# IOWA ADMINISTRATIVE BULLETIN

*Published Biweekly* VOLUME XLI August 1, 2018 NUMBER 3 Pages 155 to 324


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# PREFACE

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

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

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

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


| | | | | |
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**CITATION of Administrative Rules**

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

| | |
|---|---|
| 441 IAC 79 | (Chapter) |
| 441 IAC 79.1 | (Rule) |
| 441 IAC 79.1(1) | (Subrule) |
| 441 IAC 79.1(1)"a" | (Paragraph) |
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The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

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

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

# Schedule for Rule Making
# 2018

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

## PRINTING SCHEDULE FOR IAB

| ISSUE NUMBER | SUBMISSION DEADLINE | ISSUE DATE |
|---|---|---|
| **5** | **Friday, August 10, 2018** | **August 29, 2018** |
| **6** | **Wednesday, August 22, 2018** | **September 12, 2018** |
| **7** | **Friday, September 7, 2018** | **September 26, 2018** |

**PLEASE NOTE:**

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, August 14, 2018, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Pre-entry permitting for importation of poultry, domestic fowl and hatching eggs, 65.1, 65.2, 65.11(2) Notice **ARC 3892C** . . . . . 7/18/18

## ALCOHOLIC BEVERAGES DIVISION[185]

**COMMERCE DEPARTMENT[181]"umbrella"**

Licenses; permits; forms, amend chs 4, 5; rescind ch 12 Filed **ARC 3928C** . . . . . 8/1/18
Personal importation of alcoholic liquor, wine, and beer, ch 9 Notice **ARC 3891C** . . . . . 7/18/18

## ATTORNEY GENERAL[61]

Regulation of physical exercise clubs, 26.3, 26.4(7) Notice **ARC 3895C** . . . . . 7/18/18

## CORRECTIONS DEPARTMENT[201]

Review and update of policies and procedures, amendments to chs 1, 5, 10, 11, 20, 38, 40 to 45, 47, 50, 51 Filed **ARC 3929C** . . . . . 8/1/18
Institutions administration—pornographic materials ban, 20.2, 20.6 Notice **ARC 3912C** . . . . . 8/1/18

## DENTAL BOARD[650]

**PUBLIC HEALTH DEPARTMENT[641]"umbrella"**

Advertising; designation of specialty, amend ch 26; rescind ch 28 Notice **ARC 3901C** . . . . . 7/18/18

## ECONOMIC DEVELOPMENT AUTHORITY[261]

Future ready Iowa registered apprenticeship development fund, ch 13 Notice **ARC 3897C** . . . . . 7/18/18

## ENVIRONMENTAL PROTECTION COMMISSION[567]

**NATURAL RESOURCES DEPARTMENT[561]"umbrella"**

Asbestos notification fee; fee adjustment process, 30.3, 30.6 Notice of Termination **ARC 3927C** . . . . . 8/1/18

## HUMAN SERVICES DEPARTMENT[441]

Waiver of right to administrative disqualification hearing for alleged intentional food assistance program violation, 7.8(6)"f," 7.10(3)"b," 7.16, 7.21 Notice **ARC 3907C** . . . . . 8/1/18
Developmental disabilities basic state grant, amendments to ch 38 Notice **ARC 3900C** . . . . . 7/18/18
Provider reimbursement for case management and targeted case management, 79.1(1)"d," 79.1(2) Notice **ARC 3911C** . . . . . 8/1/18
Adjustment of home health agency reimbursement rates, 79.1(2) Notice **ARC 3909C** . . . . . 8/1/18
Medical assistance—inpatient hospital readmission policy, 79.1(5)"g" Notice **ARC 3923C** . . . . . 8/1/18
Medicaid—pharmacy copayment, 79.1(13)"a" Notice **ARC 3906C** . . . . . 8/1/18
Special population nursing facility criteria—increase in age limit, inclusion of residents in an intermediate care facility for persons with medical complexity, 81.1, 82.1 Notice **ARC 3908C** . . . . . 8/1/18
Family planning program—participating providers, distribution of funds, amendments to ch 87 Notice **ARC 3910C** . . . . . 8/1/18

## INSPECTIONS AND APPEALS DEPARTMENT[481]

Minimum construction standards for hospitals, 51.50 Notice **ARC 3918C** . . . . . 8/1/18
Tuberculosis (TB) screening, ch 59 Filed **ARC 3930C** . . . . . 8/1/18
General provisions for social and charitable gambling, ch 100 Notice **ARC 3919C** . . . . . 8/1/18
Bingo, amendments to ch 103 Notice **ARC 3920C** . . . . . 8/1/18
Amusement devices, amendments to chs 104, 105 Notice **ARC 3922C** . . . . . 8/1/18
Card game tournaments by veterans organizations, ch 106 Notice **ARC 3921C** . . . . . 8/1/18

## INSURANCE DIVISION[191]

**COMMERCE DEPARTMENT[181]"umbrella"**

Multiple employer welfare arrangements, ch 77 Notice **ARC 3894C** . . . . . 7/18/18

## IOWA FINANCE AUTHORITY[265]

Low-income housing tax credits, 12.1, 12.2 Notice **ARC 3917C** . . . . . 8/1/18
Home and community-based services rent subsidy program, amendments to ch 24 Notice **ARC 3916C** . . . . . 8/1/18

## LABOR SERVICES DIVISION[875]

**WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"**

Boilers and pressure vessels; water heaters, amend chs 84, 90, 91; rescind ch 95 Filed **ARC 3903C** . . . . . 7/18/18

## MEDICINE BOARD[653]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Prescribing psychologists, ch 19 Notice **ARC 3905C** . . . . . 8/1/18

## NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Licenses—fees, 15.1, 15.12 Notice **ARC 3924C** . . . . . 8/1/18

Zoning of the Iowa River, Iowa Falls, Hardin County—buoys, speed restrictions, 40.36
Filed **ARC 3931C** . . . . . 8/1/18

## PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Prescribing psychologists, ch 244 Notice **ARC 3904C** . . . . . 8/1/18

Polysomnographic technologists and respiratory care and polysomnographic practitioners—licensure, continuing education, amendments to chs 261, 262 Filed **ARC 3932C** . . . . . 8/1/18

## PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Initialization of a retention and recertification election, 5.6(1) Filed **ARC 3933C** . . . . . 8/1/18

## PUBLIC HEALTH DEPARTMENT[641]

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Medical cannabidiol program, 154.26(3), 154.28(4), 154.51(3), 154.52(4), 154.72(1)
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## PUBLIC SAFETY DEPARTMENT[661]

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## RACING AND GAMING COMMISSION[491]
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Problem gambling; test sample; Iowa-foaled horse allowance, 5.4(12), 10.1, 10.2(7), 10.4(5)"g," 10.5(1)"a," 10.7 Notice **ARC 3926C** . . . . . 8/1/18

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## SECRETARY OF STATE[721]

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Elections technology security, ch 29 Notice **ARC 3914C** . . . . . 8/1/18

## SOIL CONSERVATION AND WATER QUALITY DIVISION[27]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"

Water protection practice standards—update of references to technical guides, 12.83 Filed **ARC 3934C** . . . . . 8/1/18

## TRANSPORTATION DEPARTMENT[761]

Vehicle registration and certificate of title; salvage, amendments to chs 400 and 405
Notice **ARC 3890C** . . . . . 7/18/18

Special registration plates, amendments to ch 401 Filed **ARC 3935C** . . . . . 8/1/18

OWI—sobriety and drug monitoring program, license restriction and reinstatement, reporting, amendments to ch 620 Notice **ARC 3889C** . . . . . 7/18/18

## UTILITIES DIVISION[199]
COMMERCE DEPARTMENT[181]"umbrella"

Utility records—access, retention, amendments to ch 18 Notice **ARC 3913C** . . . . . 8/1/18

# ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Jim Carlin
43 Arlington Road
Sioux City, Iowa 51106

Senator Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Senator Mark Costello
37265 Rains Avenue
Imogene, Iowa 51645

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

Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001

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Mt. Auburn, Iowa 52313

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

**CORRECTIONS DEPARTMENT[201]**

| | | |
|---|---|---|
| Institutions administration—pornographic materials ban, 20.2, 20.6<br>IAB 8/1/18 **ARC 3912C** | Boardroom<br>Jessie Parker Bldg.<br>510 E. 12th St.<br>Des Moines, Iowa | August 21, 2018<br>11 a.m. to 1 p.m. |

**DENTAL BOARD[650]**

| | | |
|---|---|---|
| Advertising; designation of specialty, amend ch 26; rescind ch 28<br>IAB 7/18/18 **ARC 3901C** | Board Office, Suite D<br>400 S.W. Eighth St.<br>Des Moines, Iowa | August 21, 2018<br>2 p.m. |

**INSURANCE DIVISION[191]**

| | | |
|---|---|---|
| Multiple employer welfare arrangements, ch 77<br>IAB 7/18/18 **ARC 3894C** | Division Offices, Fourth Floor<br>Two Ruan Center<br>601 Locust St.<br>Des Moines, Iowa | August 8, 2018<br>10:30 a.m. to 12 noon |

**IOWA FINANCE AUTHORITY[265]**

| | | |
|---|---|---|
| Low-income housing tax credits, 12.1, 12.2<br>IAB 8/1/18 **ARC 3917C** | Authority Offices<br>2015 Grand Ave.<br>Des Moines, Iowa | August 21, 2018<br>9 to 11 a.m. |

**MEDICINE BOARD[653]**

| | | |
|---|---|---|
| Prescribing psychologists, ch 19<br>IAB 8/1/18 **ARC 3905C** | Board Office, Suite C<br>400 S.W. Eighth St.<br>Des Moines, Iowa | August 21, 2018<br>10 a.m. to 12 noon |

**NATURAL RESOURCE COMMISSION[571]**

| | | |
|---|---|---|
| Licenses—fees, 15.1, 15.12<br>IAB 8/1/18 **ARC 3924C** | Wallace State Office Bldg.<br>Conference Room 4W<br>Des Moines, Iowa | August 21, 2018<br>12 noon to 2 p.m. |
| | Spirit Lake Hatchery<br>Conference Room<br>122 252nd Ave.<br>Spirit Lake, Iowa | August 21, 2018<br>12 noon to 2 p.m. |
| | Ventura Wildlife Office<br>Conference Room<br>15300 Balsam Ave.<br>Ventura, Iowa | August 21, 2018<br>12 noon to 2 p.m. |
| | Cold Springs District Office<br>Conference Room<br>57744 Lewis Rd.<br>Lewis, Iowa | August 21, 2018<br>12 noon to 2 p.m. |
| | Delaware County Conservation Board<br>Conference Room<br>2379 Jefferson Rd.<br>Manchester, Iowa | August 21, 2018<br>12 noon to 2 p.m. |

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

| | | |
|---|---|---|
| | Lake Darling District Office<br>Conference Room<br>110 Lake Darling Rd.<br>Brighton, Iowa | August 21, 2018<br>12 noon to 2 p.m. |

**PROFESSIONAL LICENSURE DIVISION[645]**

| | | |
|---|---|---|
| Prescribing psychologists, ch 244<br>IAB 8/1/18 **ARC 3904C** | Iowa Board of Medicine, Suite C<br>400 S.W. Eighth St.<br>Des Moines, Iowa | August 21, 2018<br>10 a.m. to 12 noon |

**RACING AND GAMING COMMISSION[491]**

| | | |
|---|---|---|
| Problem gambling; test sample; Iowa-foaled horse allowance, 5.4(12), 10.1, 10.2(7), 10.4(5)"g," 10.5(1)"a," 10.7<br>IAB 8/1/18 **ARC 3926C** | Commission Office, Suite 100<br>1300 Des Moines St.<br>Des Moines, Iowa | August 21, 2018<br>9 a.m. |

**TRANSPORTATION DEPARTMENT[761]**

| | | |
|---|---|---|
| Vehicle registration and certificate of title; salvage, amendments to chs 400 and 405<br>IAB 7/18/18 **ARC 3890C** | Department of Transportation<br>Motor Vehicle Division<br>6310 SE Convenience Blvd.<br>Ankeny, Iowa | August 9, 2018<br>10 a.m.<br>(If requested) |
| OWI—sobriety and drug monitoring program, license restriction and reinstatement, reporting, amendments to ch 620<br>IAB 7/18/18 **ARC 3889C** | Department of Transportation<br>Motor Vehicle Division<br>6310 SE Convenience Blvd.<br>Ankeny, Iowa | August 9, 2018<br>11 a.m.<br>(If requested) |

The following list will be updated as changes occur.

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

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

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

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**ARC 3912C**

## CORRECTIONS DEPARTMENT[201]

**Notice of Intended Action**

**Proposing rule making related to banning of pornographic materials within department institutions and providing an opportunity for public comment**

The Corrections Department hereby proposes to amend Chapter 20, "Institutions Administration," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 904.108 and 2018 Iowa Acts, House File 2492, section 21.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2018 Iowa Acts, House File 2492, section 21.

*Purpose and Summary*

Section 21 of 2018 Iowa Acts, House File 2492, prohibits funds appropriated to the Department or other funds made available to the Department from being used to distribute or make available any commercially published information or material to an inmate when such information or material is sexually explicit or features nudity. The Department is required to adopt rules pursuant to Iowa Code chapter 17A to administer the section.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

The Department does not have the authority to waive requirements established by statute.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

Michael Savala, General Counsel
Department of Corrections
Jessie Parker Building
510 East 12th Street
Des Moines, Iowa 50319
Phone: 515.725.5701
Email: michael.savala@iowa.gov

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

CORRECTIONS DEPARTMENT[201](cont'd)

| | |
|---|---|
| August 21, 2018 | Boardroom |
| 11 a.m. to 1 p.m. | Jessie Parker Building |
| | 510 East 12th Street |
| | Des Moines, Iowa |

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** definitions of "Commercially published information or material," "Features," "Nudity," "Publication" and "Sexually explicit" in rule **201—20.2(904)**:

*"Commercially published information or material"* means any book, booklet, pamphlet, magazine, periodical, newsletter, photograph or other pictorial depiction, or similar document, including stationery and greeting cards, published by any individual, organization, company, or corporation, which is distributed or made available through any means or media for commercial purposes. This definition includes any portion extracted, photocopied, or clipped from such items.

*"Features"* means that the publication contains depictions of nudity or sexually explicit conduct on a routine or regular basis or promotes itself based upon such depictions in the case of individual one-time issues. Publications containing nudity illustrative of medical, educational, or anthropological content may be excluded from this definition.

*"Nudity"* means a pictorial depiction where genitalia or female breasts are exposed. When the pictorial depiction of the female breast displays the areola or nipple, this material will be rejected.

*"Publication"* means a book, booklet, pamphlet, or similar document, or a single issue of a magazine, periodical, newsletter, newspaper, plus such other materials addressed to a specific incarcerated individual, such as advertising brochures, flyers, and catalogs.

*"Sexually explicit"* means a pictorial depiction of actual or simulated sexual acts including sexual intercourse, oral sex, or masturbation. Sexually explicit material does not include material of a news or information type. Publications concerning research or opinions on sexual, health, or reproductive issues should be admitted unless the publications are otherwise a threat to legitimate institutional interests.

ITEM 2. Amend rule 201—20.6(904) as follows:

**201—20.6(904) Publications.**

**20.6(1)** The institution shall allow incarcerated individuals access to publications when doing so is consistent with institutional goals of maintaining internal order, safety, security, and rehabilitation. Publications are additionally governed by the provisions of department of corrections policy OP-MTV-02.

**20.6(2)** No change.

**20.6(3)** All publications not on the approved list shall be reviewed by a publication review committee for approval~~,~~ or denial~~, or control of the publication~~.

*a.* The committee shall be appointed by the director or designee, department of corrections, and shall include ~~a~~:

CORRECTIONS DEPARTMENT[201](cont'd)

(1) A person with broad exposure to various publications. ~~and two~~

(2) Two representatives of correctional operations.

*b.* No change.

**20.6(4)** The following procedures shall be used when a publication not on the approved list is reviewed:

*a.* The committee shall approve~~,~~ or deny~~, or control~~ publications within 30 working days of receipt of the publication.

*b.* When a publication is denied ~~or controlled~~, the committee shall send the incarcerated individual a written notice stating the publication involved, the reason for denial ~~or control~~, and the incarcerated individual's available appeal process.

*c.* The incarcerated individual shall have ~~five~~ ten days from receipt of the notice of denial ~~or control~~ to notify the designated institution staff to destroy the publication, to specify where to send the publication at the incarcerated individual's expense, or to notify the institution that the decision is being appealed.

*d.* No change.

**20.6(5)** A publication may be denied when the publication presents a danger to the security or order of an institution or is inconsistent with rehabilitation goals. Authorized reasons for denying a publication are that the publication:

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

*c.* Contains ~~hard-core pornography depicting patently offensive representations of oral, anal, or vaginal intercourse, actual or simulated, involving humans, or depicting patently offensive representations of masturbation, excretory functions, or bestiality, or~~ lewd exhibition of the genitals~~, which the average adult taking the material as a whole in applying statewide contemporary community standards would find appeals to the prurient interest; and which material, taken as a whole, lacks serious literary, scientific, political, or artistic value as prohibited by Iowa Code section 728.4~~ or material which is sexually explicit or features nudity.

*d.* to *j.* No change.

*k.* Is a pamphlet, catalog, or other publication whose purpose is primarily or significantly to sell items or materials that are expressly prohibited inside any of the department institutions. The warden can make exceptions for materials that serve reentry efforts.

~~**20.6(6)** Portrayal or simulation of fellatio, cunnilingus, masturbation, ejaculation, sexual intercourse, male erection, bestiality, sadomasochism, excretory functions, lewd exhibition of genitals, or other sexually explicit materials will be denied to incarcerated individuals when the material is inconsistent with rehabilitation goals.~~

~~**20.6(7)** Publications which contain material portraying or simulating fellatio, cunnilingus, masturbation, ejaculation, sexual intercourse or male erection and are not approved or denied by the review committee will be controlled for the security and order of the institution and to assist in enabling its control from those incarcerated individuals denied access by 20.6(6) above. Institutional procedures shall be established for the incarcerated individual to reserve time in a designated controlled area and obtain the controlled publication for reading during specified times. The controlled publication will be secured until the incarcerated individual makes arrangements for further review of the controlled publication. An incarcerated individual may have secured no more than ten publications at any given time, none of which are over three months old from publication date or receipt, and any that are in excess of the ten limit or over three months old must be sent out of the institution at the incarcerated individual's expense, destroyed, or taken with the incarcerated individual upon release.~~

~~**20.6(8)** An incarcerated individual may appeal the committee's decision or the denial of a publication because the publication is inconsistent with rehabilitation goals within ten days of receipt of the decision by filing a written appeal and sending it to Office of Inspector General, Department of Corrections, 510 East 12th Street, Des Moines, Iowa 50319. The inspector general's decision shall be final.~~

## ARC 3927C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

**Notice of Termination**

**Terminating rule making related to fee amounts and adjustment process**

The Environmental Protection Commission hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on February 14, 2018, as **ARC 3622C**, proposing to amend Chapter 30, "Fees," Iowa Administrative Code.

*Legal Authority for Rule Making*

The above-mentioned rule making is terminated under the authority provided in Iowa Code sections 17A.4(1)"b" and 455B.133C.

*Purpose and Summary*

The Notice of Intended Action proposed to amend existing rules to increase the fee and dollar cap for asbestos notifications, to rescind an exemption to the asbestos notification fee to address confusion about whether a fee is required, and to provide a process for the Department of Natural Resources (Department) to request that the Commission adjust fees at any time during a fiscal year if the Department determines that established fees are projected to be insufficient to maintain all or part of any air quality program that is subject to fees specified in Chapter 30.

*Reason for Termination*

The Commission received comments during the public comment period that will require additional time to evaluate and discuss with stakeholders. The Department, on behalf of the Commission, will meet with stakeholders to discuss a revised proposal. However, the Commission must terminate the rule making because the Department will not be able to confer with stakeholders before the statutory 180-day deadline to adopt a rule making established under Iowa Code section 17A.4(1)"b."

*Jobs Impact*

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

*Review by Administrative Rules Review Committee*

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

## ARC 3907C

# HUMAN SERVICES DEPARTMENT[441]

**Notice of Intended Action**

**Proposing rule making related to administrative disqualification hearing and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 7, "Appeals and Hearings," Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

*Legal Authority for Rule Making*

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

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 217.6 and 7 CFR 273.16(f).

*Purpose and Summary*

Federal regulations give states the option of establishing procedures to allow individuals accused of an intentional Food Assistance Program violation to waive their right to an administrative disqualification hearing. With the recommendation of the USDA Food and Nutrition Service (FNS), the Department has decided to take advantage of this option.

The Department is responsible for investigating any case of alleged intentional program violation. The Department will notify a food assistance household when a member of that household has been charged with intentionally violating Food Assistance Program rules. Currently, the Department's only options to ensure appropriate cases are acted upon are through an administrative disqualification hearing or through criminal prosecution by a court of an appropriate jurisdiction.

The proposed amendments give household members who are suspected of an intentional program violation an opportunity to waive their right to an administrative disqualification hearing if they so choose. Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, has been developed for this purpose.

If the household member chooses to sign the form, the member will be disqualified from participating in the Food Assistance Program for a specified time and agrees to repay any overpayment associated with the violation. No administrative disqualification hearing will be held. The same disqualification penalty will be imposed if the individual chooses to give up the administrative disqualification hearing and signs the waiver form or if the individual participates in the hearing and is found guilty by an administrative law judge.

No further administrative appeal procedure exists after an individual waives the individual's right to an administrative disqualification hearing and a disqualification penalty has been imposed.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

HUMAN SERVICES DEPARTMENT[441](cont'd)

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: policyanalysis@dhs.state.ia.us.

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** paragraph **7.8(6)"f"**:

*f.* An individual has waived the individual's right to an administrative disqualification hearing, agreed to repay any overpayment and agreed to be disqualified from the food assistance program for the period specified by signing and returning Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing.

ITEM 2. Amend paragraph **7.10(3)"b"** as follows:

*b.* The appeals of those appellants who are denied a hearing shall not be closed until issuance of a letter to the appellant and the appellant's representative, advising of the denial of hearing and the basis upon which that denial is made. Any appellant ~~that~~ who disagrees with a denial of hearing may present additional information relative to the reason for denial and request reconsideration by the appeals section or a hearing over the denial within 30 calendar days of the date on the denial letter.

ITEM 3. Amend subrule 7.16(9) as follows:

**7.16(9)** *Opportunity for oral presentation of appeal of the proposed decision.* In cases where there is an appeal of a proposed decision, each party shall be afforded an opportunity to present oral arguments with the consent of the director. Any party wishing oral argument shall specifically request it. When oral argument is granted, all parties shall be notified of the time and place.

ITEM 4. Amend paragraph **7.16(10)"a"** as follows:

*a.* A final decision on the appeal shall be issued within the following time frames:

(1) Appeals for all programs, except food assistance and intentional program violations, shall be rendered within 90 days from the date of the appeal.

(2) Food assistance-only decisions shall be rendered within 60 days.

(3) PROMISE JOBS displacement grievance decisions shall be rendered within 90 days from the date the displacement grievance was filed with the PROMISE JOBS contractee.

(4) Intentional program violation decisions shall be rendered within 90 days of the date the individual is notified in writing that a hearing initiated by the department has been scheduled. If the

hearing was postponed pursuant to paragraph 7.21(3)*"b,"* the 90-day period for notifying the individual of the final decision shall be extended for as many days as the hearing is postponed.

ITEM 5. Amend rule 441—7.21(17A) as follows:

**441—7.21(17A) Food assistance hearings and appeals.**

**7.21(1)** and **7.21(2)** No change.

**7.21(3)** *Waiver of right to an administrative disqualification hearing.* Individuals accused of an intentional program violation may waive their right to a food assistance administrative disqualification hearing.

*a.* When a case is referred for an administrative disqualification hearing, the appeals section shall advise the individual that the individual may waive the individual's right to an administrative disqualification hearing by signing and returning Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing.

*b.* By signing the waiver, the individual gives up the right to an administrative disqualification hearing, agrees to repay any overpayment and agrees to be disqualified from the food assistance program for the period specified.

*c.* If the individual does not sign and return Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, within ten days of the date of the written notification, an administrative disqualification hearing shall be initiated.

*d.* Even after the administrative disqualification hearing is scheduled, the individual may sign and return Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, prior to or during the administrative disqualification hearing. The presiding officer shall dismiss the administrative disqualification hearing since the individual has agreed to repay any overpayment and agreed to be disqualified from the food assistance program.

*e.* The signed waiver shall carry the same penalties as the penalties for an individual found guilty in an administrative disqualification hearing.

*f.* No further administrative appeal procedure exists after an individual waives the individual's right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty shall not be changed by a subsequent fair hearing decision. The individual is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

~~**7.21(3)**~~ **7.21(4)** *Conduct of a food assistance administrative disqualification hearing.* Hearings over disqualification of a household member for an intentional program violation shall be conducted by a presiding officer.

*a.* to *c.* No change.

~~**7.21(4)**~~ **7.21(5)** *Consolidating hearings.* Appeal hearings and food assistance administrative disqualification hearings may be consolidated if the issues arise out of the same or related circumstances~~,~~ and the household member has been provided with notice of the consolidation by the department of inspections and appeals.

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

~~**7.21(5)**~~ **7.21(6)** *Attendance at hearing.* The household member shall be allowed ten days from the scheduled hearing to present reasons indicating good cause for not attending the hearing.

*a.* to *c.* No change.

*d.* When good cause for failure to appear is based upon a showing of nonreceipt of the hearing notice, the household member has 30 days after the date of the proposed decision to claim good cause for failure to appear.

*e.* "Good cause" for purposes of this rule is defined as an emergency circumstance that is beyond the control of the party and that prevents the party from being able to participate in the hearing.

(1) Examples of good cause include, but are not limited to:

1. Sudden, severe illness or accident involving the party or the party's immediate family (spouse, partner, children, parents, sibling).

2. Death or serious illness in the party's immediate family.

3. Other circumstances evidencing an emergency situation which was beyond the party's control and was not reasonably foreseeable.

(2) Examples of circumstances that do not constitute good cause include, but are not limited to:

1. A lost or misplaced notice of hearing.
2. Confusion as to the date and time for the hearing.
3. Failure to follow the directions on the notice of hearing.
4. Oversleeping.
5. Other acts demonstrating a lack of due care by the party.

~~**7.21(6)**~~ **7.21(7)** *Food assistance administrative disqualification hearing decisions.* The presiding officer shall base the determination of an intentional program violation on clear and convincing evidence that demonstrates the person committed, and intended to commit, an intentional program violation.

*a.* No change.

*b.* The appeals section shall notify the household member and the local office of the final decision within 90 days of the date the household member is notified in writing that the hearing has been scheduled. If the hearing was postponed pursuant to ~~subrule 7.21(3), paragraph *"b,"*~~ 7.21(4)*"b,"* the ~~90 days~~ 90-day period for notifying the household member of the final decision shall be extended for as many days as the hearing is postponed.

*c.* to *e.* No change.

**ARC 3911C**

# HUMAN SERVICES DEPARTMENT[441]

**Notice of Intended Action**

**Proposing rule making related to reimbursement for targeted case management and case management and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 249A.4 and 2018 Iowa Acts, Senate File 2418, section 132.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 249A.4 and 2018 Iowa Acts, Senate File 2418, section 132.

*Purpose and Summary*

These proposed amendments rescind rule language regarding fee for service with cost settlement for targeted case management (TCM). The amendments also revise the existing fee schedules for TCM and case management (CM) under the home- and community-based services waiver and habilitation programs.

TCM and CM provider agencies will no longer be required to submit an annual cost report. These amendments will allow the Department to standardize rates for TCM and CM provider agencies. These rates will apply only to members who are enrolled in Medicaid as fee for service.

