Sourcing of taxable services performed on tangible personal property as applied to local option sales and service tax.* A local option sales and service tax shall be imposed on the same basis as the state sales and service tax. With respect to sourcing of taxable services performed on tangible personal property, the local option sales and service tax sourcing rules shall be the same as the general destination regime described in Iowa Code section 423.15 and as set forth in rules 701—223.1(423) and 701—223.2(423) and subrule 223.3(1). However, the location of the taxable service performed on tangible personal property shall be sourced to the taxing jurisdiction, rather than to the state, where the customer regains possession or can potentially make first use of the tangible personal property on which the seller performed the service. Iowa does not impose a local option use tax.

**223.3(3)** *Specific examples of taxable enumerated services.* Specific examples of services performed on tangible personal property taxable in Iowa under Iowa Code section 423.2 include, but are not limited to:

- a. Alteration and garment repair;
- b. Vehicle repair and vehicle wash and wax;
- c. Boat repair;
- d. Carpentry;
- e. Roof, shingle and glass repair;
- f. Dry cleaning, pressing, dyeing, and laundering;
- g. Electrical and electronic repair and installation;
- h. Farm implement repair of all kinds;
- i. Furniture, rug, carpet, and upholstery repair and cleaning;
- j. Gun and camera repair;
- k. Household appliance, television, and radio repair;
- l. Jewelry and watch repair;
- m. Machine repair of all kinds, including office and business machine repair;
- n. Motor repair;
- o. Motorcycle, scooter, and bicycle repair;
- p. Pet grooming;
- q. Wood preparation;

## REVENUE DEPARTMENT[701](cont'd)

- r. Sewing and stitching;
- s. Shoe repair and shoeshine; and
- t. Taxidermy services.

**223.3(4)** *Examples of sourcing rules for motor and machine repair.* The following examples are intended to clarify when motor and machine repair services are deemed “received.”

EXAMPLE A: Ms. Brown of Muscatine, Iowa, takes her lawnmower to a repair shop in Moline, Illinois, to have its engine repaired. When the lawnmower is repaired, she picks it up at the Illinois repair shop and returns to Muscatine. The repair service is received at the repair shop location in Illinois since Ms. Brown has the potential first use of the repaired item at that location. The repair transaction is sourced to Illinois. Ms. Brown’s subsequent use of the repair services performed on the lawnmower obliges her to remit use tax to the department to the extent Iowa’s use tax rate exceeds Illinois’ tax rate on lawnmower repair services. That is, Ms. Brown must remit Iowa use tax at a rate measured by the difference between Iowa’s use tax rate and the tax rate imposed in Illinois on lawnmower repair services. If Illinois does not tax motor and machine repair, Ms. Brown must remit use tax to the Department at a rate equal to Iowa’s entire use tax rate.

EXAMPLE B: Same facts as in subrule 223.3(4), Example A, except that the Illinois repair shop delivers the repaired lawnmower to the owner’s residence in Iowa. In this case, the potential first use is at Ms. Brown’s residence. Thus, Ms. Brown receives the repair service at, and the repair service is sourced to, her residence in Iowa; Iowa sales tax is due.

EXAMPLE C: Mr. Cho, a homeowner in Iowa, contacts an appliance repair service provider located in Missouri to have a clothes dryer repaired. The repair service provider dispatches a technician to Mr. Cho’s home in Iowa to make the needed repairs. Mr. Cho received the repair service in Iowa because the potential first use of the repaired clothes dryer was in Iowa. This transaction is sourced to Iowa; Iowa sales tax is due.

EXAMPLE D: A manufacturer in Iowa uses gauges in its production process to ensure that its product meets specifications. Periodically, the manufacturer ships the gauges to a test laboratory in Minnesota to verify that they are producing proper measurements. The test laboratory tests the gauges and adjusts the calibration on the gauges. The test laboratory ships the gauges back to the manufacturer’s location in Iowa. The manufacturer regained possession and had potential first use of the gauges in Iowa so the transaction is sourced to the location of the manufacturer in Iowa; Iowa sales tax is due.

EXAMPLE E: Same facts as in subrule 223.3(4), Example D, except that the manufacturer picks up the calibrated gauges from the test laboratory in Minnesota. The potential first use of the calibrated gauges (the result of the test laboratory services) is in Minnesota, and the transaction is sourced to the test laboratory’s location in Minnesota. The manufacturer must remit use tax to the department to the extent Iowa’s use tax rate exceeds Minnesota’s tax rate on test laboratory services. That is, the manufacturer is obliged to pay Iowa use tax at a rate measured by the difference between Iowa’s use tax rate and the tax rate imposed in Minnesota on test laboratory services. If Minnesota does not tax test laboratory services, the manufacturer must remit use tax to the department at a rate equal to Iowa’s entire use tax rate.

EXAMPLE F: Same facts as in subrule 223.3(4), Example D, except that the manufacturer hires a shipping company, such as a common or contract carrier, to pick up the tested and recalibrated gauges from the test laboratory and deliver them to the manufacturer’s location in Iowa. Since the terms “receive” and “receipt” do not include possession by a shipping company on behalf of the purchaser, the transaction is sourced to the manufacturer’s location in Iowa where the manufacturer regains possession and has potential first use of the gauges. Iowa sales tax is due.

**223.3(5)** *Examples of sourcing rules for the painting of tangible personal property.* The following examples are intended to clarify when the painting of tangible personal property services are deemed “received.”

EXAMPLE A: A law office in Iowa has antique bookcases it wishes to have painted. The bookcases are picked up by a painter and taken to and painted in the painter’s shop in Illinois. The painter then delivers the painted bookcases to the law office. The transaction is sourced to the location of the law office in Iowa; Iowa sales tax is due. If, instead, the law office sends one of its employees to the painter’s shop in Illinois to pick up the painted bookcases, the transaction is sourced to the painter’s location in Illinois



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where possession or potential first use occurs. The law office must remit use tax to the department to the extent Iowa's use tax rate exceeds Illinois' tax rate on painting services. If Illinois does not tax painting services, the law office must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

EXAMPLE B: A business in Davenport, Iowa, hires a painter from Rock Island, Illinois, to paint several file cabinets. The painter does the painting on site at the purchaser's office location. Because the file cabinets remain at the same location and the purchaser's potential first use of the cabinets is in Iowa, the transaction is sourced to the purchaser's office location in Davenport. Iowa sales tax is due.

**223.3(6)** *Example of sourcing rules for dry cleaning services.* The following example is intended to clarify when dry cleaning services are deemed "received."

EXAMPLE: Mr. Riley, a Council Bluffs, Iowa, resident, takes laundry to an Omaha, Nebraska, dry cleaner's store. After his clothing is dry-cleaned, Mr. Riley returns to the dry cleaner in Omaha to pick up the clothing. The dry cleaner returns the clothes to Mr. Riley at the dry cleaner's store. Mr. Riley regains possession of his dry-cleaned clothes at the store in Omaha, so the transaction is sourced to Nebraska. Mr. Riley must remit use tax to the department to the extent Iowa's use tax rate exceeds Nebraska's tax rate on dry-cleaning services. If Nebraska does not tax dry-cleaning services, then Mr. Riley must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

**223.3(7)** *Example of sourcing rules for vehicle wash and wax services.* The following example is intended to clarify when vehicle wash and wax services are deemed "received."

EXAMPLE: Mr. Moyle lives in Sioux City, Iowa, but he drives his vehicle to a car wash in Dakota Dunes, South Dakota, for a vehicle wash and wax service. The car wash operator washes and waxes the vehicle in Dakota Dunes. When the car wash operator completes the vehicle wash and wax service, Mr. Moyle pays the car wash operator and drives back to Sioux City, Iowa. Since the owner regains possession of the car at the car wash, the transaction is sourced to South Dakota. Mr. Moyle must remit use tax to the department to the extent that Iowa's use tax rate exceeds South Dakota's tax rate on vehicle wash and wax services. If South Dakota does not tax vehicle wash and wax services, then Mr. Moyle must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

**223.3(8)** *Examples of sourcing rules for animal grooming services.* The following examples are intended to clarify when animal grooming services are deemed "received."

EXAMPLE A: Ms. Decker of Lake Mills, Iowa, hires a mobile pet washing and grooming service based in Albert Lea, Minnesota, to come to her home and bathe and groom her dog Sascha. The grooming service is performed on Sascha at Ms. Decker's home in Lake Mills. Therefore, the pet washing service transaction is sourced to Ms. Decker's home in Iowa. Iowa sales tax is due.

EXAMPLE B: Mr. Marx who resides in Bettendorf, Iowa, takes his cat Fluffy to a Milan, Illinois, grooming shop. The cat groomer cuts and washes Fluffy's fur. Once Fluffy is groomed, Mr. Marx returns to the grooming shop, pays for the service, and drives Fluffy home to Bettendorf. Since Mr. Marx picks up Fluffy at the shop in Illinois, the first use of the grooming services is in Illinois, and the transaction is sourced to Illinois. Mr. Marx must remit use tax to the department to the extent Iowa's use tax rate exceeds Illinois's tax rate on animal grooming services. If Illinois does not tax animal grooming services, then Mr. Marx must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

**223.3(9)** *Example of local option sales and service tax sourcing rules for camera repair services.* The following example is intended to clarify when camera repair services are deemed "received."

EXAMPLE: Mr. Pagano, a photographer in Promise City, Iowa, contacts Bob's Camera Shop, which is located in Appanoose County, Iowa, to arrange for one of his cameras to be repaired. Promise City has imposed local option sales and service tax. Bob's Camera Shop dispatches a repairperson to Mr. Pagano's studio in Promise City to repair the camera. Mr. Pagano receives the repair service in Promise City since he can potentially make first use of his repaired camera at that location. The repair service is sourced to Promise City even though the camera shop is located in Appanoose County. Local option sales and service tax imposed by Promise City and Iowa sales tax are due on the sales price of the camera repair service.

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**223.3(10)** *Examples of local option sales and service tax sourcing rules for bicycle repair services.* The following examples are intended to clarify when bicycle repair services are deemed “received.”

EXAMPLE A: Mr. Edwards, a resident of Slater, Iowa, contacts Bike-o-rama repair shop in Ankeny, Iowa, to arrange for his bicycle to be repaired. Slater has imposed local option sales and service tax; Ankeny has not. Mr. Edwards delivers his bicycle to Bike-o-rama and leaves it there to be repaired. Because he is a preferred customer, Bike-o-rama has one of its employees deliver Mr. Edwards’ bicycle to his home in Slater when the bicycle repair service is completed. Mr. Edwards’ potential first use of his bicycle is in Slater; therefore, the transaction is sourced to Slater. Local option sales and service tax is due even though Bike-o-rama is located in Ankeny where there is no local option sales and service tax. Iowa sales tax is also due.

EXAMPLE B: Same facts as in subrule 223.3(10), Example A, but Mr. Edwards picks up his repaired bicycle at Bike-o-rama in Ankeny. Because Mr. Edwards regains possession and can make potential first use of the repaired bicycle in Ankeny, the repair transaction is sourced to Ankeny, and no local option sales and service tax is due on the sales price of the repair. Iowa sales tax is due.

EXAMPLE C: Same facts as in subrule 223.3(10), Example A, but Bike-o-rama is located in Willow Glen, California, and Bike-o-rama ships Mr. Edwards’ bike to his home in Slater, Iowa. Since the terms “receive” and “receipt” do not include possession by a shipping company on behalf of the purchaser, the transaction is sourced to Slater. Slater’s local option sales and service tax is due even though Bike-o-rama is located in Willow Glen, California. Iowa sales tax is also due.

**701—223.4(423) Sourcing rules for personal care services.**

**223.4(1)** *Definition.* “Personal care services” means services that are performed on the physical human body. Examples of personal care services governed by this rule include, but are not limited to:

- a. Barber and beauty services;
- b. Massage, excluding services provided by massage therapists licensed under Iowa Code chapter 152C;
- c. Reflexology;
- d. Reducing salons; and
- e. Tanning beds and salons.

**223.4(2)** *Sourcing of personal care services.* Except as otherwise provided in the agreement or the rules adopted by the governing board, a purchaser receives a personal care service within the meaning of rule 701—211.1(423) at the location where the services are performed, which is the same location where the services are received by the purchaser (or the purchaser’s donee). The services will be received by the purchaser (or the purchaser’s donee) either at the seller’s location, pursuant to Iowa Code section 423.15(1)(a), or at the purchaser’s (or the purchaser’s donee) location, pursuant to Iowa Code section 423.15(1)(b).

**223.4(3)** *Examples of sourcing of personal care services.* The following examples are intended to clarify sourcing rules for personal care services.

EXAMPLE A: Mr. Fernandez, a resident of Illinois, goes to a barber shop to have his hair cut. The barber is located within Iowa. The barber is providing personal care services, and the sale of these services must be sourced to the location where the services are received (place of first use). Mr. Fernandez makes first use of the services in Iowa where his hair is cut. The sale is sourced to Iowa; Iowa sales tax is due.

EXAMPLE B: Ms. Jackson, a resident of Council Bluffs, Iowa, goes to a tanning salon in Omaha, Nebraska, and pays for use of a tanning bed. The tanning salon is providing personal care services, and the sale of these services must be sourced to the location of the tanning salon since this is where the services are received (place of first use). Since the tanning salon is located in Nebraska, the sale is sourced to Nebraska. If Nebraska taxes tanning salon services and that rate is lower than Iowa’s, Ms. Jackson is obliged to pay Iowa use tax to the department at a rate measured by the difference between Iowa’s use tax rate and the tax rate imposed on tanning salon services in Nebraska. If Nebraska does

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not tax tanning salon services, then Ms. Jackson must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

EXAMPLE C: Ms. Zastrow, a resident of Iowa, contacts a massage therapist (who is not licensed under Iowa Code chapter 152C) located in Nebraska for a therapeutic massage. Ms. Zastrow requests that the therapist perform the massage at Ms. Zastrow's residence in Iowa. The therapist travels to Ms. Zastrow's residence and performs the massage. The therapist is providing personal care services, and the sale of these services must be sourced to the location where the services are received (place of first use). Ms. Zastrow makes first use of the services in Iowa where the massage is performed. The sale is sourced to Iowa, and therefore Iowa sales tax is due.

These rules are intended to implement Iowa Code sections 423.2, 423.15, and 423B.5.

**ARC 0201C****TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 601, "Application for License," Chapter 605, "License Issuance," Chapter 625, "Driver's Licenses for Undercover Law Enforcement Officers," and Chapter 630, "Nonoperator's Identification," Iowa Administrative Code.

The proposed amendments modify the requirements for obtaining a new driver's license or nonoperator's identification card, a renewal of a license or card, or a duplicate license or card to comply with federal rule making that established minimum standards for the issuance of driver's licenses and nonoperator's identification cards. The list of primary documents required to establish identity and date of birth are slightly modified to conform to the approved federal documents, and unnecessary secondary documents have been removed. The amendments also clarify the documents needed to verify social security number, establish in rule existing practice regarding proof of and verification of Iowa residency and current residential address and expand existing practice by requiring two documents showing residency rather than one, establish in rule existing practice regarding proof and verification of lawful status in the United States and modify slightly the documents necessary to prove lawful status to conform to the approved federal documents, and clarify procedures for establishing a person's change of name, date of birth, or sex designation.

A driver's license or nonoperator's identification card that is issued as a REAL ID driver's license or REAL ID nonoperator's identification card shall include a security marking as required by 6 CFR 37.17. Beginning January 15, 2013, a driver's license or nonoperator's identification card that is not issued as a REAL ID license or card may be marked as required by 6 CFR 37.71 and any subsequent guidance issued by the U.S. Department of Homeland Security. A driver's license or nonoperator's identification card that is issued to a person who is a foreign national with temporary lawful status will be marked "limited term" and will be limited in term to one year where the person's lawful status has no expiration date. Where the person's lawful status has an expiration date, current practice, which limits the term to the length of lawful status, not to exceed two years, will continue.

The proposed amendments will bring Iowa into compliance with federal rule-making requirements and ensure that Iowans will have access to driver's licenses and nonoperator's identification cards that are acceptable to the federal government (REAL IDs) when Iowans are engaging in official purposes as defined in 6 CFR 37.3; specifically, accessing federal facilities for which identification is required to enter, boarding federally regulated commercial aircraft, and entering nuclear power plants.

The proposed amendments also allow a military member or dependent family member of a military member who is stationed out of state to use the military member's residential address for the state of

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station as the residential address for an Iowa driver's license or nonoperator's identification card when the military member and dependent family member are residents of Iowa but do not maintain an Iowa residence during the period they are stationed out of state. This provision is not required for federal compliance but was determined to be appropriate to support Iowa military members and their families who are not eligible for licensing in their state of station but need forms of identification that show their local address.

These rules do not provide for 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.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)817-6511; Internet e-mail address: [tracy.george@dot.iowa.gov](mailto:tracy.george@dot.iowa.gov).
5. Be received by the Office of Policy and Legislative Services no later than July 31, 2012.

A meeting to hear requested oral presentations is scheduled for Thursday, August 2, 2012, at 10 a.m. at the Iowa Department of Transportation's Motor Vehicle Division offices located at 6310 SE Convenience Boulevard, Ankeny, Iowa.

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

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

These amendments are intended to implement Iowa Code sections 321.13, 321.177, 321.182, 321.189, 321.190, and 321.196, the REAL ID Act of 2005 (49 U.S.C. Section 30301 note), and 6 CFR Part 37.

The following amendments are proposed.

ITEM 1. Amend rule 761—601.1(321) as follows:

**761—601.1(321) Application for license.**

**601.1(1)** No change.

**601.1(2) Name.** The applicant's full legal name shall be given on the application. Full legal name means an individual's first name, middle name(s), and last name, without use of initials or nicknames. Civilian and military titles, initials and nicknames shall not be given and shall not be used on the applicant's license or in the applicant's record. This prohibition on the use of initials does not apply where a portion of an individual's legal name, whether first, middle or last, consists of a single character, whether followed by a period or not.

**601.1(3) and 601.1(4)** No change.

**601.1(5) Physical description.** ~~Physical description shall include the applicant's~~ The applicant shall provide the applicant's physical description, which shall consist of the applicant's sex, height to the nearest inch, weight to the nearest pound, and eye color.

**601.1(6) Address.** The applicant shall provide the applicant's current residential address and the applicant's current mailing address, if different from the applicant's current residential address. The applicant shall not provide as a mailing address an address for which a forwarding order is in place.

**601.1(7) Signature.**

a. No change.

b. The applicant's signature certifies, under penalty of perjury and pursuant to the laws of the state of Iowa, that the statements on the made and information provided in the applicant's application are true and the fee collected was correct.

## TRANSPORTATION DEPARTMENT[761](cont'd)

*c.* The applicant's signature further certifies that the fee collected and the change returned, if any, is correct and acknowledges that the applicant is aware of the requirement to notify the department of a change in mailing address within 30 days of the change.

*d.* ~~A driver's license clerk or examiner will initial the application as witness~~ The applicant's signature will be captured electronically.

This rule is intended to implement Iowa Code sections 321.182, 321.196 and 321C.1, Article V, the REAL ID Act of 2005 (49 U.S.C. Section 30301 note), and 6 CFR Part 37.

ITEM 2. Amend rule 761—601.5(321) as follows:

**761—601.5(321) Proofs submitted with application.** A person who applies for a new driver's license or nonoperator's identification card or a duplicate license or card to replace one that is lost, stolen or destroyed shall submit proof of age, identity, date of birth, and social security number, Iowa residency and current residential address, and lawful status in the United States.

~~601.5(1) Social security number verification.~~ One or more of the following documents may be accepted as verification of an applicant's social security number. The documents must be issued in the United States.

*a.* ~~Social security card issued by the Social Security Administration. A metal version of the card is not acceptable.~~

*b.* ~~Letter from the Social Security Administration.~~

*c.* ~~Document issued by the Internal Revenue Service or a state tax agency. Form W-2 tax form completed by the employer is acceptable.~~

*d.* ~~Financial statement containing the social security number.~~

*e.* ~~Payroll stub containing the social security number.~~

*f.* ~~Military identification card containing the social security number.~~

~~601.5(2) 601.5(1) Proof of age and identity~~ Verification of identity and date of birth. ~~An~~ To establish identity and date of birth, an applicant shall must submit at least one primary document and one secondary document from the following lists as proof of age and identity. The documents must be issued in the United States unless otherwise specified. of the following documents. The department may require additional documentation if the department believes that the documentation submitted is questionable or if the department has reason to believe that the person is not who the person claims to be.

*a.* ~~Acceptable primary documents include:~~

(1) ~~An Iowa photo driver's license.~~

(2) ~~An Iowa photo identification card.~~

(3) ~~Birth certificate issued in the United States. It must be a certified copy, have the stamp or raised seal of the issuing authority, and be issued by the state bureau of vital statistics, the state board of health, or a comparable agency. A hospital-issued certificate is not acceptable.~~

(4) ~~United States Citizenship and Immigration Service document from the following list:~~

1. ~~Certificate of Naturalization (N-550, N-570 or N-578).~~

2. ~~Certificate of Citizenship (N-560, N-561 or N-645).~~

3. ~~Permanent Resident Card (I-551).~~

4. ~~Record of Arrival and Departure (I-94) with attached photo that is stamped "Temporary Proof of Lawful Permanent Resident."~~

5. ~~"Processed for I-551" stamp in a valid foreign passport.~~

6. ~~Travel Document indicating Permit to Re-enter (I-327) or Refugee Travel Document (I-571).~~

7. ~~Record of Arrival and Departure (I-94) in a Certificate of Identity.~~

8. ~~Employment Authorization Card (I-688A, I-688B, or I-766).~~

9. ~~Record of Arrival and Departure (I-94) stamped "Refugee," "Parole," "Parolee," or "Asylee."~~

10. ~~Record of Arrival and Departure (I-94) coded Section 207 (Refugee), Section 208 (Asylum), Section 209 (Refugees), Section 212d(5) (Parolee), HP (Humanitarian Parolee), or PIP (Public Interest Parolee).~~

(5) ~~Military identification card. This does not include a military dependent identification card.~~

(6) ~~Valid United States passport.~~

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~~(7) Inmate Descriptor Inquiry, Client Information Inquiry or Offender Snapshot document issued by the Iowa department of corrections. The document must contain the full name and date of birth and be notarized.~~

~~b. Acceptable secondary documents include:~~

- ~~(1) Any primary document.~~
- ~~(2) Bureau of Indian Affairs or Indian Treaty Card. A tribal identification card is not acceptable.~~
- ~~(3) Photo driver's license or state issued photo identification card that has not been expired for more than one year.~~
- ~~(4) Court order that does not contain the applicant's date of birth but does contain the full name.~~
- ~~(5) Foreign birth certificate. It must be translated by an approved translator, if translation is necessary.~~

~~(6) Military discharge, military orders or separation papers.~~

~~(7) Military dependent identification card.~~

~~(8) Employer identification card.~~

~~(9) Health insurance card.~~

~~(10) Document issued by the Internal Revenue Service or a state tax agency. Form W-2 tax form completed by the employer is acceptable.~~

~~(11) Marriage certificate.~~

~~(12) Gun permit.~~

~~(13) Pilot's license.~~

~~(14) School record or transcript. It must be certified.~~

~~(15) Social security card issued by the Social Security Administration. A metal version of the card is not acceptable.~~

~~(16) Social insurance card issued by the Canadian government.~~

~~(17) Photo student identification card.~~

~~(18) Voter registration card.~~

~~(19) Welfare card.~~

~~(20) Prison release document.~~

~~(21) Parent or guardian affidavit. The parent or guardian must appear in person, submit proof of the parent's or guardian's age and identity, and submit a certified or notarized affidavit regarding the child's identity. This applies only to minors.~~

~~e. The department may require additional documentation if the department believes that the documentation submitted is questionable or if the department has reason to believe that the person is not who the person claims to be.~~

~~a. A valid, unexpired U.S. passport or U.S. passport card.~~

~~b. A certified copy of a birth certificate and, if applicable, a certified amended birth certificate showing a change in name, date of birth, or sex, filed with a state office of vital statistics or equivalent agency in the applicant's state of birth. The birth certificate must be a certified copy and have the stamp or raised seal of the issuing authority. A hospital-issued certificate is not acceptable. As used herein, "state" means a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.~~

~~c. A Consular Report of Birth Abroad issued by the U.S. Department of State (Form FS-240, DS-1350 or FS-545).~~

~~d. A valid, unexpired Permanent Resident Card (Form I-551) issued by the U.S. Department of Homeland Security or U.S. Immigration and Naturalization Service.~~

~~e. An unexpired employment authorization document issued by the U.S. Department of Homeland Security (Form I-766 or Form I-688B).~~

~~f. An unexpired foreign passport with a U.S. visa affixed, accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States.~~

~~g. A Certificate of Naturalization issued by the U.S. Department of Homeland Security (Form N-550 or Form N-570).~~

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h. A Certificate of Citizenship (Form N-560 or Form N-561) issued by the U.S. Department of Homeland Security.

i. A REAL ID driver's license or identification card issued in compliance with the standards established by 6 CFR Part 37.

j. Such other documents as the U.S. Department of Homeland Security may designate as acceptable proof of identity and date of birth for REAL ID purposes by notice published in the Federal Register.

k. An Inmate Descriptor Inquiry, Client Information Inquiry or Offender Snapshot document issued by the Iowa department of corrections or the United States District Court, Northern and Southern Districts of Iowa. The document must contain the applicant's full legal name and date of birth and be notarized. An applicant who provides only a document listed in this paragraph shall not be eligible for a driver's license or nonoperator's identification card marked as acceptable for federal purposes under 6 CFR Part 37.

**601.5(2) Verification of social security number.**

a. Except as provided in paragraph 601.5(2) "b," an applicant must present the applicant's Social Security Administration's account number card; or if a social security account number card is not available, the applicant may present any of the following documents bearing the applicant's social security number:

- (1) A W-2 form.
- (2) A Social Security Administration-1099 form.
- (3) A non-Social Security Administration-1099 form.
- (4) A pay stub with the applicant's name and social security number on it.

b. An applicant who establishes identity by presenting the identity document listed in paragraph 601.5(1) "f" (unexpired foreign passport with a valid, unexpired U.S. visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States) must document the applicant's social security number as set forth in paragraph 601.5(2) "a" or demonstrate non-work authorized status.

**601.5(3) Verification of Iowa residency and current residential address.**

a. To document Iowa residency and current residential address, an applicant must present two documents that include the applicant's name and current Iowa residential address and that demonstrate residency in the state of Iowa. Acceptable documents are documents issued by a person, organization, or entity other than the applicant, that include the issuer's name and address, include the applicant's name and current residential address, and demonstrate residency in the state of Iowa. The documents must be reasonable, authentic documents capable of verification by the department.

b. The address must be a street or highway address, and may not be a post office box. In areas where a number and street name have not been assigned, an address convention used by the U.S. Postal Service is acceptable. The current residence of a person with more than one dwelling is the dwelling for which the person claims a homestead tax credit under Iowa Code chapter 425, if applicable.

c. An applicant who is a member of the armed forces and is an Iowa resident stationed in another state may use the applicant's address in the state of station as the applicant's current residential address if the applicant does not maintain an Iowa residence during the applicant's deployment outside the state of Iowa. The applicant must provide official documentation confirming the applicant's residential address in the state of station and that the applicant is stationed in that state. The applicant's mailing address may be the applicant's current residential address or another address at which the applicant receives mail.

d. An applicant who is a dependent family member of and resides with a member of the armed forces who is an Iowa resident stationed in another state may use the applicant's address in the state of station as the applicant's current residential address if the applicant does not maintain an Iowa residence during the applicant's deployment outside the state of Iowa. The applicant must provide official documentation confirming the applicant's residential address in the state of station and that the applicant is a dependent family member of a member of the armed forces stationed in that state. The applicant's mailing address may be the applicant's current residential address or another address at which the applicant receives mail.

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**601.5(4)** *Verification of lawful status in the United States.*

*a.* If an applicant presents one of the identity documents listed under subrule 601.5(1), the department's verification of that identity document is satisfactory evidence of lawful status.

*b.* An applicant who presents only a document listed under subrule 601.5(1), paragraph "e," "f," or "i," is not eligible to receive a driver's license or nonoperator's identification card marked as REAL ID compliant unless the applicant also provides one of the other documents listed in subrule 601.5(1), or another United States Department of Homeland Security-approved document.

**601.5(3)** **601.5(5)** *Name Verification of name change verification.* The name listed on the driver's license or nonoperator's identification card that is issued shall be identical to the name ~~contained~~ listed on the ~~primary~~ identity document submitted unless the applicant submits an affidavit of name change on Form 430043. The affidavit must be accompanied by ~~one of the~~ chain of legal documents necessary to show the legal change of the applicant's name from the identity document submitted to the name listed on the affidavit. The following documents are acceptable:

*a.* Court-ordered name change. ~~A court order~~ must contain the applicant's prior full legal name, the applicant's court-ordered full legal name, the applicant's date of birth, and the official court seal. Acceptable court orders include orders under petition for name change, orders for name change set forth in a decree of dissolution, and orders for name change set forth in a decree of adoption.

*b.* Divorcee decree.

*c.* *b.* Marriage certificate. The marriage certificate must be filed with a state office of vital statistics or equivalent agency in the person's state or country of marriage. The certificate must be a certified copy and have the stamp or raised seal of the issuing authority. A church, chapel or similarly issued certificate is not acceptable. As used herein, "state" means a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**601.5(6)** *Verification of change of date of birth.* The date of birth listed on the driver's license or nonoperator's identification card that is issued shall be identical to the date of birth listed on the identity document submitted unless the applicant submits a certified amended birth certificate that documents the change of date of birth and that meets the requirements of paragraph 601.5(1)"b," or submits a court-ordered date of birth change. The court order must contain the applicant's full legal name, the applicant's prior date of birth, the applicant's court-ordered date of birth, and official court seal.

**601.5(7)** *Verification of change of sex designation.* The sex designation listed on the driver's license or nonoperator's identification card that is issued shall be identical to the sex designation listed on the identity document submitted unless the applicant submits a certified amended birth certificate that documents the change of sex designation and that meets the requirements of paragraph 601.5(1)"b," or submits a court-ordered change of sex designation. The court order must contain the applicant's full legal name, the applicant's date of birth, the applicant's prior sex designation, the applicant's court-ordered sex designation, and official court seal.

This rule is intended to implement Iowa Code sections 321.182 and 321.189, the REAL ID Act of 2005 (49 U.S.C. Section 30301 note), and 6 CFR Part 37.

ITEM 3. Amend rule 761—605.2(321) as follows:

**761—605.2(321) Contents of license.** In addition to the information specified in Iowa Code subsection 321.189(2), the following information shall be shown on a driver's license.

**605.2(1) Name.** The licensee's full legal name shall be listed as established according to 761—subrule 601.5(1) and 761—subrule 601.5(5) and shall conform to the requirements of 761—subrule 601.1(2).

**605.2(1) 605.2(2) Address Current residential address.** ~~A business address shall be used only when the licensee does not have an Iowa address and will not be able to establish a residence address in Iowa~~ The licensee's current residential address shall be listed as established according to the requirements of 761—subrule 601.5(3).

**605.2(2) 605.2(3) Physical description.** The physical description of the licensee on the face of the driver's license shall include:



## TRANSPORTATION DEPARTMENT[761](cont'd)

*a.* and *b.* No change.

~~*e.* Rescinded IAB 11/8/06, effective 12/13/06.~~

**605.2(4) *Date of birth.*** The licensee's date of birth shall be listed as established according to 761—subrule 601.5(1) and 761—subrule 601.5(6).

**605.2(5) *Sex.*** The licensee's sex designation shall be listed as established according to the requirements of 761—subrule 601.5(7).

**605.2(6) *REAL ID markings.***

*a.* A driver's license that is issued as a REAL ID license as defined in 761—601.7(321) shall include a security marking as required by 6 CFR 37.17(n).

*b.* Beginning January 15, 2013, 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.

*c.* A driver's license issued to a foreign national with temporary lawful status shall include the following statement on the face of the license: "limited term."

This rule is intended to implement Iowa Code section 321.189, the REAL ID Act of 2005 (49 U.S.C. Section 30301 note), and 6 CFR Part 37.

ITEM 4. Adopt the following **new** rule 761—605.6(321):

**761—605.6(321) License term for temporary foreign national.** A driver's license issued to a person who is a foreign national with temporary lawful status shall be issued only for the length of time the person is authorized to be present as verified by the department, not to exceed two years. However, if the person's lawful status as verified by the department has no expiration date, the driver's license shall be issued for a period of no longer than one year.

This rule is intended to implement Iowa Code section 321.196, the REAL ID Act of 2005 (49 U.S.C. Section 30301 note), and 6 CFR Part 37.

ITEM 5. Amend rule 761—605.11(321) as follows:

**761—605.11(321) Duplicate license.**

**605.11(1) *Lost, stolen or destroyed license.*** To replace a valid license that is lost, stolen or destroyed, the licensee shall submit Form 430052 and ~~proof of age, identity and social security number~~ shall comply with the requirements of 761—601.5(321). The replacement fee is \$3.

**605.11(2) *Voluntary replacement.*** The department shall issue a duplicate of a valid license to an eligible licensee if the license is surrendered to the department and the \$1 voluntary replacement fee is paid. Voluntary replacement includes but is not limited to:

*a.* No change.

*b.* Replacement to change the current residential address on a license. The licensee shall comply with the requirements of 761—subrule 601.5(3) to establish a change of current residential address.

*c.* Replacement to change the name on a license. The licensee shall submit an affidavit of the name change on Form 430043. The affidavit must be accompanied by one of the following documents: comply with the requirements of 761—subrule 601.5(5) to establish a name change.

~~(1) Court-ordered name change. It must contain the full name, date of birth, and court seal.~~

~~(2) Divorce decree.~~

~~(3) Marriage certificate.~~

*d.* Replacement to change the date of birth on a license. The licensee shall comply with the requirements of 761—subrule 601.5(6) to establish a change of date of birth.

~~*e. e.* Replacement to change the sex designation on a license. The licensee shall submit court documentation of the sex change~~ comply with the requirements of 761—subrule 601.5(7) to establish a change of sex designation.

~~*e. f.* Issuance of a license without the words "under 21" to a licensee who is 21 years of age or older.~~

## TRANSPORTATION DEPARTMENT[761](cont'd)

~~f. g.~~ Issuance of a license without the words “under 18” to a licensee who is 18 years of age or older. (If the licensee is under 21 years of age, the words “under 21” will replace the words “under 18.”)

~~g. h.~~ Issuance of a noncommercial driver’s license to an eligible person who has been disqualified from operating a commercial motor vehicle.

~~h.~~ ~~Replacement of a valid license before its expiration date to obtain a license issued under the new classification system.~~

i. Replacement of a valid license before its expiration date to obtain a license that may be accepted for federal identification purposes under 6 CFR Part 37 (a REAL ID license). The licensee shall comply with the requirements of 761—601.5(321) to obtain a REAL ID license.

This rule is intended to implement Iowa Code sections 321.189, 321.195, and 321.208, the REAL ID Act of 2005 (49 U.S.C. Section 30301 note), and 6 CFR Part 37.

ITEM 6. Amend rule 761—605.25(321) as follows:

**761—605.25(321) License renewal.**

**605.25(1)** A licensee who wishes to renew a driver’s license shall apply ~~at a driver’s license examination station to the department~~ and, if required, pass the appropriate examination.

**605.25(2)** and **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 current residential address.

b. Name. The licensee shall comply with the requirements of 761—subrule 601.5(5) to establish a name change.

c. Date of birth. The licensee shall comply with the requirements of 761—subrule 601.5(6) to establish a change of date of birth.

d. Sex designation. The licensee shall comply with the requirements of 761—subrule 601.5(7) to establish a change of sex designation.

**605.25(5)** A licensee who has not previously been issued a license that may be accepted for federal identification purposes under 6 CFR Part 37 (a REAL ID license) and wishes to obtain a REAL ID license upon renewal must comply with the requirements of 761—601.5(321) to obtain a REAL ID license upon renewal.

**605.25(6)** A licensee who is a foreign national with temporary lawful status must provide documentation of lawful status as required by 761—subrule 601.5(4) at each renewal.

This rule is intended to implement Iowa Code sections 321.186 and 321.196, the REAL ID Act of 2005 (49 U.S.C. Section 30301 note), and 6 CFR Part 37.

ITEM 7. Amend subrule 625.3(2) as follows:

**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(2) (proof of age and identity)~~, 761—subrule 601.5(1) is waived.

ITEM 8. Amend rule 761—630.2(321) as follows:

**761—630.2(321) Application and issuance.**

**630.2(1)** No change.

**630.2(2)** The applicant shall present proof of age, identity, date of birth, and social security number, ~~Iowa residency, current residential address and lawful status~~ as required by rule 761—601.5(321). Submission of parental consent is also required in accordance with rule 761—601.6(321).

**630.2(3)** The nonoperator’s identification card shall be coded for identification only, as explained on the reverse side of the card. The county number shall indicate the county of residence. The card shall expire five years from the date of issue if the applicant is under the age of 70. A card issued to a person who is a foreign national with temporary lawful status shall be issued only for the length of time the person is authorized to be present in the United States as verified by the department, not to exceed two

## TRANSPORTATION DEPARTMENT[761](cont'd)

years. However, if the person's lawful status as verified by the department has no expiration date, the card shall be issued for a period of no longer than one year.

**630.2(4)** and **630.2(5)** No change.

**630.2(6)** ~~Rescinded IAB 2/8/12, effective 3/14/12.~~ An applicant who is a foreign national with temporary lawful status must provide documentation of lawful status as required by 761—subrule 601.5(4) at each renewal.

**630.2(7)** No change.

**630.2(8)** A nonoperator's identification card issued to a foreign national with temporary lawful status shall include the following statement on the face of the card: "limited term."

**630.2(9)** Beginning January 15, 2013, a nonoperator's identification card that is not issued as a REAL ID nonoperator's identification card as defined in subrule 630.2(7) may be marked as required by 6 CFR 37.71 and any subsequent guidance issued by the U.S. Department of Homeland Security.

ITEM 9. Amend subrule 630.3(1) as follows:

**630.3(1)** *Lost, stolen or destroyed card.* To replace a nonoperator's identification card that is lost, stolen or destroyed, the cardholder shall submit Form 430052 and ~~proof of age, identity and social security number~~ shall comply with the requirements of 761—601.5(321). The replacement fee is \$3.