*Fiscal Impact*

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: policyanalysis@dhs.state.ia.us

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Rescind and reserve paragraph **79.1(1)"d."**

ITEM 2. Amend subrule **79.1(2)**, provider categories "HCBS waiver service providers," "Home- and community-based habilitation services" and "Targeted case management providers," as follows:

| Provider category | Basis of reimbursement | Upper limit |
|---|---|---|
| HCBS waiver service providers, including: | | Except as noted, limits apply to all waivers that cover the named provider. |
| 1. to 16. No change. | | |
| 17. Case management | ~~Fee-for-service with cost settlement. See 79.1(1)*"d"*~~ Fee schedule | For brain injury and elderly waivers: ~~Retrospective cost-settled rate.~~ Fee schedule in effect 7/1/18. |

HUMAN SERVICES DEPARTMENT[441](cont'd)

| Provider category | Basis of reimbursement | Upper limit |
|---|---|---|
| 18. to 35. No change. | | |
| Home- and community-based habilitation services: | | |
| 1. Case management | Fee schedule. See 79.1(24)*"d"* | ~~Retrospective cost-settled rate.~~ Fee schedule in effect 7/1/18. |
| 2. to 5. No change. | | |
| Targeted case management providers | ~~Fee-for-service with cost settlement. See 79.1(1)*"d."*~~ Fee schedule | ~~Retrospective cost-settled rate.~~ Fee schedule in effect 7/1/18. |

ITEM 3. Amend subrule 79.1(24) as follows:

**79.1(24)** *Reimbursement for home- and community-based habilitation services.* ~~Reimbursement for case management, job development, and employer development services provided prior to July 1, 2013, is based on a fee schedule developed using the methodology described in paragraph 79.1(1)*"d."* Reimbursement for home-based habilitation, day habilitation, prevocational habilitation, enhanced job search and supports to maintain employment services provided prior to July 1, 2013, is based on a retrospective cost-related rate calculated using the methodology in paragraphs 79.1(24)*"b"* and *"c."*~~ Reimbursement for all home- and community-based habilitation services provided on or after ~~July 1, 2013~~ January 1, 2016, shall be as provided in paragraph 79.1(24)*"d."* All rates are subject to the upper limits established in subrule 79.1(2).

*a.* to *c.* No change.

*d.* *Reimbursement for services provided on or after ~~July 1, 2013~~ January 1, 2016.*

~~(1) For dates of services July 1, 2013, through December 31, 2013, providers shall be reimbursed by the Iowa Plan for Behavioral Health contractor at the fee schedule or interim rate for the service and the provider in effect on June 30, 2013, with no retrospective adjustment or cost settlement. However, if a provider fails to submit a cost report for services provided prior to July 1, 2013, that meets the requirements of paragraph 79.1(24)*"b,"* the Iowa Plan for Behavioral Health contractor shall reduce the provider's reimbursement rate to 76 percent of the rate in effect on June 30, 2013. The reduced rate shall be paid until acceptable cost reports for all services provided prior to July 1, 2013, have been received.~~

~~(2) For dates of services from January 1, 2014, through December 31, 2015, providers shall be reimbursed by the Iowa Plan for Behavioral Health contractor at the rate negotiated by the provider and the contractor. However, if a provider fails to submit a cost report for services provided prior to July 1, 2013, that meets the requirements of paragraph 79.1(24)*"b,"* the Iowa Plan for Behavioral Health contractor shall reduce the provider's reimbursement rate to 76 percent of the negotiated rate. The reduced rate shall be paid until acceptable cost reports for all services provided prior to July 1, 2013, have been received.~~

~~(3)~~ (1) For dates of services on or after January 1, 2016, ~~providers~~ habilitation services, except for case management, shall be reimbursed by fee schedule. Case management will continue to be reimbursed by retrospective cost settlement.

(2) For dates of services on or after July 1, 2018, case management services shall be reimbursed by fee schedule.

**ARC 3909C**

# HUMAN SERVICES DEPARTMENT[441]

**Notice of Intended Action**

**Proposing rule making related to home health agency reimbursement and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

*Legal Authority for Rule Making*

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

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 249A.4 and 2018 Iowa Acts, Senate File 2418, section 39.

*Purpose and Summary*

This proposed amendment adjusts home health agency (HH) low utilization payment adjustment (LUPA) rates to reflect approximately $1 million of additional state appropriations for reimbursement in accordance with 2018 Iowa Acts, Senate File 2418, section 39.

This amendment will increase home health agency provider rates.

*Fiscal Impact*

This rule making has a fiscal impact to the State of Iowa of $100,000 annually or $500,000 over five years. This change was authorized in 2018 Iowa Acts, Senate File 2418, section 39: home health reimbursement adjustment to approximate an increase of $1 million in state dollars. The legislation indicates a July 1, 2018, effective date. The additional cost to the State is budget-neutral since Senate File 2418 provides an appropriation for this change. The increase will apply to both fee-for-service and managed care units.

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: policyanalysis@dhs.state.ia.us

*Public Hearing*

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

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, speech therapy, home health aide, and medical social services; home health care for maternity patients and children | Fee schedule. See 79.1(26). For members living in a nursing facility, see 441—paragraph 81.6(11)*"r."* | Effective ~~7/1/16~~ 7/1/18: Medicare LUPA rates in effect on ~~6/30/16~~ 6/30/18 plus a ~~2.93~~ 3% increase. |

2. and 3. No change.

**ARC 3923C**

# HUMAN SERVICES DEPARTMENT[441]

**Notice of Intended Action**

**Proposing rule making related to inpatient hospital readmission policy and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

*Legal Authority for Rule Making*

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

*State or Federal Law Implemented*

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

*Purpose and Summary*

This proposed amendment revises the current inpatient hospital 30-day readmission policy to exclude readmissions that are planned for repetitive or staged treatments and to clarify that the policy does not apply to critical access hospitals.

This amendment will more closely align with federal Medicare standards and policies and will result in lower cost savings to the Medical Assistance Program as compared to cost savings under the current readmission policy. The change in policy will result in a smaller number of inpatient hospital readmissions for the same condition based on the exclusion of planned readmissions for repetitive or staged treatments.

*Fiscal Impact*

This rule making has a fiscal impact to the State of Iowa of $100,000 annually or $500,000 over five years. This amendment applies to fee-for-service reimbursement only and does not apply to managed care organizations. Criteria were established to isolate claims that will be impacted by this rule making.

Claims were then pulled with paid dates between July 1, 2016, and June 30, 2017. Forty of those claims met the established criteria. The federal match rate is assumed to be 68.25 percent based on the estimated blend between regular Medicaid and Iowa Health and Wellness Plan inpatient claims.

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: policyanalysis@dhs.state.ia.us

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Amend subparagraph **79.1(5)"g"(5)** as follows:

(5) Inpatient readmissions within 30 days for same condition. Effective for dates of service on or after July 1, 2015, when an inpatient is discharged or transferred from an acute care hospital and is readmitted as an inpatient to the same hospital within 30 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. The readmission policy does not apply to the following:

1. Scheduled readmissions that are part of repetitive or periodic treatments; and
2. Critical access hospitals.

**ARC 3906C**

# HUMAN SERVICES DEPARTMENT[441]

**Notice of Intended Action**

**Proposing rule making related to pharmacy copayment and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

*Legal Authority for Rule Making*

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

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 249A.4 and 2018 Iowa Acts, Senate File 2418, section 129.

*Purpose and Summary*

This proposed amendment makes the pharmacy copayment a flat copayment of $1 per prescription or refill. Consistent with federal regulations and state legislative requirement, the copayment will no longer be based on the preferred or nonpreferred status of the drug on the preferred drug list (PDL).

This amendment is technical in nature because this copayment policy of $1 per prescription or refill has been in place to implement the federal final rule (CMS-2334-F) requirement. The copayment requirement provides that a nonpreferred drug copay must be limited to the amount of a preferred drug copay when the nonpreferred drug is deemed medically necessary by the prescribing provider. Since implementation of this final rule, all Medicaid drug copayments are the preferred amount of $1, because a Medicaid member would not get a nonpreferred drug unless the drug was medically necessary.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

Harry Rossander
Bureau of Policy Coordinator
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: policyanalysis@dhs.state.ia.us

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Amend paragraph **79.1(13)"a"** as follows:

*a.* The member shall pay a copayment of $1 for each covered prescription or refill of any covered drug. ~~as follows:~~

~~(1) One dollar for generic drugs and preferred brand-name drugs. Any brand-name drug that is not subject to prior approval based on nonpreferred status on the preferred drug list published by the department pursuant to Iowa Code section 249A.20A shall be treated as a preferred brand-name drug.~~

~~(2) Rescinded IAB 7/6/05, effective 7/1/05.~~

~~(3) One dollar for nonpreferred brand-name drugs for which the cost to the state is less than $25.~~

~~(4) Two dollars for nonpreferred brand-name drugs for which the cost to the state is $25.01 to $50.~~

~~(5) Three dollars for nonpreferred brand-name drugs for which the cost to the state is $50.01 or more.~~

~~(6) For the purpose of this paragraph, the cost to the state is determined without regard to federal financial participation in the Medicaid program or to any rebates received.~~

**ARC 3908C**

# HUMAN SERVICES DEPARTMENT[441]

**Notice of Intended Action**

**Proposing rule making related to care of young persons with complex medical conditions and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 81, "Nursing Facilities," and Chapter 82, "Intermediate Care Facilities for Persons with an Intellectual Disability," Iowa Administrative Code.

*Legal Authority for Rule Making*

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

*State or Federal Law Implemented*

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

*Purpose and Summary*

Currently, Iowa does not have an appropriate system of care for young adults with complex medical conditions. This has resulted in inappropriate nursing home placements and could force Medicaid members to seek services outside the state of Iowa. Current rules are limited to residents who are 21 years of age and under. These proposed amendments will expand the special population nursing facility criteria to include persons residing in an intermediate care facility for persons with medical complexity up to age 30. The amendments will increase the number of qualified providers available to meet the needs of young adults with complex medical conditions.

*Fiscal Impact*

This rule making has a fiscal impact to the State of Iowa. This rule making has a fiscal impact of $100,000 annually or $500,000 over five years. The fiscal impact statement for specific assumptions and description of how estimates were derived may be obtained by contacting the Department.

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: policyanalysis@dhs.state.ia.us

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or

group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule **441—81.1(249A)**, definition of "Special population nursing facility," as follows:

*"Special population nursing facility"* refers to a nursing facility that serves the following populations:

1. One hundred percent of the residents served are aged ~~21~~ 30 and under and require the skilled level of care.
2. Seventy percent of the residents served require the skilled level of care for neurological disorders.
3. One hundred percent of the residents require care from a facility licensed by the department of inspections and appeals as an intermediate care facility for persons with mental illness.
4. One hundred percent of the residents require care from a facility licensed by the department of inspections and appeals as an intermediate care facility for persons with medical complexity.

ITEM 2. Adopt the following **new** definition of "Intermediate care facility for persons with medical complexity" in rule **441—82.1(249A)**:

*"Intermediate care facility for persons with medical complexity"* means an intermediate care facility for persons with an intellectual disability which provides health and rehabilitation services to individuals who require a skilled nursing level of care, have either a multiple organ dysfunction or severe single organ dysfunction, and require daily use of medical resources or technology.

**ARC 3910C**

# HUMAN SERVICES DEPARTMENT[441]

**Notice of Intended Action**

**Proposing rule making related to providers of family planning services and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 87, "Family Planning Program," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 217.6 and section 217.41B as amended by 2018 Iowa Acts, Senate File 2418, section 83.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 217.6 and section 217.41B as amended by 2018 Iowa Acts, Senate File 2418, section 83.

*Purpose and Summary*

These proposed amendments are in relation to a legislatively mandated change regarding distribution of funds and participating providers of the Family Planning Program (FPP).

Providers of family planning services will change to include a nonpublic entity that is a distinct location of a nonprofit health care delivery system, if the distinct location provides family planning services but does not perform abortions or maintain or operate as a facility where abortions are performed.

FPP members may be affected by these amendments because the provider network may expand. Additional providers will be eligible to participate in the FPP.

HUMAN SERVICES DEPARTMENT[441](cont'd)

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: policyanalysis@dhs.state.ia.us

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 87.7(1) as follows:

**87.7(1)** *Distribution of funds.* Distribution of family planning services program funds shall be made to eligible, approved, and participating family planning providers subject to rule 441—87.11(217). Eligible family planning providers shall not include any provider that performs abortions or that maintains or operates a facility where abortions are performed and must attest to this fact. Effective July 1, 2018, eligible family planning providers shall be interpreted to include a distinct location of a nonprofit health care delivery system, if the distinct location provides family planning services but does not perform abortions or maintain or operate as a facility where abortions are performed. For the purposes of this subrule, "nonprofit health care delivery system" means an Iowa nonprofit corporation that controls, directly or indirectly, a regional health care network consisting of hospital facilities

and various ambulatory and clinic locations that provide a range of primary, secondary, and tertiary inpatient, outpatient, and physician services. For the purposes of this subrule, "abortion" does not include any of the following:

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

ITEM 2. Amend subrule 87.11(1) as follows:

**87.11(1)** Providers must be enrolled with the Iowa Medicaid program, subject to rule 441—79.14(249A), and otherwise qualified to provide family planning services under Medicaid, subject to the limitations related to abortions, as specified above under subrule 87.7(1). Effective July 1, 2018, as a condition of eligibility as a provider under the family planning services program, each distinct location of a nonprofit health care delivery system shall enroll in the program as a separate provider, be assigned a distinct provider identification number, and complete an attestation that abortions are not performed at the distinct location. For the purposes of this subrule, "nonprofit health care delivery system" shall have the same meaning as provided under subrule 87.7(1).

ITEM 3. Amend **441—Chapter 87**, implementation sentence, as follows:

These rules are intended to implement ~~2017 Iowa Acts, House File 653, section 90~~ Iowa Code section 217.41B as amended by 2018 Iowa Acts, Senate File 2418, section 83.

**ARC 3918C**

# INSPECTIONS AND APPEALS DEPARTMENT[481]

**Notice of Intended Action**

**Proposing rule making related to minimum construction standards for hospitals and providing an opportunity for public comment**

The Inspections and Appeals Department hereby proposes to amend Chapter 51, "Hospitals," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 10A.104(5) and 135B.7.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 10A.104(5) and 135B.7.

*Purpose and Summary*

The proposed amendment adopts by reference the 2018 Guidelines for Design and Construction of Hospitals provided by the Facility Guidelines Institute as the minimum construction standards for hospitals and off-site premises licensed under Iowa Code chapter 135B.

The proposed amendment was approved by the Hospital Licensing Board at its June 21, 2018, meeting.

The State Board of Health initially reviewed the proposed amendment at its July 11, 2018, meeting.

*Fiscal Impact*

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

*Jobs Impact*

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

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

David Werning
Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319-0083
Email: david.werning@dia.iowa.gov

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Amend rule 481—51.50(135B) as follows:

**481—51.50(135B) Minimum standards for construction.**

**51.50(1)** *Minimum standards.* Hospitals and off-site premises licensed under this chapter shall be built in accordance with the following construction standards.

*a.* Construction shall be in accordance with the standards set forth in the Guidelines for Design and Construction of Hospitals ~~and Outpatient Facilities, 2014 edition, produced~~, 2018 edition, published by the Facility Guidelines Institute.

~~*b.* A critical access hospital as defined in rule 481—51.1(135B) shall meet the standards for construction set forth in Part 2.4 of the Guidelines for Design and Construction of Hospitals and Outpatient Facilities, 2014 edition, produced by the Facility Guidelines Institute.~~

~~*c.*~~ *b.* Existing hospitals~~, critical access hospitals,~~ and off-site premises built in compliance with prior editions of the hospital construction guidelines will be deemed in compliance with subsequent regulations, with the exception of any new structural renovations, additions, functional alterations, or changes in utilization to existing facilities, which shall meet the standards specified in this subrule.

~~*d.*~~ *c.* The design and construction of a hospital or off-site premises shall be in conformance with the provisions of 661—Chapter 205.

~~*c.*~~ *d.* In jurisdictions without a local building code enforcement program, the construction shall be in conformance with the state building code, as authorized by Iowa Code section 103A.7, in effect at the time of plan submittal for review and approval. In jurisdictions with a local building code enforcement program, local building code enforcement must include both the adoption and enforcement of a local building code through plan reviews and inspections.

*e.* In any case in which an applicable requirement of 661—Chapter 205 is inconsistent with an applicable requirement of the state building code, the hospital or off-site premises shall be deemed to be in compliance with the state building code requirement if the requirement of 661—Chapter 205 is met.

**51.50(2)** No change.

**51.50(3)** *Variances.* The director of the department may grant variances to building and construction guidelines as contained in the Guidelines for Design and Construction of Hospitals ~~and Outpatient Facilities, 2014 edition~~, 2018 edition. The hospital or off-site premises must submit a variance request in writing to the director. The request must demonstrate how patient safety and the quality of care offered will not be compromised by the variance. The facility must demonstrate its ability to completely fulfill all other requirements of the service. The director shall make a written determination of the request. In determining whether a variance request shall be granted, the director shall give consideration to the following conditions and to any other conditions the director deems relevant:

*a.* to *f.* No change.

**ARC 3919C**

# INSPECTIONS AND APPEALS DEPARTMENT[481]

**Notice of Intended Action**

**Proposing rule making related to social and charitable gambling and providing an opportunity for public comment**

The Inspections and Appeals Department hereby proposes to rescind Chapter 100, "Administration," and to adopt a new Chapter 100, "General Provisions for Social and Charitable Gambling," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 99B.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 99B.2.

*Purpose and Summary*

The proposed amendment implements changes made to Iowa Code chapter 99B resulting from 2015 Iowa Acts, Senate File 482. The legislation modernized Iowa Code chapter 99B by streamlining processes and eliminating unnecessary licenses.

*Fiscal Impact*

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

*Jobs Impact*

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

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

David Werning
Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319-0083
Email: david.werning@dia.iowa.gov

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Rescind 481—Chapter 100 and adopt the following **new** chapter in lieu thereof:

CHAPTER 100
GENERAL PROVISIONS FOR SOCIAL AND CHARITABLE GAMBLING

**481—100.1(99B) Definitions.** In addition to the definitions found in Iowa Code chapter 99B, and unless specifically defined in 481—Chapters 101 to 107, the following definitions apply to all social and charitable gambling rules.

*"Bingo supplies and equipment"* means a machine, display board, monitor, card, bingo paper, or any other implement or provision used in the conduct of the game of bingo licensed pursuant to Iowa Code chapter 99B.

*"Director"* means the director of the department of inspections and appeals.

*"Responsible party"* means the individual identified on the license application as the contact person. The responsible party is expected to have a general knowledge of Iowa gambling laws and rules. This individual is deemed to be an agent of the organization until the department is notified otherwise in writing.

**481—100.2(99B) Licensure.** Gambling shall only occur upon receipt of a license issued by the department. The license shall be prominently displayed at the gambling location.

**100.2(1)** *Types of gambling licenses—qualified organizations.* A qualified organization (QO), as defined in Iowa Code section 99B.1(26), may apply for the six following license types, each of which permits the activities listed. A QO with a two-year QO license may also apply for a seventh license type, a very large raffle license.

| License type/Activity type | Two-year QO | One-year QO | 180-day QO | 90-day QO | 14-day QO | Bingo at a fair or festival |
|---|---|---|---|---|---|---|
| Bingo | Three occasions per week; 15 occasions per month | No | No | No | Two occasions | One occasion per day for length of fair or festival |
| Games of skill and chance | Unlimited carnival-style games | No | No | No | Unlimited carnival-style games | No |
| Game night | One per calendar year | One per calendar year | One per calendar year | One per calendar year | One per calendar year | No |
| Very small and small raffles | Unlimited | Unlimited | Unlimited | Unlimited | Unlimited | No |
| Large raffles | One per calendar year | Eight per license period, each conducted in a different county | One per calendar year | One per calendar year | One per calendar year | No |
| Very large raffles | One per calendar year, requires additional very large raffle license | One per calendar year, requires additional very large raffle license | No | No | No | No |
| Electronic raffles | One small raffle per day; one large raffle per calendar year | No | No | No | No | No |

**100.2(2)** *Other types of gambling licenses.* There are four other types of gambling licenses:

*a.* One-year license for an amusement concession.

*b.* Two-year license for social gambling in beer and liquor establishments.

*c.* Two-year license for social gambling in public places.

*d.* Annual license for manufacturers and distributors of bingo equipment and supplies or electronic raffle systems.

**100.2(3)** *Political action committees ineligible.* Political action committees are not qualified organizations as defined in Iowa Code section 99B.1(26) and are not eligible for gambling licenses.

**481—100.3(99B) License application.**

**100.3(1)** *Applications.* Applications may be completed online or downloaded by visiting dia.iowa.gov and clicking on the link for "Social and Charitable Gambling." A paper application may be requested from the Social and Charitable Gambling Unit, Iowa Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or by calling (515)281-6848.

**100.3(2)** *Receipt of application.* An application shall be submitted at least 30 days before the beginning date requested.

**100.3(3)** *Fees.* License fees are not refundable.

**100.3(4)** *Documentation.* Qualified organizations applying for a charitable gambling license must submit with the application documentation, as described in the application, to prove tax-exempt status.

**100.3(5)** *Application for incorrect license.* If the applicant does not apply for the appropriate license, the license fee may be applied to the appropriate license within 30 days of notification to the applicant by the department. For example, the applicant applies for a 90-day qualified organization license but wishes to conduct bingo. The fee for the 90-day qualified organization license may be applied to a two-year or 14-day qualified organization license, if the applicant responds within 30 days of notification by the department.

**100.3(6)** *Incomplete application submitted.* If the applicant submits an incomplete application, the application may be completed and submitted within 30 days of notification to the applicant by the department without forfeiting the fee submitted with the incomplete application.

**481—100.4(99B) Additional requirements for licensure.** In addition to requirements for licensure found in Iowa Code chapter 99B, the department may use the following standards to determine whether to issue a gambling license. These standards do not apply to licensure of manufacturers or distributors of bingo equipment and supplies or electronic raffle equipment.

**100.4(1)** *Sales tax permit—exemptions.* Qualified organizations shall either possess or have made application for a sales tax permit at the time the license application is submitted. The following gambling activities are exempt from sales and local option taxes:

*a.* Gambling activities conducted by county and city governments.

*b.* Gambling activities held by the Iowa state fair, Iowa state fair authority, or Iowa state fair foundation (organized under Iowa Code chapter 173), including gambling activities that occur outside of the annual scheduled fair event.

*c.* Gambling activities held by a fair (as defined in Iowa Code section 174.1(2)), including gambling activities that occur outside of scheduled fair events.

*d.* Raffles held by a licensed qualified organization at a fair as defined in Iowa Code section 99B.1 and pursuant to the requirements specified in Iowa Code section 99B.24.

*e.* Raffles, whether or not they are conducted at a fair event, where the proceeds are used to provide educational scholarships by a qualifying organization representing veterans as defined in Iowa Code section 99B.27(1)*"b."*

**100.4(2)** *State tax liabilities.* The applicant must have no outstanding state tax liabilities or, if there are outstanding state tax liabilities, the applicant must have entered into a negotiated repayment plan with the department of revenue and be current in all payments pursuant to the plan. A copy of the repayment plan shall be submitted with the licensure application.

**100.4(3)** *Revocation—no license issued.*

*a.* No one involved in an organization with a gambling license revocation action pending will be granted a license similar to the license revoked.

*b.* No one with a gambling license currently under revocation may be issued any gambling license during the period of revocation.

*c.* A license will not be issued if there is a current revocation of either a gambling or a liquor license for the location named on the license application.

**100.4(4)** *Criminal violations.* No applicant shall have been convicted of or pled guilty to a criminal violation of Iowa gambling law.

**100.4(5)** *Violations of gambling law or Iowa alcoholic beverage control Act.* Violation of gambling law or the Iowa alcoholic beverage control Act affects whether a gambling license is issued.

*a.* The applicant may have no more than two convictions of or guilty pleas to serious or aggravated misdemeanors in the last two years. This includes any combination of serious or aggravated misdemeanors.

*b.* No liquor license shall have been suspended within the last 12 months because of a conviction of or guilty plea to a criminal violation of the Iowa alcoholic beverage control Act (Iowa Code chapter 123).

*c.* No liquor license shall have been revoked because of a conviction of or guilty plea to a criminal violation of the Iowa alcoholic beverage control Act.

*d.* No applicant shall have been convicted of a felony, federal or state, within five years of the date of the application. For felony convictions more than five years prior to the date of the application, citizenship rights must have been restored in order for the application to be considered.

**481—100.5(99B) Returned checks.** If a check intended to pay for any license provided for under Iowa Code chapter 99B is not honored for payment by the bank on which the check is drafted, the department will attempt to redeem the check. The department will notify the applicant of the need to provide sufficient payment. An additional fee of $25 shall be assessed for each dishonored check. If the department does not receive cash to replace the check, no license will be issued.

**481—100.6(99B) Payment systems.** Licensees allowing participants to make payment by debit card, as authorized by Iowa Code section 99B.5, shall ensure that payment systems comply with all applicable federal and state laws regarding payment card processing and the protection of personal information.

**481—100.7(99B) Participation—game of skill, game of chance or raffle.** No one who conducts a game of skill, game of chance or raffle may participate in the game or raffle. For purposes of this rule, an individual "conducts" a raffle if the individual directly participates in the mechanism of selection of the prize, such as drawing the winning entry. For purposes of this rule, an individual "conducts" a game of skill or game of chance if, for example, the person is a dealer or a croupier or otherwise operates the game.

**481—100.8(99B) Posted rules—games other than bingo and raffles.** Rules established by the licensee shall be posted on a sign near the front of the playing area or made available electronically at each player's location. Rules shall be in large, easily readable print and shall include:

1. The name and mailing address of the licensee;
2. Prices to play;
3. How winners will be determined;
4. Prize(s) or categories of prizes for each game; and
5. Rules established by the licensee for the game. Rules shall define a game and indicate the cost per game. For example, a game might be one opportunity to shoot and make one basket, or three opportunities to shoot and make one basket.

**481—100.9(99B) Posted rules—bingo.** Requirements for posted bingo rules are found in rule 481—103.5(99B).

**481—100.10(99B) Rules—raffles.** A copy of the rules for a raffle shall be available upon request.

**100.10(1)** The rules shall include the following:

*a.* Methods of awarding a prize;

*b.* Prices to play, including discounts; and

*c.* Whether a sufficient number of entries must be sold in order for the raffle to occur, or if an alternate prize is offered when sales of entries are insufficient.

**100.10(2)** A licensed qualified organization may also include in its rules items such as the policy for nonpayment of prizes.

**481—100.11(99B) Prizes.** Prizes are governed by the following standards.

**100.11(1)** *Amusement concession licensees.* The maximum prize limit for games of skill, games of chance and bingo is $100 in merchandise.

**100.11(2)** *Qualified organizations.* The following table provides prize limits for types of gambling conducted by qualified organizations.

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

| Type of gambling | Prize limits |
|---|---|
| Games of skill and games of chance | $10,000 in merchandise |
| Very small raffle | Cumulative value of cash prizes is $1,000 or less; or purchased merchandise is $1,000 or less; or donated merchandise is $5,000 or less |
| Small raffle | Cumulative value of all cash and prizes is more than $1,000 but not more than $10,000 |
| Large raffle | Cumulative value of cash and prizes is more than $10,000 but not more than $100,000 |
| Very large raffle | Cumulative value of cash and prizes is more than $100,000 but not more than $200,000; or the prize is real property |
| Single bingo game | Up to $250 cash or merchandise |
| Bingo jackpot | $1,000 cash or merchandise maximum on first jackpot in 24-hour period; $2,500 cash or merchandise maximum on second jackpot in 24-hour period (see Iowa Code section 99B.21(2)*"d"*) |

**100.11(3)** *Annual game night.* An individual shall not spend more than $250 for entrance fees and wagers. Cash and merchandise may be awarded in an aggregate amount not to exceed $10,000. No participant shall win more than a total of $5,000.

**481—100.12(99B) Games of chance—prohibited games.** Slot machines are unlawful for all licenses issued under Iowa Code chapter 99B. Other than during an annual game night, games in the following list are unlawful:

1. Punchboard,
2. Pushcard,
3. Pull-tab,
4. Craps,
5. Chuck-a-luck,
6. Roulette,
7. Klondike,
8. Blackjack,
9. Baccarat,
10. Equality, or
11. Three-card monte.

**481—100.13(99B) Records.** In addition to requirements found in Iowa Code section 99B.16, the following requirements apply. Gambling records, maintained separately from all other records, shall be kept current.

**100.13(1)** *Disbursement journal.* Records of expenses and dedicated and distributed money are required.

*a.* A disbursement journal shall include the date of expenditure, the name of the payee, a description of the purpose of payment, the amount of payment, and the method of payment (check, electronic fund transfer, etc.).

*b.* The disbursement journal shall clearly indicate dedication as the purpose for expenditure of dedicated funds.

**100.13(2)** *Supporting documentation—time requirements.* Supporting documentation such as invoices or bills shall be kept for three years.

**481—100.14(99B) Reports.** A licensed qualified organization shall submit an annual report to the department by January 31 of each year for the prior calendar year period of January 1 through December 31. A report shall be submitted even if no gambling activity occurred during the reporting period.

Reports may be completed online by visiting dia.iowa.gov and clicking on the link for "Social and Charitable Gambling." A paper version of the annual gambling report may be obtained from the Social and Charitable Gambling Unit, Iowa Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or by telephone (515)281-6848. When the due date is on Saturday, Sunday, or a legal holiday, the report is due the next business day.