ITEM 10. Amend subrule 630.3(2) as follows:

**630.3(2)** *Voluntary replacement.* To voluntarily replace a nonoperator's identification card, the cardholder shall surrender to the department the card to be replaced. The reasons a card may be voluntarily replaced and any additional supporting documentation required are the same as those listed in ~~subrule 761—605.11(2)~~, 761—paragraphs 605.11(2) "a" to "f." "i." The fee for voluntary replacement is \$1.

ITEM 11. Amend **761—Chapter 630**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 321.189, 321.190, ~~321.192~~, 321.195, 321.216, 321.216A, 321.216B and 321.216C, the REAL ID Act of 2005 (49 U.S.C. Section 30301 note), and 6 CFR Part 37.

## USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

July 1, 2011 — July 31, 2011	5.25%
August 1, 2011 — August 31, 2011	5.00%
September 1, 2011 — September 30, 2011	5.00%
October 1, 2011 — October 31, 2011	4.25%
November 1, 2011 — November 30, 2011	4.00%
December 1, 2011 — December 31, 2011	4.25%
January 1, 2012 — January 31, 2012	4.00%
February 1, 2012 — February 29, 2012	4.00%
March 1, 2012 — March 31, 2012	4.00%
April 1, 2012 — April 30, 2012	4.00%
May 1, 2012 — May 31, 2012	4.25%
June 1, 2012 — June 30, 2012	4.00%
July 1, 2012 — July 31, 2012	3.75%

## ARC 0204C

## ALCOHOLIC BEVERAGES DIVISION[185]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 123.21, the Alcoholic Beverages Division hereby amends Chapter 4, “Liquor Licenses—Beer Permits—Wine Permits,” Iowa Administrative Code.

This amendment adopts new rule 185—4.5(123), which establishes guidelines for liquor control license holders to mix, store, and dispense mixed drinks or cocktails which are not for immediate consumption on a licensed premises, subject to and mandated by 2012 Iowa Acts, House File 2465, section 22, and pursuant to rules adopted by the Alcoholic Beverages Division. This amendment is necessary to:

- Establish the requirements for mixing, storing, dispensing, and disposing of mixed drinks or cocktails that are not for immediate consumption,
- Establish labeling and reporting requirements,
- Establish that certain ingredients are prohibited, and
- Establish that a licensee who mixes, stores, and dispenses mixed drinks or cocktails that are not for immediate consumption shall comply with all applicable state and federal alcohol and food safety laws.

Pursuant to Iowa Code section 17A.4(3), the Alcoholic Beverages Division finds that notice and public participation are impracticable because of the immediate need for the amendment to implement the provisions of this law.

Pursuant to Iowa Code section 17A.5(2)“b”(1) to (3), the Alcoholic Beverages Division further finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective July 1, 2012, consistent with the effective date of the law. The law is not specific about the requirements for mixed drinks or cocktails which are not for immediate consumption, and it relies on the Division to establish guidelines. Moreover, storage requirements for mixed drinks or cocktails which are not for immediate consumption must be established to ensure the process is conducted in compliance with state and federal food safety laws to protect the health, safety, and welfare of the citizens of Iowa. For efficient regulation, administrative rules to implement consistent labeling of and record keeping on mixed drinks or cocktails which are not for immediate consumption are necessary.

This amendment is also published herein under Notice of Intended Action as **ARC 0205C** to allow for public comment.

This amendment does not provide for waivers in specified situations. An agencywide waiver provision is provided in 185—Chapter 19.

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

This amendment is intended to implement Iowa Code chapter 123 and 2012 Iowa Acts, House File 2465, section 22.

This amendment became effective July 1, 2012.

The following amendment is adopted.

Adopt the following **new** rule 185—4.5(123):

**185—4.5(123) Mixed drinks or cocktails not for immediate consumption.** An on-premises liquor control licensee may mix, store, and allow the consumption of mixed drinks or cocktails which are not for immediate consumption, subject to the requirements and restrictions provided in 2012 Iowa Acts, House File 2465, section 22, and this rule.

**4.5(1) Definitions.**

*a. Immediate consumption.* For purposes of Iowa Code section 123.49(2)“d” as amended by 2012 Iowa Acts, House File 2465, section 22, and this rule, “immediate consumption” is defined as the compounding and fulfillment of a mixed drink or cocktail order upon receipt of the order for the mixed drink or cocktail.

## ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

*b. Mixed drink or cocktail.* A mixed drink or cocktail is a beverage composed in whole or in part of alcoholic liquors, combined with other alcoholic beverages or nonalcoholic beverages or ingredients including but not limited to ice, water, soft drinks, or flavorings.

**4.5(2) Location.** Mixed drinks or cocktails which are not for immediate consumption shall be mixed, stored, and consumed on the liquor control licensed premises. Mixed drinks or cocktails shall not be removed from the licensed premises.

**4.5(3) Quantity.** A mixed drink or cocktail which is not for immediate consumption shall be mixed and stored in, and dispensed from, a labeled container in a quantity not to exceed three gallons.

**4.5(4) Container.** A mixed drink or cocktail which is not for immediate consumption shall at all times be in a container compliant with applicable state and federal food safety statutes and regulations.

*a.* The mixed drink or cocktail shall be mixed and remain stored in the same container.

*b.* The mixed drink or cocktail shall be removed from the stored container for one of the following dispensing purposes:

(1) To compound and fulfill a mixed drink or cocktail order upon receipt of the order for the mixed drink or cocktail.

(2) For transfer into a pourable container. The pourable container shall have affixed a label compliant with subrule 4.5(5) displaying label information identical to that on the container from which the contents were poured. The expiration date and time shall not be extended by the transfer of product to a pourable container.

*c.* The mixed drink or cocktail may be strained into another container when each of the following conditions is met:

(1) The mixed drink or cocktail is returned without delay to the labeled container from which it was strained.

(2) The container and process are compliant with applicable state and federal food safety statutes and regulations.

*d.* An original package of alcoholic liquor as purchased from the division or an original package of wine shall not be used to mix, store, or dispense a mixed drink or cocktail, pursuant to Iowa Code section 123.49(2) "d" as amended by 2012 Iowa Acts, House File 2465, section 22, and section 123.49(2) "e."

*e.* The mixed drink or cocktail shall not be mixed, stored, or dispensed from a container bearing an alcoholic beverage name brand.

**4.5(5) Label.** A label shall be placed on a container when the contents of the mixed drink or cocktail are placed into the empty container.

*a.* Contents are defined in subrule 4.5(6).

*b.* The label shall be subject to the following requirements and restrictions:

(1) The label shall adhere to the container for the duration of the 72 hours as set forth in 2012 Iowa Acts, House File 2465, section 22, and in subrule 4.5(7).

(2) The label shall be affixed to the container in a conspicuous place.

(3) The label shall legibly identify the month, day, and year the contents are placed into the empty container.

(4) The label shall legibly identify the time the contents were placed into the empty container. The time shall be reported to the minute utilizing the 12-hour clock, and include either the ante meridian (AM) or post meridian (PM) part of time.

(5) The label shall legibly identify the month, day, and year the contents expire.

(6) The label shall legibly identify the time the contents expire. The time shall be reported in the same manner as reported in subparagraph 4.5(5) "b"(4).

(7) The label shall legibly specify the title of the recipe used for the contents of the container.

(8) The label shall legibly identify the person who prepared the contents of the container.

(9) The label shall legibly identify the size of the batch within the container and be conspicuously marked with the words "CONTAINS ALCOHOL."

(10) The label shall be removed from the container only after the entire contents have been consumed or destroyed and disposed of in accordance with applicable law.

(11) A removed label shall not be reapplied to a container.

## ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

(12) A new label, subject to the requirements and restrictions of paragraph 4.5(5) "b," shall be affixed to a container that is being reused for a mixed drink or cocktail which is not for immediate consumption.

c. A licensee may access a label template on the Web site of the division located at [www.IowaABD.com](http://www.IowaABD.com).

**4.5(6) Contents.** Contents include alcoholic beverages, nonalcoholic ingredients, or combination thereof, which are not for immediate consumption.

a. A licensee is limited to utilizing alcoholic beverages in the mixed drink or cocktail which are authorized by the license.

b. A licensee shall utilize alcoholic beverages in the mixed drink or cocktail which are obtained as prescribed by Iowa Code chapter 123.

c. The contents of the mixed drink or cocktail shall not include hallucinogenic substances, added caffeine or added stimulants including but not limited to guarana, ginseng, and taurine, or a controlled substance as defined in Iowa Code section 124.401.

**4.5(7) Disposal.**

a. Any mixed drink or cocktail, or portion thereof, not consumed within 72 hours of the contents being placed into the empty container shall be destroyed and disposed of in accordance with applicable law.

b. An expired mixed drink or cocktail which is not for immediate consumption shall not be:

(1) Added to an empty container and relabeled; or

(2) Added to another mixed drink or cocktail which is not for immediate consumption.

**4.5(8) Records.** A licensee shall maintain accurate and legible records for each prepared batch of mixed drinks or cocktails which is not for immediate consumption.

a. Records shall contain:

(1) The month, day, and year the contents are placed into the empty container.

(2) The time the contents are placed into the empty container. The time shall be reported in the same manner as reported in subparagraph 4.5(5) "b"(4).

(3) Each alcoholic beverage, including the brand and the amount, placed in the container. The amount of each alcoholic beverage shall be reported utilizing the metric system.

(4) Each nonalcoholic ingredient placed in the container.

(5) The recipe title and directions for preparing the contents of the container.

(6) The size of the batch.

(7) The identity of the person who prepared the contents of the container.

(8) The month, day, and year the contents of the container are destroyed and disposed of or entirely consumed.

(9) The time the contents of the container are destroyed and disposed of or entirely consumed. The time shall be reported in the same manner as reported in subparagraph 4.5(5) "b"(4).

(10) The method of destruction and disposal or shall specify the entire contents were consumed.

(11) The identity of the person who destroyed and disposed of the contents, if not consumed.

b. A licensee may access record-keeping forms on the Web site of the division located at [www.IowaABD.com](http://www.IowaABD.com), by sending a request by fax to (515)281-7375, or by sending a request by mail to Alcoholic Beverages Division, 1918 SE Hulsizer Road, Ankeny, Iowa 50021.

c. Records shall be maintained on the licensed premises for a period of three years and open to inspection pursuant to Iowa Code section 123.30(1).

**4.5(9) Dispensing machines.**

a. *Machine without alcoholic beverages.* Nothing in this rule prohibits a licensee from operating a machine to premix and dispense frozen or iced mixed drinks or cocktails, provided that alcoholic beverages are added to the mixed drink or cocktail after being dispensed from the machine upon receipt of an order for the mixed drink or cocktail. The machine shall comply with all applicable state and federal food safety statutes and regulations.

b. *Machine with alcoholic beverages.* A dispensing machine which contains a mixed drink or cocktail with alcoholic beverages is subject to the requirements and restrictions of this rule.

## ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

**4.5(10) Food safety compliance.** A licensee who mixes, stores, and allows the consumption of mixed drinks or cocktails which are not for immediate consumption shall comply with all applicable state and federal food safety statutes and regulations.

**4.5(11) Federal alcohol compliance.** A licensee who mixes, stores, and allows the consumption of mixed drinks or cocktails which are not for immediate consumption shall comply with all applicable federal statutes and regulations. Prohibitions include but are not limited to processing with non-tax-paid alcoholic liquor, aging alcoholic liquor in barrels, heating alcoholic liquor, bottling alcoholic liquor, and refilling alcoholic liquor or wine bottles.

**4.5(12) Violations.** Failure to comply with the requirements and restrictions of this rule shall subject the licensee to the penalty provisions of Iowa Code section 123.39.

This rule is intended to implement Iowa Code subsection 123.49(2) as amended by 2012 Iowa Acts, House File 2465, section 22.

[Filed Emergency 6/19/12, effective 7/1/12]

[Published 7/11/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/11/12.

**ARC 0192C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

These amendments provide the annual updates of the statewide average cost of nursing facility services to a private-pay resident and the statewide average charges or maximum Medicaid rate for four levels of care in a medical institution.

The changes in Item 1 reflect an increase in the statewide average cost of nursing facility services to a private-pay person from \$4,853.36 to \$5,131.82 for state fiscal year 2013. This figure is used when a Medicaid applicant or member (or that person's spouse) transfers assets for less than fair market value to attain or maintain Medicaid eligibility. When assets are transferred under these circumstances, the applicant or member becomes ineligible for Medicaid payment of long-term care services. The period of this ineligibility is determined by dividing the amount transferred by the statewide average cost of nursing facility services to a private-pay person.

To determine this figure, the Department conducts an annual survey of the freestanding nursing facilities, hospital-based skilled facilities, and special population nursing facilities in Iowa. ("Special population" facilities may care for patients with dementia, Alzheimer's, or brain injury or provide pediatric skilled care, for example.) The amount is not related to rates paid by Medicaid for nursing facility care. A person would have to transfer a sum in excess of \$500,000 before the penalty period would be reduced by a full month due to the annual change in cost.

The changes in Item 2 reflect the average or maximum charges for various levels of medical institution care, which are used to determine the disposition of the income of a medical assistance income trust (Miller-type trust). For state fiscal year 2013, these values are as follows:

- The average charge to a private-pay resident for nursing facility care has increased from \$4,594 per month to \$4,762.
- The average charge for care in a psychiatric medical institution for children has increased from \$5,312 per month to \$5,472 per month.
- The average charge for care in a state mental health institute has increased from \$16,475 per month to \$18,546 per month.
- The maximum Medicaid reimbursement rate for care in an intermediate care facility for persons with an intellectual disability has decreased from \$24,060 per month to \$23,801.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

For the purposes of this rule making, the figure for nursing facility care includes only amounts reported on the Department's annual survey from the freestanding nursing facilities in Iowa. Hospital-based skilled facilities and special population units are not included, since trust beneficiaries are allowed to cover the cost of specialized care. The average charges for psychiatric medical institutions for children and intermediate care facilities for persons with an intellectual disability are based on Medicaid rates because Medicaid is the primary payer of these services.

An increase in these amounts may allow a few more people to qualify for medical assistance with Miller trusts because the effective income limit has increased. A decrease in these amounts may result in fewer people who qualify for medical assistance with Miller trusts due to the decrease in the income limit. However, with such high income limits, this change is unlikely to affect anyone applying for Medicaid in an intermediate care facility for persons with an intellectual disability.

The Council on Human Services adopted these amendments on June 13, 2012.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary for these amendments because the Department has no discretion in setting these amounts.

The Department finds that these amendments confer a benefit on the public by carrying out the Department's statutory responsibility to make available to the public the specific amounts for the thresholds referenced in the statute. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments do not provide for waivers in specified situations, since these amounts are derived through a standard methodology and are required by statute.

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

These amendments are intended to implement Iowa Code section 249A.4 and Iowa Code chapter 633C.

These amendments became effective on July 1, 2012.

The following amendments 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 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, ~~2011~~ 2012, through June 30, ~~2012~~ 2013, this average statewide cost shall be ~~\$4,853.36~~ \$5,131.82 per month or ~~\$159.65~~ \$168.81 per day.

ITEM 2. Amend paragraph **75.24(3)"b"** 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, ~~2011~~ 2012, to June 30, ~~2012~~ 2013, shall be as follows:

(1) The average statewide charge to a private-pay resident of a nursing facility is ~~\$4,594~~ \$4,762 per month.

(2) The maximum statewide Medicaid rate for a resident of an intermediate care facility for ~~the mentally retarded persons with an intellectual disability~~ is ~~\$24,060~~ \$23,801 per month.

(3) The average statewide charge to a resident of a mental health institute is ~~\$16,475~~ \$18,546 per month.

(4) The average statewide charge to a private-pay resident of a psychiatric medical institution for children is ~~\$5,312~~ \$5,472 per month.



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(5) No change.

[Filed Emergency 6/18/12, effective 7/1/12]

[Published 7/11/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/11/12.

**ARC 0198C**

## **HUMAN SERVICES DEPARTMENT[441]**

### **Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, chapter 129, section 10, the Department of Human Services amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

The Eighty-Fourth General Assembly allowed the Department to submit an amendment to the State Medicaid Plan to take advantage of an option given to states in Section 2703 of the federal Patient Protection and Affordable Care Act, Public Law 111-148. That provision allows states to provide to members who have designated chronic medical conditions additional services that are not normally funded by Medicaid. Implementation is subject to federal approval of the state plan amendment. States are allowed to claim 90 percent federal match for the first two years of operation.

Health home services provide comprehensive care management; care coordination and health promotion; comprehensive transitional care from inpatient to other settings, including appropriate follow-up; support to the patient and family, including authorized representatives; referral to relevant community and social support services; and for the use of health information technology to link services. Providers of health home services are anticipated to be primary care practices, such as community mental health centers, federally qualified health centers, and rural health clinics. However, any Medicaid-enrolled entity that can furnish a designated practitioner, a dedicated care coordinator, a health coach, and support staff and that commits to meeting program requirements may qualify as a health home services provider.

Provision of health home services to eligible Medicaid members will support the plan for implementing a statewide medical home system developed by the Medical Home System Advisory Council pursuant to Iowa Code section 135.159. The expectation is that the provision of more intensive services to people with chronic health conditions will lower the overall cost of their care by reducing emergency room visits and hospital stays. Other benefits expected from medical homes include an emphasis on convenient, comprehensive primary care; quality-driven and comprehensive health care; strong and effective medical management; and patient and provider accountability.

A monthly payment will be made for each eligible member who receives health home services from the provider during the month. The amount of the payment will be determined according to a fee schedule based on the number of chronic health conditions the member has. The conditions that will be considered in determining whether a member is eligible for the services include mental health and substance use disorders, asthma, diabetes, heart disease, being overweight, and hypertension. As a condition of participation, health home services providers must report applicable quality measures. The Department expects to offer incentive payments based on a provider's performance beginning in state fiscal year 2014.

Federal law also requires that hospitals in a state that offers health home services must agree to refer eligible members to a designated health home services provider.

Notice of Intended Action on these amendments was published in the May 2, 2012, Iowa Administrative Bulletin as **ARC 0117C**. The Department received no comments from the public on the Notice. Three nonsubstantive changes from the Notice have been made: An implementation sentence

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has been added to the end of existing rule 441—77.3(249A) and to new rules 441—77.47(249A) and 441—78.53(249A).

The Council on Human Services adopted these amendments on June 13, 2012.

The Department finds that these amendments confer a benefit on constituents with chronic health conditions by providing coordinated care and services. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

These amendments do not provide for waivers in specified situations because health home services are optional and confer a benefit on members who choose to receive them. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

The impact on private-sector jobs is uncertain. While individual practitioners may find additional duties to be performed, it is unknown whether this will result in additional staff being hired or if current staff will be used to fulfill the functions of the program.

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, chapter 129, section 10.

These amendments became effective July 1, 2012.

The following amendments are adopted.

ITEM 1. Amend rule 441—77.3(249A) as follows:

**441—77.3(249A) Hospitals.**

**77.3(1) Qualifications.** All hospitals licensed in the state of Iowa or in another state and certified as eligible to participate in Part A of the Medicare program (Title XVIII of the Social Security Act) are eligible to participate in the medical assistance program, subject to the additional requirements of this rule. ~~Hospitals in other states are also eligible if duly licensed and certified for Medicare participation in that state.~~

**77.3(2) Referral to health home services provider.** As a condition of participation in the medical assistance program, hospitals must establish procedures for referring to health home services providers any members who seek or need treatment in the hospital emergency department and who are eligible for health home services pursuant to 441—subrule 78.53(2).

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

ITEM 2. Adopt the following **new** rule 441—77.47(249A):

**441—77.47(249A) Health home services providers.** Subject to the requirements of this rule, a designated provider may participate in the medical assistance program as a provider of health home services.

**77.47(1) Qualifications.** A designated provider of health home services must be a Medicaid-enrolled entity or provider that is determined through the provider enrollment process to have the systems and infrastructure in place to provide health home services.

*a. Staffing.* At a minimum, a qualifying provider must fill the following roles:

- (1) Designated practitioner.
- (2) Dedicated care coordinator.
- (3) Health coach.
- (4) Clinic support staff.

*b. Data management.* A qualifying provider shall ensure that all clinical data related to the member are maintained with the member’s medical records through the use of health information technology.

**77.47(2) Report on quality measures.** As a condition of participation in the medical assistance program as a provider of health home services and of receiving payment for health home services provided, a designated provider must report to the Iowa Medicaid enterprise on measures for determining the quality of such services. When appropriate and feasible, a designated provider shall use health information technology in providing the Iowa Medicaid enterprise with such information.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

**77.47(3) Selection.** As a condition of payment for health home services provided to a Medicaid member eligible to receive such services pursuant to 441—subrule 78.53(2), a designated provider must be selected by the member as the member's health home, as reported by provider attestation.

This rule is intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, chapter 129, section 10.

ITEM 3. Adopt the following **new** rule 441—78.53(249A):

**441—78.53(249A) Health home services.** Subject to federal approval in the Medicaid state plan, payment shall be made for health home services as described in subrule 78.53(1) provided to an eligible Medicaid member as described in subrule 78.53(2) who has selected a health home services provider as provided in subrule 78.53(3).

**78.53(1) Covered services.** Health home services consist of the following services provided in a comprehensive, timely, and high-quality manner using health information technology to link services, as feasible and appropriate:

- a. Comprehensive care management, which means:
  - (1) Providing for all the member's health care needs or taking responsibility for arranging care with other qualified professionals;
  - (2) Developing and maintaining for each member a continuity of care document that details all important aspects of the member's medical needs, treatment plan, and medication list; and
  - (3) Implementing a formal screening tool to assess behavioral health treatment needs and physical health care needs.
- b. Care coordination, which means assisting members with:
  - (1) Medication adherence;
  - (2) Chronic disease management;
  - (3) Appointments, referral scheduling, and reminders; and
  - (4) Understanding health insurance coverage.
- c. Health promotion, which means coordinating or providing behavior modification interventions aimed at:
  - (1) Supporting health management;
  - (2) Improving disease control; and
  - (3) Enhancing safety, disease prevention, and an overall healthy lifestyle.
- d. Comprehensive transitional care following a member's move from an inpatient setting to another setting. Comprehensive transitional care includes:
  - (1) Updates of the member's continuity of care document and case plan to reflect the member's short-term and long-term care coordination needs; and
  - (2) Personal follow-up with the member regarding all needed follow-up after the transition.
- e. Member and family support (including authorized representatives). This support may include:
  - (1) Communicating with and advocating for the member or family for the assessment of care decisions;
  - (2) Assisting with obtaining and adhering to medications and other prescribed treatments;
  - (3) Increasing health literacy and self-management skills; and
  - (4) Assessing the member's physical and social environment so that the plan of care incorporates needs, strengths, preferences, and risk factors.
- f. Referral to community and social support services available in the community.

**78.53(2) Members eligible for health home services.** Subject to the authority of the Secretary of the United States Department of Health and Human Services pursuant to 42 U.S.C. §1396w-4(h)(1)(B) to establish higher levels for the number or severity of chronic or mental health conditions for purposes of determining eligibility for receipt of health home services, payment shall be made only for health home services provided to a Medicaid member who has at least two chronic conditions or has one chronic condition and is at risk of having a second chronic condition. For purposes of this rule, the term "chronic condition" means:

- a. A mental health disorder.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- b. A substance use disorder.
- c. Asthma.
- d. Diabetes.
- e. Heart disease.
- f. Being overweight, as evidenced by:
  - (1) Having a body mass index (BMI) over 25 for an adult, or
  - (2) Weighing over the 85th percentile for the pediatric population.
- g. Hypertension.

**78.53(3)** *Selection of health home services provider.* As a condition of payment for health home services, the eligible member receiving the services must have selected the billing provider as the member's health home, as reported by the provider. A member must select a provider located in the member's county of residence or in a contiguous county.

This rule is intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, chapter 129, section 10.

ITEM 4. Adopt the following **new** provider category in subrule **79.1(2)**:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Health home services provider	Fee schedule based on number of member's chronic conditions (not including conditions for which member is only at risk). Submission of the per-member per-month (PMPM) claim from the provider confirms that health home services are being provided.	Monthly fee schedule amount.

ITEM 5. Adopt the following **new** subparagraph **79.3(2)“d”(40)**:

- (40) Health home services:
1. Comprehensive care management plan.
  2. Care coordination and health promotion plan.
  3. Comprehensive transitional care plan, including appropriate follow-up, from inpatient to other settings.
  4. Documentation of member and family support (including authorized representatives).
  5. Documentation of referral to community and social support services, if relevant.

ITEM 6. Adopt the following **new** paragraph **79.14(2)“e”**:

e. With the application form, or as a supplement to a previously submitted application, providers of health home services shall submit Form 470-5100, Health Home Provider Agreement.

[Filed Emergency After Notice 6/18/12, effective 7/1/12]

[Published 7/11/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/11/12.

**ARC 0191C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, chapter 129, section 141, subsection 11, the Department of Human Services amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care,"

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Chapter 82, “Intermediate Care Facilities for the Mentally Retarded,” Chapter 83, “Medicaid Waiver Services,” and Chapter 88, “Managed Health Care Providers,” Iowa Administrative Code.

These amendments implement directives included in 2012 Iowa Acts, Senate File 2336, enacted by the Eighty-Fourth General Assembly, that affect payment for Medicaid habilitation services; home health services; services provided under the elderly, intellectual disability, or brain injury waiver; targeted case management; and services provided in a psychiatric medical institution for children or a community-based intermediate care facility for persons with an intellectual disability (ICF/ID).

Items 1 through 10, 13, 14, 15, and 19 through 25 reflect that 2012 Iowa Acts, Senate File 2336, section 58, removes statutory requirements for county governments to pay the nonfederal share of medical assistance costs for the following services provided in the fiscal year beginning July 1, 2012:

- Habilitation.
- Targeted case management.
- Services provided under the home- and community-based services intellectual disability waiver or brain injury waiver.
- Care in a community-based intermediate care facility for persons with an intellectual disability (ICF/ID).

With the elimination of county funding for these services, the county role in provider certification, ICF/ID placement, and determination of need for waiver services is also eliminated. These amendments remove requirements on waiver applicants and county governments and streamline eligibility determination.

Items 11 and 16 increase the cap on home- and community-based services elderly waiver costs from \$1,117 to \$1,300 for the nursing facility level of care as mandated by 2012 Iowa Acts, Senate File 2336, section 37. This change allows waiver members to receive additional services.

Item 12 increases home health agency reimbursement rates by 2 percent effective July 1, 2012, as mandated by 2012 Iowa Acts, Senate File 2336, section 33. The basis of reimbursement for private duty nursing and personal care services is corrected to read “Interim fee schedule with retrospective cost-related settlement.” Increased income will help providers meet the cost of providing services.

The final item of these amendments adds psychiatric medical institutions for children (PMICs) as covered mental health services under the Iowa Plan for Behavioral Health as directed by 2012 Iowa Acts, Senate File 2336, section 12. The transition of PMICs to the Iowa Plan is a benefit to Medicaid members because it will provide increased integration of mental health services for children with mental health conditions.

Inclusion of PMICs in the managed care plan will provide increased flexibility in payment methods and services and options for PMIC care. The transition will enhance discharge planning for children leaving PMICs to receive community-based services also managed by the Iowa Plan. This change will increase the opportunities for coordination of care and services and the permanency of community placement for children. This change was recommended by the workgroup appointed pursuant to 2011 Iowa Acts, chapter 121.

The Council on Human Services adopted these amendments on June 13, 2012.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because the legislature mandated these changes.

Pursuant to Iowa Code section 17A.5(2)“b”(1) and (2), the Department further finds that the normal effective date of these amendments, 35 days after publication, should be waived because the amendments confer a benefit on the public. Also, 2011 Iowa Acts, chapter 129, section 141, subsection 11, authorizes emergency rule making for the changes related to the elderly waiver and home health services.

These amendments are also published herein under Notice of Intended Action as **ARC 0193C** to allow for public comment.

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

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There is an impact on private-sector jobs. The increase in reimbursement to home health agencies and the increase in the level-of-care dollar cap for the elderly waiver may result in increased wages for providers and a possible increase in jobs.

These amendments are intended to implement Iowa Code section 249A.4 and 2012 Iowa Acts, Senate File 2336.

These amendments became effective July 1, 2012.

The following amendments are adopted.

ITEM 1. Rescind subparagraph **77.37(10)“d”(3)**.

ITEM 2. Rescind subparagraph **77.37(11)“b”(3)**.

ITEM 3. Amend subrule 77.37(12) as follows:

**77.37(12) *Period of certification.*** Provider certification shall become effective on the date identified on the certificate of approval and shall terminate in 270 calendar days, one year, or three calendar years from the month of issue. The renewal of certification shall be contingent upon demonstration of continued compliance with certification requirements.

*a. to c.* No change.

*d.* During the course of the review, if a team member encounters a situation that places a consumer in immediate jeopardy, the team member shall immediately notify the provider, the department, and other team members. “Immediate jeopardy” refers to circumstances where the life, health, or safety of a consumer will be severely jeopardized if the circumstances are not immediately corrected.

(1) The provider shall correct the situation within 24 to 48 hours. If the situation is not corrected within the prescribed time frame, that portion of the provider’s services that was the subject of the notification shall not be certified. The department, ~~the county of residence, and the central point of coordination~~ shall be notified immediately to discontinue funding for that provider’s service.

(2) If this action is appealed and the consumer, legal guardian, or attorney in fact under a durable power of attorney for health care wants to maintain the provider’s services, funding can be reinstated. At that time the provider shall take appropriate action to ensure the life, health, and safety of the consumers deemed to be at risk as a result of the provider’s inaction.

*e. to g.* No change.

*h.* An approved provider shall immediately notify the department, ~~applicable county,~~ the applicable mental health and developmental disabilities planning council, and other interested parties of a decision to withdraw from an a home- and community-based services intellectual disability waiver service.

*i. and j.* No change.

ITEM 4. Amend subparagraph **77.37(23)“f”(3)** as follows:

(3) Period and conditions of certification.

1. to 3. No change.

4. Immediate jeopardy. If, during the course of any review, a review team member encounters a situation that places a consumer in immediate jeopardy, the team member shall immediately notify the provider, the department, and other team members. “Immediate jeopardy” refers to circumstances where the life, health, or safety of a consumer will be severely jeopardized if the circumstances are not immediately corrected.

The provider shall correct the situation within 24 to 48 hours. If the situation is not corrected within the prescribed time frame, the provider shall not be certified. The department, ~~the county of residence, and the central point of coordination~~ shall be notified immediately to discontinue funding for that provider’s service. If this action is appealed and the consumer or legal guardian wants to maintain the provider’s services, funding can be reinstated. At that time the provider shall take appropriate action to ensure the life, health, and safety of the consumers deemed to be at risk.

5. to 10. No change.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 5. Rescind subparagraph **77.39(8)“d”(3)**.

ITEM 6. Amend subrule 77.39(9) as follows:

**77.39(9) Initial certification.** The department shall review the application and accompanying information to see if the provider has the necessary framework to provide services in accordance with all applicable requirements and standards.

*a.* The department shall make a determination regarding initial certification within 60 days of receipt of the application and notify the provider in writing of the decision unless extended by mutual consent of the parties involved. ~~Providers shall be responsible for notifying the appropriate county and the appropriate central point of coordination of the determination.~~

*b.* The decision of the department on initial certification of the providers shall be based on all relevant information, including:

- (1) The application for status as an approved provider according to requirements of rules.
- (2) A determination of the financial position of the prospective provider in relation to its ability to meet the stated need.

~~(3) The prospective provider's coordination of service design, development, and application with the applicable local county central point of coordination and other interested parties.~~

*c.* No change.

ITEM 7. Amend subrule 77.39(10) as follows:

**77.39(10) Period of certification.** Provider certification shall become effective on the date identified on the certificate of approval and shall terminate in 270 calendar days, one year, or three calendar years from the month of issue. The renewal of certification shall be contingent upon demonstration of continued compliance with certification requirements.

*a. to c.* No change.

*d.* During the course of the review, if a team member encounters a situation that places a consumer in immediate jeopardy, the team member shall immediately notify the provider, the department, and other team members. “Immediate jeopardy” refers to circumstances where the life, health, or safety of a consumer will be severely jeopardized if the circumstances are not immediately corrected.

(1) The provider shall correct the situation within 24 to 48 hours. If the situation is not corrected within the prescribed time frame, that portion of the provider's services that was the subject of the notification shall not be certified. The department, ~~the county of residence, and the central point of coordination shall be notified immediately to discontinue funding for that provider's service.~~

(2) If this action is appealed and the consumer, legal guardian, or attorney in fact under a durable power of attorney for health care wants to maintain the provider's services, funding can be reinstated. At that time the provider shall take appropriate action to ensure the life, health, and safety of the consumers deemed to be at risk as a result of the provider's inaction.

*e. to g.* No change.

*h.* An approved provider shall immediately notify the department, ~~applicable county,~~ the applicable mental health and developmental disabilities planning council, and other interested parties of a decision to withdraw from an HCBS BI waiver service.

*i. and j.* No change.

ITEM 8. Rescind paragraph **77.41(1)“c.”**

ITEM 9. Rescind and reserve subrule **78.27(12)**.

ITEM 10. Amend paragraph **78.43(1)“d”** as follows:

*d.* ~~Members who are at the ICF/MR level of care whose county has voluntarily chosen to participate in the HCBS brain injury waiver are eligible for targeted case management and, therefore, are not eligible for case management as a waiver service.~~

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 11. Amend subrule **79.1(2)**, provider category “HCBS waiver services,” numbered paragraph “15,” as follows:

Provider category	Basis of reimbursement	Upper limit
15. Consumer-directed attendant care provided by:		
Agency (other than an elderly waiver assisted living program)	Fee agreed upon by member and provider	No change.
Assisted living program (for elderly waiver only)	Fee agreed upon by member and provider	<del>Effective 7/1/11, provider's</del> Provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$1,117</del> \$1,300 per calendar month. When prorated per day for a partial month, <del>\$36.71</del> \$42.74 per day.
Individual	Fee agreed upon by member and provider	No change.

ITEM 12. Amend subrule **79.1(2)**, provider category “Home health agencies,” as follows:

Provider category	Basis of reimbursement	Upper limit
Home health agencies		
1. Skilled nursing, physical therapy, occupational therapy, home health aide, and medical social services; home health care for maternity patients and children	Retrospective cost-related	Lesser of maximum Medicare rate in effect <del>11/30/09</del> 6/30/12 or maximum Medicaid rate in effect <del>11/30/09 less 5%</del> 6/30/12 plus 2%.
2. Private duty nursing and personal care for persons aged 20 or under	Interim fee schedule with retrospective cost-related settlement	Medicaid rate in effect <del>11/30/09</del> less 5% 6/30/12 plus 2%.
3. Administration of vaccines	Physician fee schedule	Physician fee schedule rate.

ITEM 13. Amend rule 441—82.7(249A) as follows:

**441—82.7(249A) Initial approval for ICF/MR ICF/ID care.**

**82.7(1) Referral through targeted case management.** Persons seeking ICF/MR ICF/ID placement shall be referred through targeted case management. The case management program shall identify any appropriate alternatives to the placement and shall inform the person of the alternatives. A referral shall be made by targeted case management to the central point of coordination having financial responsibility for the person. The department is the central point of coordination for persons with state case status.:

- a. Identify appropriate service alternatives;
- b. Inform the person of the alternatives; and
- c. Refer a person without appropriate alternatives to the department.

**82.7(2) Approval of ICF/MR placement by central point of coordination department.** The central point of coordination shall approve ICF/MR placement, offer a home- or community-based alternative, or refer the person back to the targeted case management program for further consideration of service needs within 30 days of receipt of a referral. Initial placement must be approved by the central point of coordination with responsibility for the person.

- a. Within 30 days of receipt of a referral, the department shall:
  - (1) Approve ICF/ID placement;
  - (2) Offer a home- or community-based alternative; or



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(3) Refer the person back to the targeted case management program for further consideration of service needs.

b. Once ICF/ID placement is approved, the eligible person, or the person’s representative, is free to seek placement in the facility of the person’s or the person’s representative’s choice.

82.7(3) Approval of level of care. Medicaid payment shall be made for ~~intermediate care facility for the mentally retarded~~ ICF/ID care upon certification of need for this level of care by a licensed physician of medicine or osteopathy and approval by the Iowa Medicaid enterprise (IME) medical services unit. The IME medical services unit shall review ~~ICF/MR~~ ICF/ID admissions and transfers only when documentation is provided which verifies a referral from targeted case management that includes an approval by the ~~central point of coordination~~ department.

82.7(4) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7. ~~The applicant or consumer for whom the county has legal payment responsibility shall be entitled to a review of adverse decisions by the county by appealing to the county pursuant to 441—paragraph 25.13(2)“j.”~~ If dissatisfied with the county’s decision, the applicant or consumer may file an appeal with the department according to the procedures in 441—Chapter 7.

This rule is intended to implement Iowa Code section 249A.12 as amended by 2012 Iowa Acts, Senate File 2336, section 58.

ITEM 14. Rescind and reserve subrule 82.14(2).

ITEM 15. Amend rule 441—82.14(249A), implementation sentence, as follows:

This rule is intended to implement Iowa Code section 249A.12 as amended by 2012 Iowa Acts, Senate File 2336, section 58.

ITEM 16. Amend subparagraph 83.22(2)“c”(2) as follows:

(2) Services must be the least costly available to meet the service needs of the ~~consumer member~~. The total monthly cost of the elderly waiver services exclusive of case management services shall not exceed the established monthly cost of the level of care. Aggregate monthly costs are limited as follows:

Skilled level of care	Nursing level of care
\$2,631	\$1,117 <u>\$1,300</u>

ITEM 17. Amend subrule 83.61(2) as follows:

83.61(2) Need for services.

a. No change.

b. Applicants not receiving services as set forth in paragraph 83.61(2)“a” shall have a department service worker or a case manager ~~paid by the county without Medicaid funds~~:

(1) to (3) No change.

c. to f. No change.

g. At initial enrollment, the service worker, department ~~QMRP QIDP~~, case manager ~~paid by the county without Medicaid funds~~, or Medicaid case manager shall establish an interdisciplinary team for each applicant and, with the team, identify the applicant’s need for service based on the applicant’s needs and desires as well as the availability and appropriateness of services. The Medicaid case manager shall complete an annual review thereafter. The following criteria shall be used for the initial and ongoing assessments:

(1) The assessment shall be based, in part, on information on the completed Case Management Comprehensive Assessment, Form 470-4694.