**481—100.15(10A,17A,99B) Appeal rights.** Any decision of the department may be appealed in accordance with procedures set out in 481—Chapter 10 and Iowa Code chapter 17A. When an appeal is received, the status of the license is governed by the following:

**100.15(1)** *Denial of untimely or insufficient renewal application.* If a renewal application is not timely or sufficient, a license may not be issued until a final decision is issued and all appeal rights have been exhausted.

**100.15(2)** *Denial of timely and sufficient renewal application.* If a renewal application is timely and sufficient but is denied by the department, a license remains effective until a final decision is issued and all appeal rights have been exhausted.

**100.15(3)** *Denial of new application.* If a new application is denied, no license may be issued until a final decision is issued and all appeal rights have been exhausted.

**481—100.16(99B) Raffles.** The following apply to all raffles, including electronic raffles.

**100.16(1)** *Timing.* A valid raffle shall only occur during the period of the license. The license must be in effect before promotions for the raffle can begin. The gambling event begins when the first entry is sold and ends when winning numbers are drawn. Calendar raffles and build-up or pyramid raffles are prohibited. If an organization obtains a temporary license to conduct a raffle, the entirety of the raffle, including promotion, sale of entries and drawing, must fall within the time period for the temporary license.

**100.16(2)** *Raffle entries—sales.* Any price may be charged for a raffle entry. Raffle entries shall not be sold online. Raffle entries shall not be sold outside the state of Iowa. Organizations shall comply with United States Postal Service regulations restricting the sale of raffle entries through the mail.

**100.16(3)** *Raffle entries—discount.* A licensee may offer raffle entries for sale at a discounted rate if the discount is applied in a nondiscriminatory manner.

*a.* *Examples.* Selling one entry for $5 or five entries for $20 is acceptable. The amount paid for entries may not be determined by a characteristic of the person purchasing entries, such as height, weight or wingspan.

*b.* *Promotion and availability of discount.* The discount must be available to all persons throughout the duration of the raffle and must be posted on all promotional material.

**100.16(4)** *Winners.* Raffle winners cannot be required to be present to win.

*a.* The date by which the prize shall be claimed shall be no fewer than 14 days following the drawing.

*b.* If the prize is not claimed, the licensed qualified organization may do one of the following:

(1) Continue to draw until a winner claims the prize. Each drawing must allow the time period specified in paragraph 100.16(4)*"a"* for claiming the prize.

(2) Donate the unclaimed prize to another qualified organization to be used for an educational, civic, public, charitable, patriotic, or religious use.

**100.16(5)** *Prizes.* If a prize is merchandise, its value shall be determined by the purchase price paid by the organization or donor. The prize may be a single item or several items.

**481—100.17(99B) Expenses.** Reasonable expenses shall not exceed 40 percent of the net receipts.

**100.17(1)** *Proof of expense.* No expense item shall be allowed without a proper receipt, paid invoice or canceled check and shall not be paid from an outside source. The burden of proof is on the licensee to show that all expenses were incurred exclusively and directly as a result of the gambling activity. An expense will not be considered reasonable if the amount charged significantly exceeds the prevailing rate or average retail cost of the item or service purchased.

**100.17(2)** *Allowed expenses.* Expenses allowed within the 40 percent limit are:

*a.* The license fee;
*b.* Rent of building or equipment;
*c.* Taxes (other than state and local sales tax paid on gross receipts);
*d.* Promotion expense;
*e.* Major equipment purchases;
*f.* Overhead expenses;
*g.* Worker compensation; and
*h.* Other expenses incurred exclusively and directly as a result of the gambling activity.

**481—100.18(99B) Net receipts.** At least 60 percent of net receipts shall be dedicated and distributed to educational, civic, public, charitable, patriotic or religious uses.

**100.18(1)** *Examples.* The following examples illustrate methods to determine net receipts, allowable expenses, and the amount requested to be dedicated and distributed.

*a.* *Example 1.* When sales tax is not included in gross receipts, sales tax need not be deducted to arrive at net receipts.

| | |
|---|---|
| Gross receipts (excluding sales tax) | $100,000 |
| Amount awarded as prizes | $20,000 |
| Net receipts | $80,000 |
| Minimum dedicated and distributed (60% of net receipts) | $48,000 |
| Maximum expenses (40% of net receipts) | $32,000 |

*b.* *Example 2.* When sales tax is included in gross receipts, it is deducted to arrive at net receipts.

| | |
|---|---|
| Gross receipts (including sales tax) | $107,000 |
| Amount awarded as prizes | $20,000 |
| Sales tax (7%) | $7,000 |
| Net receipts | $80,000 |
| Minimum dedicated and distributed (60% of net receipts) | $48,000 |
| Maximum expenses (40% of net receipts) | $32,000 |

**100.18(2)** *Time for distribution.* Net receipts received during the calendar year shall be distributed no later than 30 days following the end of each calendar year unless permission to do otherwise is requested in writing and granted by the department.

**481—100.19(99B) Licensure of manufacturers and distributors of bingo equipment and supplies and electronic raffle systems.** A manufacturer or distributor of bingo equipment and supplies and electronic raffle systems, as defined in Iowa Code section 99B.32, shall obtain a license prior to conducting business within the State of Iowa.

**100.19(1)** *Duration of license.* The license is issued for a one-year period.

**100.19(2)** *Application.* To obtain a license, the applicant shall complete an application for a license and submit a $1,000 fee.

*a.* The applicant shall comply with the requirements of Iowa Code chapter 99B, administrative rules of the department and other applicable state or federal laws.

*b.* The department may require detailed information concerning the business structure and operation of the applicant, including but not limited to the following:

(1) All owners, officers and board members of the business.
(2) All names under which the applicant will conduct business in the State of Iowa.

**100.19(3)** *Manufacturers and distributors of electronic raffle systems—additional requirements.* A manufacturer or distributor of electronic raffle systems must meet the following additional requirements in order to obtain a license.

*a. Approval of certifying entity by the department.* In addition to licensure, manufacturers and distributors of electronic raffle systems must be certified by an entity approved by the department. "Approved by the department," for purposes of this subrule, means that the entity has submitted its qualifications in writing to the director for review and has received approval in writing by the director or the director's designee.

*b. Certification—requirements.* Entities approved by the department to certify manufacturers and distributors of electronic raffle systems shall ensure all electronic raffle systems meet the requirements of Iowa Code section 99B.25 and 481—100.20(99B).

*c. Review of contracts—notification.* The applicant shall submit to the department for review at the time of application the base contract intended for use with qualified organizations. For the duration of the license, the licensee shall notify the department each time the licensee enters into a contract with a qualified organization by submitting in writing the name of the qualified organization and the duration of the contract. The required notification will allow the department to verify that the qualified organization holds a valid two-year qualified organization license, which permits the conduct of an electronic raffle.

**481—100.20(99B) Bingo supplies and equipment.** Products sold within this state to a gambling license holder shall meet the following requirements:

**100.20(1)** Products must be manufactured and sold by an Iowa-licensed manufacturer or distributor.

**100.20(2)** Products shall be supplies and equipment used in connection with the game of bingo as defined in Iowa Code section 99B.1. The following are noninclusive characteristics of the game of bingo to which products must conform:

*a.* Cards or playing faces shall have spaces marked in horizontal and vertical rows. Each space shall be designated by number, letter, symbol, or picture, or a combination of numbers, letters, symbols, or pictures.

*b.* Balls or objects used to select spaces which are to be covered on the card or playing face must bear numbers, letters, symbols, or pictures, or a combination of numbers, letters, symbols, or pictures corresponding to the system used for designating the spaces.

*c.* The bingo machine must contain a receptacle where objects or balls are placed and from which the objects or balls representing the space to be covered are selected. The selection of the balls or objects by the bingo machine must be by chance and may be either manual or mechanical.

**100.20(3)** Bingo cards sold in Iowa must have the manufacturer's name imprinted on the cards.

**481—100.21(99B) Electronic raffles.** In addition to the requirements found in Iowa Code section 99B.25, the following apply to electronic raffles:

**100.21(1)** An electronic raffle shall be conducted in a fair and honest manner.

**100.21(2)** All entries shall be included in the drawing.

**100.21(3)** The sale of raffle entries and the drawing of the winning entry shall take place within the same calendar day.

**481—100.22(99B) Social gambling.** Social gambling requirements are located in Iowa Code sections 99B.41 to 99B.45.

These rules are intended to implement Iowa Code chapter 99B.

**ARC 3920C**

# INSPECTIONS AND APPEALS DEPARTMENT[481]

**Notice of Intended Action**

**Proposing rule making related to bingo and providing an opportunity for public comment**

The Inspections and Appeals Department hereby proposes to amend Chapter 103, "Bingo," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 99B.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 99B.2.

*Purpose and Summary*

The proposed amendments implement changes made to Iowa Code chapter 99B resulting from 2015 Iowa Acts, Senate File 482. The legislation modernized Iowa Code chapter 99B by streamlining processes and eliminating unnecessary licenses. Cross references in this rule making to rules in 481—Chapter 100 refer to the proposed rules published in **ARC 3919C** (IAB 8/1/18).

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

David Werning
Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319-0083
Email: david.werning@dia.iowa.gov

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental

subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Rescind rule 481—103.1(10A,99B) and adopt the following **new** rule in lieu thereof:

**481—103.1(99B) Definitions.** In addition to definitions found in Iowa Code chapter 99B and in rule 481—100.1(99B), the following definitions apply to all qualified organizations where bingo is played.

*"Cash"* means any legal tender of the United States.

*"Category"* means the name given to a particular type of playing face to distinguish one from another.

*"Limited license"* means a 14-day license issued only to a qualified organization. There are no limits on the number of games played or occasions held, except that only two bingo occasions may be held during the period of 14 days, with no limit on the number of bingo games or the number of hours played during each designated bingo day.

*"Playing face"* means the grid on which a player marks numbers and letters called as the game progresses.

ITEM 2. Rescind rule 481—103.2(10A,99B) and adopt the following **new** rule in lieu thereof:

**481—103.2(99B) License.**

**103.2(1)** *License required—exception.* A license is required in order to conduct a bingo occasion unless all of the following requirements are met:

*a.* Participants in the bingo occasion are not charged to enter the premises where bingo is conducted.

*b.* Participants in the bingo occasion are not charged to play.

*c.* Any prize awarded at the bingo occasion is donated.

*d.* The bingo occasion is conducted as an activity and not for fundraising purposes.

**103.2(2)** *Location.* Bingo occasions are restricted to the location for which application is made by the qualified organization and approved by the department. For good cause, a license may be transferred to a different location only after written notice by the licensee and approval by the department. "Good cause," for purposes of this subrule, may include flood, fire or other natural disasters; sale of the building; or nonrenewal of lease.

**103.2(3)** *Application.* Before any organization may conduct bingo, a license application must be approved by the department. Application and license requirements are found in rules 481—100.3(99B), 481—100.4(99B), and 481—100.5(99B).

**103.2(4)** *Examples.* The following are examples of circumstances affecting whether a license is granted.

*a.* Qualified organization X applies for and is issued a two-year license to conduct bingo occasions at 313 Cherry Street, Des Moines, Iowa. The license is effective from August 1, 2017, to July 31, 2019. On October 1, 2017, qualified organization Y applies for a 14-day limited license to conduct bingo at the same location. The license is approved and issued because a limited license can be issued for the same location used for a two-year bingo license.

*b.* Qualified organization ABC applies for and is issued a two-year qualified organization license to conduct bingo at 1002 West 2nd Avenue in Jones Town, Iowa. The license is effective from October 1,

2017, to September 30, 2019. On November 15, 2017, qualified organization EFG applies for a two-year qualified organization license for the same location. A license may be issued to organization EFG for the same location during the same period to conduct any games of chance, games of skill or raffles. Organization EFG shall not conduct bingo at the location.

*c.* Hometown Community School applies for and is issued a two-year qualified organization license to conduct games of skill, games of chance and raffles at the grade school building. The license is effective from September 1, 2017, to August 31, 2019. During the time that the Hometown Community School license is in effect, the school-sponsored pep club applies for a 14-day limited license to conduct games of skill at the grade school building. The school-sponsored pep club may be issued a limited license for the same location during the same time. Under this example, the school-sponsored pep club would not be required to obtain a separate license, because school-affiliated organizations may operate separate events under a school's two-year license.

ITEM 3. Rescind rule 481—103.3(99B) and adopt the following **new** rule in lieu thereof:

**481—103.3(99B) Bingo occasion.** A qualified organization may conduct only 3 bingo occasions per week, but not more than 15 occasions per month, under a two-year qualified organization license. A week starts on Sunday and ends on Saturday. At the end of each occasion, the person conducting the games shall announce both the gross receipts and the use to which the net receipts will be dedicated and distributed.

ITEM 4. Amend rule 481—103.4(99B), introductory paragraph, as follows:

**481—103.4(99B) Game of bingo.** Each game shall meet all of the requirements of the definition of "bingo" in Iowa Code section ~~99B.1(5)~~ 99B.1(4) to be a legal game of bingo. Games ordinarily considered bingo may be played.

ITEM 5. Amend paragraph **103.4(1)"f"** as follows:

*f.* ~~House rules~~ Rules established by the licensee may require that a player have the last number called for a bingo. If not posted in the ~~house~~ rules established by the licensee, the player is not required to have the last number called.

ITEM 6. Amend subrule 103.4(3) as follows:

**103.4(3)** The cost to play each game shall not exceed $5. Cards or games may be sold only within the premises of the bingo occasion. The cost for each packet, playing face, or tear sheet shall be the same for each participant, i.e., the cost for an opportunity to play shall be equal. Players may pay for games with cash ~~or, at the option of the licensee, checks~~, personal check, money order, bank check, cashier's check, electronic check, or debit card.

*a.* All cards or games shall be assigned a price.

*b.* The price shall be posted. Cards may be sold only for the posted price.

*c.* Free games shall not be given. Free games include gift cards redeemable for games. This paragraph does not prohibit giving free concession items such as food, beverages or daubers.

~~*d.* Bingo games allowing for a trade-in of a bingo card during a bingo game for not more than fifty cents per trade-in may be allowed.~~

ITEM 7. Rescind the implementation sentence in rule **481—103.4(99B)**.

ITEM 8. Amend rule 481—103.5(99B) as follows:

**481—103.5(99B) State rules and ~~house~~ rules established by the licensee.** Iowa administrative rules and ~~specific house~~ rules established by the licensee must be readily available to every bingo player. ~~The house has discretion regarding reserved seating and age restrictions for children to play, but must post such restrictions in the house rules.~~

**103.5(1)** A copy of these rules, 481—Chapter 103, "Bingo," shall be maintained at every bingo location during every bingo occasion. Bingo players who request it shall have the opportunity to read the administrative rules.

**103.5(2)** ~~House rules~~ Rules established by the licensee shall be posted on a sign near the front of the playing area.

~~*a.* The sign shall be at least 30 inches by 30 inches.~~

~~*b.* Permanent letters 3 inches high shall proclaim "Rules of the Game."~~

~~*c.*~~ *a.* Rules shall be in large, easily readable print and shall include:

(1) The name and mailing address of the licensee;

(2) Prices to play; and

(3) ~~House rules~~ Rules established by the licensee for the game.

~~1.~~ *b.* ~~House rules~~ Rules established by the licensee shall include how to indicate "bingo" to halt the game, how to collect a prize, and how the licensee will verify winners' names and addresses.

~~2. Reserved seating may be observed if the house so chooses and posts the information.~~

~~3. People of any age are allowed to play bingo. The house may choose to restrict children of certain ages, as long as the restriction is posted in the house rules.~~

*c.* Rules established by the licensee may include rules related to reserved seating and age restrictions for children to play.

**103.5(3)** The following information shall be correctly posted before the beginning of each bingo occasion and shall not be changed after the bingo occasion begins:

*a.* Description of each game to be played;

*b.* Price of each game;

*c.* Prize for each game or method for determining the prize for each game; and

*d.* Jackpot rules, if any.

EXAMPLE: Single bingo $1 per game, $50 payout.

~~This rule is intended to implement Iowa Code section 99B.1(24).~~

ITEM 9. Amend rule 481—103.6(99B), introductory paragraph, as follows:

**481—103.6(99B) Prizes.** Cash or merchandise prizes awarded for each game shall not exceed ~~$100~~ $250 in value. Jackpot games are excepted and are governed by standards in subrule 103.6(5). The exact amount of the prize shall be announced before the beginning of each game.

ITEM 10. Amend subrule 103.6(2) as follows:

**103.6(2)** Prizes awarded in games with more than one winner shall be shared equally. It is permissible to round up or down, provided doing so does not exceed the maximum payout for that particular game.

Examples of prizes awarded in games with more than one winner:

1. Two winners with a total of three bingos: Player 1 has two bingos in separate squares, and Player 2 has one bingo in one square. Player 1 receives 2/3 of the prize, and Player 2 receives 1/3 of the prize.

2. Multiple winners equally splitting a prize with rounding to the nearest dollar: Six players all win the single ~~$100~~ $250 prize. The appropriate payout is ~~$16.66~~ $41.66 each, but rounding to the nearest dollar (~~$17~~ $42) for each winner would result in a payout of ~~$102~~ $252, in violation of the maximum payout for a nonjackpot bingo game.

ITEM 11. Amend subrule 103.6(4) as follows:

**103.6(4)** A player shall not be required to return cash or a merchandise prize won in one game in order to play a subsequent game. ~~Players shall not be required to play in one game in order to play in a subsequent game.~~

ITEM 12. Amend paragraph **103.6(5)"b"** as follows:

*b.* The jackpot starting prize shall not exceed ~~$300~~ $500 in cash or actual retail value of merchandise.

ITEM 13. Amend paragraph **103.6(5)"e"** as follows:

*e.* If a jackpot is not won in the specified number of calls, the game reverts to a regular game with a prize of ~~$100~~ $250 or less.

ITEM 14. Amend paragraph **103.6(5)"f"** as follows:

*f.* Each jackpot game shall begin again at no more than ~~$300~~ $500.

ITEM 15. Amend rule **481—103.6(99B)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~99B.7(1),~~ 99B.21, 422.16 and 717D.2.

ITEM 16. Amend rule 481—103.7(10A,99B) as follows:

**481—103.7(~~10A,~~99B) Workers.**

**103.7(1)** Each organization must have a responsible party listed on the application. The responsible party must be an active member of the organization and should be familiar with the requirements of the Iowa law and be aware of the bingo activities of the organization.

**103.7(2)** Volunteers must be actively participating members of the licensed organization or must participate in an organization to which money will be dedicated.

~~**103.7(3)** Rescinded IAB 7/24/02, effective 7/5/02.~~

~~**103.7(4)**~~ **103.7(3)** Paid workers shall not play during a bingo occasion in which they work. Persons conducting bingo shall not play during any bingo occasion conducted by the qualified organization for which they work. A person conducting bingo includes: persons overseeing the bingo games, persons controlling and accounting for the bingo occasion's net receipts, persons directing the work of bingo workers, and any persons having management or oversight responsibilities.

~~**103.7(5)**~~ **103.7(4)** ~~The following people shall not work during a bingo occasion:~~

~~*a.* The lessor of the building; or~~ A person receiving rent for a bingo location, either directly or indirectly, shall not be involved in, participate in, or be associated with the operation of bingo games.

~~*b.*~~ **103.7(5)** Anyone who sells bingo equipment or supplies to ~~that~~ a bingo licensee shall not work for that licensee during a bingo occasion.

~~This rule is intended to implement Iowa Code section 99B.7(1)*"b."*~~

ITEM 17. Amend rule 481—103.8(99B), introductory paragraph, as follows:

**481—103.8(99B) Expenses.** Expenses incurred exclusively and directly as a result of bingo shall not exceed ~~25~~ 40 percent of net receipts. Reasonable expenses within the ~~25~~ 40 percent limit are:

ITEM 18. Rescind the implementation sentence in rule **481—103.8(99B)**.

ITEM 19. Amend rule 481—103.9(99B) as follows:

**481—103.9(99B) Location.** Bingo occasions may be conducted on premises either owned or leased by the qualified organization.

1. to 8. No change.

9. Only one licensed qualified organization may ~~hold~~ conduct bingo occasions ~~at a location~~ within the same structure or building. ~~However, the following exception applies: A 14-day limited licensee may hold bingo occasions at the same location.~~

~~This rule is intended to implement Iowa Code section 99B.7.~~

ITEM 20. Rescind the implementation sentence in rule **481—103.12(10A,99B)**.

ITEM 21. Rescind subrule 103.13(3) and adopt the following **new** subrule in lieu thereof:

**103.13(3)** Records of expenses and dedicated and distributed money are required.

*a.* The following information shall be retained for all payments:

(1) Date of payment.

(2) Payee.

(3) Amount of payment.

(4) Purpose of payment.

*b.* For checks, the purpose of payment shall be recorded on the memo line of the check.

ITEM 22. Rescind the implementation sentence in rule **481—103.13(99B)**.

ITEM 23. Amend rule 481—103.14(10A,99B) as follows:

**481—103.14(~~10A,~~99B) Bingo checking account.** A qualified organization whose bingo occasions exceed $10,000 in annual gross receipts shall maintain a separate bingo checking account. The checking account shall be established within one day of attaining $10,000.

**103.14(1)** Bingo receipts, less the amount awarded as cash prizes, shall be deposited in the bingo checking account on the same or the next business day after the occasion. Other funds shall not be deposited in the bingo account. Interest earned on deposits in a bingo checking or savings account shall be treated the same as proceeds of bingo occasions.

EXCEPTION: Limited funds of the organization may be deposited to pay initial or unexpected emergency expenses. The amount of nonbingo funds deposited in the bingo account shall not exceed $7500. Records shall be kept which identify this money.

~~**103.14(2)** Funds from bingo accounts shall be withdrawn by check. Checks shall be preprinted.~~

~~*a.* The following information shall be printed on the face of the check:~~

~~(1) Organization name,~~

~~(2) Consecutive numbers,~~

~~(3) The words "bingo account," and~~

~~(4) The organization's gambling license number.~~

~~The nature of the payment is to be written on the face of each check or share draft as it is drawn. Each check shall be made payable to a person or an organization and be signed by an authorized representative of the licensee. A check shall not be made payable to "cash," "bearer," or any fictitious payee. Table G[1] shows a sample check.~~

~~*b.* All checks, including void and voided checks, shall be kept and accounted for.~~

~~**103.14(3)** Checks may be drawn on the bingo account for only the following purposes:~~

~~*a.* To pay necessary and reasonable expenses incurred in connection with bingo. Wages must be paid by check.~~

~~*b.* To disburse net proceeds of bingo for qualified purposes as required by law.~~

~~*c.* To transfer proceeds from a bingo checking account to a bingo savings account pending disbursement for a qualified purpose.~~

~~*d.* To withdraw initial or emergency funds deposited in the account.~~

~~*e.* To pay prizes.~~

**103.14(2)** Payments shall be paid from the bingo account in accordance with the requirements of Iowa Code section 99B.21. Wages shall not be paid by cash.

~~**103.14(4)**~~ **103.14(3)** ~~A check shall be drawn on the~~ The bingo account ~~in~~ shall be used for both of the following events:

*a.* One qualified organization satisfies the dedication requirement by donating funds to another organization over which the licensed organization has no control; or

*b.* A qualified organization licensee is satisfying the dedication requirement by spending funds to further the charitable, educational, religious, public, patriotic or civic purposes of its own organization.

~~**103.14(5)**~~ **103.14(4)** A qualified organization licensee shall not transfer funds from the bingo checking account to any other checking account of the organization.

A flowchart for a bingo checking account is shown on Table H[1].

~~This rule is intended to implement Iowa Code sections 99B.2(3) and 99B.7(1) *"p."*~~

ITEM 24. Rescind the implementation sentence in rule **481—103.15(10A,99B)**.

ITEM 25. Amend rule 481—103.16(10A,99B) as follows:

**481—103.16(~~10A,~~99B) ~~Reports~~ Annual gambling reports.**

**103.16(1)** Each organization which conducts bingo shall submit a report ~~of all transactions for each fiscal year. The fiscal year begins July 1 and ends June 30 of the following year~~ to the department by

January 31 of each year for the prior calendar year period of January 1 through December 31. When the due date is on Saturday, Sunday, or a legal holiday, the report is due the next business day.

**103.16(2)** Annual gambling reports may be completed online by visiting ~~http://dia.iowa.gov/~~ dia.iowa.gov and clicking ~~on~~ the link for "Social and Charitable Gambling." A paper version of the annual gambling report may be obtained from the Social and Charitable Gambling Unit, Iowa Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or by telephone ~~(515)281-6840~~ (515)281-6848.

~~**103.16(3)** Reports are due 30 days after the end of the fiscal year. When the due date is on Saturday, Sunday, or a legal holiday, the report is due the next business day.~~

~~**103.16(4)**~~ **103.16(3)** The department may require a qualified organization to submit records of specific occasions with the annual report.

~~**103.16(5)**~~ **103.16(4)** All transactions of any school group or parent support group using a schoolwide license shall be on the annual report.

~~This rule is intended to implement Iowa Code sections 99B.2(4) and 99B.16.~~

ITEM 26. Rescind the implementation sentence in rule **481—103.17(10A,99B)**.

ITEM 27. Rescind rule **481—103.18(10A,99B)**.

ITEM 28. Renumber rule **481—103.19(99B)** as **481—103.18(99B)**.

ITEM 29. Amend renumbered subrule 103.18(1) as follows:

**103.18(1)** A qualified organization may lease electronic bingo equipment from a manufacturer or distributor licensed by the department. For purposes of this rule, "electronic bingo equipment" means an electronic device that ~~aids~~ assists an individual with a disability in the use of a bingo card during a bingo game.

ITEM 30. Amend renumbered rule **481—103.18(99B)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~99B.7(8) *"b."*~~ 99B.21(3) *"b."*

ITEM 31. Adopt the following **new** rule 481—103.19(99B):

**481—103.19(99B) Bingo at a fair or community festival.** Bingo may lawfully be conducted at a fair or a community festival if the requirements of Iowa Code section 99B.22 are met. A qualified organization that has received permission from the sponsor of the fair or community festival to conduct bingo shall be licensed under Iowa Code section 99B.12.

ITEM 32. Adopt the following **new** implementation sentence in **481—Chapter 103**:

These rules are intended to implement Iowa Code sections 99B.1 to 99B.7, 99B.11 to 99B.16, 99B.21 to 99B.23, and 99B.32.

ITEM 33. Rescind and reserve **481—Chapter 103**, Table E.

ITEM 34. Rescind and reserve **481—Chapter 103**, Table G.

## ARC 3922C

# INSPECTIONS AND APPEALS DEPARTMENT[481]

### Notice of Intended Action

### Proposing rule making related to amusement devices and providing an opportunity for public comment

The Inspections and Appeals Department hereby proposes to amend Chapter 104, "General Provisions for All Amusement Devices," and Chapter 105, "Registered Amusement Devices," Iowa Administrative Code.

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

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 99B.2 and 99B.52(7).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 99B.2.

*Purpose and Summary*

The proposed amendments implement changes made to Iowa Code chapter 99B, "Social and Charitable Gaming," resulting from 2015 Iowa Acts, Senate File 482. The legislation modernized Iowa Code chapter 99B by streamlining processes and eliminating unnecessary licenses.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

David Werning
Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319-0083
Email: david.werning@dia.iowa.gov

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

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

The following rule-making actions are proposed:

ITEM 1. Amend rule **481—104.1(10A,99B)**, definitions of "Amusement device" and "Gambling device," as follows:

*"Amusement device"* means an electrical or mechanical device possessed and used in accordance with Iowa Code ~~section 99B.10~~ chapter 99B. An amusement device is not a game of skill or chance as defined in Iowa Code section 99B.1, a gambling device, or a device that plays poker, blackjack, or keno. Roulette wheels, slot machines, and other devices specified in Iowa Code section 725.9 as gambling devices are not amusement devices.

*"Gambling device"* means a device possessed or used or designed to be used for gambling and includes, but is not limited to: roulette wheels, klondike tables, punchboards, faro layouts, keno layouts, numbers tickets, slot machines, pachislo skill-stop machine or any other similar machine or device, push cards, jar tickets, pull-tabs, and video machines or other devices that do not comply with Iowa Code ~~section 99B.10~~ chapter 99B.

ITEM 2. Adopt the following **new** definition of "Progressive games" in rule **481—104.1(10A,99B)**:

*"Progressive games"* means games in which the value of the prizes increases an incremental amount with each game.

ITEM 3. Amend rule 481—104.2(99B) as follows:

**481—104.2(99B) Device restrictions.** An amusement device, except for an amusement device which shall be registered pursuant to Iowa Code section ~~99B.10(1) *"f,"*~~ 99B.53, may be owned, possessed, or offered for use by any person at any location. All amusement devices shall comply with all of the following:

1. to 8. No change.