(2) Service plans must be developed or reviewed to reflect use of all appropriate nonwaiver Medicaid services so as not to replace or duplicate those services.

~~(3) Rescinded IAB 3/7/01, effective 5/1/01.~~

(4) (3) Service plans for ~~consumers~~ applicants aged 20 or under which include supported community living services beyond intermittent shall be approved (signed and dated) by the designee of the bureau of long-term care ~~or the designee of the county board of supervisors~~. The service worker, department ~~QMRP QIDP~~, or Medicaid case manager shall attach a written request for a variance from

## HUMAN SERVICES DEPARTMENT[441](cont'd)

the maximum for intermittent supported community living with a summary of services and service costs. The written request for the variance shall provide a rationale for requesting supported community living beyond intermittent. The rationale shall contain sufficient information for the designee to make a decision regarding the need for supported community living beyond intermittent.

*h.* No change.

ITEM 18. Amend subrule 83.67(6) as follows:

**83.67(6) Approval of plan.** The plan shall be approved through the Individualized Services Information System (ISIS). Services shall be entered into ISIS based on the service plan.

*a.* No change.

*b.* The department ~~or county~~ has 15 working days after receipt of the summary and service costs in which to approve the services and service cost or request modification of the service plan unless the parties mutually agree to extend that time frame.

*c.* If the department ~~or county~~ and the service worker or case manager are unable to agree on the terms of the services or service cost within 10 days, the department ~~or county~~ has final authority regarding the services and service cost.

~~*d.* If a notice of decision is not received from a county within 30 days from the date of request for services, the request shall be sent to the department of human services with documentation verifying the original submission of the request to the county. The department shall send a letter to the county central point of coordination and county board of supervisors requesting a response within 10 days. If no response is received within 10 days, the department will make the decision, as stated in paragraph "b."~~

ITEM 19. Amend rule 441—83.69(249A) as follows:

**441—83.69(249A) Appeal rights.** Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). The applicant or consumer is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or consumer may file an appeal with the department.

~~The applicant or consumer for whom the county has legal payment responsibility shall be entitled to a review of adverse decisions by the county by appealing to the county pursuant to 441—paragraph 25.13(2) "j." If dissatisfied with the county's decision, the applicant or consumer may file an appeal with the department pursuant to rule 441—83.69(249A).~~

ITEM 20. Rescind and reserve rule **441—83.70(249A)**.

ITEM 21. Amend paragraph **83.82(2)"a"** as follows:

*a.* The ~~consumer applicant~~ shall have a service plan approved by the department that is developed by the certified case manager for this waiver as identified by the county of residence. This must be completed ~~prior to~~ before services provision and annually thereafter.

The case manager shall establish the interdisciplinary team for the ~~consumer applicant~~ and, with the team, identify the ~~consumer's applicant's~~ "need for service" based on the ~~consumer's applicant's~~ needs and desires as well as the availability and appropriateness of services using the following criteria:

(1) The assessment shall be based, in part, on information provided to the IME medical services unit.

(2) Service plans must be developed to reflect use of all appropriate nonwaiver Medicaid state services so as not to replace or duplicate those services.

(3) Service plans for ~~consumers applicants~~ aged 20 or under which include supported community living services beyond intermittent shall not be approved until a home health provider has made a request to cover the service through all nonwaiver Medicaid services.

(4) Service plans for ~~consumers applicants~~ aged 20 or under which include supported community living services beyond intermittent must be approved (signed and dated) by the designee of the bureau of long-term care. The Medicaid case manager must request in writing more than intermittent supported community living with a summary of services and service costs, and submit a written justification

## HUMAN SERVICES DEPARTMENT[441](cont'd)

with the service plan. The rationale must contain sufficient information for the bureau's designee, ~~or for a consumer at the ICF/MR level of care, the designee of the county of legal settlement's board of supervisors,~~ to make a decision regarding the need for supported community living beyond intermittent.

ITEM 22. Amend subrule 83.82(4) as follows:

**83.82(4) Securing a state payment slot.**

a. The county department office shall contact the bureau of long-term care to determine if a payment slot is available for all new applications for the HCBS BI waiver program. ~~For new applications for people who require the ICF/MR level of care when the county of legal settlement has payment responsibility pursuant to rule 441—83.90(249A), the county department office shall inform the county of legal settlement of the application.~~

(1) For applicants not currently receiving Medicaid, the county department office shall contact the bureau and ~~notify the county of those applicants for whom the county has payment responsibility~~ by the end of the second working day after receipt of a completed Form 470-2927 or 470-2927(S), Health Services Application.

(2) For current Medicaid recipients, the county department office shall contact the bureau and ~~notify the county of those persons for whom the county has payment responsibility~~ by the end of the second working day after receipt of either Form 470-3349, Brain Injury Functional Assessment, with the choice of the HCBS waiver indicated by the consumer's signature, or a written request signed and dated by the consumer.

b. On the third day after the receipt of the completed Form 470-2927 or 470-2927(S), if no payment slot is available, the bureau of long-term care shall enter the consumer on a waiting list according to the following:

(1) No change.

(2) Persons who do not fall within the available slots shall have their applications rejected but their names shall be maintained on the waiting list. As slots become available, persons shall be selected from the waiting list to maintain the number of approved persons on the program based on their order on the waiting list.

~~The county shall have financial responsibility for the state share of the costs of services for these consumers as stated in rule 441—83.90(249A). The county shall include these ICF/MR level of care brain-injured consumers in their annual county management plan which is approved by the state.~~

ITEM 23. Amend subrule 83.87(2) as follows:

**83.87(2) Use of nonwaiver services.** Service plans must be developed to reflect use of all appropriate nonwaiver Medicaid services and so as not to replace or duplicate those services.

Service plans for ~~consumers~~ members aged 20 or under which include supported community living services beyond intermittent must be approved (signed and dated) by the designee of the bureau of long-term care, ~~or when a county voluntarily chooses to participate, by the county board of supervisors' designee or the bureau's designee.~~ The Medicaid case manager shall attach a written request for a variance from the limitation on supported community living to intermittent.

ITEM 24. Amend rule 441—83.89(249A) as follows:

**441—83.89(249A) Appeal rights.** Notice of adverse actions and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). The applicant or consumer is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or consumer may file an appeal with the department.

~~The applicant or consumer for whom the county has legal payment responsibility shall be entitled to a review of adverse decisions by the county by appealing to the county pursuant to 441—paragraph 25.13(2) "j." If dissatisfied with the county's decision, the applicant or consumer may file an appeal with the department pursuant to rule 441—83.69(249A).~~

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 25. Rescind and reserve rule **441—83.90(249A)**.

ITEM 26. Amend paragraph **88.65(3)“a”** as follows:

a. The contractor shall ensure, arrange, monitor and reimburse, at a minimum, the following covered mental health services:

(1) to (16) No change.

(17) Inpatient psychiatric services in psychiatric medical institutions for children as set forth in 441—Chapter 85, Division II.

[Filed Emergency 6/18/12, effective 7/1/12]

[Published 7/11/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/11/12.

**ARC 0194C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, chapter 129, section 122, subsection 20(a), the Department of Human Services amends Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments reduce Medicaid reimbursement for inpatient hospital care when a member is readmitted to a hospital for treatment of the same condition within seven days of discharge from that hospital. This change is mandated by 2012 Iowa Acts, Senate File 2336, section 12. The total amount of annual program savings is estimated to be \$650,000, of which approximately \$260,000 is state funds. These savings are assumed in the Department's appropriation for the state fiscal year beginning July 1, 2012.

Currently, when a hospital discharges a patient too early and the patient is subsequently readmitted for the same condition, the hospital receives two full “diagnosis-related group” (DRG) payments. These amendments provide that the original and readmission claims will be combined together, resulting in one DRG payment. Based on past years' experience, this change is expected to affect 150 to 175 readmissions per year.

In many cases, the savings will equal the entire amount of the second hospital claim. In some instances, combining both claims will result in a day outlier or cost outlier payment. Hospitals will be fairly compensated for these longer stays if the stays meet either the cost outlier or long-stay outlier criteria. Cost savings estimates were reduced by 20 percent to account for these outlier payments.

Unnecessary hospital readmissions are a recognized cost and quality issue in the health care system. If the patient were kept longer, there would be less likelihood of readmission and additional cost. More payors are instituting incentives such as the one included in this rule making for hospitals to ensure appropriate discharge planning and coordination with other providers so that patients receive appropriate follow-up care.

The Council on Human Services adopted these amendments on June 13, 2012.

The Department finds that notice and public participation are unnecessary because the legislature mandated this change and are impracticable because the Department's appropriation for the fiscal year beginning July 1, 2012, assumes the immediate implementation of this change. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(1), that the normal effective date of these amendments should be waived, as authorized by 2011 Iowa Acts, chapter 129, section 122, subsection 20(a).

These amendments are also published herein under Notice of Intended Action as **ARC 0195C** to allow for public comment.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments do not provide for waivers in specified situations because the savings assumed in the Department's appropriation would not be realized if waivers were granted. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

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

These amendments are intended to implement Iowa Code section 249A.4, 2011 Iowa Acts, chapter 129, section 122, subsection 20(a), and 2012 Iowa Acts, Senate File 2336, section 12.

These amendments became effective July 1, 2012.

The following amendments are adopted.

ITEM 1. Amend rule 441—78.3(249A), introductory paragraph, as follows:

**441—78.3(249A) Inpatient hospital services.** Payment for inpatient hospital admission is approved when it meets the criteria for inpatient hospital care as determined by the Iowa ~~Foundation for Medical Care (IFMC)~~ Medicaid enterprise. All cases are subject to random retrospective review and may be subject to a more intensive retrospective review if abuse is suspected. In addition, transfers, outliers, and readmissions within 31 days are subject to random review. ~~Readmissions to the same facility due to premature discharge shall not be paid a new DRG.~~ Selected admissions and procedures are subject to a 100 percent review before the services are rendered. Medicaid payment for inpatient hospital admissions and continued stays are approved when the admissions and continued stays are determined to meet the criteria for inpatient hospital care. (Cross-reference 78.28(5)) The criteria are available from ~~IFMC, 6000 Westown Parkway, Suite 350E, West Des Moines, Iowa 50265-7771~~ the IME Medical Services Unit, 100 Army Post Road, Des Moines, Iowa 50315, or in local hospital utilization review offices. No payment will be made for waiver days.

ITEM 2. Adopt the following new subparagraph **79.1(5)“g”(5)**:

(5) Inpatient readmissions within seven days for same condition. When an inpatient is discharged or transferred from an acute care hospital and is readmitted as an inpatient to the same hospital within seven days for the same condition, any claim for the subsequent inpatient stay shall be combined with the claim for the original inpatient stay and payment shall be under a single DRG for both stays.

[Filed Emergency 6/18/12, effective 7/1/12]

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**ARC 0196C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4, 2011 Iowa Acts, chapter 129, section 122, subsection 20(a), and 2012 Iowa Acts, Senate File 2336, section 12, the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments lower Medicaid reimbursement for drugs administered by a physician when the drugs are billed as a physician service with Healthcare Common Procedure Coding System (HCPCS) Level II “J” codes. A reduction of 2 percent below the reimbursement rates in effect on June 30, 2012, is mandated by 2012 Iowa Acts, Senate File 2336, section 12. The total amount of program savings for the fiscal year is estimated to be \$218,000, of which approximately \$88,000 is state funds. These savings are assumed in the Department's appropriation for the state fiscal year beginning July 1, 2012.

This change will make reimbursement for physician-administered drugs more consistent with the current payment methodology for drugs supplied by pharmacies. This method of reimbursement will be an interim process until drug payment rates are based on a benchmark other than the average wholesale price published by Medi-Span. Physicians will continue to be paid for the administration of the drugs.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

The Council on Human Services adopted these amendments on June 13, 2012.

The Department finds that notice and public participation are unnecessary because the legislature mandated this change and are impracticable because the Department's appropriation for the fiscal year beginning July 1, 2012, assumes the implementation of this change without delay for notice and public comment. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived, as authorized by 2011 Iowa Acts, chapter 129, section 122, subsection 20(a).

These amendments are also published herein under Notice of Intended Action as **ARC 0197C** to allow for public comment.

These amendments do not provide for waivers in specified situations because the legislative mandate does not provide for waivers and because the savings assumed in the Department's appropriation would not be realized if waivers were granted. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

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

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, chapter 129, section 122, as amended by 2012 Iowa Acts, Senate File 2336, section 12.

These amendments became effective July 1, 2012.

The following amendments are adopted.

ITEM 1. Amend subrule **79.1(2)**, provider category "Physicians (doctors of medicine or osteopathy)," as follows:

Provider category	Basis of reimbursement	Upper limit
Physicians (doctors of medicine or osteopathy)	Fee schedule. See 79.1(7)"a"	Fee schedule in effect 11/30/09 less 5%.
Anesthesia services	Fee schedule	Fee schedule in effect 11/30/09 less 5%.
<u>Physician-administered drugs</u>	<u>Fee schedule</u>	<u>Fee schedule in effect 6/30/12 less 2%.</u>

ITEM 2. Adopt the following **new** paragraph **79.1(8)"k"**:

*k.* Payment to physicians for physician-administered drugs billed with Healthcare Common Procedure Coding System (HCPCS) Level II "J" codes, as a physician service, shall be pursuant to physician payment policy under subrule 79.1(2).

[Filed Emergency 6/18/12, effective 7/1/12]

[Published 7/11/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/11/12.

**ARC 0200C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 92, "IowaCare," Iowa Administrative Code.

This amendment expands the uses of the funding pool created to reimburse Broadlawns Medical Center for services outside the scope of the IowaCare program provided to IowaCare members. For state fiscal year 2013, Broadlawns has again transferred \$4 million of Polk County property tax funds to the state. Due to this transfer, those funds are no longer available for providing noncovered services to IowaCare members residing in Polk County. The General Assembly has appropriated \$4 million from

HUMAN SERVICES DEPARTMENT[441](cont'd)

IowaCare funding for Broadlawns to reimburse the hospital for podiatry services, optometric services and durable medical equipment to IowaCare members in addition to the outpatient prescription drugs and podiatry services that were reimbursed during state fiscal year 2012.

The Council on Human Services adopted these amendments on June 13, 2012.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because this amendment merely implements the specific changes enacted in appropriations legislation.

The Department also finds that this amendment confers a benefit by supplementing the funding available for IowaCare services in Polk County. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of the amendment is waived.

This amendment does not provide for waivers in specified situations because it benefits the persons affected and the payment conditions are set in legislation, which the Department has no authority to waive.

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

This amendment implements 2011 Iowa Acts, chapter 129, section 146, subsection 4, as amended by 2012 Iowa Acts, Senate File 2336, section 43.

This amendment became effective on July 1, 2012.

The following amendment is adopted.

Amend subrule 92.8(9) as follows:

**92.8(9)** ~~*Outpatient prescription drugs and podiatry*~~ *Other services provided by Broadlawns Medical Center.* ~~Effective November 1, 2011,~~ Broadlawns Medical Center shall be reimbursed for outpatient prescription drugs, ~~and podiatry services,~~ optometric services, and durable medical equipment provided to members of the expansion population. Payment is limited to the amount of funds appropriated for this purpose.

[Filed Emergency 6/18/12, effective 7/1/12]

[Published 7/11/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/11/12.

**ARC 0210C****BANKING DIVISION[187]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 524.213, the Division of Banking hereby amends Chapter 2, "Application Procedures," and rescinds Chapter 3, "Examinations," Iowa Administrative Code.

This rule making rescinds rules that are no longer necessary in light of statutory changes. Rule 187—2.11(17A) is no longer necessary because it implemented a section of the Iowa Code that has been repealed. Chapter 3 is no longer necessary because the subject matter addressed in the chapter is specifically addressed in the Iowa Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9953B** on January 11, 2012. No public comments were received. These amendments are identical to the amendments published under Notice.

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

These amendments are intended to implement Iowa Code sections 17A.3 and 524.213.

These amendments will become effective August 29, 2012.

The following amendments are adopted.

ITEM 1. Rescind and reserve rule **187—2.11(17A)**.

ITEM 2. Rescind and reserve **187—Chapter 3**.

[Filed 6/21/12, effective 8/29/12]

[Published 7/11/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/11/12.

**ARC 0208C****ENVIRONMENTAL PROTECTION COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.172, 455B.173 and 455B.197 and 2011 Iowa Code Supplement section 455B.172A, the Environmental Protection Commission hereby amends Chapter 68, "Commercial Septic Tank Cleaners," and Chapter 69, "Private Sewage Disposal Systems," Iowa Administrative Code.

In conjunction with this rule making, the Iowa Department of Natural Resources has updated the Groundwater Hazard Statement form through a separate rule making which amended 561—Chapter 9 (see **ARC 0167C**, IAB 6/13/12). Changes to the Groundwater Hazard Statement form are intended to provide clarification as to the applicability of the time of transfer inspection requirements.

Iowa Code section 455B.172 directs the Commission to establish uniform statewide inspection criteria for time of transfer inspections.

Pursuant to 2011 Iowa Code Supplement section 455B.172A, the Commission is required to adopt by rule standards for the disposal of wastewater from an on-farm processing operation.

Pursuant to Iowa Code section 455B.173(3), the Commission is required to establish, modify, or repeal rules relating to the location, construction, operation, and maintenance of private sewage disposal systems. In addition, Iowa Code section 455B.173(11) requires the Commission to adopt rules for the issuance of a single general permit, after notice and opportunity for a public hearing. The single general permit shall cover numerous facilities to the extent that they are representative of a class of facilities which can be identified and conditioned by a single permit. These amendments fulfill the Commission's and the Department's requirements pursuant to Iowa Code sections 455B.173(3) and 455B.173(11).

These amendments do not significantly change current practices for private sewage disposal systems. The changes to time of transfer inspections simplify and clarify current practices. The National Pollution



## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Discharge Elimination System (NPDES) permit will be reissued with no new requirements for permit holders. Other language changes are expected to clarify current requirements.

The following summary describes the significant amendments to Chapters 68 and 69. It does not detail each of the changes but highlights the changes that will have the most impact on private sewage disposal systems and the state of Iowa.

**Chapter 68**

The amendments to Chapter 68 are largely the result of the passage of 2011 Iowa Acts, Senate File 321, dealing with the disposal of wastewater from small-scale on-farm food processing operations. Rule 567—68.11(455B) outlines the wastewater disposal options for on-farm food processing operations that produce less than 1,500 gallons per day of wastewater. The primary new option for these facilities is the ability to land-apply the wastewater in accordance with rules consistent with the land application rules for septage. This process is outlined in new subrule 68.11(4).

The amendments include new definitions related to on-farm food processors and an updated definition of “private sewage disposal system.” Also included are minor changes to the licensing requirements to match streamlined procedures that are currently used for commercial septic tank cleaner licensing.

The amendments to Chapter 68 to provide additional wastewater disposal options for small-scale on-farm food processing operations, such as cheese-making, winery and other similar operations, are intended to lessen the burden of the regulations and allow for the continued growth of these Iowa small businesses.

**Chapter 69**

The amendments to Chapter 69 include changes to the time of transfer septic system inspection program required by the passage of 2010 Iowa Acts, House File 2437. Several changes were made in the Iowa Code to simplify the inspection process. These include situations where an inspection may not be required because an agreement is signed in which the buyer agrees to replace a private sewage disposal system or where a building served by a private sewage disposal system will be demolished. The original requirement for an inspection at the time of a contract sale will now be included in the chapter. Additions to the exemptions to the inspection requirement were added by 2010 Iowa Acts, House File 2437, and all the exemptions will now be included in the chapter. Other minor language changes to the rules are made to be consistent with the new Iowa Code language. Minor changes to the inspection reporting requirements, certified inspector continuing education and certificate renewal requirements, and inspection processes are made to be consistent with current practices and discharge permit sampling requirements.

Technical changes to Chapter 69 include clarification of setback distances to public wells to be consistent with Chapter 43, “Public Water Supplies,” flow rates per bedroom that are currently used in the rule, the use and type of effluent screens, the size of septic tank risers and the applicable standards for plastic septic tanks. Other technical changes include removal of language related to dual sand filters, which were removed in a previous rule making, and removal of language dealing with the width of mounds and at-grade septic systems.

Several changes are made to the language dealing with the maintenance and sampling of packaged treatment devices and sand filters. These changes were made to make each rule uniform since the sampling and maintenance requirements are largely identical. Maintenance contracts will now be required prior to the installation of systems requiring maintenance to ensure the contract is in place and the system owner is fully aware of the owner’s responsibilities. Language is added to ensure the use of lower-maintenance systems before high-maintenance systems where applicable.

Finally, the NPDES General Permit No. 4 has been revised for renewal. The current permit expired March 18, 2011. That permit has been administratively extended until the new permit is issued. The General Permit will remain largely unchanged with the exception of the addition of antidegradation language required by rule and the U.S. EPA. The addition of this language should have a minimal impact on the use of discharging private sewage disposal systems for two reasons. First, the outstanding Iowa waters that antidegradation protects are typically in areas where the vast majority of private sewage disposal systems are soil-based systems that do not discharge. Secondly, Chapter 69 already requires

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

the use of soil-based systems or nondegrading systems prior to the consideration of discharging systems. The new NPDES General Permit No. 4 will be renewed for a five-year period.

Notice of Intended Action was published in the March 21, 2012, Iowa Administrative Bulletin as **ARC 0046C**. Comments regarding these amendments were received during the comment period and at five public hearings conducted from April 12, 2012, to April 19, 2012. The public hearings were conducted in Des Moines, Independence, Fairfield, Atlantic and Storm Lake. The comments and the Department's responses are contained within the responsiveness summary available online at [www.onsiteiowa.com](http://www.onsiteiowa.com). The following is a summary of the changes that have been made as the result of comments received.

2012 Iowa Acts, Senate File 2269, was passed by the Legislature removing the requirement for a commercial septic tank cleaner to carry out land application of on-farm food processing wastewater. This requirement and the associated reporting requirements have been removed from new subrule 68.11(4).

Operation permits are required for the land application of industrial wastewater in 567—Chapter 64. This provision would require an operation permit for on-farm food processing operations. However, the intent of the on-farm food processing law was to lessen the burden for small on-farm food processing operations. Therefore, an exemption from the operation permit requirement has been added in a new paragraph 68.11(4)“c.”

Subrule 68.11(4) now reads as follows:

“**68.11(4) Land application.**

“a. On-farm food processing wastewater may be land-applied if all of the following apply:

“(1) The volume of wastewater produced by the on-farm processing operation is less than 1,500 gallons per day.

“(2) The application rate does not exceed 30,000 gallons per acre per year.

“(3) The application rate does not exceed 1,500 gallons per acre per day.

“b. On-farm food processing wastewater shall be land-applied in accordance with 567—68.10(455B).

“c. On-farm food processing operations that meet the requirements for land application in 68.11(4) shall not be required to obtain an operation permit as prescribed in 567—64.3(455B).”

In addition, one correction has been made in paragraph 69.2(4)“c” to change a date from March 30 to March 31.

After analysis and review of this rule making, a positive impact on jobs should result. The changes to time of transfer inspections simplify and clarify current procedures related to private sewage disposal systems. The NPDES permit will be reissued with no new requirements for permit holders. Other language changes are expected to clarify current requirements.

These amendments are intended to implement Iowa Code chapter 455B, division III, part I, and 2011 Iowa Code Supplement section 455B.172A.

These amendments shall become effective August 15, 2012.

The following amendments are adopted.

ITEM 1. Amend rule 567—68.1(455B) as follows:

**567—68.1(455B) Purpose and applicability.** The purpose of this chapter is to implement Iowa Code subsection 455B.172(5) and 2011 Iowa Code Supplement section 455B.172A by providing standards for the commercial cleaning of and the disposal of waste from private sewage disposal systems and on-farm food processing operations and by providing licensing requirements and procedures. These rules govern the commercial cleaning of and the disposal of wastes from private sewage disposal systems and on-farm food processing operations.

ITEM 2. Amend rule **567—68.2(455B)**, definition of “Private sewage disposal systems,” as follows:

“*Private sewage disposal systems system*” means a system which provides for the treatment or disposal of domestic sewage from four or fewer dwelling units or the equivalent of fewer than 16 individuals on a continuing basis, including domestic waste, whether residential or nonresidential, but not including industrial waste of any flow rate except as provided for in 567—68.11(455B). “Private

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

sewage disposal ~~systems~~ system” includes, but is not limited to, septic tanks as defined in 567—subrule 69.1(2); holding tanks for waste; and impervious vault toilets, portable toilets, and chemical toilets as described in 567—69.15(455B).

ITEM 3. Adopt the following new definitions in rule ~~567—68.2(455B)~~:

“*Food commodity*” means any commodity that is derived from an agricultural animal or crop, both as defined in Iowa Code section 717A.1, which is intended for human consumption in its raw or processed state.

1. A food commodity in its raw state for processing includes, but is not limited to, milk, eggs, vegetables, fruits, nuts, syrup, and honey.

2. A food commodity in its processed state includes, but is not limited to, dairy products, pastries, pies, and meat or poultry products.

“*On-farm processing operation*” means any place located on a farm where the form or condition of a food commodity originating from that farm or another farm is changed or packaged for human consumption, including but not limited to a dairy, creamery, winery, distillery, cannery, bakery, or meat or poultry processor. “On-farm processing operation” does not include food commodities processed by a person exclusively for use by the person and members of the person’s household and the person’s nonpaying guests and employees.

ITEM 4. Rescind and reserve paragraph ~~68.4(2)~~“i.”

ITEM 5. Amend subrule 68.4(3) as follows:

~~68.4(3) License fee. The initial license application and each renewal application must be accompanied by a nonrefundable fee in the form of a check or money order made payable to the Department of Natural Resources. The application fee is \$150 per year for the first registered vehicle and \$50 for each additional vehicle. If the applicant intends to land-apply any septage during the year, there will be an additional application fee of \$7 per 1,000 gallons of septage to be land-applied per year. Land application fees shall be based on the previous year’s records. First-time applicants shall pay a \$300 annual land application fee if they propose to land-apply. New license applicants will be charged monthly prorated fees until the next June 30.~~

ITEM 6. Amend subrule 68.4(4) as follows:

~~68.4(4) License renewal. In order to remain valid, a commercial septic tank cleaner license must be renewed by June 30 of each year. Renewal application must be made on a form provided by the department, and must be received by the department or postmarked at least 30 days prior to the expiration date. The renewal application form must be accompanied by the license fee specified in subrule 68.4(3), a copy of all waste disposal records as defined in 68.6(3) for the previous year, and a revised waste management plan.~~

ITEM 7. Amend subrule 68.6(3) as follows:

~~68.6(3) Records. The licensee shall maintain records of private sewage disposal systems cleaned and the location, method of septage disposal, and volume of septage disposed of for each trip. Such records shall be maintained for a period of five years, and shall be made readily available upon request to county board of health or department officials and submitted with the waste management plan by the administrative authority.~~

ITEM 8. Amend subparagraph ~~68.10(2)~~“c”(4) as follows:

(4) When septage is applied to land, the person who applies the septage shall develop the following information and shall retain the information for five years ~~and include it in the annually submitted waste management plan:~~

1. to 8. No change.

ITEM 9. Adopt the following new rule ~~567—68.11(455B)~~:

**567—68.11(455B) Standards for disposal of on-farm food processing wastewater.** Disposal of on-farm food processing wastewater shall be carried out by utilizing one or more of the following methods:

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

**68.11(1)** On-farm food processing wastewater shall be discharged to a publicly owned treatment works or other permitted wastewater treatment system with the treatment works owner's approval.

**68.11(2)** On-farm food processing wastewater shall be discharged to a subsurface soil absorption system that is in compliance with 567—Chapter 69 and the United States Environmental Protection Agency's Underground Injection Control Program or other applicable regulations.

**68.11(3)** On-farm food processing wastewater shall be discharged through a disposal system that meets all of the following:

- a. The disposal system is located on the same site as the on-farm processing operation.
- b. The disposal system is constructed in conformance with a permit issued by the department in accordance with Iowa Code section 455B.183, implemented by 567—Chapter 64.
- c. For a disposal system that discharges wastewater to a water of the United States, the system must be operated in conformance with a National Pollutant Discharge Elimination System permit issued by the department under Iowa Code section 455B.197.

**68.11(4)** Land application.

- a. On-farm food processing wastewater may be land-applied if all of the following apply:
  - (1) The volume of wastewater produced by the on-farm processing operation is less than 1,500 gallons per day.
  - (2) The application rate does not exceed 30,000 gallons per acre per year.
  - (3) The application rate does not exceed 1,500 gallons per acre per day.
- b. On-farm food processing wastewater shall be land-applied in accordance with 567—68.10(455B).
- c. On-farm food processing operations that meet the requirements for land application in 68.11(4) shall not be required to obtain an operation permit as prescribed in 567—64.3(455B).

ITEM 10. Amend subrule **69.1(2)**, definition of "Private sewage disposal system," as follows:

*"Private sewage disposal system"* means a system which provides for the treatment or disposal of domestic sewage from four or fewer dwelling units or the equivalent of less than 16 individuals on a continuing basis.—~~This includes, including~~ domestic waste, whether residential or nonresidential, but ~~does not include including~~ industrial waste of any flow rate except as provided for in 567—68.11(455B). "Private sewage disposal system" includes, but is not limited to, septic tanks, holding tanks for waste, chemical toilets, impervious vault toilets and portable toilets.

ITEM 11. Amend subrule 69.2(1), introductory paragraph, as follows:

**69.2(1)** *Inspections required.* ~~Beginning July 1, 2009, prior~~ Prior to any transfer of ownership of a building where a person resides, congregates, or is employed that is served by a private sewage disposal system, the sewage disposal system serving the building shall be inspected. ~~A building that will be demolished without being occupied does not require an inspection. A legally binding document verifying that the building will be demolished shall be provided to the county and to the department for record.~~ In the event that weather or other temporary physical conditions prevent the certified inspection from being conducted, the buyer shall execute and submit a binding acknowledgment agreement with the county board of health to conduct a certified inspection of the private sewage disposal system at the earliest practicable time and to be responsible for any required modifications to the private sewage disposal system as identified by the certified inspection. ~~Title abstracts to property with private sewage disposal systems shall include documentation of compliance with the requirements in this rule. In the event that all parties agree the existing private sewage disposal system will not pass inspection, the buyer may forego the inspection and execute a binding agreement with the local board of health to install a private sewage disposal system compliant with this rule at a time specified by the administrative authority. The inspection requirement applies to all types of ownership transfers not specifically exempted, including when a seller-financed real estate contract is signed.~~

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 12. Reletter paragraphs **69.2(1)“a”** and **“b”** as **69.2(1)“b”** and **“c.”**

ITEM 13. Adopt the following **new** paragraph **69.2(1)“a”**:

*a. Inspection exemptions.* The following types of real estate transactions are exempt from the inspection requirement. However, the discharge restrictions in paragraph 69.1(3)“b” shall always apply.

(1) A transfer made pursuant to a court order, including but not limited to a transfer under Iowa Code chapter 633 or 633A, the execution of a judgment, the foreclosure of a real estate mortgage pursuant to Iowa Code chapter 654, the forfeiture of a real estate contract under Iowa Code chapter 656, a transfer by a trustee in bankruptcy, a transfer by eminent domain, or a transfer resulting from a decree for specific performance.

(2) A transfer to a mortgagee by a mortgagor or successor in interest who is in default, a transfer by a mortgagee who has acquired real property as a result of a deed in lieu of foreclosure or has acquired real property under Iowa Code chapter 654 or 655A, or a transfer back to a mortgagor exercising a right of first refusal pursuant to Iowa Code section 654.16A.

(3) A transfer by a fiduciary in the course of the administration of a decedent’s estate, guardianship, conservatorship, or trust.

(4) A transfer between joint tenants or tenants in common.

(5) A transfer made to a spouse or to a person in the lineal line of consanguinity of a person making the transfer.

(6) A transfer between spouses resulting from a decree of dissolution of marriage, a decree of legal separation, or a property settlement agreement which is incidental to the decree, including a decree ordered pursuant to Iowa Code chapter 598.

(7) A transfer in which the transferee intends to demolish or raze the building.

(8) A transfer of property with a system that was installed not more than two years prior to the date of the transfer.

(9) A deed arising from a partition proceeding.

(10) A tax sale deed issued by the county treasurer.

(11) A transfer for which consideration is \$500 or less.

(12) A deed between a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company as defined in Iowa Code section 428A.2, subsection 15, and its stockholders, partners, or members for the purpose of transferring real property in an incorporation or a corporate dissolution or in the organization or dissolution of a partnership, limited partnership, limited liability partnership, or limited liability company under the laws of this state, where the deed is given for no actual consideration other than for shares or for debt securities of the family corporation, partnership, limited partnership, limited liability partnership, or limited liability company.

ITEM 14. Amend relettered paragraph **69.2(1)“b”** as follows:

*b. Inspection criteria.* If a private sewage disposal system is failing to ensure effective wastewater treatment or is otherwise improperly functioning, the private sewage disposal system shall be renovated to meet current construction standards, as adopted by the department, either by the seller or, by agreement, within a reasonable time period as determined by the ~~county or the department~~ administrative authority, by the buyer. If the private sewage disposal system is properly treating the wastewater and not creating an unsanitary condition in the environment at the time of inspection, the system is not required to meet current construction standards. However, the discharge restrictions in paragraph 69.1(3)“b” shall always apply.

ITEM 15. Amend paragraph **69.2(2)“b”** as follows:

*b. Examination application.* A person wishing to take the examination necessary to become a certified inspector shall complete the Certified Time of Transfer Inspector Application, Form 542-0192. A listing of dates and locations of examinations is available from the department upon request. The application form requires the applicant to indicate pertinent educational background, training and past experience in providing private sewage disposal services. The completed application and the application fee shall be sent to Time of Transfer Inspector Certification, Iowa Department of Natural Resources, 502

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

E. 9th Street, Des Moines, Iowa 50319-0034. An application for examination must be received by the department at least ~~60~~ 30 days prior to the date of the examination.

ITEM 16. Rescind and reserve subparagraph **69.2(2)“e”(4)**.

ITEM 17. Adopt the following **new** paragraph **69.2(2)“g”**:

*g. Renewal rights.* Inspectors seeking renewal more than 45 days following expiration of the certificate shall lose the right to renew under the normal renewal process and must retake the inspector class and test to become recertified.

ITEM 18. Amend paragraph **69.2(4)“b”** as follows:

*b. Application for renewal.* Renewal applications shall be submitted ~~on DNR Form 542-0192~~ 60 days before the expiration date of the current certificate. Late applications or incomplete applications may lead to revocation of the certificate. Renewal of certificates will only be granted to inspectors in good standing.

ITEM 19. Amend paragraph **69.2(4)“c”** as follows:

*c. CEUs.* Only those certified inspectors fulfilling the continuing education requirements before the end of each two-year period (~~June 30~~ March 31) will be allowed to renew their certificates. The certificates of inspectors not fulfilling the continuing education requirements shall expire on June 30 of the even-numbered year.

ITEM 20. Amend paragraph **69.2(4)“d”** as follows:

*d. Renewal fee.* A renewal fee in the amount of \$300 must accompany the renewal application in order for the certificate to be renewed. Failure to submit the renewal fee on time may lead to revocation of the certificate ~~in addition to a penalty fee~~.

ITEM 21. Amend paragraph **69.2(5)“b”** as follows:

*b.* Following an inspection, the inspection form and any ~~related reports~~ attachments shall be provided to the county environmental health department for enforcement of any follow-up mandatory improvements to the system, to the department for record, and to the ~~county recorder's office~~ person ordering the inspection.

ITEM 22. Amend paragraph **69.2(8)“f,”** introductory paragraph, as follows:

*f. Discharging systems.* An effluent test shall be performed on any legally discharging private sewage disposal system. The effluent quality shall ~~be tested to determine if it meets~~ meet the requirements of NPDES General Permit No. 4, ~~and the~~ for CBOD<sub>5</sub> and TSS. ~~The test results shall be included in the inspection report.~~

ITEM 23. Amend subparagraph **69.2(8)“f”(1)** as follows:

(1) The certified inspector shall ~~ensure that a legally discharging private sewage disposal system has an NPDES General Permit No. 4, if applicable~~ report the location of the discharge point of a legally discharging private sewage disposal system and the discharge point's proximity to a perennial stream or drainage tile.

ITEM 24. Rescind and reserve subparagraph **69.2(8)“f”(2)**.

ITEM 25. Amend paragraph **69.2(8)“i”** as follows:

*i. Inspection reports.* Following an inspection, the inspection form and a narrative report describing the condition of the private sewage disposal system at the time of the inspection shall be provided to the county environmental health department, to the department for record, and to the ~~county recorder in the county where the inspection occurred~~ person who ordered the inspection.

The certified inspector shall provide the completed inspection report to the county environmental health office within ten business days of the inspection date.

ITEM 26. Amend subrule 69.3(1), introductory paragraph, as follows:

**69.3(1) Site evaluation.** A site evaluation shall be conducted by the administrative authority prior to issuance of a construction permit. Consideration shall be given to, but not be limited to, the impact of the following: topography; drainage ways; terraces; floodplain; percent of land slope; location of

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

property lines; location of easements; buried utilities; existing and proposed tile lines; existing, proposed and abandoned water wells; amount of available area for the installation of the system; evidence of unstable ground; alteration (cutting, filling, compacting) of existing soil profile; and soil characteristics determined from a soil analysis, percolation tests, and soil survey maps if available.

ITEM 27. Amend subrule 69.3(2) as follows:

**69.3(2) Minimum distances.** All private sewage disposal systems shall be located in accordance with the minimum distances shown in Table I.