9. The device must be registered if it meets the registration requirements set forth in Iowa Code section 99B.53 and rule 481—104.5(99B).

ITEM 4. Amend rule 481—104.3(99B) as follows:

**481—104.3(99B) Prohibited games/devices.** The following games or devices are not permitted:

1. and 2. No change.

3. Any machine that does not conform to the requirements in these rules or Iowa Code ~~section 99B.10~~ chapter 99B.

4. and 5. No change.

6. Progressive games.

NOTE: This rule does not prohibit the possession of antique slot machines when possessed pursuant to Iowa Code chapter 725.

ITEM 5. Amend rule 481—104.5(99B) as follows:

**481—104.5(99B) Registration.** An amusement device must be registered if it meets the registration requirements set forth in Iowa Code section ~~99B.10(1) *"f."*~~ 99B.53. The outcome of the game is not primarily determined by the skill or knowledge of the operator, and registration is required if chance plays a role equal to or greater than the players' skill or knowledge in determining the outcome of the game. Additional licenses or registrations under Iowa Code chapter 99B are not required.

ITEM 6. Amend rule 481—104.6(99B) as follows:

**481—104.6(99B) Violations.** Failure to comply with the limitations imposed on the use and possession of amusement devices in Iowa Code ~~section 99B.10 as amended by 2007 Iowa Acts, Senate File 510, section 2,~~ chapter 99B constitutes unlawful gambling, which may result in the following consequences. Additional consequences apply for registered amusement devices pursuant to 481—Chapter 105 and Iowa Code ~~section 99B.10 as amended by 2007 Iowa Acts, Senate File 510, section 2~~ chapter 99B.

1. Conviction for illegal gambling under the provisions of Iowa Code chapter 725.

2. Forfeiture of property under the provisions of Iowa Code chapter 809.

ITEM 7. Adopt the following **new** rule 481—104.7(99B,17A):

**481—104.7(99B,17A) Declaratory orders.** In addition to the requirements for declaratory orders found in 481—Chapter 3, parties seeking a declaratory order shall file with their petition a written evaluation of the game by an independent gaming laboratory approved by the department.

**104.7(1)** *Approved by the department.* "Approved by the department," for purposes of this rule, means that the gaming laboratory has submitted its qualifications in writing to the director for review and approval in writing by the director or the director's designee.

**104.7(2)** *Written evaluation—requirements.* The independent gaming laboratory's evaluation must analyze whether chance plays a role equal to or greater than the players' skill or knowledge in determining the outcome of the game. "Outcome of the game" includes both whether the player correctly solves the puzzle and what prize is awarded.

ITEM 8. Amend **481—Chapter 104**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section 99B.10~~ sections 99B.1, 99B.2 and 99B.51 to 99B.60.

ITEM 9. Rescind the definitions of "Manufacturer's representative" and "Organization" in rule **481—105.1(10A,99B)**.

ITEM 10. Amend rule **481—105.1(10A,99B)**, definitions of "Distributor," "Manufacturer," "Owner," "Registered amusement device" and "Responsible party," as follows:

*"Distributor"* ~~means, for the purposes of Iowa Code sections 99B.10, 99B.10A, and 99B.10B, any person who owns electrical or mechanical amusement devices that are registered as provided in Iowa Code section 99B.10(4) and that are offered for use at more than a single location or premises~~ is as defined in Iowa Code section 99B.51.

*"Manufacturer"* ~~means, for the purposes of Iowa Code sections 99B.10, 99B.10A, and 99B.10B, any person engaged in business in this state that originally produces an electrical or mechanical amusement device required to be registered under Iowa Code section 99B.10(4) or produces individual components for use in such a device~~ is as defined in Iowa Code section 99B.51.

*"Owner"* ~~means, for the purposes of Iowa Code sections 99B.10A and 99B.10B, any person that owns an operable registered electrical or mechanical amusement device. An owner that operates for profit is allowed up to two machines at a single location. An owner that meets the requirements of Iowa Code section 99B.7(1)*"m"* is allowed up to four machines at a single location~~ is as defined in Iowa Code section 99B.51.

*"Registered amusement device"* means an electrical or mechanical amusement device in operation subject to registration by the department pursuant to Iowa Code section ~~99B.10(1)*"f"*~~ 99B.53 and includes both the external and internal components. Any change in the registered amusement device, including the external and internal components of the registered amusement device, constitutes a new registered amusement device for which registration by the owner is required. The word "change" as used herein does not include repairs or replacement of parts that do not change or alter the operation of the device as originally registered by the owner. If the repairs or replacement parts alter the operation of the device as originally registered, then the device must be reregistered before it is made available for operation.

*"Responsible party,"* as listed on the amusement device registration, means the owner of the amusement ~~device(s)~~ device.

ITEM 11. Amend subrule 105.2(6) as follows:

**105.2(6)** The registered amusement device shall be registered in accordance with these rules and shall comply with all of the requirements of Iowa Code section ~~99B.10~~ 99B.53, this chapter, 481—Chapter 104, and any other applicable laws or rules.

ITEM 12. Amend subrule 105.2(8) as follows:

**105.2(8)** If the department, or the department's designee, determines that a registered amusement device is not in compliance with the requirements of this chapter or any other provision of Iowa law, the device may be subject to seizure, and any registration associated with the device, including the registration of the manufacturer, ~~manufacturer's representative,~~ distributor, or owner, may be revoked or suspended.

ITEM 13. Adopt the following **new** subrule 105.2(15):

**105.2(15)** Devices shall not allow for more than one player. Each playing position constitutes one amusement device.

ITEM 14. Amend rule 481—105.5(99B), introductory paragraph, as follows:

**481—105.5(99B) Registration by a manufacturer, ~~manufacturer's representative,~~ distributor, or an owner that operates for profit.** A person engaged in business in Iowa as a manufacturer, ~~a manufacturer's representative,~~ a distributor, or an owner that operates for profit shall be registered with the department prior to engaging in business in Iowa. A person shall register under each of the categories that apply to the business to be conducted in Iowa and shall pay the designated fee for each category of registration.

ITEM 15. Amend subrule 105.5(1) as follows:

**105.5(1)** Each person that registers with the department shall pay an annual registration fee as follows:

*a.* For a manufacturer ~~or manufacturer's representative~~, $2,500.

*b.* For a distributor, $5,000.

*c.* For an owner of no more than ~~two~~ four registered amusement devices at a single location or premises that is not ~~an organization that meets the requirements of Iowa Code section 99B.7(1)~~ ~~*"m,"*~~ a qualified organization, $2,500.

ITEM 16. Amend rule 481—105.6(99B), introductory paragraph, as follows:

**481—105.6(99B) Registration of registered amusement devices.** Each owner of an amusement device subject to registration by the department pursuant to Iowa Code section ~~99B.10(4)~~ 99B.53 shall obtain a registration. A registration issued pursuant to Iowa Code chapter 99B is required to offer a registered amusement device for use.

ITEM 17. Amend subrule 105.6(3) as follows:

**105.6(3)** A new registered amusement device must be obtained from a manufacturer~~, a manufacturer's representative or a distributor~~ that is registered with the department pursuant to Iowa Code section 99B.56. A registered amusement device that has been placed on location and used may be obtained from a manufacturer, distributor or owner that is registered with the department pursuant to Iowa Code section ~~99B.10A~~ 99B.56. A distributor or owner that ceases, for any reason, to be registered pursuant to Iowa Code section 99B.56 may sell any registered amusement devices in the distributor's or owner's possession within 12 months from the date registration ceases. For ~~new machines~~ all amusement devices new to the purchaser, proof of purchase, which includes the seller's name, company name, and address, must accompany the application for registration of the machine.

~~The owner of the registered amusement device shall exercise due diligence in ensuring that the amusement device is in compliance with these rules and all laws governing such devices. Upon request by the department or the department's designee, any manufacturer, manufacturer's representative or distributor registered with the department, or any owner of a registered device, shall permit the inspection of any amusement device and shall make available for inspection all records, documents, and agreements pertaining to the amusement device.~~

ITEM 18. Amend subrule 105.6(4) as follows:

**105.6(4)** ~~An organization that meets the requirements of Iowa Code section 99B.7(1)~~ ~~*"m"*~~ ~~shall not permit or offer for use more than four registered amusement devices at any single premises.~~

~~Organizations that meet the Iowa Code section 99B.7(1)*"m"* requirements under Section 501(c) of the Internal Revenue Code shall provide a copy of the exemption approval letter from the Internal Revenue Service. All other persons shall not permit or offer for use more than two registered amusement devices at any single premises. The single premises where the registered amusement device(s) is located shall have a Class "A," Class "B," Class "C," special Class "C," or Class "D" liquor control license or a Class "B" or a Class "C" beer permit issued pursuant to Iowa Code chapter 123. New registrations shall not be issued to devices to be located at premises with Class "B" or Class "C" beer permits.~~ No more than four registered amusement devices shall be permitted or offered for use at any single premises.

*a.* A registered amusement device may be located on premises for which a class "A," class "B," class "C," special class "C," or class "D" liquor control license has been issued pursuant to Iowa Code chapter 123.

*b.* A registered amusement device may be located on the premises for which a class "B" or class "C" beer permit has been issued pursuant to Iowa Code chapter 123, but new registrations shall not be issued to devices to be located at premises with class "B" or class "C" beer permits.

(1) A registered amusement device at a location for which only a class "B" or class "C" beer permit has been issued pursuant to Iowa Code chapter 123 may only be relocated to a location for which a class "A," class "B," class "C," special class "C," or class "D" liquor license has been issued and shall not be transferred, assigned, sold or leased to another person for which only a class "B" or class "C" beer permit has been issued pursuant to Iowa Code chapter 123.

(2) If ownership of the location changes, the class "B" or class "C" beer permit does not lapse, and the registered amusement device is not removed from the location, the device may remain at the location.

ITEM 19. Amend subrule 105.6(5), introductory paragraph, as follows:

**105.6(5)** Each electrical or mechanical amusement device required to be registered pursuant to Iowa Code section ~~99B.10~~ 99B.53 shall include on the amusement device a counting mechanism.

ITEM 20. Rescind subrule 105.6(6) and adopt the following **new** subrule in lieu thereof:

**105.6(6)** The owner of the registered amusement device shall exercise due diligence in ensuring that the amusement device is in compliance with these rules and all laws governing such devices. Upon request by the department or the department's designee, any manufacturer or distributor registered with the department, or any owner of a registered device, shall permit the inspection of any amusement device and shall make available for inspection all records, documents, and agreements pertaining to the amusement device.

ITEM 21. Amend rule 481—105.7(99B) as follows:

**481—105.7(99B) Violations.** Failure to comply with the limitations imposed on the use and possession of registered amusement devices in Iowa Code chapter 99B may result in the following:

1. Conviction for illegal gambling may result under the provisions of Iowa Code chapter 725.
2. Suspension or revocation of a wine or beer permit or of a liquor license may result under the provisions of Iowa Code chapter 123.
3. Property may be forfeited under the provisions of Iowa Code chapter 809.
4. Violation of any laws pertaining to gambling may result in suspension or revocation of a registration as prescribed in Iowa Code section ~~99B.10B or 99B.10C~~ 99B.55.
5. Unless otherwise prescribed in Iowa Code section ~~99B.10B or 99B.10C~~ 99B.55, a registration may be revoked upon the violation of any gambling law, rule or regulation, including Iowa Code chapter 99B, 481—Chapter 104, or this chapter.
6. A registration may be revoked if the registrant or an agent of the registrant engages in any act or omission that would have permitted the department to refuse to issue a registration under Iowa Code chapter 99B.
7. A person under the age of 21 shall not participate in the operation of an electrical or mechanical amusement device that is required to be registered. A person who violates the provisions of Iowa Code section ~~99B.10C(1)~~ 99B.57 commits a scheduled violation under Iowa Code section 805.8C(4).

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

ITEM 22. Amend rule **481—105.9(10A,99B,82GA,SF510)**, parenthetical implementation statute, as follows:

**481—105.9(10A,99B~~,82GA,SF510~~) Procedure for denial, revocation, or suspension of a registration.**

ITEM 23. Amend subrule 105.11(1), introductory paragraph, as follows:

**105.11(1)** The department shall consider the following factors in determining whether to approve or deny an application for registration of an amusement device, a manufacturer, a distributor, or an owner~~, or a manufacturer's representative~~:

ITEM 24. Amend paragraph **105.11(1)"a"** as follows:

*a.* The applicant and responsible person's history of compliance with Iowa Code sections ~~99B.10, 99B.10A and 99B.10B~~ 99B.51 to 99B.60 and with other gambling laws and rules.

ITEM 25. Amend **481—Chapter 105**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~99B.10, 99B.10A, 99B.10B, and 99B.10C~~ 99B.1, 99B.2 and 99B.51 to 99B.60.

## ARC 3921C

# INSPECTIONS AND APPEALS DEPARTMENT[481]

**Notice of Intended Action**

**Proposing rule making related to card game tournaments and providing an opportunity for public comment**

The Inspections and Appeals Department hereby proposes to rescind Chapter 106, "Card Game Tournaments by Veterans Organizations," Iowa Administrative Code, and to adopt a new Chapter 106 with the same title.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 99B.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 99B.2.

*Purpose and Summary*

The proposed amendment implements changes made to Iowa Code chapter 99B resulting from 2015 Iowa Acts, Senate File 482. The legislation modernized Iowa Code chapter 99B by streamlining processes and eliminating unnecessary licenses. Iowa Code section 99B.27 addresses much of what was formerly found in 481—Chapter 106; accordingly, the proposed amendment eliminates duplicative material. Cross references in this rule making to rules in 481—Chapter 100 refer to the proposed rules published in **ARC 3919C** (IAB 8/1/18).

*Fiscal Impact*

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

*Jobs Impact*

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

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

David Werning
Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319-0083
Email: david.werning@dia.iowa.gov

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Rescind 481—Chapter 106 and adopt the following **new** chapter in lieu thereof:

CHAPTER 106
CARD GAME TOURNAMENTS BY VETERANS ORGANIZATIONS

**481—106.1(99B) Definitions.** In addition to definitions found in Iowa Code chapter 99B, for the purposes of this chapter, the following definitions apply:

*"Card game tournament"* or *"tournament"* means a series of card games held by a licensee during a consecutive period of time of not more than 24 hours and not held as part of an annual game night licensed pursuant to Iowa Code section 99B.26.

*"Department"* means the department of inspections and appeals.

*"Educational, civic, public, charitable, patriotic, or religious uses"* means the same as defined in Iowa Code section 99B.1(14).

*"Licensee"* means a qualified organization representing veterans that has been issued a license pursuant to Iowa Code section 99B.12 and the rules in 481—Chapter 100 and this chapter.

**481—106.2(99B) Licensing.** Before any card game tournament may occur, a license application must be approved by the department. Application and license requirements are found in rules

481—100.3(99B), 481—100.4(99B), and 481—100.5(99B). A qualified organization intending to conduct veterans card game tournaments must complete the section of the license application for veterans card game tournaments.

**481—106.3(99B) Card game tournament.** In addition to the requirements found in Iowa Code section 99B.27, licensees conducting tournaments shall comply with all of the following:

**106.3(1)** *Licensee to conduct tournament.* The licensee shall conduct each tournament and shall not contract with or permit another person to conduct the tournament or any card game during the tournament.

**106.3(2)** *Tournament rules.* Tournament rules shall be posted or distributed to all participants before the tournament begins. Rules shall include the following:

*a.* Card games and the rules of each card game;
*b.* Participation fees;
*c.* Prize(s) for each card game and tournament;
*d.* How winners will be determined; and
*e.* Any other tournament rules.

**481—106.4(99B) Records.** The licensee shall comply with the record-keeping requirements found in Iowa Code sections 99B.16 and 99B.27(3) and 481—Chapter 100. The licensee shall keep a journal of all dates of events, amount of gross receipts, amount given out as prizes, expenses, amount collected for taxes, and amount collected as revenue.

These rules are intended to implement Iowa Code sections 99B.2 and 99B.27.

**ARC 3917C**

# IOWA FINANCE AUTHORITY[265]

**Notice of Intended Action**

**Proposing rule making related to qualified allocation plans and providing an opportunity for public comment**

The Iowa Finance Authority hereby proposes to amend Chapter 12, "Low-Income Housing Tax Credits," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 16.5.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 16.35 and Section 42 of the Internal Revenue Code.

*Purpose and Summary*

The updated 2019 9% Qualified Allocation Plan (QAP) and the 2019 4% Qualified Allocation Plan set forth the purposes of the plans, administrative information required for participation, threshold criteria, selection criteria, postreservation requirements, appeal process, and compliance monitoring components. The plans also establish the fees for filing an application for low-income housing tax credits and for compliance monitoring. Copies of the qualified allocation plans are available upon request from the Authority and are available electronically on the Authority's website at www.iowafinanceauthority.gov. It is the Authority's intent to incorporate the updated 2019 qualified allocation plans by reference consistent with Iowa Code chapter 17A and 265—subrules 17.4(2) and 17.12(2).

IOWA FINANCE AUTHORITY[265](cont'd)

*Fiscal Impact*

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

*Jobs Impact*

After analysis and review of this rule making, the impact on jobs is expected to be consistent with the impact of previous years' QAPs. The Low-Income Housing Tax Credit program has a substantial positive impact on job creation in Iowa, with many jobs created annually in the construction, finance, and property management fields, among others.

*Waivers*

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

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

Dave Vaske
Iowa Finance Authority
2015 Grand Avenue
Des Moines, Iowa 50312
Phone: 515.725.4900
Email: dave.vaske@iowa.gov

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| August 21, 2018<br>9 to 11 a.m. | Authority Offices<br>2015 Grand Avenue<br>Des Moines, Iowa |

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

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Authority and advise of specific needs.

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

IOWA FINANCE AUTHORITY[265](cont'd)

ITEM 1. Amend rule 265—12.1(16) as follows:

**265—12.1(16) Qualified allocation plans.**

**12.1(1)** *Four percent qualified allocation plan.* The qualified allocation plan entitled Iowa Finance Authority Low-Income Housing Tax Credit Program 4% Qualified Allocation Plan ("4% QAP") dated ~~September 7, 2016~~ July 11, 2018, shall be the qualified allocation plan for the allocation of 4 percent low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.35. The 4% QAP is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2). The 4% QAP does not include any amendments or editions created subsequent to ~~September 7, 2016~~ July 11, 2018.

**12.1(2)** *Nine percent qualified allocation plan.* The qualified allocation plan entitled Iowa Finance Authority Low-Income Housing Tax Credit Program ~~2018~~ 2019 Qualified Allocation Plan ("9% QAP") shall be the qualified allocation plan for the allocation of 9 percent low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.35. The 9% QAP is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2). The 9% QAP does not include any amendments or editions created subsequent to ~~September 6, 2017~~ July 11, 2018.

ITEM 2. Amend rule 265—12.2(16) as follows:

**265—12.2(16) Location of copies of the plans.**

**12.2(1)** *4% QAP.* The 4% QAP can be reviewed and copied in its entirety on the authority's ~~Web site~~ website at ~~http://www.iowafinanceauthority.gov~~ www.iowafinanceauthority.gov. Copies of the 4% QAP, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library and shall be available on the authority's ~~Web site~~ website. The 4% QAP incorporates by reference IRC Section 42 and the regulations in effect as of ~~September 7, 2016~~ July 11, 2018. Additionally, the 4% QAP incorporates by reference Iowa Code section 16.35. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority's ~~Web site~~ website.

**12.2(2)** *9% QAP.* The 9% QAP can be reviewed and copied in its entirety on the authority's ~~Web site~~ website at ~~http://www.iowafinanceauthority.gov~~ www.iowafinanceauthority.gov. Copies of the 9% QAP, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library and shall be available on the authority's ~~Web site~~ website. The 9% QAP incorporates by reference IRC Section 42 and the regulations in effect as of ~~September 6, 2017~~ July 11, 2018. Additionally, the 9% QAP incorporates by reference Iowa Code section 16.35. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority's ~~Web site~~ website.

**ARC 3916C**

# IOWA FINANCE AUTHORITY[265]

**Notice of Intended Action**

**Proposing rule making related to home and community-based services rent subsidy program and providing an opportunity for public comment**

The Iowa Finance Authority hereby proposes to amend Chapter 24, "Home and Community-Based Services Rent Subsidy Program," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 16.5.

IOWA FINANCE AUTHORITY[265](cont'd)

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 16.55.

*Purpose and Summary*

The purposes of these proposed amendments are to clarify the rules, remove an unnecessary defined term, and strike a sentence that prohibits subsidy recipients from residing in rental units owned by immediate family members.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

Mark Thompson
Iowa Finance Authority
2015 Grand Avenue
Des Moines, Iowa 50312
Phone: 515.725.4937
Email: mark.thompson@iowa.gov

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

IOWA FINANCE AUTHORITY[265](cont'd)

ITEM 1. Rescind the definition of "Immediate family member" in rule **265—24.2(16)**.

ITEM 2. Amend rule **265—24.2(16)**, definition of "Qualified rental unit," as follows:

*"Qualified rental unit"* means a housing unit for which a signed written rental agreement exists and which is governed by Iowa Code chapter 562A. ~~A qualified rental unit does not include a home owned by an immediate family member.~~

ITEM 3. Amend rule 265—24.3(16) as follows:

**265—24.3(16) Eligibility requirements.** All of the following criteria shall be met.

**24.3(1)** *Demonstrated need.* An applicant must demonstrate need for rent subsidy by meeting all of the following requirements:

*a.* The applicant shall provide a copy of an executed rental agreement showing the applicant as a tenant, with signatures by the landlord and the applicant or the applicant's legal guardian;

*b.* The applicant shall provide evidence that the applicant pays more than 30 percent of the applicant's gross income for rent, with a minimum contribution of $25 per month;

*c.* The applicant shall not receive any other permanent rental assistance;

*d.* The applicant may not use this program to substitute for any other permanent rent subsidy that the applicant had been receiving at the time of or immediately prior to the time of application to this program; and

*e.* The applicant's rental unit must be a qualified rental unit and may not be owned by someone who lives in the unit.

**24.3(2)** No change.

ITEM 4. Amend **265—Chapter 24**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section ~~16.5(17) and 2005 Iowa Acts, House File 825, section 45~~ 16.55.

**ARC 3905C**

# MEDICINE BOARD[653]

**Notice of Intended Action**

**Proposing rule making related to prescribing psychologists and providing an opportunity for public comment**

The Board of Medicine hereby proposes to adopt new Chapter 19, "Prescribing Psychologists," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapters 148, 154B, and 272C and section 147.76.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 154B, Iowa Code sections 123.3, 124.101, 147.107, 148.13A, 148.13B, 155A.3, 155A.23, 155A.24 and 155A.27, and 2016 Iowa Acts, Senate File 2188.

*Purpose and Summary*

This proposed rule making establishes a new Chapter 19 for a set of joint rules with the Iowa Board of Psychology to implement 2016 Iowa Acts, Senate File 2188, which gives prescriptive authority for certain psychologists. These joint rules were developed in a joint rule-making process involving both boards over the past 18 months. Identical joint rules have been published under Notice by the Board of

MEDICINE BOARD[653](cont'd)

Psychology herein (see Professional Licensure Division[645] **ARC 3904C**, IAB 8/1/18). Both boards will hold a single public hearing on the joint rules on August 21, 2018, as described below.

*Fiscal Impact*

2016 Iowa Acts, Senate File 2188, broadens the scope of practice for certain psychologists, allowing them to provide mental health care services previously provided by other health care practitioners, such as physicians, nurse practitioners and physician assistants. Consequently, it is difficult to determine the actual fiscal impact of the legislation and corresponding rules.

*Jobs Impact*

2016 Iowa Acts, Senate File 2188, broadens the scope of practice for certain psychologists, allowing them to provide mental health care services previously provided by other health care practitioners, such as physicians, nurse practitioners and physician assistants. Consequently, it is difficult to determine the actual jobs impact of the legislation and corresponding rules.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed joint rule making. Written or oral comments in response to this joint rule making must be received by the Board no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

Kent Nebel
Board of Medicine
400 S.W. Eighth Street
Des Moines, Iowa 50309
Phone: 515.281.7088
Fax: 515.242.5908
Email: kent.nebel@iowa.gov

*Public Hearing*

A jointly held public hearing by the Boards of Medicine and Psychology at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| August 21, 2018 | Board Office, Suite C |
| 10 a.m. to 12 noon | 400 S.W. Eighth Street |
| | Des Moines, Iowa |

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

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

MEDICINE BOARD[653](cont'd)

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Adopt the following **new** 653—Chapter 19:

CHAPTER 19
PRESCRIBING PSYCHOLOGISTS

**653—19.1(148,154B) Definitions—joint rule.**

*"APA"* means the American Psychological Association.

*"Applicant"* means a psychologist applying for a conditional prescription certificate.

*"Board"* means the Iowa board of psychology.

*"Board of medicine"* means the Iowa board of medicine.

*"Collaborating physician"* means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician's normal course of practice, and who serves as a resource for a prescribing psychologist pursuant to a collaborative practice agreement. A collaborating physician shall be board-certified in family medicine, internal medicine, neurology, pediatrics, or psychiatry.

*"Conditional prescribing psychologist"* means a person licensed to practice psychology in Iowa who holds an active conditional prescription certificate. This term does not include prescribing psychologists.

*"Conditional prescription certificate"* means a certificate issued by the board to a psychologist that permits the psychologist to prescribe psychotropic medication under the supervision of a supervising physician.

*"CSA registration"* means a Controlled Substance Act registration issued by the Iowa board of pharmacy authorizing a psychologist to possess and prescribe controlled substances.

*"DEA registration"* means a mid-level practitioner registration with the Drug Enforcement Administration authorizing a psychologist to possess and prescribe controlled substances.

*"Joint rule"* means a rule adopted by agreement of the board of psychology and the board of medicine through the joint rule-making process.

*"Mental disorder"* means a disorder which is defined by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or contained within the mental and behavioral disorders chapter of the most recent version of the International Classification of Diseases.

*"Prescribing psychologist"* means a person licensed to practice psychology in Iowa who holds an active prescription certificate. This term does not include conditional prescribing psychologists.

*"Prescription certificate"* means a certificate issued by the board to a psychologist that permits the psychologist to prescribe psychotropic medication.

*"Primary care physician"* means a person licensed to practice medicine and surgery or osteopathic medicine in Iowa who is responsible for the ongoing medical care of a patient.

*"Psychologist"* means a person licensed to practice psychology in Iowa.

*"Psychotropic medication"* means a medication that shall not be dispensed or administered without a prescription and that has been explicitly approved by the federal Food and Drug Administration for the treatment of a mental disorder, as defined by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or the most recent version of the International Classification of Diseases. "Psychotropic medication" does not include narcotics.

*"Supervising physician"* means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician's normal course of practice, and who supervises a conditional prescribing psychologist. A supervising physician shall be board-certified in family medicine, internal medicine, neurology, pediatrics, or psychiatry.

*"Training director"* means an employee of the psychopharmacology training program who is primarily responsible for directing the training program.

*"Training physician"* means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician's normal course of practice, and who provides training to a psychologist as part of the clinical experience and practicum described in rule 653—19.2(148,154B). A training physician shall be board-certified in family medicine, internal medicine, neurology, pediatrics, or psychiatry. A training physician shall be approved by the psychopharmacology training program.

**653—19.2(148,154B) Educational requirements for conditional prescription certificate—joint rule.** An applicant for a conditional prescription certificate shall have completed a program of study designated by the APA as a program for the psychopharmacology training of postdoctoral psychologists. The program must have included didactic instruction, a clinical experience, and a practicum satisfying the requirements of this rule. A minimum of 40 hours of basic training on clinical assessment skills shall be included as part of the program's didactic instruction.

**19.2(1)** *Degree.* An applicant shall possess a postdoctoral master of science degree in clinical psychopharmacology from a program designated by the APA as a program for the psychopharmacology training of postdoctoral psychologists. The degree program must be a minimum of 30 credit hours not including the practicum and shall include coursework in basic science, neuroscience, clinical medicine, pathological basis of disease, clinical pharmacology, psychopharmacology, and professional, ethical and legal issues. A minimum of one-third of the coursework must be completed in a live interactive format. The date the degree is conferred must be within the five-year period immediately preceding the application for a conditional prescription certificate. A program must be designated by the APA at the time the degree is conferred.

**19.2(2)** *Clinical experience.* An applicant shall have completed a clinical experience in accordance with the requirements of this subrule. During the clinical experience, a psychologist shall learn clinical assessment techniques and pathophysiology through direct observation and hands-on training with a training physician. During the clinical experience, a psychologist shall become competent in health history interviews, physical examinations, and neurological examinations with a medically diverse patient population. The clinical experience must be associated with the psychopharmacology training program from which the psychologist obtained the postdoctoral master of science degree in clinical psychopharmacology.

*a. Scope.* At the beginning of the clinical experience, the psychologist shall directly observe the training physician performing clinical assessments of patients. After the training physician determines the psychologist has gained sufficient knowledge, the clinical experience shall transition to the psychologist's performance of clinical assessments of patients under the direct observation of the training physician. After the training physician determines the psychologist has gained sufficient knowledge and experience, the psychologist may perform clinical assessments of patients without being directly observed by the training physician, provided that the training physician is on site at all times when the psychologist is with patients and is reviewing all medical records. A psychologist and a training physician shall have ongoing discussions regarding the psychologist's clinical assessment skills and progress in the clinical experience.

*b. Minimum experience.* The clinical experience shall consist of a minimum of 600 patient encounters that shall be completed by the end of the practicum.

*c. Conflict of interest.* A training physician shall not be an employee of the psychologist or otherwise have a conflict of interest that could affect the training physician's ability to impartially evaluate the psychologist's performance. A psychologist may utilize more than one training physician.

*d. Milestones.* To satisfactorily complete the clinical experience, a psychologist shall demonstrate competency in each of the following:

(1) Perform a health history interview to obtain pertinent information regarding a patient's chief complaint, history of the present illness, past medical and surgical history, family history, allergies, medications, and psychosocial history. The psychologist shall perform a review of systems to elicit a health history and shall appropriately document the health history.

(2) Perform a physical examination in a logical sequence, ensuring appropriate positioning of the patient, proper patient draping, and proper application of the principles of asepsis throughout the examination. The psychologist shall verbalize and assess the components of a general survey and be able to accurately assess all of the following: vital signs, including pulse, respiration, and blood pressure; skin, hair and nails; head, face and neck; eyes; ears, nose, mouth and throat; thorax, lungs and axillae; heart; peripheral vascular system; abdomen; and musculoskeletal system. The psychologist shall be proficient in utilizing any equipment needed to conduct a physical examination.

(3) Complete a neurological examination demonstrating knowledge of the history related to the neurological system and the ability to assess the following: mental status, cranial nerves, motor system, sensory system, and reflexes. The psychologist shall differentiate normal laboratory values from abnormal laboratory values and correlate abnormal laboratory values with impaired physiological systems. The psychologist shall identify adverse drug reactions and identify laboratory data and physical signs indicating an adverse drug reaction.

*e. Informed consent.* At the initial contact, the psychologist shall inform the patient, or the patient's legal guardian when appropriate, of the psychologist's training role in the clinical experience. The psychologist shall provide sufficient information regarding the expectations and requirements of the clinical experience to obtain informed consent and appropriate releases. Upon request, the psychologist shall provide additional information regarding the psychologist's education, training, or experience.

*f. Training documentation.* The psychologist and the training director shall maintain documentation accounting for all clinical experience patient encounters, including the dates, times, and locations of all clinical experience patient encounters, and documentation of completion of the milestones defined in these rules. The applicant shall provide additional documentation to the board upon request.

*g. Certification.* The training physician(s) and the training director shall certify on forms provided by the board that the applicant has successfully completed the minimum number of clinical experience patient encounters required and demonstrated competence in clinical assessment techniques and pathophysiology through completion of the milestones defined in these rules.

**19.2(3)** *Practicum.* An applicant shall have completed a practicum in accordance with the requirements of this subrule. During the practicum, a psychologist shall develop competencies in evaluating and treating patients with mental disorders through pharmacological intervention via observation and active participation. The practicum must be associated with the psychopharmacology training program from which the applicant obtained the postdoctoral master of science degree in clinical psychopharmacology and must be completed in a period of time not less than six months and not more than three years.

*a. Scope.* At the beginning of the practicum, the psychologist shall directly observe the training physician evaluating and treating patients with mental disorders. After the training physician determines the psychologist has gained sufficient knowledge, the practicum shall transition to the psychologist's evaluation and treatment of patients under the direct observation of the training physician. After the training physician determines the psychologist has gained sufficient knowledge and experience, the psychologist may evaluate and treat patients without being directly observed by the training physician, provided that the training physician is on site at all times when the psychologist is with patients, has personal contact with the patient at each visit, and is reviewing all pertinent medical records. During the practicum, the training physician shall make all final treatment decisions, with consultation from the psychologist prior to making a final determination regarding the psychopharmacological treatment of a patient.

*b. Minimum number of hours.* A practicum shall consist of a minimum of 400 hours. Only hours spent face to face evaluating and treating patients with mental disorders and hours spent discussing treatment plans with a training physician may count as practicum hours. Time spent by the psychologist providing services that are within the scope of practice of a licensed psychologist, such as psychological examinations and psychotherapy, shall not be counted as practicum hours.

*c. Minimum number of patients.* A psychologist shall see a minimum of 100 individual patients throughout the practicum. A patient can be counted toward this requirement if the patient has a diagnosed mental disorder and pharmacological intervention is considered as a treatment option, even if a decision is made not to prescribe a psychotropic medication to the patient. Over the course of the practicum, the psychologist shall observe, evaluate, and treat patients encompassing a range of ages and a variety of psychiatric diagnoses.

*d. Settings.* At least 100 hours of the 400 hours must be completed in a psychiatric setting. At least 100 hours of the 400 hours must be completed in a primary care or community mental health setting.

*e. Conflict of interest.* A training physician shall not be an employee of the psychologist or otherwise have a conflict of interest that could affect the training physician's ability to impartially evaluate the psychologist's performance. A psychologist may utilize more than one training physician.

*f. Milestones.* To successfully complete the practicum, a psychologist shall demonstrate competency in each of the following:

(1) Physical examination and mental status examination. The psychologist shall perform comprehensive and focused physical examinations and mental status evaluations, demonstrate proper use of instruments, and recognize variation associated with developmental stages and diversity.

(2) Review of systems. The psychologist shall integrate information learned from patient reports, signs, symptoms, and a review of each major body system, recognizing normal developmental variations.

(3) Medical history interview. The psychologist shall systematically conduct a patient clinical interview, producing a patient's medical, surgical, psychiatric, and medication history, as well as a family medical and psychiatric history, and be able to communicate the findings in written and verbal form.

(4) Assessment indications and interpretation. The psychologist shall order and interpret appropriate tests (e.g., psychometric, laboratory, and radiological) for the purpose of making a differential diagnosis and monitoring therapeutic and adverse effects of treatment.

(5) Differential diagnosis. The psychologist shall determine primary and alternate diagnoses using established diagnostic criteria.

(6) Integrated treatment planning. The psychologist shall identify and select, using all available data, the most appropriate treatment alternatives, including medication, psychosocial, and combined treatments, and sequence treatment within the larger biopsychosocial context.

(7) Consultation and collaboration. The psychologist shall understand the parameters of the role of a prescribing psychologist and work with other professionals, including a patient's primary care physician, in an advisory or collaborative manner to effectively treat a patient.

(8) Treatment management. The psychologist shall apply, monitor, and modify as needed the treatment of a patient and learn to write valid and complete prescriptions.

(9) Medical documentation. The psychologist shall demonstrate appropriate medical documentation for the patient-psychologist interaction to include subjective and objective assessment; mental status, physical examination findings, or both; formulation; diagnostic impression; and comprehensive treatment plan.

*g. Informed consent.* At the initial contact, the psychologist shall inform the patient, or the patient's legal guardian when appropriate, of the psychologist's training role in the practicum. The psychologist shall provide sufficient information regarding the expectations and requirements of the practicum to obtain informed consent and appropriate releases. Upon request, the psychologist shall provide additional information regarding the psychologist's education, training, or experience.

*h. Training documentation.* The psychologist and the training director shall maintain documentation regarding all patients observed, evaluated, and treated by the psychologist as part of the practicum. The documentation shall clearly identify the training physician for each patient. The psychologist and the training director shall maintain documentation of all practicum hours, including the

dates, times, and locations of all practicum hours, and documentation of completion of the milestones defined in these rules. The applicant shall provide additional documentation to the board upon request.

*i.* *Certification.* The training physician(s) and the training director shall certify on forms provided by the board that the psychologist has successfully completed the minimum number of practicum hours, treated the minimum number of patients, and demonstrated competence in the evaluation and treatment of patients with mental disorders through pharmacological intervention through completion of the milestones defined in these rules.

**19.2(4)** *Examination.* A psychologist shall pass the Psychopharmacology Examination for Psychologists (PEP) administered by the APA Practice Organization's College of Professional Psychology or by the Association of State and Provincial Psychology Boards. The passing score utilized by the board shall be the passing score recommended by the test administrator. The examination score shall be sent directly from the testing service to the board.

**653—19.3(148,154B) Supervised practice as a conditional prescribing psychologist—joint rule.** A conditional prescribing psychologist shall complete a minimum of two years of supervised practice in prescribing psychotropic medications to patients with mental disorders in accordance with this rule to be eligible to apply for a prescription certificate.

**19.3(1)** *Supervision plan.* Prior to issuing a conditional prescription certificate, the board shall review and approve the proposed supervision plan.

*a.* The proposed supervision plan must include the following:

(1) The name, license number, address, telephone number, and email address of the supervisee.

(2) The name, license number, date of licensure, area of specialization, address, telephone number, and email address of each supervising physician.

(3) A designation of the primary supervising physician.

(4) The beginning date of the supervision plan and estimated date of completion.

(5) A description of the locations and settings where and with whom supervision will occur.

(6) A description of the scope of practice of the conditional prescribing psychologist, including any limitations on the types of psychotropic medications that may be prescribed and the patient populations to which a prescription may be issued and including the expectations and responsibilities of the supervising physician.

(7) A description of how the supervision plan may be terminated and the process for notifying affected patients.

(8) Signatures of the psychologist and all supervising physicians.

*b.* A conditional prescribing psychologist shall inform the board of any amendments to the conditional prescribing psychologist's supervision plan, including the addition of any supervising physicians, within 30 days of the change. Amendments to a supervisory plan are subject to board approval.

*c.* The board shall transmit all approved supervisory plans and approved amendments to the board of medicine.

**19.3(2)** *Responsibilities of a supervising physician.* A supervising physician shall provide supervision in accordance with rules established by the board of medicine.

**19.3(3)** *Responsibilities of a conditional prescribing psychologist.* At the initial contact, a conditional prescribing psychologist shall inform a patient, or a patient's legal guardian when appropriate, that the conditional prescribing psychologist is practicing under the supervision of a physician for purposes of prescribing psychotropic medication and shall provide the name of the supervising physician. A conditional prescribing psychologist shall provide sufficient information regarding the supervision requirements to obtain informed consent and appropriate releases. Upon request, a conditional prescribing psychologist shall provide additional information regarding the conditional prescribing psychologist's education, training, or experience with respect to prescribing psychotropic medications.

**19.3(4)** *Specialization.* A conditional prescribing psychologist shall complete the following training during the supervised practice period to be eligible to prescribe psychotropic medications to the respective population as a prescribing psychologist:

*a.* *Children.* To prescribe to patients who are less than 17 years of age, a conditional prescribing psychologist shall complete at least one year of the required two years of supervised practice in either:

(1) A pediatric practice,

(2) A child and adolescent practice, or

(3) A general practice provided the conditional prescribing psychologist treats a minimum of 50 patients who are less than 17 years of age.

*b.* *Elderly patients.* To prescribe to patients who are over 65 years of age, a conditional prescribing psychologist shall complete at least one year of the required two years of supervised practice in either:

(1) A geriatric practice, or

(2) A general practice with patients across the lifespan including patients who are over 65 years of age.

*c.* *Serious medical conditions.* To prescribe to patients with serious medical conditions including but not limited to heart disease, cancer, stroke, seizures, or comorbid psychological conditions, or patients with developmental disabilities and intellectual disabilities, a conditional prescribing psychologist shall complete at least one year prescribing psychotropic medications to patients with serious medical conditions.

**19.3(5)** *Completion of supervised practice.* A conditional prescribing psychologist shall see a minimum of 300 patients over a minimum of two years to complete the supervised practice period, provided each of the 300 patients has a diagnosed mental disorder and pharmacological intervention is considered as a treatment option, even if a decision is made not to prescribe a psychotropic medication to the patient. A conditional prescribing psychologist shall treat a minimum of 100 patients with psychotropic medication throughout the supervised practice period.

*a.* At the conclusion of the supervised practice period, a primary supervising physician shall certify the following:

(1) Supervision was provided in accordance with rules established by the board of medicine.

(2) A conditional prescribing psychologist has successfully completed two years of supervised practice, considered at least 300 patients for psychopharmacological intervention, and treated at least 100 patients with psychotropic medications.

(3) A conditional prescribing psychologist intending to specialize in the psychological care of children or elderly persons, or persons with serious medical conditions, has completed the requirements of subrule 19.3(4).

(4) A conditional prescribing psychologist has successfully completed the supervised practice period and demonstrated competence in psychopharmacology by demonstrating competency in the milestones listed in paragraph 19.2(3)*"f"* sufficient to obtain a prescription certificate.

*b.* If a conditional prescribing psychologist is unable to successfully complete the supervised practice period prior to the expiration of the conditional prescription certificate, the conditional prescribing psychologist may request an extension of the conditional prescription certificate provided that the conditional prescribing psychologist can demonstrate that the conditional prescribing psychologist is likely to successfully complete the supervised practice within the extended time requested. Any requests for extension must be submitted to and approved by both the board and the board of medicine.

**653—19.4(148,154B) Prescribing—joint rule.** This rule applies to both conditional prescribing psychologists and prescribing psychologists. A psychologist shall comply with all prescription requirements described in 657—subrule 8.19(1). The following limits apply to a psychologist's prescriptive authority:

1. A psychologist shall only prescribe psychotropic medications for the treatment of mental disorders.

2. A psychologist shall only prescribe psychotropic medications in situations where the psychologist has adequate education and training to safely prescribe.

3. A prescription shall identify the prescriber as a "psychologist certified to prescribe" and shall include the Iowa license number of the psychologist.

4. A prescription issued by a conditional prescribing psychologist shall contain the name of the supervising physician overseeing the care of the patient.

5. A psychologist shall not delegate prescriptive authority to any other person.

6. A psychologist is prohibited from prescribing narcotics as defined in Iowa Code section 124.101.

7. A psychologist shall maintain an active DEA registration and an active CSA registration in order to dispense, prescribe, or administer controlled substances.

8. A psychologist shall not self-prescribe nor prescribe to any person who is a member of the psychologist's immediate family or household.

9. Before prescribing a psychotropic medication that is classified as a controlled substance, a psychologist shall check the patient's prescriptive profile using the Iowa prescription monitoring program.

10. To prescribe to a patient who is pregnant or lactating, a psychologist shall consult with the patient's obstetrician-gynecologist or the physician managing the patient's pregnancy or postpartum care regarding all prescribing decisions. A psychologist shall not prescribe a psychotropic medication to a patient if the patient's obstetrician-gynecologist or the physician managing care objects on the basis of a contraindication.

11. To prescribe to a patient who has a serious medical condition, including but not limited to heart disease, kidney disease, liver disease, cancer, stroke, seizures, or comorbid psychological conditions, or to a patient who has a developmental or intellectual disability, a psychologist shall consult with the physician who is managing the comorbid condition for that patient regarding all prescribing decisions. A psychologist shall not prescribe a psychotropic medication if the patient's physician objects on the basis of a contraindication.

**653—19.5(148,154B) Consultation with primary care physicians—joint rule.** This rule applies to both conditional prescribing psychologists and prescribing psychologists. A psychologist shall maintain a cooperative relationship with the primary care physician who oversees a patient's general medical care to ensure that necessary medical examinations are conducted, the psychotropic medication is appropriate for the patient's medical conditions, and significant changes in the patient's medical or psychological condition are discussed.

**19.5(1)** *Requirement for a primary care physician.* A patient must have a designated primary care physician in order for a psychologist to have the ability to prescribe psychotropic medications to the patient. If a patient does not have a designated primary care physician, a psychologist shall refer the patient to a primary care physician prior to prescribing psychotropic medications to the patient. A psychologist shall not prescribe psychotropic medications to a patient until the patient has established care with a primary care physician.

**19.5(2)** *Requirement for a release.* A psychologist shall obtain a release of information from the patient, or the patient's legal guardian when appropriate, authorizing the psychologist to share information with the patient's primary care physician. A psychologist shall not prescribe psychotropic medications to a patient who refuses to sign a release.

**19.5(3)** *Cooperation and consultation with primary care physicians.* A psychologist shall contact each patient's primary care physician on at least a quarterly basis and shall contact the primary care physician to relay information regarding the care of a patient whenever the following occur:

*a.* A psychologist is considering adding a new psychotropic medication to a patient's medication regimen. A psychologist shall not prescribe a new psychotropic medication if the patient's primary care physician objects on the basis of a contraindication.

*b.* A psychologist is discontinuing or changing the dosage of a psychotropic medication.

*c.* A patient experiences adverse effects from any medication prescribed by the psychologist that may be related to the patient's medical condition.

*d.* A psychologist receives the results of laboratory tests related to the medical care of a patient.

*e.* A psychologist notes a change in a patient's mental condition that may affect the patient's medical treatment.

**653—19.6(148,154B) Collaborative practice—joint rule.**

**19.6(1)** A prescribing psychologist shall have one or more collaborating physicians at all times, as evidenced by a current collaborative practice agreement. Prior to executing a collaborative practice agreement, a prescribing psychologist and a collaborating physician shall review and discuss each other's relevant education, training, experience, and competencies to determine whether a collaborative practice is appropriate and to facilitate drafting a suitable collaborative practice agreement. A collaborative relationship between a prescribing psychologist and a collaborating physician shall ensure patient safety and optimal clinical outcomes. Collaboration may be done in person or via electronic communication in accordance with these rules. A physician shall not serve as a collaborating physician for more than two prescribing psychologists at one time. A prescribing psychologist shall not prescribe without a current written collaborative practice agreement with a collaborating physician in place. All collaborative relationships shall be reviewed and evaluated on an annual basis to ensure that the prescribing psychologist is competent to safely prescribe psychotropic medications to patients and that the collaborating physician is providing appropriate feedback to the prescribing psychologist. A collaborative practice agreement shall establish the parameters of the collaborative practice that are mutually agreed upon by the prescribing psychologist and the collaborating physician and shall be reviewed on an annual basis.

**19.6(2)** A collaborative practice agreement shall include the following:

*a.* *Prescribing psychologist information.* The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the prescribing psychologist.

*b.* *Collaborating physician information.* The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the collaborating physician.

*c.* *Time period.* The time period covered by the agreement.

*d.* *Locations and settings.* The locations and settings where collaborative practice will occur.

*e.* *Collaboration.* A provision indicating that the collaborating physician and prescribing psychologist shall ensure that the collaborating physician is available for timely collaboration with a prescribing psychologist, either in person or via electronic communication, in accordance with these rules.

*f.* *Scope of practice.* The scope of practice agreed upon by the collaborating physician and the prescribing psychologist, as it relates to the prescribing psychologist's prescribing of psychotropic medications, including provisions to ensure that the prescribing psychologist's practice complies with all provisions of these rules.

*g.* *Clinical protocols, practice guidelines, and care plans.* Clinical protocols, practice guidelines, and care plans relevant to the scope of practice authorized.

*h.* *Methods of communication.* A description of how a prescribing psychologist and a collaborating physician may contact each other for consultation.

*i.* *Limitations on psychotropic medications.* A description of any limitations on the range of psychotropic medications the prescribing psychologist may prescribe. The collaborative practice agreement shall also include a provision indicating that the collaborating physician and prescribing psychologist shall ensure that the prescribing psychologist only prescribes psychotropic medications that are consistent with the prescribing psychologist's education, training, experience, and competence.

*j.* *Limitations on patient populations.* A description of any limitations on the types of populations that the prescribing psychologist may treat with psychotropic medications. The collaborative practice agreement shall also include a provision indicating that the collaborating physician and prescribing

psychologist shall ensure that the prescribing psychologist only provides psychopharmacology services to patient populations that are within the prescribing psychologist's education, training, experience, and competence.

*k. Chart review.* A provision indicating that the collaborating physician and prescribing psychologist shall ensure that the collaborative physician personally reviews and documents review of at least 10 percent of the prescribing psychologist's patient charts on a quarterly basis in each of the following categories:

(1) Juvenile patients,
(2) Pregnant or lactating patients,
(3) Elderly patients,
(4) Patients with serious medical conditions, and
(5) All other patients.

*l. Annual review.* A provision requiring an annual review and evaluation of the collaborative relationship and the collaborative practice agreement.

*m. Termination.* A provision describing how the agreement can be terminated and the process for notifying affected patients if there will be an interruption in services.

*n. Signatures.* Signatures of the prescribing psychologist and all collaborating physicians.

**653—19.7(148,154B) Complaints—joint rule.** Any complaint received by the board alleging a violation of this chapter shall be forwarded to the board of medicine. Any complaint received by the board of medicine alleging a violation of this chapter shall be forwarded to the board.

**653—19.8(148,154B) Joint waiver or variance—joint rule.** Any rule identified as a joint rule may only be waived upon approval by both the board and the board of medicine.

**653—19.9(148,154B) Amendment—joint rule.** Any rule identified as a joint rule may only be amended by agreement of the board and board of medicine through a joint rule-making process.

These rules are intended to implement Iowa Code chapters 148 and 154B.

**ARC 3924C**

# NATURAL RESOURCE COMMISSION[571]

**Notice of Intended Action**

**Proposing rule making related to license fees and providing an opportunity for public comment**

The Natural Resource Commission hereby proposes to amend Chapter 15, "General License Regulations," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 455A.5(6), 483A.1, and 483A.6B.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2018 Iowa Acts, House File 631.

*Purpose and Summary*

Chapter 15 provides rules for license sales, refunds, and administration; implementation of the wildlife violator compact and penalties for multiple offenses; and administration of special licenses available for hunting and fishing, and it describes and implements certification and education programs

of the Department of Natural Resources (Department). Previously, all fees for Department-issued fishing, hunting, fur harvester, and related licenses were established via statute and listed in Iowa Code section 483A.1. During the 87th General Assembly, 2018 Iowa Acts, House File 631 was passed, and on May 17, 2018, it was signed into law by Governor Kim Reynolds. House File 631 removes all license fees from Iowa Code section 483A.1 and directs the Commission to adopt administrative rules establishing such fees. House File 631 allows for an increase in those fees in this current rule making and grants the Commission the authority to institute future fee increases through the rule-making process. Lastly, House File 631 allows for the creation of a new five-day, nonresident hunting license. Currently, a nonresident must purchase an annual nonresident hunting license in order to hunt in Iowa as there is no option for a license covering a shorter period of time. This rule making creates a fee for this new license.

Chapter 15 is amended to provide a list of Department-issued licenses, primarily related to fishing, hunting, and fur harvesting, and their associated fees. This list is substantively the same as that which was previously found in the Iowa Code. Minor changes are made for clarity, including listing popular combinations of licenses/fees (e.g., annual hunting license plus the habitat fee) on a single line showing the total combined fee. License fees are increased by 0 to 20 percent over current levels, depending on the individual license type, resulting in a total increase in revenue of just under 17 percent. By law, this revenue is directed to the State Fish and Game Protection Trust Fund (Trust Fund). The Trust Fund is a constitutionally protected fund that can be spent only on fish and wildlife conservation activities within the state.

*Fiscal Impact*

This rule making has a fiscal impact to the State of Iowa. The license fee increases in this rule making will result in an estimated annual increase in revenue to the Trust Fund of $4.5 million over the fee levels previously found in Iowa Code section 483A.1. Approximately $3.1 million of this increase will come from license purchases by Iowa residents; the remaining $1.4 million of this increase will result from license purchases by nonresidents. The proposed license fee increase will allow the Department to maintain the current level of service provided and in some cases will restore services that had been previously reduced. A copy of the fiscal impact statement is available upon request from the Department.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found. The following types of jobs are positively impacted by fishing, hunting, and trapping generally in the state of Iowa, none of which should see a noticeable change due to this rule making: 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 and anglers traveling around the state. Iowa's 579,000 hunters and anglers support Iowa's economy through spending more than $779 million annually while engaged in their pursuits. This spending accounts for approximately 11,548 jobs and generates $77 million in state and local taxes (see Iowa Hunting and Fishing Day Proclamation, signed by Governor Reynolds on September 21, 2017). A copy of the impact statement is available upon request from the Department.

*Waivers*

This rule is subject to the waiver provisions of 561—Chapter 10. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

NATURAL RESOURCE COMMISSION[571](cont'd)

Joe Larscheid
Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Email: wildlife@dnr.iowa.gov

*Public Hearing*

Six public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| August 21, 2018<br>12 noon to 2 p.m. | Wallace State Office Building<br>Conference Room 4W<br>Des Moines, Iowa |
| August 21, 2018<br>12 noon to 2 p.m. | Spirit Lake Hatchery<br>Conference Room<br>122 252nd Avenue<br>Spirit Lake, Iowa |
| August 21, 2018<br>12 noon to 2 p.m. | Ventura Wildlife Office<br>Conference Room<br>15300 Balsam Avenue<br>Ventura, Iowa |
| August 21, 2018<br>12 noon to 2 p.m. | Cold Springs District Office<br>Conference Room<br>57744 Lewis Road<br>Lewis, Iowa |
| August 21, 2018<br>12 noon to 2 p.m. | Delaware County Conservation Board<br>Conference Room<br>2379 Jefferson Road<br>Manchester, Iowa |
| August 21, 2018<br>12 noon to 2 p.m. | Lake Darling District Office<br>Conference Room<br>110 Lake Darling Road<br>Brighton, Iowa |

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 1. Amend rule 571—15.1(483A) as follows:

**571—15.1(483A) Scope.** The purposes of this chapter are to provide rules for license fees, sales, refunds and administration; implement the wildlife violator compact and penalties for multiple offenses; administer special licenses available for hunting and fishing; and describe and implement certification and education programs of the department of natural resources.

ITEM 2. Adopt the following **new** rule 571—15.12(483A):

**571—15.12(483A) Licenses—fees.** Except as otherwise provided by law, a person shall not fish, trap, hunt, harvest, pursue, catch, kill, take in any manner, use, have possession of, sell, or transport all or a part of any wild animal, bird, game, turtle, or fish, the protection and regulation of which is desirable for the conservation of resources of the state, without first obtaining a license for that purpose and paying a fee as follows:

**15.12(1)** *Residents.*

*a.* Fishing license, annual — $20.
*b.* Fishing license, three-year — $60.
*c.* Fishing license, seven-day — $13.50.
*d.* Fishing license, one-day — $8.50.
*e.* Third-line fishing permit, annual — $12.
*f.* Fishing license, lifetime, 65 years of age or older — $59.50.
*g.* Fishing license, lifetime, disabled veteran or POW — $5.
*h.* Paddlefish fishing license, annual — $23.50.
*i.* Trout fishing fee — $12.50.
*j.* Boundary waters sport trotline license, annual — $24.
*k.* Hunting license, annual — $20.
*l.* Hunting license, annual, including the wildlife habitat fee — $33.
*m.* Hunting license, three-year, including the wildlife habitat fee — $99.
*n.* Hunting license, lifetime, 65 years of age or older — $59.50.
*o.* Combination hunting and fishing license, annual, including the wildlife habitat fee — $53.
*p.* Combination hunting and fishing license, lifetime, disabled veteran or POW — $5.
*q.* Deer hunting license — $30.
*r.* First antlerless deer license — $25.50.
*s.* Additional antlerless deer license — $12.
*t.* Wildlife habitat fee — $13.
*u.* Migratory game bird fee — $10.
*v.* Wild turkey hunting license — $26.50.
*w.* Fur harvester license, annual — $24.
*x.* Fur harvester license, annual, including the wildlife habitat fee — $37.
*y.* Fur harvester license, annual, under 16 years of age — $5.50.
*z.* Fur harvester license, lifetime, 65 years of age or older — $59.50.
*aa.* Fur dealer license, annual — $264.
*bb.* Aquaculture unit license, annual — $30.
*cc.* Retail bait dealer license, annual — $36.
*dd.* Wholesale bait dealer license, annual — $146.50.
*ee.* Game breeder license, annual — $18.
*ff.* Taxidermy license, annual — $18.

**15.12(2)** *Nonresidents.*

*a.* Fishing license, annual — $46.
*b.* Fishing license, seven-day — $35.50.
*c.* Fishing license, three-day — $18.50.
*d.* Fishing license, one-day — $10.
*e.* Third-line fishing permit, annual — $12.