**Table I**

Minimum Distance in Feet From	Closed Portion of Treatment System <sup>(1)</sup>	Open Portion of Treatment System <sup>(2)</sup>
Private water supply well	50	100
<del>Public</del> <u>Shallow public</u> water supply well <sup>(3)</sup>	200	<del>200</del> <u>400</u>
<u>Deep public</u> water supply well <sup>(4)</sup>	<u>100</u>	<u>200</u>
Groundwater heat pump borehole	50	100
Lake or reservoir	50	100
Stream or pond	25	25
Edge of drainage ditch	10	10
Dwelling or other structure	10	10
Property lines (unless a mutual easement is signed and recorded)	10	10
Other type of subsurface treatment system	5	10
Water lines continually under pressure	10	10
Suction water lines	50	100
Foundation drains or subsurface tiles	10	10

<sup>(1)</sup> Includes septic tanks, aerobic treatment units, fully contained media filters and impervious vault toilets.

<sup>(2)</sup> Includes subsurface absorption systems, mound systems, intermittent sand filters, constructed wetlands, open bottom media filters and waste stabilization ponds.

<sup>(3)</sup> "Shallow well" means a well located and constructed in such a manner that there is not a continuous layer of low-permeability soil or rock (or equivalent retarding mechanism acceptable to the department) at least 5 feet thick, the top of which is located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

<sup>(4)</sup> "Deep well" means a well located and constructed in such a manner that there is a continuous layer of low-permeability soil or rock at least 5 feet thick located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

ITEM 28. Amend subrule 69.5(2) as follows:

**69.5(2)** Private sewage disposal systems that require a maintenance contract shall be inspected by a manufacturer's certified technician ~~or person demonstrating knowledge of the system in accordance with the manufacturer's standards.~~

ITEM 29. Adopt the following **new** subrule 69.5(4):

**69.5(4)** No private sewage disposal system shall discharge to a state-owned natural or artificial lake, an outstanding Iowa water or an outstanding national water as defined in 567—subrule 61.2(2) unless authorized by an individual NPDES permit.

ITEM 30. Amend paragraph **69.8(2)“c”** as follows:

*c. Determination of flow rates.* Residential wastewater flows are based on 150 gallons per bedroom per day. For wastewater flow rates for nonresidential and commercial domestic waste applications serving the equivalent of fewer than 16 individuals on a continuing basis, refer to Appendix A.

ITEM 31. Amend subparagraph **69.8(3)“d”(1)** as follows:

(1) Four-inch-diameter Schedule 40 plastic pipe tees shall be used as inlet and outlet baffles. Inlet tees shall extend at least 6 inches above and 8 inches below the liquid level of the tank. The inlet tee shall extend below the liquid level no more than 20 percent of the liquid depth. The outlet tee shall extend above the liquid level a distance of at least 6 inches and below the liquid level a distance of at least 15

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inches but no more than 30 percent of the liquid depth. A minimum 2-inch clearance between the top of the inlet and outlet tees and the bottom of the tank lid shall be provided. A horizontal separation of at least 36 inches shall be provided between the inlet baffle and the outlet baffle in each compartment. Outlet baffles shall be fitted with, or replaced by, an approved effluent screen. All effluent screens shall be certified by an ANSI-accredited third-party certifier to meet National Sanitation Foundation Standard 46, including appendices, or other equivalent testing as determined by the department. Effluent screens require periodic inspection and cleaning to ensure their continued proper operation.

ITEM 32. Amend subparagraph **69.8(3)“e”(3)** as follows:

(3) Watertight risers with a minimum diameter of 18 inches shall be installed to bring the access openings to the ground surface. Risers shall be secured using stainless steel fasteners of sufficient complexity, locking devices, concrete lids of sufficient weight, or another device approved by the administrative authority to deter tampering.

ITEM 33. Amend subrule 69.8(5) as follows:

**69.8(5) Wall thickness.** Minimum wall thickness for tanks shall conform to applicable IAPMO<sup>1</sup> standards or the following specifications:

Poured concrete	6 inches thick
Poured concrete, reinforced	4 inches thick
Special concrete mix, vibrated and reinforced	2.5 inches thick
Fiberglass or plastic	.25 inches thick

<sup>1</sup>International Association of Plumbing and Mechanical Officials

ITEM 34. Amend paragraph **69.10(3)“j”** as follows:

*j.* The base absorption area of the mound is to be calculated based on the results of the percolation rate test or soil analysis as indicated in Table IIIa or IIIb and the flow rate. ~~The maximum width of the mound shall be 12 feet.~~

ITEM 35. Amend paragraph **69.11(2)“i”** as follows:

*i.* The gravel bed absorption area of the at-grade system is to be calculated based on the results of the percolation rate test or soil analysis as indicated in Table IIIa or IIIb and the flow rate. ~~The maximum width of the at-grade system shall be 8 feet.~~

ITEM 36. Amend paragraph **69.13(1)“c”** as follows:

*c. Sampling port.* ~~A sampling port shall be available at the~~ The discharge point of the filter shall be accessible for effluent sampling, or a sampling port shall be installed in the discharge line.

ITEM 37. Rescind and reserve paragraph **69.13(2)“a.”**

ITEM 38. Amend subparagraph **69.13(3)“b”(4)** as follows:

(4) Nonhousehold. Effluent application rates for commercial systems treating domestic waste shall not exceed the following:

1. 1.0 gallon/square feet/day for ~~single bed~~ intermittent sand filters.
2. The total surface area for any subsurface sand filter system shall not be less than 200 square feet.

ITEM 39. Amend paragraph **69.13(6)“a”** as follows:

*a. Use.* Peat moss biofilter systems may be used when the administrative authority determines the site is unacceptable for a soil absorption system or an intermittent sand filter.

ITEM 40. Amend paragraph **69.13(6)“d”** as follows:

*d. Maintenance contract.* A Prior to installation, a maintenance contract for the proper monitoring and servicing of the entire treatment system shall be established between the owner and a certified technician. A maintenance contract is required for the life of the system. All monitoring and servicing shall be performed by a manufacturer’s certified technician or person demonstrating knowledge of the system in accordance with the manufacturer’s standards. Manufacturers are responsible for ensuring that



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an adequate number of ~~maintenance providers~~ certified technicians are available to service all peat moss biofilters at the specified intervals. ~~Maintenance contracts and responsibility waivers shall be recorded with the county recorder and in the abstract of title for the premises on which the system is installed.~~ The ~~maintenance provider~~ certified technician shall perform the required maintenance and reporting to the owner and to the administrative authority. The ~~maintenance provider~~ certified technician shall also report any discontinuance of maintenance of the peat moss biofilter system to the administrative authority. Peat moss biofilter systems shall be inspected at least once annually by the ~~maintenance provider~~ certified technician. A copy of the maintenance contract shall be on file in the office of the administrative authority.

ITEM 41. Amend paragraph **69.13(6)“e”** as follows:

*e. Effluent sampling.* ~~A sampling port shall be available at the~~ The discharge point of the filter shall be accessible for effluent sampling, or a sampling port shall be installed in the discharge line. All peat moss biofilter systems ~~having that have~~ having that have an open discharge shall be sampled in accordance with the requirements of NPDES General Permit No. 4 if applicable.

ITEM 42. Amend paragraph **69.13(7)“a”** as follows:

*a. Use.* Recirculating textile filter systems may be used when the administrative authority determines the site is unacceptable for a soil absorption system or an intermittent sand filter.

ITEM 43. Amend paragraph **69.13(7)“e”** as follows:

*e. Maintenance contract.* ~~A~~ Prior to installation, a maintenance contract for the proper monitoring and servicing of the entire treatment system shall be established between the owner and a certified technician. A maintenance contract is required for the life of the system. All monitoring and servicing shall be performed by a manufacturer's certified technician ~~or person demonstrating knowledge of the system in accordance with the manufacturer's standards.~~ Manufacturers are responsible for ensuring that an adequate number of ~~maintenance providers~~ certified technicians are available to service all recirculating textile filters at the specified intervals. ~~Maintenance contracts and responsibility waivers shall be recorded with the county recorder and in the abstract of title for the premises on which the system is installed.~~ The ~~maintenance provider~~ certified technician shall perform the required maintenance and reporting to the owner and to the administrative authority. The ~~maintenance provider~~ certified technician shall also report any discontinuance of maintenance of the system to the administrative authority. Recirculating textile filter systems shall be inspected, ~~at minimum,~~ at least once annually by the ~~maintenance provider~~ certified technician. A copy of the maintenance contract shall be on file in the office of the administrative authority.

ITEM 44. Amend paragraph **69.13(7)“f”** as follows:

*f. Effluent sampling.* ~~A sampling port shall be available at the~~ The discharge point of the filter shall be accessible for effluent sampling, or a sampling port shall be installed in the discharge line. All recirculating textile filter systems ~~having that have~~ having that have an open discharge shall be sampled in accordance with the requirements of NPDES General Permit No. 4 if applicable.

ITEM 45. Amend subrule 69.14(1) as follows:

**69.14(1) Use.** Aerobic treatment units may be used only when the administrative authority determines that the site is unacceptable for a soil absorption system or an intermittent sand filter. Because of the higher maintenance requirements of aerobic treatment units, preference should be given to packed bed media filters, where conditions allow.

ITEM 46. Amend subrule 69.14(6) as follows:

**69.14(6) Maintenance contract.** ~~A maintenance contract with a manufacturer certified technician or equivalent, as determined by the department, shall be maintained at all times. The maintenance contract shall include the aerobic treatment unit and effluent disposal system.~~ Prior to installation, a maintenance contract for the proper monitoring and servicing of the entire treatment system shall be established between the owner and a certified technician. A maintenance contract is required for the life of the system. All monitoring and servicing shall be performed by a manufacturer's certified technician. Manufacturers are responsible for ensuring that an adequate number of ~~maintenance providers~~ certified technicians are available to service all aerobic treatment units at the specified intervals. ~~Maintenance~~

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~~agreements and responsibility waivers shall be recorded with the county recorder and in the abstract of title for the premises on which an aerobic treatment unit is installed. Aerobic treatment units shall be inspected for proper operation at least twice a year at six-month intervals by the certified technician.~~

ITEM 47. Amend subrule 69.14(7) as follows:

**69.14(7) Effluent sampling.** The discharge point of the aerobic treatment unit system shall be accessible for effluent sampling, or a sampling port shall be installed in the discharge line. All aerobic treatment unit systems ~~having that have~~ an open discharge shall be sampled in accordance with the requirements of NPDES General Permit No. 4 if applicable.

[Filed 6/20/12, effective 8/15/12]

[Published 7/11/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/11/12.

**ARC 0189C**

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

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455A.5(6), 481A.38, 481A.39, 481A.48(1), 483A.8, 483A.8B, 483A.8C, 483A.24, and 483A.24B, the Natural Resource Commission hereby amends Chapter 106, "Deer Hunting by Residents," Iowa Administrative Code.

Chapter 106 sets regulations for deer hunting by residents and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of take, and transportation and reporting requirements.

The amendments do the following:

1. Close the November antlerless season;
2. Remove four counties from the January antlerless season and reduce the length of the January season by one week;
3. Restrict hunters who purchase one of the 7,500 paid any-deer early muzzleloader licenses from also purchasing a paid antlerless license during either the first or second regular gun season;
4. Specify changes in quota numbers in 21 counties for antlerless deer licenses.

These amendments are being adopted for the following reasons:

1. In 2005, the November season was added and the January antlerless season was lengthened in an attempt to reduce deer numbers. These changes are no longer needed to reach the Department's objectives for the deer population. Thus, the November season is being removed and the January season is being shortened by one week.

2. In 2011, the 7,500 quota for the muzzleloader season was filled in less than four days. Restricting hunters who obtain an early muzzleloader season license from also obtaining an antlerless license for the shotgun season will require hunters to choose which season they prefer. In 2004, and before, hunters had to choose a season in which to participate, and the muzzleloader season took three weeks or longer to fill. Thus, the proposed change will allow those hunters who prefer to hunt only during the muzzleloader season a better opportunity to do so.

3. The changes to the antlerless quotas are designed to stabilize deer numbers in 20 counties where deer numbers have been reduced to the Department's goals and to increase the quota in one county so that deer numbers are reduced to the Department's goals more quickly there.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 2, 2012, as **ARC 0114C**. A public hearing was held on May 23, 2012. Sixteen comments were received from the public during the comment period, and all but one supported the proposed changes in the antlerless quotas, elimination of the November antlerless season and the shortening of the January antlerless season. Four opposed the change to the early muzzleloader season. No changes were made from the Notice.

These amendments will have a neutral impact on jobs in the state. Even though the Department is seeking a license reduction, there should not be a noticeable change in deer hunting. The quota

## NATURAL RESOURCE COMMISSION[571](cont'd)

is designed to keep deer numbers stable and result in similar license sales overall. Thus, the private sector job impact should remain status quo even with this rule making. Importantly, remaining status quo is a very good thing for the state. A study done by the Fish and Wildlife Service shows Iowa's deer season typically generates \$200 million in economic activity. The following types of jobs are positively impacted by deer hunting generally (and should see no noticeable change due to this rule making): hunting equipment retailers (weapons, ammunition, clothing, chairs, stands, binoculars, and other supporting equipment); field guides and outfitters; taxidermists; and restaurants, hotels, and gas stations for hunters traveling around the state.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48(1), 483A.8, 483A.8B, 483A.8C, 483A.24 and 483A.24B.

These amendments will become effective on August 15, 2012.

The following amendments are adopted.

ITEM 1. Rescind and reserve subrule **106.1(5)**.

ITEM 2. Amend subrule 106.1(7) as follows:

**106.1(7) Free and reduced-fee deer licenses for landowners and tenants.** A maximum of one free any-deer license, two free antlerless-deer-only licenses, and two reduced-fee antlerless-deer-only licenses may be issued to a qualifying landowner or eligible family member and a qualifying tenant or eligible family member. Eligibility for licenses is described in 571—106.12(481A). The free any-deer license shall be available for one of the following seasons: the youth/disabled hunter season (if eligible), bow season, early muzzleloader season, late muzzleloader season or first and second regular gun seasons. One free antlerless-deer-only license shall be available for one of the following seasons: youth/disabled hunter season (if eligible), bow season, early muzzleloader season, late muzzleloader season, or first and second regular gun seasons, ~~or November antlerless-deer-only season~~. The second free antlerless-deer-only license shall be valid only for the January antlerless-deer-only season and will be available only if a portion of the farm unit lies within a county where paid antlerless-deer-only licenses are available during that season. Each reduced-fee antlerless-deer-only license shall be valid for one of the following seasons: youth/disabled hunter season (if eligible), bow season, early muzzleloader season, late muzzleloader season, first and second regular gun seasons, ~~November antlerless-deer-only season~~ or January antlerless-deer-only season. January antlerless-deer-only licenses will be available only if a portion of the farm unit is located in a county where paid antlerless-deer-only licenses are available in that season.

ITEM 3. Rescind and reserve subrule **106.2(4)**.

ITEM 4. Amend subrule 106.2(5) as follows:

**106.2(5) January antlerless-deer-only season.** Antlerless deer may be taken from January 11 through the ~~third~~ second following Sunday.

ITEM 5. Rescind and reserve subrule **106.4(4)**.

ITEM 6. Amend paragraph **106.6(2)“b”** as follows:

*b.* No one may obtain paid licenses for both the first regular gun season and second regular gun season regardless of whether the licenses are valid for any deer or antlerless deer only. Paid antlerless-deer-only licenses for the early muzzleloader season may only be purchased by hunters who have already purchased one of the 7,500 paid statewide any-deer licenses. Hunters who purchase one of the 7,500 paid statewide any-deer licenses for the early muzzleloader season may not obtain paid antlerless licenses for the first or second regular gun season.

ITEM 7. Rescind and reserve subrule **106.6(3)**.

ITEM 8. Amend subrule 106.6(4) as follows:

**106.6(4) January antlerless-deer-only licenses.** Antlerless-deer-only licenses for the January antlerless-deer-only season shall be available in the following counties: Adair, Adams, ~~Allamakee~~, Appanoose, Cass, Clarke, ~~Clayton~~, Dallas, Davis, Decatur, Des Moines, ~~Fayette~~, Fremont, Guthrie, Harrison, Henry, Jasper, Jefferson, Keokuk, Lee, Louisa, Lucas, Madison, Mahaska, Marion,

## NATURAL RESOURCE COMMISSION[571](cont'd)

Mills, Monona, Monroe, Montgomery, Page, Polk, Pottawattamie, Ringgold, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, ~~Winneshek~~, and Woodbury. Beginning December 15, an unlimited number of paid antlerless-deer-only licenses may be purchased for the January antlerless-deer-only season. These licenses may be obtained regardless of any other paid any-deer or paid antlerless-deer-only licenses that may have been obtained.

ITEM 9. Amend subrule 106.6(6) as follows:

**106.6(6) Antlerless-deer-only licenses.** Paid antlerless-deer-only licenses will be available by county as follows:

County	Quota	County	Quota	County	Quota
Adair	2400	Floyd	0	Monona	2500
Adams	1950	Franklin	0	Monroe	3000
Allamakee	4500	Fremont	1500	Montgomery	1300
Appanoose	3300	Greene	150	Muscatine	<del>1700</del> <u>1175</u>
Audubon	100	Grundy	0	O'Brien	0
Benton	<del>1000</del> <u>650</u>	Guthrie	3300	Osceola	0
Black Hawk	0	Hamilton	100	Page	1800
Boone	650	Hancock	0	Palo Alto	0
Bremer	<del>700</del> <u>1000</u>	Hardin	200	Plymouth	100
Buchanan	250	Harrison	2500	Pocahontas	0
Buena Vista	0	Henry	<del>2000</del> <u>1025</u>	Polk	1500
Butler	0	Howard	350	Pottawattamie	2100
Calhoun	0	Humboldt	0	Poweshiek	<del>650</del> <u>500</u>
Carroll	100	Ida	0	Ringgold	2600
Cass	1300	Iowa	<del>1200</del> <u>775</u>	Sac	0
Cedar	<del>1300</del> <u>1025</u>	Jackson	<del>1800</del> <u>1250</u>	Scott	<del>800</del> <u>500</u>
Cerro Gordo	0	Jasper	1700	Shelby	400
Cherokee	0	Jefferson	2150	Sioux	0
Chickasaw	450	Johnson	<del>2000</del> <u>1400</u>	Story	500
Clarke	2500	Jones	<del>1500</del> <u>975</u>	Tama	<del>650</del> <u>500</u>
Clay	0	Keokuk	1900	Taylor	2650
Clayton	<del>5800</del> <u>3200</u>	Kossuth	0	Union	2100
Clinton	<del>1200</del> <u>825</u>	Lee	<del>2500</del> <u>1400</u>	Van Buren	5400
Crawford	300	Linn	<del>1900</del> <u>1300</u>	Wapello	2150
Dallas	2700	Louisa	<del>1500</del> <u>850</u>	Warren	4200
Davis	3600	Lucas	2800	Washington	2250
Decatur	2800	Lyon	0	Wayne	3000
Delaware	<del>1550</del> <u>975</u>	Madison	4000	Webster	100
Des Moines	<del>2000</del> <u>900</u>	Mahaska	1350	Winnebago	0
Dickinson	0	Marion	2250	Winneshek	3500
Dubuque	<del>2000</del> <u>1375</u>	Marshall	500	Woodbury	2500
Emmet	0	Mills	1350	Worth	0
Fayette	<del>2500</del> <u>1650</u>	Mitchell	0	Wright	0

## NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 10. Rescind and reserve subrule **106.7(4)**.

ITEM 11. Amend rule 571—106.9(481A) as follows:

**571—106.9(481A) Transportation tag.** A transportation tag bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to one leg of each antlerless deer or on the main beam between two points, if present, on one of the antlers of an antlered deer in such a manner that the tag cannot be removed without mutilating or destroying the tag. This tag shall be attached to the carcass of the deer within 15 minutes of the time the deer carcass is located after being taken or before the carcass is moved to be transported by any means from the place where the deer was taken, whichever occurs first. No person shall tag a deer with a transportation tag issued to another person or with a tag that was purchased after the deer was taken. During the youth/disabled hunter season, bow season, early muzzleloader season and late muzzleloader season, the hunter who killed the deer must tag the deer by using the transportation tag issued in that person's name. During the first and second regular gun seasons and the ~~November and January antlerless-deer-only seasons~~ season, anyone present in the hunting party may tag a deer with a tag issued in that person's name. This tag shall be proof of possession and shall remain affixed to the carcass until such time as the animal is processed for consumption. The head, and antlers if any, shall remain attached to the deer while being transported by any means whatsoever from the place where taken to the processor or commercial preservation facility or until the deer has been processed for consumption.