NATURAL RESOURCE COMMISSION[571](cont'd)

*f.* Paddlefish fishing license, annual — $47.
*g.* Trout fishing fee — $15.50.
*h.* Boundary waters sport trotline license, annual — $47.50.
*i.* Hunting license, annual — $129.
*j.* Hunting license, annual, including the wildlife habitat fee — $142.
*k.* Hunting license, annual, under 18 years of age — $30.
*l.* Hunting license, annual, under 18 years of age, including the wildlife habitat fee — $43.
*m.* Hunting license, five-day (not applicable to deer or wild turkey seasons) — $75.
*n.* Hunting license, five-day, including the wildlife habitat fee (not applicable to deer or wild turkey seasons) — $88.
*o.* Deer hunting license, antlered or any-sex deer — $345.50.
*p.* Deer hunting license, antlerless-deer-only, required with the purchase of an antlered or any-sex deer hunting license — $146.50.
*q.* Deer hunting license, antlerless-deer-only — $263.50.
*r.* Preference point issued under Iowa Code section 483A.7(3)*"b"* or 483A.8(3)*"e"* — $58.50.
*s.* Holiday deer hunting license issued under Iowa Code section 483A.8(6), antlerless-deer-only — $88.
*t.* Wildlife habitat fee — $13.
*u.* Migratory game bird fee — $10.
*v.* Wild turkey hunting license, annual — $117.
*w.* Fur harvester license, annual — $232.
*x.* Fur harvester license, annual, including the wildlife habitat fee — $245.
*y.* Fur dealer license, annual — $586.50.
*z.* Fur dealer license, one day, one location — $292.50.
*aa.* Location permit for fur dealer — $66.
*bb.* Aquaculture unit license, annual — $66.
*cc.* Retail bait dealer license, annual — $146.50.
*dd.* Wholesale bait dealer license, annual — $292.50.
*ee.* Game breeder license, annual — $30.50.
*ff.* Taxidermy license, annual — $30.50.

**ARC 3904C**

# PROFESSIONAL LICENSURE DIVISION[645]

**Notice of Intended Action**

**Proposing rule making related to prescribing psychologists and providing an opportunity for public comment**

The Board of Psychology hereby proposes to adopt new Chapter 244, "Prescribing Psychologists," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapter 154B.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 154B.1 and 154B.9 to 154B.14.

*Purpose and Summary*

The purpose of this rule making is to define the requirements for licensed psychologists to prescribe psychotropic medications to patients with mental disorders. The proposed chapter defines a conditional prescription certificate, sets forth the requirement for supervised practice under a conditional

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

prescription certificate, defines a prescription certificate, sets forth the requirements to apply for a prescription certificate, sets forth the requirements for collaborative practice, sets forth the limitations on prescribing, sets forth the requirements for continuing education, sets forth the grounds for discipline, establishes a requirement to share complaints with the Board of Medicine, and sets forth the procedure for waiving or amending the joint rules. Several of the proposed rules are joint rules, which are being promulgated jointly by the Board of Psychology and the Board of Medicine (**ARC 3905C**, IAB 8/1/18).

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

Sharon Dozier
Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| August 21, 2018<br>10 a.m. to 12 noon | Iowa Board of Medicine, Suite C<br>400 S.W. Eighth Street<br>Des Moines, Iowa |

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

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Adopt the following **new** 645—Chapter 244:

CHAPTER 244
PRESCRIBING PSYCHOLOGISTS

**645—244.1(148,154B) Definitions—joint rule.**

*"APA"* means the American Psychological Association.

*"Applicant"* means a psychologist applying for a conditional prescription certificate.

*"Board"* means the Iowa board of psychology.

*"Board of medicine"* means the Iowa board of medicine.

*"Collaborating physician"* means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician's normal course of practice, and who serves as a resource for a prescribing psychologist pursuant to a collaborative practice agreement. A collaborating physician shall be board-certified in family medicine, internal medicine, neurology, pediatrics, or psychiatry.

*"Conditional prescribing psychologist"* means a person licensed to practice psychology in Iowa who holds an active conditional prescription certificate. This term does not include prescribing psychologists.

*"Conditional prescription certificate"* means a certificate issued by the board to a psychologist that permits the psychologist to prescribe psychotropic medication under the supervision of a supervising physician.

*"CSA registration"* means a Controlled Substance Act registration issued by the Iowa board of pharmacy authorizing a psychologist to possess and prescribe controlled substances.

*"DEA registration"* means a mid-level practitioner registration with the Drug Enforcement Administration authorizing a psychologist to possess and prescribe controlled substances.

*"Joint rule"* means a rule adopted by agreement of the board of psychology and the board of medicine through the joint rule-making process.

*"Mental disorder"* means a disorder which is defined by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or contained within the mental and behavioral disorders chapter of the most recent version of the International Classification of Diseases.

*"Prescribing psychologist"* means a person licensed to practice psychology in Iowa who holds an active prescription certificate. This term does not include conditional prescribing psychologists.

*"Prescription certificate"* means a certificate issued by the board to a psychologist that permits the psychologist to prescribe psychotropic medication.

*"Primary care physician"* means a person licensed to practice medicine and surgery or osteopathic medicine in Iowa who is responsible for the ongoing medical care of a patient.

*"Psychologist"* means a person licensed to practice psychology in Iowa.

*"Psychotropic medication"* means a medication that shall not be dispensed or administered without a prescription and that has been explicitly approved by the federal Food and Drug Administration for the treatment of a mental disorder, as defined by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or the most recent version of the International Classification of Diseases. "Psychotropic medication" does not include narcotics.

*"Supervising physician"* means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician's normal course of practice, and who supervises a conditional prescribing psychologist. A supervising physician shall be board-certified in family medicine, internal medicine, neurology, pediatrics, or psychiatry.

*"Training director"* means an employee of the psychopharmacology training program who is primarily responsible for directing the training program.

*"Training physician"* means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of

mental disorders as part of the physician's normal course of practice, and who provides training to a psychologist as part of the clinical experience and practicum described in rule 645—244.3(148,154B). A training physician shall be board-certified in family medicine, internal medicine, neurology, pediatrics, or psychiatry. A training physician shall be approved by the psychopharmacology training program.

**645—244.2(154B) Conditional prescription certificate.** A conditional prescription certificate shall authorize a psychologist to prescribe psychotropic medications to patients with mental disorders under supervision in accordance with the requirements of this chapter.

**244.2(1)** *Application.* Unless a basis for denial exists in accordance with rule 645—244.9(154B), the board shall issue a conditional prescription certificate to an applicant who satisfies the following requirements:

*a.* Holds an active license to practice psychology in Iowa and an active health service provider certification issued by the board. Both the license and the health service provider certification must be in good standing.

*b.* Meets the educational requirements set forth in rule 645—244.3(148,154B). Official academic transcripts shall be sent directly from the school to the board.

*c.* Submits a supervision plan in accordance with subrule 244.4(1).

*d.* Possesses malpractice insurance that covers the prescribing of psychotropic medications.

*e.* Submits a completed application and a nonrefundable application fee of $270.

**244.2(2)** *Term.* A conditional prescription certificate shall be valid for a period of four years from the date of issuance. The board shall not renew a conditional prescription certificate unless a conditional prescribing psychologist cannot complete the requirements of supervised practice within four years due to extenuating circumstances. A conditional prescribing psychologist may request an extension of a conditional prescription certificate when extenuating circumstances exist to provide additional time for the requirements of supervised practice to be met.

**645—244.3(148,154B) Educational requirements for conditional prescription certificate—joint rule.** An applicant for a conditional prescription certificate shall have completed a program of study designated by the APA as a program for the psychopharmacology training of postdoctoral psychologists. The program must have included didactic instruction, a clinical experience, and a practicum satisfying the requirements of this rule. A minimum of 40 hours of basic training on clinical assessment skills shall be included as part of the program's didactic instruction.

**244.3(1)** *Degree.* An applicant shall possess a postdoctoral master of science degree in clinical psychopharmacology from a program designated by the APA as a program for the psychopharmacology training of postdoctoral psychologists. The degree program must be a minimum of 30 credit hours not including the practicum and shall include coursework in basic science, neuroscience, clinical medicine, pathological basis of disease, clinical pharmacology, psychopharmacology, and professional, ethical and legal issues. A minimum of one-third of the coursework must be completed in a live interactive format. The date the degree is conferred must be within the five-year period immediately preceding the application for a conditional prescription certificate. A program must be designated by the APA at the time the degree is conferred.

**244.3(2)** *Clinical experience.* An applicant shall have completed a clinical experience in accordance with the requirements of this subrule. During the clinical experience, a psychologist shall learn clinical assessment techniques and pathophysiology through direct observation and hands-on training with a training physician. During the clinical experience, a psychologist shall become competent in health history interviews, physical examinations, and neurological examinations with a medically diverse patient population. The clinical experience must be associated with the psychopharmacology training program from which the psychologist obtained the postdoctoral master of science degree in clinical psychopharmacology.

*a.* *Scope.* At the beginning of the clinical experience, the psychologist shall directly observe the training physician performing clinical assessments of patients. After the training physician determines the psychologist has gained sufficient knowledge, the clinical experience shall transition

to the psychologist's performance of clinical assessments of patients under the direct observation of the training physician. After the training physician determines the psychologist has gained sufficient knowledge and experience, the psychologist may perform clinical assessments of patients without being directly observed by the training physician, provided that the training physician is on site at all times when the psychologist is with patients and is reviewing all medical records. A psychologist and a training physician shall have ongoing discussions regarding the psychologist's clinical assessment skills and progress in the clinical experience.

*b. Minimum experience.* The clinical experience shall consist of a minimum of 600 patient encounters that shall be completed by the end of the practicum.

*c. Conflict of interest.* A training physician shall not be an employee of the psychologist or otherwise have a conflict of interest that could affect the training physician's ability to impartially evaluate the psychologist's performance. A psychologist may utilize more than one training physician.

*d. Milestones.* To satisfactorily complete the clinical experience, a psychologist shall demonstrate competency in each of the following:

(1) Perform a health history interview to obtain pertinent information regarding a patient's chief complaint, history of the present illness, past medical and surgical history, family history, allergies, medications, and psychosocial history. The psychologist shall perform a review of systems to elicit a health history and shall appropriately document the health history.

(2) Perform a physical examination in a logical sequence, ensuring appropriate positioning of the patient, proper patient draping, and proper application of the principles of asepsis throughout the examination. The psychologist shall verbalize and assess the components of a general survey and be able to accurately assess all of the following: vital signs, including pulse, respiration, and blood pressure; skin, hair and nails; head, face and neck; eyes; ears, nose, mouth and throat; thorax, lungs and axillae; heart; peripheral vascular system; abdomen; and musculoskeletal system. The psychologist shall be proficient in utilizing any equipment needed to conduct a physical examination.

(3) Complete a neurological examination demonstrating knowledge of the history related to the neurological system and the ability to assess the following: mental status, cranial nerves, motor system, sensory system, and reflexes. The psychologist shall differentiate normal laboratory values from abnormal laboratory values and correlate abnormal laboratory values with impaired physiological systems. The psychologist shall identify adverse drug reactions and identify laboratory data and physical signs indicating an adverse drug reaction.

*e. Informed consent.* At the initial contact, the psychologist shall inform the patient, or the patient's legal guardian when appropriate, of the psychologist's training role in the clinical experience. The psychologist shall provide sufficient information regarding the expectations and requirements of the clinical experience to obtain informed consent and appropriate releases. Upon request, the psychologist shall provide additional information regarding the psychologist's education, training, or experience.

*f. Training documentation.* The psychologist and the training director shall maintain documentation accounting for all clinical experience patient encounters, including the dates, times, and locations of all clinical experience patient encounters, and documentation of completion of the milestones defined in these rules. The applicant shall provide additional documentation to the board upon request.

*g. Certification.* The training physician(s) and the training director shall certify on forms provided by the board that the applicant has successfully completed the minimum number of clinical experience patient encounters required and demonstrated competence in clinical assessment techniques and pathophysiology through completion of the milestones defined in these rules.

**244.3(3)** *Practicum.* An applicant shall have completed a practicum in accordance with the requirements of this subrule. During the practicum, a psychologist shall develop competencies in evaluating and treating patients with mental disorders through pharmacological intervention via observation and active participation. The practicum must be associated with the psychopharmacology training program from which the applicant obtained the postdoctoral master of science degree in clinical psychopharmacology and must be completed in a period of time not less than six months and not more than three years.

*a. Scope.* At the beginning of the practicum, the psychologist shall directly observe the training physician evaluating and treating patients with mental disorders. After the training physician determines the psychologist has gained sufficient knowledge, the practicum shall transition to the psychologist's evaluation and treatment of patients under the direct observation of the training physician. After the training physician determines the psychologist has gained sufficient knowledge and experience, the psychologist may evaluate and treat patients without being directly observed by the training physician, provided that the training physician is on site at all times when the psychologist is with patients, has personal contact with the patient at each visit, and is reviewing all pertinent medical records. During the practicum, the training physician shall make all final treatment decisions, with consultation from the psychologist prior to making a final determination regarding the psychopharmacological treatment of a patient.

*b. Minimum number of hours.* A practicum shall consist of a minimum of 400 hours. Only hours spent face to face evaluating and treating patients with mental disorders and hours spent discussing treatment plans with a training physician may count as practicum hours. Time spent by the psychologist providing services that are within the scope of practice of a licensed psychologist, such as psychological examinations and psychotherapy, shall not be counted as practicum hours.

*c. Minimum number of patients.* A psychologist shall see a minimum of 100 individual patients throughout the practicum. A patient can be counted toward this requirement if the patient has a diagnosed mental disorder and pharmacological intervention is considered as a treatment option, even if a decision is made not to prescribe a psychotropic medication to the patient. Over the course of the practicum, the psychologist shall observe, evaluate, and treat patients encompassing a range of ages and a variety of psychiatric diagnoses.

*d. Settings.* At least 100 hours of the 400 hours must be completed in a psychiatric setting. At least 100 hours of the 400 hours must be completed in a primary care or community mental health setting.

*e. Conflict of interest.* A training physician shall not be an employee of the psychologist or otherwise have a conflict of interest that could affect the training physician's ability to impartially evaluate the psychologist's performance. A psychologist may utilize more than one training physician.

*f. Milestones.* To successfully complete the practicum, a psychologist shall demonstrate competency in each of the following:

(1) Physical examination and mental status examination. The psychologist shall perform comprehensive and focused physical examinations and mental status evaluations, demonstrate proper use of instruments, and recognize variation associated with developmental stages and diversity.

(2) Review of systems. The psychologist shall integrate information learned from patient reports, signs, symptoms, and a review of each major body system, recognizing normal developmental variations.

(3) Medical history interview. The psychologist shall systematically conduct a patient clinical interview, producing a patient's medical, surgical, psychiatric, and medication history, as well as a family medical and psychiatric history, and be able to communicate the findings in written and verbal form.

(4) Assessment indications and interpretation. The psychologist shall order and interpret appropriate tests (e.g., psychometric, laboratory, and radiological) for the purpose of making a differential diagnosis and monitoring therapeutic and adverse effects of treatment.

(5) Differential diagnosis. The psychologist shall determine primary and alternate diagnoses using established diagnostic criteria.

(6) Integrated treatment planning. The psychologist shall identify and select, using all available data, the most appropriate treatment alternatives, including medication, psychosocial, and combined treatments, and sequence treatment within the larger biopsychosocial context.

(7) Consultation and collaboration. The psychologist shall understand the parameters of the role of a prescribing psychologist and work with other professionals, including a patient's primary care physician, in an advisory or collaborative manner to effectively treat a patient.

(8) Treatment management. The psychologist shall apply, monitor, and modify as needed the treatment of a patient and learn to write valid and complete prescriptions.

(9) Medical documentation. The psychologist shall demonstrate appropriate medical documentation for the patient-psychologist interaction to include subjective and objective assessment;

mental status, physical examination findings, or both; formulation; diagnostic impression; and comprehensive treatment plan.

*g. Informed consent.* At the initial contact, the psychologist shall inform the patient, or the patient's legal guardian when appropriate, of the psychologist's training role in the practicum. The psychologist shall provide sufficient information regarding the expectations and requirements of the practicum to obtain informed consent and appropriate releases. Upon request, the psychologist shall provide additional information regarding the psychologist's education, training, or experience.

*h. Training documentation.* The psychologist and the training director shall maintain documentation regarding all patients observed, evaluated, and treated by the psychologist as part of the practicum. The documentation shall clearly identify the training physician for each patient. The psychologist and the training director shall maintain documentation of all practicum hours, including the dates, times, and locations of all practicum hours, and documentation of completion of the milestones defined in these rules. The applicant shall provide additional documentation to the board upon request.

*i. Certification.* The training physician(s) and the training director shall certify on forms provided by the board that the psychologist has successfully completed the minimum number of practicum hours, treated the minimum number of patients, and demonstrated competence in the evaluation and treatment of patients with mental disorders through pharmacological intervention through completion of the milestones defined in these rules.

**244.3(4)** *Examination.* A psychologist shall pass the Psychopharmacology Examination for Psychologists (PEP) administered by the APA Practice Organization's College of Professional Psychology or by the Association of State and Provincial Psychology Boards. The passing score utilized by the board shall be the passing score recommended by the test administrator. The examination score shall be sent directly from the testing service to the board.

**645—244.4(148,154B) Supervised practice as a conditional prescribing psychologist—joint rule.** A conditional prescribing psychologist shall complete a minimum of two years of supervised practice in prescribing psychotropic medications to patients with mental disorders in accordance with this rule to be eligible to apply for a prescription certificate.

**244.4(1)** *Supervision plan.* Prior to issuing a conditional prescription certificate, the board shall review and approve the proposed supervision plan.

*a.* The proposed supervision plan must include the following:

(1) The name, license number, address, telephone number, and email address of the supervisee.

(2) The name, license number, date of licensure, area of specialization, address, telephone number, and email address of each supervising physician.

(3) A designation of the primary supervising physician.

(4) The beginning date of the supervision plan and estimated date of completion.

(5) A description of the locations and settings where and with whom supervision will occur.

(6) A description of the scope of practice of the conditional prescribing psychologist, including any limitations on the types of psychotropic medications that may be prescribed and the patient populations to which a prescription may be issued and including the expectations and responsibilities of the supervising physician.

(7) A description of how the supervision plan may be terminated and the process for notifying affected patients.

(8) Signatures of the psychologist and all supervising physicians.

*b.* A conditional prescribing psychologist shall inform the board of any amendments to the conditional prescribing psychologist's supervision plan, including the addition of any supervising physicians, within 30 days of the change. Amendments to a supervisory plan are subject to board approval.

*c.* The board shall transmit all approved supervisory plans and approved amendments to the board of medicine.

**244.4(2)** *Responsibilities of a supervising physician.* A supervising physician shall provide supervision in accordance with rules established by the board of medicine.

**244.4(3)** *Responsibilities of a conditional prescribing psychologist.* At the initial contact, a conditional prescribing psychologist shall inform a patient, or a patient's legal guardian when appropriate, that the conditional prescribing psychologist is practicing under the supervision of a physician for purposes of prescribing psychotropic medication and shall provide the name of the supervising physician. A conditional prescribing psychologist shall provide sufficient information regarding the supervision requirements to obtain informed consent and appropriate releases. Upon request, a conditional prescribing psychologist shall provide additional information regarding the conditional prescribing psychologist's education, training, or experience with respect to prescribing psychotropic medications.

**244.4(4)** *Specialization.* A conditional prescribing psychologist shall complete the following training during the supervised practice period to be eligible to prescribe psychotropic medications to the respective population as a prescribing psychologist:

*a.* *Children.* To prescribe to patients who are less than 17 years of age, a conditional prescribing psychologist shall complete at least one year of the required two years of supervised practice in either:

(1) A pediatric practice,

(2) A child and adolescent practice, or

(3) A general practice provided the conditional prescribing psychologist treats a minimum of 50 patients who are less than 17 years of age.

*b.* *Elderly patients.* To prescribe to patients who are over 65 years of age, a conditional prescribing psychologist shall complete at least one year of the required two years of supervised practice in either:

(1) A geriatric practice, or

(2) A general practice with patients across the lifespan including patients who are over 65 years of age.

*c.* *Serious medical conditions.* To prescribe to patients with serious medical conditions including but not limited to heart disease, cancer, stroke, seizures, or comorbid psychological conditions, or patients with developmental disabilities and intellectual disabilities, a conditional prescribing psychologist shall complete at least one year prescribing psychotropic medications to patients with serious medical conditions.

**244.4(5)** *Completion of supervised practice.* A conditional prescribing psychologist shall see a minimum of 300 patients over a minimum of two years to complete the supervised practice period, provided each of the 300 patients has a diagnosed mental disorder and pharmacological intervention is considered as a treatment option, even if a decision is made not to prescribe a psychotropic medication to the patient. A conditional prescribing psychologist shall treat a minimum of 100 patients with psychotropic medication throughout the supervised practice period.

*a.* At the conclusion of the supervised practice period, a primary supervising physician shall certify the following:

(1) Supervision was provided in accordance with rules established by the board of medicine.

(2) A conditional prescribing psychologist has successfully completed two years of supervised practice, considered at least 300 patients for psychopharmacological intervention, and treated at least 100 patients with psychotropic medications.

(3) A conditional prescribing psychologist intending to specialize in the psychological care of children or elderly persons, or persons with serious medical conditions, has completed the requirements of subrule 244.4(4).

(4) A conditional prescribing psychologist has successfully completed the supervised practice period and demonstrated competence in psychopharmacology by demonstrating competency in the milestones listed in paragraph 244.3(3)*"f"* sufficient to obtain a prescription certificate.

*b.* If a conditional prescribing psychologist is unable to successfully complete the supervised practice period prior to the expiration of the conditional prescription certificate, the conditional prescribing psychologist may request an extension of the conditional prescription certificate provided that the conditional prescribing psychologist can demonstrate that the conditional prescribing psychologist is likely to successfully complete the supervised practice within the extended time

requested. Any requests for extension must be submitted to and approved by both the board and the board of medicine.

**645—244.5(154B) Prescription certificate.** A prescription certificate shall authorize a psychologist to prescribe psychotropic medications to patients with mental disorders in accordance with the requirements of this chapter.

**244.5(1)** *Application.* Unless a basis for denial exists in accordance with rule 645—244.9(154B), the board shall issue a prescription certificate to a conditional prescribing psychologist who satisfies the following requirements:

*a.* Holds an active license to practice psychology in Iowa, an active health service provider certification issued by the board, and an active conditional prescription certificate. The license, certification, and certificate must all be in good standing.

*b.* Submits documentation regarding successful completion of the supervised practice period.

*c.* Submits a collaborative practice agreement in accordance with rule 645—244.8(148,154B).

*d.* Possesses malpractice insurance that covers the prescribing of psychotropic medications.

*e.* Submits a completed application and a nonrefundable application fee of $60.

**244.5(2)** *Initial term and renewal.* An initial prescription certificate shall be valid through the current expiration date of the applicant's psychologist license. Thereafter, a prescription certificate shall be renewed biennially concurrent with the renewal of the psychologist license. A prescribing psychologist may renew a prescription certificate by submitting a completed renewal application and a nonrefundable application fee of $60. A prescribing psychologist is responsible for renewing the prescription certificate prior to its expiration.

**244.5(3)** *Continuing education required.* A prescribing psychologist shall complete a minimum of 20 hours of continuing education in psychopharmacology each year. A total of 40 hours of continuing education in psychopharmacology is required to renew a prescription certificate. These hours are separate from, and in addition to, the continuing education hours needed to renew a psychologist license pursuant to 645—Chapter 241. If a psychologist specializes in treating children, a minimum of 10 hours of continuing education in psychopharmacology each year, for a total of 20 hours of continuing education per renewal period, must be directly related to prescribing psychotropic medication to children.

**244.5(4)** *Late renewal.* A prescription certificate shall become late when it has not been renewed prior to the expiration date. To renew a late prescription certificate, a prescribing psychologist shall complete the renewal requirements and submit a late fee of $60 within 30 days following the prescription certificate expiration date. A prescribing psychologist who fails to renew a prescription certificate within 30 days following the prescription certificate expiration date shall have an inactive prescription certificate. A psychologist whose prescription certificate is inactive continues to hold the privilege of certification in Iowa but may not prescribe psychotropic medications until the prescription certificate is reactivated.

**244.5(5)** *Reactivation.* To apply for reactivation of an inactive prescription certificate, a psychologist shall submit a completed reactivation application, a nonrefundable fee of $60, and documentation of a minimum of 40 hours of continuing education in psychopharmacology taken within the preceding two years. If a prescription certificate has been inactive for more than five years, a psychologist shall demonstrate competence in psychopharmacology through one of the following means:

*a.* Practiced as a prescribing psychologist in another jurisdiction in the preceding two years.

*b.* Completed a period of supervised practice for a minimum of 12 months. The board may issue a conditional prescription certificate to complete a supervised practice period for purposes of prescription certificate reactivation.

**645—244.6(148,154B) Prescribing—joint rule.** This rule applies to both conditional prescribing psychologists and prescribing psychologists. A psychologist shall comply with all prescription requirements described in 657—subrule 8.19(1). The following limits apply to a psychologist's prescriptive authority:

1. A psychologist shall only prescribe psychotropic medications for the treatment of mental disorders.

2. A psychologist shall only prescribe psychotropic medications in situations where the psychologist has adequate education and training to safely prescribe.

3. A prescription shall identify the prescriber as a "psychologist certified to prescribe" and shall include the Iowa license number of the psychologist.

4. A prescription issued by a conditional prescribing psychologist shall contain the name of the supervising physician overseeing the care of the patient.

5. A psychologist shall not delegate prescriptive authority to any other person.

6. A psychologist is prohibited from prescribing narcotics as defined in Iowa Code section 124.101.

7. A psychologist shall maintain an active DEA registration and an active CSA registration in order to dispense, prescribe, or administer controlled substances.

8. A psychologist shall not self-prescribe nor prescribe to any person who is a member of the psychologist's immediate family or household.

9. Before prescribing a psychotropic medication that is classified as a controlled substance, a psychologist shall check the patient's prescriptive profile using the Iowa prescription monitoring program.

10. To prescribe to a patient who is pregnant or lactating, a psychologist shall consult with the patient's obstetrician-gynecologist or the physician managing the patient's pregnancy or postpartum care regarding all prescribing decisions. A psychologist shall not prescribe a psychotropic medication to a patient if the patient's obstetrician-gynecologist or the physician managing care objects on the basis of a contraindication.

11. To prescribe to a patient who has a serious medical condition, including but not limited to heart disease, kidney disease, liver disease, cancer, stroke, seizures, or comorbid psychological conditions, or to a patient who has a developmental or intellectual disability, a psychologist shall consult with the physician who is managing the comorbid condition for that patient regarding all prescribing decisions. A psychologist shall not prescribe a psychotropic medication if the patient's physician objects on the basis of a contraindication.

**645—244.7(148,154B) Consultation with primary care physicians—joint rule.** This rule applies to both conditional prescribing psychologists and prescribing psychologists. A psychologist shall maintain a cooperative relationship with the primary care physician who oversees a patient's general medical care to ensure that necessary medical examinations are conducted, the psychotropic medication is appropriate for the patient's medical conditions, and significant changes in the patient's medical or psychological condition are discussed.

**244.7(1)** *Requirement for a primary care physician.* A patient must have a designated primary care physician in order for a psychologist to have the ability to prescribe psychotropic medications to the patient. If a patient does not have a designated primary care physician, a psychologist shall refer the patient to a primary care physician prior to prescribing psychotropic medications to the patient. A psychologist shall not prescribe psychotropic medications to a patient until the patient has established care with a primary care physician.

**244.7(2)** *Requirement for a release.* A psychologist shall obtain a release of information from the patient, or the patient's legal guardian when appropriate, authorizing the psychologist to share information with the patient's primary care physician. A psychologist shall not prescribe psychotropic medications to a patient who refuses to sign a release.

**244.7(3)** *Cooperation and consultation with primary care physicians.* A psychologist shall contact each patient's primary care physician on at least a quarterly basis and shall contact the primary care physician to relay information regarding the care of a patient whenever the following occur:

*a.* A psychologist is considering adding a new psychotropic medication to a patient's medication regimen. A psychologist shall not prescribe a new psychotropic medication if the patient's primary care physician objects on the basis of a contraindication.

*b.* A psychologist is discontinuing or changing the dosage of a psychotropic medication.

*c.* A patient experiences adverse effects from any medication prescribed by the psychologist that may be related to the patient's medical condition.

*d.* A psychologist receives the results of laboratory tests related to the medical care of a patient.

*e.* A psychologist notes a change in a patient's mental condition that may affect the patient's medical treatment.

**645—244.8(148,154B) Collaborative practice—joint rule.**

**244.8(1)** A prescribing psychologist shall have one or more collaborating physicians at all times, as evidenced by a current collaborative practice agreement. Prior to executing a collaborative practice agreement, a prescribing psychologist and a collaborating physician shall review and discuss each other's relevant education, training, experience, and competencies to determine whether a collaborative practice is appropriate and to facilitate drafting a suitable collaborative practice agreement. A collaborative relationship between a prescribing psychologist and a collaborating physician shall ensure patient safety and optimal clinical outcomes. Collaboration may be done in person or via electronic communication in accordance with these rules. A physician shall not serve as a collaborating physician for more than two prescribing psychologists at one time. A prescribing psychologist shall not prescribe without a current written collaborative practice agreement with a collaborating physician in place. All collaborative relationships shall be reviewed and evaluated on an annual basis to ensure that the prescribing psychologist is competent to safely prescribe psychotropic medications to patients and that the collaborating physician is providing appropriate feedback to the prescribing psychologist. A collaborative practice agreement shall establish the parameters of the collaborative practice that are mutually agreed upon by the prescribing psychologist and the collaborating physician and shall be reviewed on an annual basis.

**244.8(2)** A collaborative practice agreement shall include the following:

*a.* *Prescribing psychologist information.* The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the prescribing psychologist.

*b.* *Collaborating physician information.* The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the collaborating physician.

*c.* *Time period.* The time period covered by the agreement.

*d.* *Locations and settings.* The locations and settings where collaborative practice will occur.

*e.* *Collaboration.* A provision indicating that the collaborating physician and prescribing psychologist shall ensure that the collaborating physician is available for timely collaboration with a prescribing psychologist, either in person or via electronic communication, in accordance with these rules.

*f.* *Scope of practice.* The scope of practice agreed upon by the collaborating physician and the prescribing psychologist, as it relates to the prescribing psychologist's prescribing of psychotropic medications, including provisions to ensure that the prescribing psychologist's practice complies with all provisions of these rules.

*g.* *Clinical protocols, practice guidelines, and care plans.* Clinical protocols, practice guidelines, and care plans relevant to the scope of practice authorized.

*h.* *Methods of communication.* A description of how a prescribing psychologist and a collaborating physician may contact each other for consultation.

*i.* *Limitations on psychotropic medications.* A description of any limitations on the range of psychotropic medications the prescribing psychologist may prescribe. The collaborative practice agreement shall also include a provision indicating that the collaborating physician and prescribing psychologist shall ensure that the prescribing psychologist only prescribes psychotropic medications that are consistent with the prescribing psychologist's education, training, experience, and competence.

*j.* *Limitations on patient populations.* A description of any limitations on the types of populations that the prescribing psychologist may treat with psychotropic medications. The collaborative practice

agreement shall also include a provision indicating that the collaborating physician and prescribing psychologist shall ensure that the prescribing psychologist only provides psychopharmacology services to patient populations that are within the prescribing psychologist's education, training, experience, and competence.

*k. Chart review.* A provision indicating that the collaborating physician and prescribing psychologist shall ensure that the collaborative physician personally reviews and documents review of at least 10 percent of the prescribing psychologist's patient charts on a quarterly basis in each of the following categories:

(1) Juvenile patients,
(2) Pregnant or lactating patients,
(3) Elderly patients,
(4) Patients with serious medical conditions, and
(5) All other patients.

*l. Annual review.* A provision requiring an annual review and evaluation of the collaborative relationship and the collaborative practice agreement.

*m. Termination.* A provision describing how the agreement can be terminated and the process for notifying affected patients if there will be an interruption in services.

*n. Signatures.* Signatures of the prescribing psychologist and all collaborating physicians.

**645—244.9(154B) Grounds for discipline.** The board may deny, suspend, revoke, or impose other discipline as outlined in rule 645—242.3(147,272C) against a psychologist who holds a conditional prescription certificate or prescription certificate for any of the following:

**244.9(1)** Violating any of the grounds for discipline set forth in rule 645—242.2(147,272C).

**244.9(2)** The inability to safely prescribe psychotropic medications.

**244.9(3)** Prescribing medications in violation of rule 645—244.6(148,154B).

**244.9(4)** Repeatedly failing to cooperate and collaborate with primary care physicians.

**244.9(5)** Prescribing psychotropic medications without a current written collaborative practice agreement.

**244.9(6)** Failing to maintain malpractice insurance that covers the prescribing of psychotropic medications.

**244.9(7)** Practicing outside the scope of a collaborative practice agreement.

**244.9(8)** Prescribing medications while the conditional prescription certificate or prescription certificate is inactive, or prescribing controlled substances while the DEA registration or CSA registration is not current.

**244.9(9)** Having a conditional prescription certificate or prescription certificate disciplined by the licensing authority of another state.

**244.9(10)** Having a license or health service provider certification disciplined by the board or the licensing authority of another state.

**645—244.10(154B) List of psychologists.** The board shall maintain a list of all current conditional prescribing psychologists and prescribing psychologists. The list shall be transmitted annually to the board of medicine.

**244.10(1)** *Information.* The list shall include the name of the psychologist, license number, license expiration date, expiration date of the conditional prescription certificate or prescription certificate, and practice locations.

**244.10(2)** *Additions and deletions.* When a psychologist is added or removed from the list, the board shall notify the board of medicine of the addition or deletion.

**645—244.11(148,154B) Complaints—joint rule.** Any complaint received by the board alleging a violation of this chapter shall be forwarded to the board of medicine. Any complaint received by the board of medicine alleging a violation of this chapter shall be forwarded to the board.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**645—244.12(148,154B) Joint waiver or variance—joint rule.** Any rule identified as a joint rule may only be waived upon approval by both the board and the board of medicine.

**645—244.13(148,154B) Amendment—joint rule.** Any rule identified as a joint rule may only be amended by agreement of the board and board of medicine through a joint rule-making process.

These rules are intended to implement Iowa Code chapters 148 and 154B.

**ARC 3926C**

# RACING AND GAMING COMMISSION[491]

**Notice of Intended Action**

**Proposing rule making related to problem gambling, test samples, and Iowa-foaled horse allowance and providing an opportunity for public comment**

The Racing and Gaming Commission hereby proposes to amend Chapter 5, "Track, Gambling Structure, and Excursion Gambling Boat Licensees' Responsibilities," and Chapter 10, "Thoroughbred and Quarter Horse Racing," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 99D.7 and 99F.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 99D and 99F.

*Purpose and Summary*

The proposed amendments implement legislation passed in 2018.

Item 1 implements 2018 Iowa Acts, House File 2349, which amends Iowa Code sections 99D.7(23) and 99F.4(22).

Items 2 and 3 and 5 through 7 implement 2018 Iowa Acts, House File 2439, which amends Iowa Code sections 99D.23(1) and 99D.23(2) to add "hair" as an allowable sample for testing purposes.

Item 4 implements 2018 Iowa Acts, House File 2439, which amends Iowa Code section 99D.22(1)"a" with regard to Iowa-foaled horses.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Commission no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

RACING AND GAMING COMMISSION[491](cont'd)

Barb Blake
Iowa Racing and Gaming Commission
1300 Des Moines Street
Des Moines, Iowa 50309
Email: barb.blake@iowa.gov

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| August 21, 2018<br>9 a.m. | Commission Office, Suite 100<br>1300 Des Moines Street<br>Des Moines, Iowa |

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

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Commission and advise of specific needs.

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 5.4(12) as follows:

**5.4(12)** *Problem gambling.*

*a.* The holder of a license to operate gambling games and the holder of a license to accept simulcast wagering shall adopt and implement policies and procedures designed to:

(1) Identify problem gamblers; ~~and~~

(2) Comply with the process established by the commission to allow a person to be voluntarily excluded from the gaming floor of an excursion gambling boat, from the wagering area as defined in Iowa Code section 99D.2, and from the gaming floor of all other licensed facilities or gambling activities regulated under Iowa Code chapters 99D and 99F; and

~~(2)~~ (3) Allow persons to be voluntarily excluded for five years or life from all facilities on a form prescribed by the commission. Each facility will disseminate information regarding the exclusion to all other ~~facilities~~ licensees and the commission.

*b.* and *c.* No change.

*d.* Money forfeited by a voluntarily excluded person pursuant to Iowa Code sections 99D.7(23) and 99F.4(22) shall be withheld by the licensee and remitted to the general fund of the state by the licensee.

ITEM 2. Amend rule **491—10.1(99D)**, definition of "Test sample," as follows:

*"Test sample"* means any bodily substance including, but not limited to, blood, ~~or~~ urine, or hair taken from a horse under the supervision of the commission veterinarian and as prescribed by the commission for the purpose of analysis.

ITEM 3. Amend subrule 10.2(7) as follows:

**10.2(7)** *Detention enclosure.* Each facility shall maintain a detention enclosure for use by the commission for securing samples of urine, saliva, blood, hair, or other bodily substances or tissues for

chemical analysis from horses ~~who~~ that have run in a race. The enclosure shall include a wash rack, commission veterinarian office, a walking ring, at least four stalls, workroom for the sample collectors with hot and cold running water, and glass observation windows for viewing of the horses from the office and workroom. An owner, trainer, or designated representative licensed by the commission shall be with a horse in the detention barn at all times.

ITEM 4. Adopt the following **new** subparagraph **10.4(5)"g"(5)**:

(5) Iowa-foaled horse allowance. Iowa-foaled horses that are properly registered and whose papers are stamped by the Iowa department of agriculture shall be allowed an additional three pounds beyond the stated conditions of the race if the race is not limited to Iowa-foaled horses. This allowance does not apply to stakes races.

ITEM 5. Amend subparagraph **10.5(1)"a"(27)** as follows:

(27) Witnessing the collection of a urine, ~~or~~ blood, or hair sample from the horse in the trainer's charge or delegating a licensed employee or the owner of the horse to do so.

ITEM 6. Amend paragraph **10.7(1)"c"** as follows:

*c.* Proof of detection by the commission chemist of the presence of a medication, drug, foreign substance, or metabolic derivative thereof, prohibited by paragraph ~~*"a"*~~ 10.7(1)*"a"* or *"b,"* in a saliva, urine, ~~or~~ blood, or hair sample duly taken under the supervision of the commission veterinarian from a horse immediately prior to or promptly after running in a race shall be prima facie evidence that the horse was administered, with the intent that it would carry or that it did carry in its body while running in a race, prohibited medication, drug, or foreign substance in violation of this rule.

ITEM 7. Amend paragraph **10.7(2)"a"** as follows:

*a.* Under the supervision of the commission veterinarian, urine, blood, hair, and other specimens shall be taken and tested from any horse that the stewards, commission veterinarian, or the commission's representatives may designate. The samples shall be collected by the commission veterinarian or other person or persons the commission may designate. Each sample shall be marked or numbered and bear information essential to its proper analysis; but the identity of the horse from which the sample was taken or the identity of its owners or trainer shall not be revealed to the official chemist or the staff of the chemist. The container of each sample shall be sealed as soon as the sample is placed therein.

**ARC 3915C**

# SECRETARY OF STATE[721]

**Notice of Intended Action**

**Proposing rule making related to postelection audit and providing an opportunity for public comment**

The Secretary of State hereby proposes to amend Chapter 26, "Counting Votes," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 17A.4 and 50.51 [2017 Iowa Acts, House File 516, section 43].

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 50.51.

*Purpose and Summary*

The Secretary of State has determined that as a result of the enactment of 2017 Iowa Acts, House File 516, these proposed amendments are necessary to keep administrative rules in compliance with the

SECRETARY OF STATE[721](cont'd)

Iowa Code. House File 516 makes significant changes to elections in the state of Iowa, creating a need to update Chapter 26, which pertains to elections.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Secretary of State for a waiver of the discretionary provisions, if any, pursuant to 721—Chapter 10.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Secretary of State no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

Molly Hammer
Office of the Secretary of State
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: molly.hammer@sos.iowa.gov

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Reserve rules **721—26.108** to **721—26.199**.

ITEM 2. Adopt the following **new** 721—Part VI:

PART VI—POSTELECTION AUDIT

ITEM 3. Adopt the following **new** rule 721—26.200(50):

**721—26.200(50) Precinct selection.**

**26.200(1)** One precinct per county shall be selected by lot.

**26.200(2)** For the purpose of this rule, combined precincts established pursuant to Iowa Code section 49.11 shall be audited as a single precinct if selected by lot; therefore, if one precinct out of the combined precinct is selected, all of the precincts that make up the combined precinct shall be audited.

**26.200(3)** Absentee and special voters precincts, established pursuant to Iowa Code section 53.20, shall be included in the list of precincts to be selected for each county to be selected by lot.

ITEM 4. Adopt the following **new** rule 721—26.201(50):

**721—26.201(50) State commissioner duties.**

**26.201(1)** The state commissioner of elections shall select the precincts to be included in the postelection audit by lot the day following the election.

**26.201(2)** The state commissioner shall notify the state chairpersons of the two political parties whose candidates received the highest number of votes statewide for either the office of President of the United States or governor in the preceding general election, of the time and location of the selection at least 24 hours prior to the selection. A public notice shall be posted on the state commissioner's website.

**26.201(3)** The state commissioner shall notify the commissioners of all precincts selected for an audit following a statewide election.

**26.201(4)** In advance of any other election, the state commissioner may order an audit of the election in the manner provided for in Iowa Code section 50.51. In the event an audit is ordered, the state commissioner of elections shall notify all commissioners holding an election no less than 24 hours before the election in question that an audit has been ordered. An audit ordered under Iowa Code section 50.51 and rule 721—26.200(50) shall be conducted using the same time frame and procedure as a general election audit.

ITEM 5. Adopt the following **new** rule 721—26.202(50):

**721—26.202(50) Postelection audit time frame.**

**26.202(1)** A postelection audit shall be conducted no later than 20 days following the election.

**26.202(2)** At least 24 hours prior to the audit start time, commissioners shall post the times and locations of each audit.

**26.202(3)** The commissioner shall notify the county chairperson of the two political parties whose candidates received the highest number of votes statewide for either the office of president of the United States or governor in the preceding general election, in writing, of the date, time, and place that the audit will be conducted, so that the chairperson may be present or have a representative present.

ITEM 6. Adopt the following **new** rule 721—26.203(50):

**721—26.203(50) Audit board and audit procedure.**

**26.203(1)** The commissioner shall appoint three or five audit board members to conduct the audit. Not more than a simple majority of the members of the audit board in any precinct shall be members of the same political party or organization if one or more registered voters of another party or organization are qualified and willing to serve on the audit board.

**26.203(2)** The commissioner or the commissioner's designee shall supervise the handling of ballots to ensure that the ballots are protected from alteration or damage.

**26.203(3)** If a polling place precinct is selected for an audit, the hand count shall be conducted by the audit board pursuant to Iowa Code section 50.51. For postelection audit purposes, the audit board shall count votes according to voting system programming standards, outlined in 721—subrule 22.41(1).

**26.203(4)** If an absentee and special voters precinct is selected for an audit, the audit board shall tabulate at least 50 percent of ballots, but no more than 2,000 ballots, within the precinct. The ballots shall first be tabulated using the same automatic tabulating equipment and program used for tabulating the votes on election day, unless the program is believed or known to be flawed. The same ballots shall then be hand-counted by the audit board pursuant to Iowa Code section 50.51. For postelection audit

purposes, the audit board shall count votes according to voting system programming standards, outlined in 721—subrule 22.41(1).

**26.203(5)** The audit board shall reseal the ballots after they have been audited and before adjournment of the audit board. The signatures of the audit board members shall be placed across the seal or opening of the container so that it cannot be opened without breaking the seal, following the same procedure described in Iowa Code section 50.12. Audited ballots shall be stored separately from nonaudited ballots and clearly marked "AUDITED," along with the date the audit was conducted. If an absentee and special voters precinct is selected for an audit, the ballots that were audited shall be sealed and kept separately from any ballots that were not selected for audit.

**26.203(6)** Upon completion of the audit, the commissioner shall report the findings on a form prescribed by the state commissioner. One copy of the audit report shall be transmitted to the state commissioner and one copy shall be filed with the county board of supervisors not later than 20 days following the election.

**26.203(7)** The commissioner may order an administrative recount pursuant to Iowa Code section 50.50 and rule 721—21.25(50) if the commissioner determines the results of an audit require an administrative recount.

ITEM 7. Amend **721—Chapter 26**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section~~ sections 49.98 ~~as amended by 2004 Iowa Acts, Senate File 2269, section 21~~ and 50.51.

## ARC 3914C

# SECRETARY OF STATE[721]

**Notice of Intended Action**

**Proposing rule making related to elections technology security and providing an opportunity for public comment**

The Secretary of State hereby proposes to adopt new Chapter 29, "Elections Technology Security," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 47.7.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 47.7.

*Purpose and Summary*

Proposed Chapter 29 requires that all Secretary of State and County Auditor staff who access Iowa's statewide voter registration database (I-Voters) take an approved training course related to cybersecurity practices.

This new chapter is necessary because of heightened awareness of cybersecurity issues and the need for those with lawful access to I-Voters to be alert to common cybersecurity threats and mitigation techniques. The Secretary of State, as the State Registrar of Voters, has determined this training is necessary for a variety of reasons, including the federal Department of Homeland Security's designation of elections as "critical infrastructure."

*Fiscal Impact*

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

SECRETARY OF STATE[721](cont'd)

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Secretary of State for a waiver of the discretionary provisions, if any, pursuant to 721—Chapter 10.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Secretary of State no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

Eric Gookin
Office of the Secretary of State
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: eric.gookin@sos.iowa.gov

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Adopt the following **new** 721—Chapter 29:

CHAPTER 29
ELECTIONS TECHNOLOGY SECURITY

**721—29.1(47) Definitions.** The following definitions are adopted.

*"Breach"* means a compromise of security processes that leads to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to protected information.

*"Commissioner"* means the county commissioner of elections as defined in Iowa Code chapter 47.

*"Cybersecurity"* means the prevention of damage to, protection of, and restoration of computers, electronic communications systems, electronic communications services, wire communication, and electronic communication, including information contained therein, to ensure its availability, integrity, authentication, confidentiality, and nonrepudiation.

*"Elections technology"* means the statewide voter registration database, voting system, electronic poll books, and other technologies used to register, maintain, or process voters or conduct any election.

SECRETARY OF STATE[721](cont'd)

For purposes of this rule, these terms shall have the definitions as described in the administrative rules of the secretary of state.

*"Encryption"* means the use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without the use of a confidential process or key.

*"Incident"* means an occurrence that actually or potentially jeopardizes the confidentiality, integrity, or availability of an information system or the information the system processes, stores, or transmits or that constitutes a violation or imminent threat of violation of security policies, security procedures, or acceptable use policies.

*"I-Voters"* means the statewide voter registration database.

*"Office of the chief information officer"* or *"OCIO"* means the state chief information officer.

*"Registrar"* means the county commissioner of registration as defined in Iowa Code section 48A.3.

*"State commissioner"* means the state commissioner of elections as described in Iowa Code chapter 47.

*"State registrar"* means the state registrar of voters as defined in Iowa Code chapter 48A.

*"User"* means anyone from the state registrar or county registrar or approved third-party vendor who accesses I-Voters.

**721—29.2(47) Cybersecurity training.**

**29.2(1)** All users who access the I-Voters database must complete annual training programs on principles of cybersecurity. Upon completion of the training, a user shall transmit proof of completion to the state registrar. The state registrar shall maintain a list of approved training programs on the secretary of state's website. The state registrar shall consult with the OCIO or the federal Election Assistance Commission before adding trainings to the list of approved programs. If requested by the office of the chief information officer, the federal Election Assistance Commission, or a county registrar, the state registrar may review and add recommended cybersecurity training programs to the approved list.

**29.2(2)** The state registrar may disable any user account if the user does not complete the training within 30 days of access granted, or on the anniversary date set by the state registrar.

**29.2(3)** The state registrar may temporarily waive this requirement for any user if the state registrar believes it is necessary to the execution of the election.

**721—29.3(47) Cybersecurity incident or breach.**

**29.3(1)** A commissioner who identifies or suspects an actual or possible cybersecurity incident or breach shall immediately report the incident to the state commissioner. Upon receiving the report, the state commissioner shall alert the appropriate state or federal law enforcement agencies, the federal Department of Homeland Security, the OCIO, and the vendor responsible for maintaining the affected technology. The state commissioner may disseminate the information to other agencies as the state commissioner deems necessary.

**29.3(2)** Information reported to the state commissioner under this rule shall be exempt from public records requests pursuant to Iowa Code section 22.7(50).

**29.3(3)** Nothing in this rule prohibits a commissioner from alerting local law enforcement prior to contacting the state commissioner in the event of an incident or breach.

These rules are intended to implement Iowa Code section 47.7(2).

# DEPARTMENT OF TRANSPORTATION

**Advisory Notice**

Adjusted Bid Thresholds for City and County Highway, Bridge, and Culvert Construction, Reconstruction and Improvement Projects

Pursuant to the authority of Iowa Code section 314.1B, the Director of Transportation gives an advisory notice of adjusted bid thresholds for city and county highway, bridge, and culvert construction, reconstruction and improvement projects. The adjusted bid threshold values will become effective January 1, 2019.

The horizontal infrastructure bid threshold subcommittee, composed of three contractors, two county representatives, one city representative and the Director's designee, held a meeting on May 31, 2018, to review bid thresholds. After a review of the construction price index, the subcommittee made the following three adjustments to bid thresholds for city and county highway, bridge, and culvert construction, reconstruction and improvement projects:

1. The county bid threshold in Iowa Code section 309.40 will be adjusted from $87,000 to $89,000 effective January 1, 2019.
2. The bid threshold in Iowa Code section 314.1(2) for cities with a population of 50,000 or less will be adjusted from $47,000 to $48,000 effective January 1, 2019.
3. The bid threshold in Iowa Code section 314.1(2) for cities with a population of more than 50,000 will be adjusted from $67,000 to $69,000 effective January 1, 2019.

All other bid thresholds for city and county highway, bridge, and culvert construction, reconstruction and improvement projects that are not addressed in this advisory notice will remain as currently stated in the appropriate Iowa Code sections.

**ARC 3913C**

# UTILITIES DIVISION[199]

**Notice of Intended Action**

**Proposing rule making related to utility records and providing an opportunity for public comment**

The Utilities Board hereby proposes to amend Chapter 18, "Utility Records," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 17A.4, 476.2 and 476.9.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 476.9, 476.31 and 546.7.

*Purpose and Summary*

The purpose of this rule making is to update and amend the Board's rules regarding access and retention of utility records. The Board issued an order requesting stakeholder comments on proposed amendments to Chapter 18, the Board's rules that establish utility record and access standards. The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; Interstate Power and Light Company; MidAmerican Energy Company; and Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy, filed comments addressing the proposed amendments.

The Board reviewed the stakeholder comments and proposes the following amendments to the Board's rules for utility records and access. The amendments are designed to update references to utility record standards and access and update the scope of utilities subject to the provisions of the chapter.

The Board issued an order on July 13, 2018, commencing this rule making. The order provides a full discussion of the proposed amendments. The order is available on the Board's electronic filing system, efs.iowa.gov, under Docket No. RMU-2016-0034.

UTILITIES DIVISION[199](cont'd)

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa. These proposed amendments update and amend existing rules that are required to be followed for retention and access to utility records.

*Jobs Impact*

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

*Waivers*

No waiver provision is included in the proposed amendments because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in this chapter.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

Iowa Utilities Board
Electronic Filing System (EFS) at efs.iowa.gov
Phone: 515.725.7337
Email: efshelpdesk@iub.iowa.gov

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 199—18.2(476) as follows:

**199—18.2(476) Location of records.** All records required by any rules of the board, or necessary for the administration thereof, shall be kept or made accessible within this state unless otherwise authorized by the board. Any transfer of records from a location outside this state to another location outside this state shall also require prior board authorization, but a transfer from outside this state to a locale within this state may be made with only prior notification to the board.

The board is to be notified by each rate-regulated gas utility and electric utility within 30 days of any change in the address, telephone number, or business hours of the utility's principal office for Iowa operations. A utility providing gas and electric service may designate one principal office for both types of utility operations or a separate principal office for each type of utility operation. Notwithstanding any other provision of these rules, the following books, accounts, papers, and records, or current copies

thereof, are required to be maintained or made accessible at the utility's principal office for Iowa operations:

**18.2(1)** The utility's tariffs.

**18.2(2)** A record of the number and business location of the utility's administrative, technical, and operating personnel within the state.

**18.2(3)** The most recent inspection report.

**18.2(4)** The most recent rate case filing.

**18.2(5)** Annual reports for the past five years.

**18.2(6)** Shareholder's reports for the past five years.

**18.2(7)** Form IG-1 (gas utilities).

**18.2(8)** Form IE-1 (electric utilities).

**18.2(9)** Information regarding the location of other books, records, and accounts required by the board to be maintained ~~by the board~~ or made accessible pursuant to statute or rule.

ITEM 2. Amend subrule 18.4(1) as follows:

**18.4(1)** *Units of property.* Electric utilities subject to rate regulation shall maintain an accounting system for Units of Property in Accounting for Additions and Retirements of Electric Plant in accordance with 199—16.2(476)~~, which adopts the 2000 FERC rules, 18 CFR Part 101, Electric Plant Instructions~~.

ITEM 3. Amend subrule 18.4(2) as follows:

**18.4(2)** *Preservation of records.* All electric utilities subject to regulation by the board shall preserve the records of their operations in accordance with the provisions of Part 125 of the FERC rules, 18 CFR Part 125, Preservation of Records of Public Utilities and Licensees, as issued on ~~April 1, 2000~~ August 15, 2000. Rate-regulated companies shall further ensure the preservation of records of associated companies, whether or not the associated companies are themselves utilities, as necessary to support the cost of services rendered to the utility by the associated companies.

ITEM 4. Amend subrule 18.5(1) as follows:

**18.5(1)** *Units of property.* Rural electric cooperatives (RECs) subject to rate regulation by the board shall adopt the RUS rules contained in RUS 7 CFR Part 1767 ~~issued January 1, 2002~~ published May 27, 2008. The REC shall maintain sufficient records to support additions to plant, retirement units, and replacements of electric plant, in accordance with 7 CFR Part 1767.10, Definitions, 7 CFR Part 1767.15, General Instructions, 7 CFR Part 1767.16, Electric Plant Instructions, and 7 CFR Part 1767.20, Plant Accounts.

ITEM 5. Amend subrule 18.5(2) as follows:

**18.5(2)** *Preservation of records.* Rural electric cooperatives shall preserve the records of their operations in accordance with the provisions of the RUS rules contained in RUS Bulletin 180-2, ~~Manual for Preservation of Borrowers Records (Electric)~~ Record Retention Recommendations for RUS Electric Borrowers, ~~issued June 6, 1972~~ issued June 26, 2003.

ITEM 6. Amend subrule 18.6(1) as follows:

**18.6(1)** *Units of property.* Gas utilities subject to rate regulation shall maintain an accounting system for Units of Property in Accounting for Additions and Retirements of Gas Plant in accordance with 199—16.3(476)~~, which adopts the 2000 FERC rules, 18 CFR Part 201, Gas Plant Instructions~~.

ITEM 7. Amend subrule 18.6(2) as follows:

**18.6(2)** *Preservation of records.* All gas utilities subject to regulation by the board shall preserve the records of their operations in accordance with the provisions of FERC rules, 18 CFR Part 225, Preservation of Records of Natural Gas Companies, as issued ~~April 1, 2000~~ August 15, 2000. Rate-regulated companies shall further ensure the preservation of records of associated companies, whether or not the associated companies are themselves utilities, as necessary to support the cost of services rendered to the utility by the associated companies.

UTILITIES DIVISION[199](cont'd)

ITEM 8. Amend subrule 18.7(1) as follows:

**18.7(1)** *Units of property.* Water, sanitary sewage, and storm water drainage utilities subject to rate regulation shall maintain an accounting system for Units of Property in Accounting for Additions and Retirements of Water Plant in accordance with 199—16.4(476) ~~which adopts the 1996 NARUC uniform systems of accounts for Class A, B, and C water utilities~~.

ITEM 9. Amend subrule 18.7(2) as follows:

**18.7(2)** *Preservation of records.* All water, sanitary sewage, and storm water drainage utilities subject to regulation by the board shall preserve the records of their operations in accordance with the provisions of the NARUC guidelines: Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities, revised ~~May 1985~~ October 2007 edition. Regulated water, sanitary sewage, and storm water drainage utilities shall further ensure the preservation of records of associated companies, whether or not the associated companies are themselves utilities, as necessary to support the cost of services rendered to the utility by the associated companies.

ITEM 10. Rescind rule 199—18.8(476) and adopt the following **new** rule in lieu thereof:

**199—18.8(476) Telephone utilities.** All telephone utilities subject to regulation by the board shall preserve the records of their operations in accordance with the provisions of Part 42 of the FCC rules, 47 CFR 42, Preservation of Records of Communication Common Carriers, as issued March 28, 2001.