ITEM 12. Amend **571—Chapter 106**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.8, 483A.8B, 483A.8C, 483A.24, and 483A.24B ~~and 2009 Iowa Acts, Senate File 187.~~

[Filed 6/14/12, effective 8/15/12]

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**ARC 0188C**

**NATURAL RESOURCE COMMISSION[571]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 481A.6, 481A.38, 481A.39, 481A.87, 481A.90, and 455A.5(6), the Natural Resource Commission hereby amends Chapter 108, "Mink, Muskrat, Raccoon, Badger, Opossum, Weasel, Striped Skunk, Fox (Red and Gray), Beaver, Coyote, River Otter, Bobcat, Gray (Timber) Wolf and Spotted Skunk Seasons," Iowa Administrative Code.

Chapter 108 sets the season dates, bag limits, possession limits and areas open to hunting or trapping furbearers. The amendment increases the quota for bobcats from 350 to 450 and increases the quota for river otters from 650 to 850. Both populations appear capable of sustaining the increased harvest.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 2, 2012, as **ARC 0115C**. A public hearing was held on May 23, 2012. Three comments were received from the public and all supported the proposed change. No changes were made from the Notice.

Increasing the quota for bobcats and river otters will have a positive jobs impact on the state by increasing overall trapping activity. Because of the raised quotas, trappers have a better opportunity to actually take a bobcat or otter before the quotas are filled. This means increased business for the private sector in the following areas: hunting and trapping gear and other related equipment, and taxidermy work. It could also lead to increased business for restaurants, hotels, and gas stations as people move around the state participating in the sport.

This amendment is intended to implement Iowa Code sections 481A.6, 481A.38, 481A.39, 481A.87, and 481A.90.

This amendment will become effective on August 15, 2012.

## NATURAL RESOURCE COMMISSION[571](cont'd)

The following amendment is adopted.

Amend subrule 108.7(3) as follows:

**108.7(3) Quotas and seasonal bag limit.**

- a. Seasonal bag limit.* The seasonal bag limit is 3 river otters and 1 bobcat per person.
- b. Quotas.* The quota for the number of river otters that may be taken is ~~650~~ 850 statewide. The quota for the number of bobcats that may be taken is ~~350~~ 450 in the open area. The season shall end for river otters when the number of river otters trapped, as determined by the harvest reporting system, reaches the quota. The season shall end for bobcats when the number of bobcats taken, as determined by the harvest reporting system, reaches the quota. Trappers shall be allowed a grace period that ends on midnight of the day after the quota is reached to clear their traps of river otters or bobcats. River otters or bobcats found in traps during the grace period may be kept even though the quota is exceeded provided that the trapper has not reached the trapper's personal bag limit. River otters or bobcats trapped after the grace period or in excess of the seasonal bag limit must be turned over to the department; the trapper shall not be penalized.

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**ARC 0187C**

**TRANSPORTATION DEPARTMENT[761]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Iowa Department of Transportation, on June 13, 2012, adopted amendments to Chapter 25, "Competition With Private Enterprise," and adopted new Chapter 123, "Rest Area Sponsorship Program," and Chapter 124, "Highway Helper Sponsorship Program," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the May 2, 2012, Iowa Administrative Bulletin as **ARC 0113C**.

These amendments establish a Rest Area Sponsorship Program and a Highway Helper Sponsorship Program and include a coordinating amendment to 761—subrule 25.2(8). Sponsors will provide monetary contribution to the Department in exchange for sponsorship opportunities. The monetary contribution will help support the rest areas and highway helper program. Sponsors will be determined through a fair and transparent procurement process.

Pursuant to Iowa Code section 17A.34, the Department hereby provides notice to the Administrative Rules Coordinator that a service or product may be offered for sale to the public by the Department that competes with private enterprise. However, if any such product or service is deemed to compete with private enterprise, said product or service falls within the exception from application, as set forth in Iowa Code subsection 23A.2(9).

These amendments do not provide for 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.

These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code subsection 23A.2(9) and Iowa Code section 307.24.

These amendments will become effective August 15, 2012.

Rule-making actions:

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 1. Amend subrule 25.2(8) as follows:

**25.2(8)** Design, construction, reconstruction, inspection and maintenance of highways including, but not limited to, signs erected in the right-of-way and acknowledgment signs used in the adopt-a-highway, rest area sponsorship and highway helper sponsorship programs.

ITEM 2. Adopt the following new 761—Chapter 123:

CHAPTER 123  
REST AREA SPONSORSHIP PROGRAM

**761—123.1(307) Introduction and purpose.** The rest area sponsorship program is an exchange of a monetary contribution from a person, a firm, or an entity for public recognition in the form of identification displayed on an acknowledgment sign on the main-traveled way of an interstate highway in advance of the exit for a rest area and an interior sign within the primary rest area building. The purpose of the program is to provide contributory support for the primary road fund. The rest areas are funded through the primary road fund and provide a public service.

**761—123.2(307) Contact information.** Information relating to the issuance of requests for proposals when sponsorship opportunities become available may be obtained from the Office of Maintenance, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, or by telephone at (515)239-1971.

**761—123.3(307) Definitions.** As used in this chapter, unless the context otherwise requires:

*“Acknowledgment sign”* means an official sign placed within the right-of-way which meets all design and placement guidelines for acknowledgment signs as covered in Part 2 of the MUTCD, and all sign design principles covered in the most current edition of the “Standard Highway Signs and Markings Book,” as published by the U.S. Department of Transportation, Federal Highway Administration, and which is intended only to inform the traveling public that a highway-related service, product or monetary contribution has been sponsored by a person, firm or entity.

*“Advertise”* means to provide information on a sign which includes, but is not limited to, any of the following: promotional offers, location directions, a listing of amenities, descriptive words or phrases, telephone numbers, Internet addresses including domain names, slogans or any message that is extraneous to the identification of a single-sponsoring person, firm or entity.

*“Identification”* means a display on an acknowledgment sign which is limited to the name of the sponsor or a registered or unregistered trademark in addition to or instead of the name of the sponsor, if such mark is used consistently by the sponsor whenever and wherever the firm’s or entity’s name is visible to the public, and the medium will allow. If multiple trademarks are used by the sponsor, identification is provided only by the one in the simplest form needed to identify the sponsor.

*“Interstate highway”* means any highway of the primary system at any time officially designated as a part of the national system of interstate and defense highways by the department and approved by the appropriate authority of the federal government.

*“Main-traveled way”* means the portion of the roadway for movement of vehicles on which through traffic is carried, exclusive of shoulders and auxiliary lanes. In the case of a divided highway, the main-traveled way includes each of the separated roadways for traffic in opposite directions, exclusive of frontage roads, turning roadways or parking areas.

*“MUTCD”* means the Manual on Uniform Traffic Control Devices as adopted in 761—Chapter 130.

*“Rest area”* means an area or site established and maintained within or adjacent to the right-of-way of an interstate, freeway-primary or primary highway under supervision and control of the department for the safety, recreation, and convenience of the traveling public. Subject to paragraph 123.4(1) “b,” if two rest areas are located in close proximity and serve opposite directions of travel, both rest areas are individually eligible for sponsorship.

*“Right-of-way”* means land area dedicated to public use for the highway and its maintenance, and includes land acquired in fee simple or by permanent easement for highway purposes, but does not include temporary easements or rights for supplementary highway appurtenances.

## TRANSPORTATION DEPARTMENT[761](cont'd)

“*Sponsor*” means a single person, firm or entity which has been approved by the department for the rest area sponsorship program.

**761—123.4(307) General provisions.****123.4(1) Scope.**

a. This program is limited to the sponsorship of all rest areas located on the interstate highways in Iowa.

b. This program may be limited by the department to those rest areas located in areas where adequate spacing for acknowledgment signs along the main-traveled way is available, in accordance with the MUTCD, Section 2H.08, “Acknowledgment Signs.”

**123.4(2) Authority and conditions.**

a. Subject to the provisions of Iowa Code section 321.253, the department may erect in advance of the exit for the rest area one acknowledgment sign per rest area, per direction of travel, on the interstate highway right-of-way along the main-traveled way.

b. The department may allow an interior sign, with size and message approved by the department, within the primary building which may advertise the sponsor.

c. Subject to the provisions of Iowa Code chapter 23A, the department may, through an equitable procurement process, receive a monetary contribution from an approved sponsor. This monetary contribution shall be deposited into the primary road fund and subsequently spent for highway purposes, including the maintenance and operation of the rest areas.

d. The department shall have the right to discontinue the program, or portions thereof, if the program or any component part of the program is found to be in violation of federal law or regulation.

e. The department shall have the right to terminate a sponsorship agreement for reasons, as determined by the department, based on safety concerns, interference with the free and safe flow of traffic, or a determination that the sponsorship agreement or acknowledgment sign is not in the public interest.

**761—123.5(307) Sponsorship agreements.**

**123.5(1) Federal Highway Administration approval.** All sponsorship agreements are subject to approval by the Federal Highway Administration.

**123.5(2) Qualifications.** A person, firm or entity may be eligible to participate as a sponsor for the program. However, the department may deny the proposal or application from any potential sponsor if the sponsor’s participation might be deemed by the state as a partisan endorsement or have an adverse effect on the program.

**123.5(3) Selection process.** Sponsors will be approved through a fair and transparent procurement process, as approved by the department, subject to the provisions of 761—Chapter 20.

**123.5(4) Discrimination prohibited.** As a condition of approval as a sponsor, the sponsor shall give the department written assurance of the sponsor’s conformity with all applicable laws prohibiting discrimination based on age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion or disability.

**761—123.6(307) Acknowledgment sign criteria.****123.6(1) Identification displayed.**

a. An acknowledgment sign shall not advertise.

b. An acknowledgment sign shall not contain any messages, lights, symbols or trademarks that resemble any official traffic control device.

c. An acknowledgment sign shall contain the appropriate lettering to indicate “REST AREA” and may contain an identification of one sponsor.

d. The department shall review the acknowledgment sign proposed by the sponsor and shall have full authority to determine whether proposed designs from sponsors advertise or provide identification.

e. The department shall not approve any acknowledgment sign proposed by the sponsor if the sign might be deemed a partisan endorsement or have an adverse effect on the program.



TRANSPORTATION DEPARTMENT[761](cont'd)

**123.6(2) Design and placement of acknowledgment sign.**

- a. The department shall determine when adequate spacing is available to accommodate the placement of an acknowledgment sign in accordance with the MUTCD.
- b. The entire sign display area shall not exceed 24 square feet.
- c. The area reserved for the identification of the sponsor shall not exceed one-third of the total area of the sign, shall be a maximum of 8 square feet, and shall not be located at the top of the sign.
- d. Sponsors must provide signs measuring 24 inches high and 48 inches wide that are fabricated from .080 aluminum with 2-inch radius corners and have a ½-inch white border for placement on the acknowledgment signs.
- e. The department shall inspect signs received from sponsors, and if the signs meet the requirements contained in this rule, the department shall perform the installation.
- f. All acknowledgment signs erected by the department shall conform to the MUTCD.

These rules are intended to implement Iowa Code subsection 23A.2(9) and Iowa Code section 307.24.

ITEM 3. Adopt the following **new** 761—Chapter 124:

CHAPTER 124  
HIGHWAY HELPER SPONSORSHIP PROGRAM

**761—124.1(307) Introduction and purpose.** The department operates the highway helper sponsorship program on the primary highways to keep traffic flowing by providing minor breakdown assistance and aiding with traffic control at crash scenes. This chapter establishes the requirements for a sponsorship for this program. The purpose of this sponsorship program is to provide contributory support for the primary road fund. The highway helper fleet is funded through the primary road fund and provides a public service.

**761—124.2(307) Contact information.** Information relating to the issuance of requests for proposals when sponsorship opportunities become available may be obtained from the Office of Traffic and Safety, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, or by telephone at (515)239-1296.

**761—124.3(307) Definitions.** As used in this chapter, unless the context otherwise requires:

*“Acknowledgment sign”* means an official sign placed within the right-of-way which meets all design and placement guidelines for acknowledgment signs as covered in Part 2 of the MUTCD, and all sign design principles covered in the most current edition of the “Standard Highway Signs and Markings Book,” as published by the U.S. Department of Transportation, Federal Highway Administration, and which is intended only to inform the traveling public that a highway-related service, product or monetary contribution has been sponsored by a person, firm or entity.

*“Advertise”* means to provide information on a sign which includes, but is not limited to, any of the following: promotional offers, location directions, a listing of amenities, descriptive words or phrases, telephone numbers, Internet addresses including domain names, slogans or any message that is extraneous to the identification of a single-sponsoring person, firm or entity.

*“Freeway-primary highway”* means those highways under department jurisdiction which have been constructed as a fully controlled access facility with no access to the facility except at established interchanges.

*“Highway helper vehicle”* means a motor vehicle included in the program as designated by the department.

*“Identification”* means a display on an acknowledgment sign which is limited to the name of the sponsor or a registered or unregistered trademark in addition to or instead of the name of the sponsor, if such mark is used consistently by the sponsor whenever and wherever the firm’s or entity’s name

## TRANSPORTATION DEPARTMENT[761](cont'd)

is visible to the public, and the medium will allow. If multiple trademarks are used by the sponsor, identification is provided only by the one in the simplest form needed to identify the sponsor.

“*Interstate highway*” means any highway of the primary system at any time officially designated as a part of the national system of interstate and defense highways by the department and approved by the appropriate authority of the federal government.

“*Main-traveled way*” means the portion of the roadway for movement of vehicles on which through traffic is carried, exclusive of shoulders and auxiliary lanes. In the case of a divided highway, the main-traveled way includes each of the separated roadways for traffic in opposite directions, exclusive of frontage roads, turning roadways or parking areas.

“*MUTCD*” means the Manual on Uniform Traffic Control Devices as adopted in 761—Chapter 130.

“*Right-of-way*” means land area dedicated to public use for the highway and its maintenance, and includes land acquired in fee simple or by permanent easement for highway purposes, but does not include temporary easements or rights for supplementary highway appurtenances.

“*Sponsor*” means a single person, firm or entity which has been approved by the department for the highway helper sponsorship program. If the highway helper sponsorship program includes more than one urban area, this definition shall not preclude the approval of one sponsor per urban area.

**761—124.4(307) General provisions.**

**124.4(1) *Program ownership and operation.*** The department shall retain ownership and operation of the highway helper program.

**124.4(2) *Monetary contributions.*** Subject to the provisions of Iowa Code chapter 23A, the department may, through an equitable procurement process, receive a monetary contribution from an approved sponsor. This monetary contribution shall be deposited into the primary road fund and subsequently spent for highway purposes, including the maintenance and operation of the highway helper sponsorship program.

**124.4(3) *Placement of signs.*** Subject to the provisions of Iowa Code section 321.253, the department may erect acknowledgment signs within the right-of-way along the main-traveled way of any interstate or freeway-primary highway patrolled by the highway helper vehicles.

**124.4(4) *Program discontinuance.*** The department shall have the right to discontinue the program, or portions thereof, if the program or any component part of the program is found to be in violation of federal law or regulation.

**124.4(5) *Termination of sponsorship agreement.*** The department shall have the right to terminate a sponsorship agreement for reasons, as determined by the department, based on safety concerns, interference with the free and safe flow of traffic, or a determination that the sponsorship agreement or acknowledgment sign is not in the public interest.

**761—124.5(307) Sponsorship agreements.**

**124.5(1) *Federal Highway Administration approval.*** All sponsorship agreements are subject to approval by the Federal Highway Administration.

**124.5(2) *Qualifications.*** A person, firm or entity may be eligible to participate as a sponsor for the program. However, the department may deny the proposal or application from any potential sponsor if the sponsor’s participation might be deemed by the state as a partisan endorsement or have an adverse effect on the program.

**124.5(3) *Selection process.*** Sponsors will be approved through a fair and transparent procurement process, as approved by the department, subject to the provisions of 761—Chapter 20.

**124.5(4) *Sponsor benefits.*** Subject to terms mutually agreed upon by the department and sponsor during or following the procurement process, the following benefits may be offered:

*a.* Identification of the sponsor on acknowledgment signs along the interstate or freeway-primary highway, subject to rule 761—124.6(307).

*b.* Placement of the sponsor’s name and logo on a highway helper vehicle, not to exceed the dimension and size requirements for the particular highway helper vehicle, as determined by the department.

TRANSPORTATION DEPARTMENT[761](cont'd)

**124.5(5) *Discrimination prohibited.*** As a condition of approval as a sponsor, the sponsor shall give the department written assurance of the sponsor's conformity with all applicable laws prohibiting discrimination based on age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion or disability.

**761—124.6(307) Acknowledgment sign criteria.**

**124.6(1) *Identification displayed.***

- a. An acknowledgment sign shall not advertise.
- b. An acknowledgment sign shall not contain any messages, lights, symbols or trademarks that resemble any official traffic control device.
- c. An acknowledgment sign shall contain the appropriate lettering to indicate "HIGHWAY HELPER" and may contain an identification of one sponsor.
- d. The department shall review the acknowledgment sign proposed by the sponsor and shall have full authority to determine whether proposed designs from sponsors advertise or provide identification.
- e. The department shall not approve any acknowledgment sign proposed by the sponsor if the sign might be deemed a partisan endorsement or have an adverse effect on the program.

**124.6(2) *Design and placement of acknowledgment sign.***

- a. The department shall determine when adequate spacing is available to accommodate the placement of an acknowledgment sign in accordance with the MUTCD.
- b. No more than one acknowledgment sign per interstate or freeway-primary route per direction shall be installed within an urban area. If routes run concurrently, each route may be afforded one acknowledgment sign per direction, at the department's discretion.
- c. The entire sign display area shall not exceed 24 square feet.
- d. The area reserved for the identification of the sponsor shall not exceed one-third of the total area of the sign, shall be a maximum of 8 square feet, and shall not be located at the top of the sign.
- e. Sponsors must provide signs measuring 24 inches high and 48 inches wide that are fabricated from .080 aluminum with 2-inch radius corners and have a ½-inch white border for placement on the acknowledgment signs.
- f. The department shall inspect signs received from sponsors, and if the signs meet the requirements contained in this rule, the department shall perform the installation.
- g. All acknowledgment signs erected by the department shall conform to the MUTCD.

These rules are intended to implement Iowa Code subsection 23A.2(9) and Iowa Code section 307.24.

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