**ARC 3928C**

# ALCOHOLIC BEVERAGES DIVISION[185]

**Adopted and Filed**

**Rule making related to licensing**

The Alcoholic Beverages Division hereby amends Chapter 4, "Liquor Licenses—Beer Permits—Wine Permits" and Chapter 5, "License and Permit Division," and rescinds Chapter 12, "Forms," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 123.10.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 123 as amended by 2017 Iowa Acts, House File 607, and 2016 Iowa Acts, House File 2359, section 51.

*Purpose and Summary*

This rule making implements changes to the Iowa Code enacted in 2017 Iowa Acts, House File 607, and 2016 Iowa Acts, House File 2359. The amendments to Chapters 4 and 5 clarify existing rules and add new rules where required by House File 607. The amendment in Item 4 rescinds rule 185—4.24(123) because the changes in House File 2359 make the rule unnecessary. For accessibility, the amendment to subrule 5.9(4) in Item 6 adds a description of the forms used to furnish a surety bond when a bond is required during the process of obtaining a license or permit. As a result, Chapter 12 of the Division's rules is rescinded.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 6, 2018, as **ARC 3817C**. A public hearing was held on June 26, 2018, at 9 a.m. in the Division Board Room, 1918 S.E. Hulsizer Road, Ankeny, Iowa. The Division received oral and written comments from one respondent. A summary of the comments and the Division's responses are as follows:

**Comment 1:** The respondent stated that the use of word "forfeiture" in subrule 5.9(2) is legally problematic in the law of surety and does not reflect the obligations for payment on a bond. As written, the subrule would require forfeiture of the full amount of the bond, even when liability owed to the state is below the bond limit, which does not reflect how surety companies operate and which impacts how surety companies underwrite risk in Iowa.

The respondent recommended striking the word "forfeiture" where it appears in subrule 5.9(2) and replacing it with the term "payment on bond."

**Division response 1:** Subrule 5.9(2) describes the requirement for surety bonds issued to licensees and permittees in Iowa to include a provision for the principal and the surety company to consent to the forfeiture of the principal sum of the bond in the event of revocation of the license or permit by the violation of any Iowa Code provision which requires forfeiture of the bond. The statutory basis for forfeiture of a surety bond is found in Iowa Code section 123.50, subsections 2 and 4. Before a bond can be forfeited to the Division, a licensee or permittee must first be convicted of a violation of Iowa Code section 123.49, subsection 2, paragraph "a," "d," or "e," or of Iowa Code section 123.59, and the license or permit must be revoked.

As such, the Division has not made changes to subrule 5.9(2). Rather, reference to Iowa Code section 123.50 has been added to the implementation sentence for rule 185—5.9(123), found in Item 6, to provide further guidance for the reader.

**Comment 2:** The respondent stated that the language in the second paragraph in subrule 5.9(3), which explicitly prohibits a surety company from canceling a bond for any reason when an administrative hearing complaint has been filed and charges are currently pending against a licensee or permittee that could result in revocation of the license or permit, creates unintended but significant problems. Under Iowa law, a surety company is liable for the actions of the licensee or permittee throughout the term of the bond, including the 30-day cancellation period after notice is given to the licensee or permittee. The language in subrule 5.9(3) would bar a surety company from canceling a bond on a licensee or permittee for any reason, even if the reason is separate from those reasons that prompted the administrative action.

The respondent recommended striking the second paragraph in subrule 5.9(3). This change would not alter a surety company's legal obligations to the state under the bond, nor would it prohibit a licensee or permittee from obtaining a bond if the license or permit is not revoked in the event the administrative action is terminated.

**Division response 2:** The Division agrees with the respondent's comment and has stricken the second paragraph in subrule 5.9(3), found in Item 6.

Written comments were identical to those received at the public hearing.

*Adoption of Rule Making*

This rule making was adopted by the Alcoholic Beverages Commission on July 12, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 185—Chapter 19.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on September 5, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 185—4.1(123) as follows:

**185—4.1(123) Definitions.**

~~**4.1(1)**~~ "Act" means the alcoholic beverage control Act.

~~**4.1(2)** *"Division"* means the alcoholic beverages division of the department of commerce.~~

~~**4.1(3)** *"Growler"* means any fillable and sealable glass, ceramic, plastic, aluminum or stainless steel container designed to hold only beer or high alcoholic content beer.~~

~~**4.1(4)** *"Original container"* means a vessel containing an alcoholic beverage that has been lawfully obtained, bears a label approved by the Alcohol and Tobacco Tax and Trade Bureau, and has been securely capped, sealed or corked at the location of manufacture.~~

~~**4.1(5)** Reserved.~~

**4.1(6)** "Administrator" means the chief administrative officer of the alcoholic beverages division or a designee.

~~**4.1(7)**~~ "Beverages" as used in Iowa Code section ~~123.129~~ 123.3(18) does not include alcoholic liquor, wine, or beer as defined in Iowa Code sections 123.3(4), 123.3(5), 123.3(7), 123.3(19), 123.3(28), 123.3(30), 123.3(43) and ~~123.3(37)~~ 123.3(47).

*"Division"* means the alcoholic beverages division of the department of commerce.

This rule is intended to implement Iowa Code sections 123.3 and 123.4.

ITEM 2. Amend rule 185—4.4(123) as follows:

**185—4.4(123) Licensed premises.** The following criteria must be met before a "place" (as used in Iowa Code section ~~123.3(20)~~ 123.3(25)) may be licensed as a "place susceptible of precise description satisfactory to the administrator."

**4.4(1)** The "place" must be owned by or under the control of the prospective licensee.

**4.4(2)** The "place" must be solely within the jurisdiction of one local approving authority.

**4.4(3)** The "place" must be described by a sketch of the ~~"premise"~~ "premises" as defined in Iowa Code section ~~123.3(20)~~ 123.3(25) and showing the boundaries of the proposed "place"; showing the locations of selling/serving areas within the confines of the "place"; showing all entrances and exits; and indicating the measurements of the "place~~,~~" and distances between selling/serving areas.

**4.4(4)** The "place" must satisfy the health, safety, fire and seating requirements of the division, local authorities and ~~Iowa department of agriculture and land stewardship~~ the Iowa department of inspections and appeals.

**4.4(5)** Any other criteria as required by the administrator.

This rule is intended to implement Iowa Code sections ~~123.3(20)~~ 123.3(25) and 123.4.

ITEM 3. Amend rule 185—4.6(123) as follows:

**185—4.6(123) Filling and selling of beer in a container other than the original container ~~by class "C" beer permit holders.~~** ~~Class~~ Liquor control license holders, class "B" and class "C" beer permit holders, and their employees may fill, refill and sell beer in a container other than the original container, otherwise known as a growler ~~as defined in subrule 4.1(3)~~, subject to the requirements and restrictions provided in Iowa Code ~~section~~ sections 123.131 and 123.132 and in this rule.

**4.6(1)** ~~*Definition*~~ *Definitions.*

*"Beer,"* for the purpose of this rule, means "beer" as defined in Iowa Code section 123.3(7) and "high alcoholic content beer" as defined in Iowa Code section 123.3(19).

*"Growler,"* for the purpose of this rule, means any fillable and sealable glass, ceramic, plastic, aluminum, or stainless steel container designed to hold only beer or high alcoholic content beer.

*"Original container,"* for the purpose of this rule, means a vessel containing beer that has been lawfully obtained and has been securely capped, sealed, or corked at the location of manufacture. For special class "A" beer permit holders, an "original container" includes a tank used for storing and serving beer.

**4.6(2)** No change.

**4.6(3)** *Filling and refilling requirements.*

*a.* No change.

*b.* A growler shall be filled or refilled only by the licensee or permittee or the licensee's or permittee's employees who are 18 years of age or older.

*c.* No change.

*d.* A growler shall be filled or refilled only with beer from the original container procured from a duly licensed wholesaler unless the beer being used to fill or refill a growler on the premises of a

special class "A" beer permit holder was manufactured by that special class "A" beer permit holder on the permitted premises.

*e.* and *f.* No change.

**4.6(4)** *Sealing requirements.* A filled or refilled growler shall be securely sealed at the time of the sale by the licensee or permittee or the licensee's or permittee's employees in the following manner:

*a.* A growler shall bear a ~~twist-type~~ cap, ~~screw-on cap, flip-top~~ lid, ~~swing-top lid,~~ stopper, or plug.

*b.* A plastic heat shrink wrap band, strip, or sleeve shall extend around the ~~twist-type~~ cap~~, screw-on cap, flip-top lid,~~ or ~~swing-top~~ lid or over the stopper or plug to form a seal that must be broken upon the opening of the growler. A lid permanently affixed with a can seamer shall not require a plastic heat shrink wrap band, strip, or sleeve.

*c.* and *d.* No change.

**4.6(5)** *Restrictions.*

*a.* to *d.* No change.

*e.* A licensee or permittee or a licensee's or permittee's employees shall not allow a consumer to fill or refill a growler.

*f.* and *g.* No change.

*h.* An original container shall only be opened on the ~~licensed~~ premises of a class "C" beer permit holder for the limited purposes of filling or refilling a growler as provided in this rule, or for a tasting in accordance with rule 185—16.7(123).

**4.6(6)** *Violations.* Failure to comply with the requirements and restrictions of this rule shall subject the licensee or permittee to the penalty provisions provided in Iowa Code chapter 123.

This rule is intended to implement Iowa Code ~~section~~ sections 123.123, 123.131, and 123.132.

ITEM 4. Rescind and reserve rule **185—4.24(123)**.

ITEM 5. Adopt the following **new** rule 185—5.2(123):

**185—5.2(123) Annual production of a native distillery.** A native distillery is a business with an operating still which produces and manufactures native distilled spirits and holds a class "A" native distilled spirits license. The total number of proof gallons of native distilled spirits produced and manufactured by a native distillery on an annual basis shall be used to determine the amount of native distilled spirits that may be sold per person per day from the native distillery's licensed premises for off-premises consumption and to determine eligibility to obtain a class "C" native distilled spirits liquor control license.

**5.2(1)** Definitions.

*"Annual basis,"* for the purpose of this rule, means a year as defined in Iowa Code section 4.1(40) beginning January 1 and ending December 31.

*"Native distilled spirits"* means an alcoholic beverage as defined in Iowa Code section 123.3(28).

*"Operating still,"* for the purpose of this rule, means a still that is registered with the Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 CFR 19.75(b) and is actively used to manufacture spirits.

*"Proof gallon,"* for the purpose of this rule, means a United States gallon of proof spirits, or the alcoholic equivalent thereof, as defined by the Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 CFR 30.11.

**5.2(2)** The total number of proof gallons of native distilled spirits produced and manufactured by a native distillery on an annual basis shall combine all production facilities of the business and shall be determined based on the 12-month sum of line 26 of Alcohol and Tobacco Tax and Trade Bureau Form 5110.28, Monthly Report of Processing Operations, filed monthly by the native distillery with the division, pursuant to Iowa Code section 123.43A(5).

**5.2(3)** The amount of native distilled spirits that may be sold per person per day from a native distillery's licensed premises for off-premises consumption shall be determined based on the total number of proof gallons of native distilled spirits as determined in subrule 5.2(2) for the preceding calendar year beginning January 1 and ending December 31.

**5.2(4)** As a condition of obtaining a class "C" native distilled spirits liquor control license, a native distillery shall report to the division, at the time of application, the total number of proof gallons of native distilled spirits as determined in subrule 5.2(2) for the preceding calendar year beginning January 1 and ending December 31.

This rule is intended to implement Iowa Code sections 123.3(29), 123.30(3)*"c"*(3), 123.31(6) and 123.43A.

ITEM 6. Amend rule 185—5.9(123) as follows:

**185—5.9(123) Surety bond requirements.** A $5,000 ~~penal~~ surety bond ~~must~~ shall be filed with the division with each application for a ~~Class~~ class "A" wine permit~~, Class "A" beer permit, special Class "A" beer permit and manufacturer's license~~ and with each application for a wine direct shipper license unless the applicant for the wine direct shipper license posted a surety bond as part of obtaining a class "A" wine permit. A $10,000 surety bond shall be filed with the division for each application for a class "A" beer permit or special class "A" beer permit. A ~~$5,000, $10,000 or $15,000 penal~~ surety bond ~~must~~ in an amount of at least $5,000 but not more than $15,000 shall be filed with the division with each application for a ~~Class~~ class "E" liquor control license. ~~A Class "E" liquor control licensee may determine the amount of the bond to be posted with the division, and may increase or decrease the face amount of the bond in increments of $5,000 on one occasion during the licensee's first year of business. Thereafter, a licensee may increase or decrease the face amount of the bond in increments of $5,000 only when the liquor control license is renewed.~~ Each ~~penal~~ surety bond ~~must~~ shall meet the following requirements.

**5.9(1)** *Certificate of authority.* ~~It must~~ The surety bond shall be issued by a company holding a current certificate of authority from the commissioner of insurance authorizing the company to issue bonds in Iowa.

**5.9(2)** *Forfeiture of bond.* ~~It must~~ The surety bond shall contain a provision for the principal and surety to consent to the forfeiture of the principal sum of the bond in the event of revocation of the license or permit by the violation of any Iowa Code provision which requires forfeiture of the bond.

**5.9(3)** *Cancellation.* A surety company or a principal may cancel a bond by giving a minimum of 30 days' written notice to this division of the party's intent to cancel the bond. The 30-day period shall commence on the date that this division receives the notice of cancellation. The party seeking to cancel a bond shall ~~mail~~ submit written notice of such cancellation to the division in Ankeny, Iowa, ~~by certified mail,~~ and further shall ~~mail~~ submit a copy of the notice of cancellation to the other party~~, at that party's post office address~~. The notice of cancellation shall contain: the name of the party to whom the copy of the notice of cancellation was ~~mailed~~ submitted, ~~the address to which the copy of the notice of cancellation was sent,~~ the date on which the notice of cancellation was ~~mailed~~ submitted, the date the bond is being canceled, and the license or permit number of the licensee or permittee to be affected by such cancellation.

~~The cancellation or notice thereof shall have no force or effect in the event that the principal's license or permit has been revoked during the period of the bond or when an administrative hearing complaint has been filed, and charges are currently pending against the licensee or permittee which could result in revocation of the license or permit after an administrative hearing on the complaint.~~

**5.9(4)** *Proof of bond.* A licensee or permittee shall be deemed to have furnished a surety bond when the licensee or permittee has filed with the division ~~at its offices in Ankeny, Iowa, a form described by 185—subrule 12.2(7)~~ a form prescribed by the division containing the following: the name of the bond provider; the city and state where the bond provider is located; the bond number, the names of the principal, and the city and state where the principal is located; the amount of the bond; the type of license or permit guaranteed by the bond; the effective date of the bond; signatures of the principal and the bond provider; and any other information the administrator of the division may require.

**5.9(5)** to **5.9(7)** No change.

This rule is intended to implement Iowa Code sections ~~123.21,~~ 123.30, ~~123.128 and 123.129~~ 123.50, 123.127, 123.175, and 123.187.

ITEM 7. Rescind and reserve **185—Chapter 12**.

[Filed 7/12/18, effective 9/5/18]
[Published 8/1/18]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/1/18.

**ARC 3929C**

# CORRECTIONS DEPARTMENT[201]

**Adopted and Filed**

**Rule making related to policies and procedures**

The Corrections Department hereby amends Chapter 1, "Departmental Organization and Procedures," Chapter 5, "Public Records and Fair Information Practices," Chapter 10, "Rule Making," Chapter 11, "Declaratory Rulings," Chapter 20, "Institutions Administration," Chapter 38, "Sex Offender Management and Treatment," Chapter 40, "Community-Based Corrections Administration," Chapter 41, "Preconviction Service," Chapter 42, "Probation Services," Chapter 43, "Residential Facilities," Chapter 44, "Work Release," Chapter 45, "Parole," Chapter 47, "OWI Programs," Chapter 50, "Jail Facilities," and Chapter 51, "Temporary Holding Facilities," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 356.36, 903B.10, 904.108 and 905.7.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 356A, 692A, 901, 902, 903, 903B, 904, 905, 907, 908 and 910 and Iowa Code sections 17A.3, 17A.4, 17A.6, 17A.7, 17A.9, 22.11, 80B.11A, 356.36, 356.43, 903B.10, 904.101 to 904.108, 904.508A, 904.513, 904.909, 905.7, 905.14, 906.9 to 906.11, 906.15, 906.16, 907.3, 908.1, 908.2, 908.8, 908.11 and 910.5.

*Purpose and Summary*

All of the Department's rules were reviewed as part of the comprehensive five-year review required under Iowa Code section 17A.7. These amendments are designed to eliminate outdated or redundant rules, update rule language to align with Iowa Code language and eliminate any rules that are inconsistent or incompatible with statutes or other rules. The amendments also reflect changes to conform the rules to current, more efficient practices.

The adopted amendments to Chapter 1 reflect the Department's new mission and the revision of the Department's internal structure.

The adopted amendments to Chapter 5 reflect changes to the process for records requests and treatment of confidential records/information, as provided in the uniform rules on agency public records and fair information practices.

The adopted amendments to Chapters 10 and 11 are nonsubstantive corrections of the address of the Iowa Department of Corrections from "420 Watson Powell Jr. Way, Des Moines, Iowa 50309" to the current address "510 East 12th Street, Des Moines, Iowa 50319."

The adopted amendments to Chapter 20 make nonsubstantive corrections, which include changing the term "offender" to "incarcerated individual" and removing the word "superintendent" because the Department has only wardens with the closing of the mental health institutes. The amendments to Chapter 20 also make changes to outdated security procedures and outdated sanctions for visitors.

The adopted amendments to Chapter 38 reflect changes to the risk assessment instruments used on sex offenders. The amendments to Chapter 38 also make a nonsubstantive change from the designated term "offender" to "client."

The adopted amendments to Chapter 40 reflect changes to definitions, accreditation for community-based corrections, the carrying of firearms by staff, and other nonsubstantive updates.

The adopted amendments to Chapter 41 reflect nonsubstantive changes to pretrial services and to clarifying factors to be used for presentence investigations.

The adopted amendments to Chapter 42 reflect nonsubstantive changes to probation services, including updating old terminology and clarifying language on infectious diseases.

The adopted amendments to Chapter 43 reflect clarifying changes regarding residential facilities on admission, the federal Prison Rape Elimination Act (PREA), infectious disease, and risk needs assessment instruments.

The adopted amendments to Chapter 44 reflect changes to work release facility requirements, contagious disease, admission, records, personnel health statements, and PREA and remove outdated risk assessment instruments.

The adopted amendments to Chapter 45 reflect changes to effective date/parole agreements, conditions of parole, and violations. These amendments also remove outdated risk assessment instruments and outdated prison language, add clarifying language on infectious disease and change the term "offender" to "client."

The adopted amendments to Chapter 47 reflect changes to OWI facilities and to PREA, remove references to the American Corrections Association, and change the term "offender" to "client."

The adopted amendments to Chapter 50 remove inspection of residential facilities, add clarifying language on prisoner mail, and make a nonsubstantive correction to change the name "citizen's aide office" to "ombudsman office."

The adopted amendments to Chapter 51 remove the inspection of residential facilities and add clarifying language on detainee mail.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 23, 2018, as **ARC 3806C**. A public hearing was held on June 12, 2018, at 11 a.m. at the Jessie Parker Building, 510 East 12th Street, Des Moines, Iowa, and written comments were accepted through June 12, 2018. No one attended the public hearing. The Department received three comments during the public comment period. The following changes have been made to the amendments since publication of the Notice:

Subrule 1.8(1) has been changed in response to public comment. The subrule was revised to add one of the correctional facilities that had been left off the list. In addition, the two listings for the facilities in Newton have been combined into one listing. Another change in response to public comment has been made to paragraph 5.3(1)"a" to correct the area code listed for one of the facilities. A new Item 8 has been added to correct an outdated reference in Chapter 8 to the uniform rules for public records and fair information practices. Subrule 20.3(13) has been amended to allow visitors to a correctional setting to wear knee-length shorts. Rule 201—20.5(904) has been revised to strike a duplicate sentence.

Changes to community-based corrections rules include an amendment to paragraph 40.4(12)"g," which had been proposed for rescission. The paragraph has been amended to provide that while no officer shall be required to carry a firearm, refusal to carry a firearm may affect job assignment. In addition, the proposed amendments to rule 201—41.1(811,905), Pretrial investigation, included in Item 41 of the Notice were not adopted at this time, and the item has been omitted from this document. In subrule 42.1(4), the words "and addressed in an effort to lower risk and reduce victimization" that were proposed to be stricken have been retained with the addition of the word "are" to fit the context of the sentence, and a reference to "offenders" has been changed to "clients." Subrule 44.6(1) has been revised to add a reference to the deputy director of community-based corrections. The word "needs" in subparagraph 44.9(1)"f"(3) was not stricken as had been proposed. Subrule 45.2(1) has been revised

to set forth the Board of Parole's standard conditions of parole, and the last sentence in paragraph 45.2(2)"b" is now stricken rather than amended. An amendment has been added to subrule 47.1(5) to correct an outdated reference, and the reference in subrule 47.2(9) to the deputy director has been revised.

Lastly, Items 60 and 64 have been added to amend subrules 50.9(2) and 51.8(2), respectively, to change the due date of the certificate of inspection from the State Fire Marshal or qualified fire prevention authority from 24 months to 18 months to conform to the time frame used by the State Fire Marshal.

*Adoption of Rule Making*

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

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 201—Chapter 7.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on September 5, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule **201—1.1(904)**, definition of "Deputy director," as follows:

*"Deputy director"* means the administrator who is appointed by the director and is responsible for an operational division within the department of corrections. The ~~five~~ four operational divisions are administration, ~~eastern operations, western operations, offender services~~ institutional operations, community-based corrections, and prison industries.

ITEM 2. Amend rule 201—1.2(904) as follows:

**201—1.2(904) Mission and function.** The department of corrections is mandated by Iowa Code chapter 904 and consists of a policy board, a director and ~~five~~ four operational divisions.

The mission of the department of corrections is ~~to protect the public, the employees, and the offenders~~ creating opportunities for safer communities.

The department is charged with the operation of the state's penal institutions, judicial district department of corrections programs, prison industries, corrections administration, and contracting with the judicial district departments of correctional services for community correctional services. It is further charged with accreditation and funding of community-based corrections programs, including but not limited to pretrial release, presentence investigation, probation, parole, residential facilities, work release centers and other duties provided for by law.

ITEM 3. Amend subrule **1.3(3)**, office contact information, as follows:

| | |
|---|---|
| Anamosa State Penitentiary | Iowa Medical and Classification Center |
| 406 North High Street~~, Box 10~~ | ~~Box A - Highway 965~~ 2700 Coral Ridge Avenue |
| Anamosa, IA 52205 | ~~Oakdale, IA 52319~~ Coralville, IA 52241 |
| (319)462-3504 | (319)626-2391 |
| (319)462-4962 Fax | (319)626-2141 Fax |
| | |
| Mt. Pleasant Correctional Facility | Iowa State Penitentiary |
| 1200 East Washington | ~~3 John Bennett Drive, Box 316~~ 2111 330th Avenue, P.O. Box 316 |
| Mt. Pleasant, IA 52641 | Fort Madison, IA 52627 |
| (319)385-9511 | (319)372-5432 |
| (319)385-8828 Fax | (319)372-6967 Fax |
| | |
| North Central Correctional Facility | Iowa Correctional Institution for Women |
| 313 Lanedale | ~~300 Elm Ave. SW, P.O. Box 700~~ 420 Mill Street SW |
| Rockwell City, IA 50579 | Mitchellville, IA 50169 |
| (712)297-7521 | (515)967-4236 |
| (712)297-7875 Fax | (515)967-5347 Fax |
| | |
| Clarinda Correctional Facility | First Judicial District, DCS |
| 2000 N. 16th Street~~, Box 1338~~ | 314 East Sixth Street, P.O. Box 4030 |
| Clarinda, IA 51362 | Waterloo, IA 50704-4030 |
| (712)542-5634/5635 | (319)236-9626 |
| (712)542-4844 Fax | (319)291-3947 Fax |
| | |
| Second Judicial District, DCS | Third Judicial District, DCS |
| ~~510 Fifth Street, P.O. Box 623~~ 509 Main Street, Suite 200 | 515 Water Street |
| Ames, IA 50010~~-0623~~ | Sioux City, IA 51103 |
| (515)232-1511 | (712)252-0590 |
| (515)232-9453 Fax | (712)252-0634 Fax |
| | |
| Fourth Judicial District, DCS | Fifth Judicial District, DCS |
| ~~801~~ 810 South Tenth Street | ~~604 Locust Street, Equitable Bldg., Suite 317~~ 1000 Washington Street |
| Council Bluffs, IA 51501 | Des Moines, IA ~~50309~~ 50314 |
| (712)325-4943 | (515)~~280-4220~~ 242-6611 |
| (712)325-0312 Fax | (515)~~280-4259~~ 242-6656 Fax |

ITEM 4. Amend rule 201—1.4(904) as follows:

**201—1.4(904) Internet ~~Web site~~ website.** The department's Internet home page is located at ~~http://www.doc.state.ia.us~~ www.doc.iowa.gov.

ITEM 5. Amend subrule 1.6(8) as follows:

**1.6(8)** The board shall:

*a.* Oversee the work of the department as defined in Iowa Code section 904.105 and, for this purpose, ~~it~~ the board shall have access at any time to all books, papers, documents and records of the department.

*b.* No change.

ITEM 6. Amend rule 201—1.7(904) as follows:

**201—1.7(904) Director.** The governor appoints the director of the department of corrections. The director is responsible for the daily administration of the department. The operations are performed by ~~five~~ four divisions consisting of ~~eastern~~ institutional operations, ~~western operations~~ community-based corrections (CBC), administration, and prison industries~~, and offender services~~. The deputy directors of these divisions report to the director of the department.

In addition to the deputy directors, the general counsel/inspector general, the director of media and public relations, the director of research/recidivism reduction, and the ~~director of training and professional development~~ medical services director report to the director of the department.

**1.7(1)** to **1.7(3)** No change.

ITEM 7. Amend rule 201—1.8(904) as follows:

**201—1.8(904) Organization of the department.**

**1.8(1)** The ~~two regional~~ deputy ~~directors are~~ director of institutional operations is responsible for ~~the following~~ all institutions and facilities ~~and for liaison with the following judicial district departments of correctional services, which are generally described herein~~. These descriptions are in no way binding on the director's authority to transfer ~~offenders~~ incarcerated individuals between institutions.

*a.* ~~Regional deputy~~ Deputy director ~~for eastern~~ of institutional operations:

(1) The Iowa state penitentiary, Fort Madison.

~~1. John Bennett facility, Fort Madison.~~

~~2. Prison farms, Fort Madison.~~

~~3. Clinical care unit, which is a special needs unit.~~

(2) The Anamosa state penitentiary, Anamosa.

~~1. Luster Heights camp, Harpers Ferry, which is a conservation commission camp administered by the Anamosa state penitentiary at Anamosa.~~

~~2. Reserved.~~

(3) The Iowa medical and classification center, ~~Oakdale~~ Coralville.

(4) Mount Pleasant correctional facility, Mount Pleasant.

(5) ~~The first judicial district department of correctional services~~ The Iowa correctional institution for women, Mitchellville.

(6) ~~The sixth judicial district department of correctional services~~ The Clarinda correctional facility, Clarinda.

(7) ~~The seventh judicial district department of correctional services~~ The north central correctional facility, Rockwell City.

(8) ~~The eighth judicial district department of correctional services~~ The Newton correctional facility and the Newton correctional release center, Newton.

(9) The Fort Dodge correctional facility, Fort Dodge.

*b.* ~~Regional deputy director for western operations:~~

~~(1) The Iowa correctional institution for women at Mitchellville.~~

~~(2) The Clarinda correctional facility, Clarinda.~~

~~(3) The north central correctional facility, Rockwell City.~~

~~(4) The Newton correctional facility, Newton.~~

~~(5) The correctional release center, Newton.~~

~~(6) The Fort Dodge correctional facility, Fort Dodge.~~

~~(7) The second judicial district department of correctional services.~~

~~(8) The third judicial district department of correctional services.~~

~~(9) The fourth judicial district department of correctional services.~~

~~(10) The fifth judicial district department of correctional services.~~

**1.8(2)** ~~The two regional deputy directors:~~ The deputy director of CBC:

*a.* ~~Shall be responsible for the following service areas:~~ Is responsible for supervising and coordinating of Code of Iowa requirements as they apply to the judicial district department of correctional services for all eight judicial districts to include:

~~(1) Contracting with the eight judicial district departments of correctional services for work release centers.~~

~~(2) Contracting with the eight judicial district departments of correctional services for parole services.~~

~~(3) Providing coordinated placement of work releasees and parolees with the district departments upon order of the Iowa board of parole.~~

(1) The first judicial district department of correctional services.

(2) The second judicial district department of correctional services.

(3) The third judicial district department of correctional services.

(4) The fourth judicial district department of correctional services.

(5) The fifth judicial district department of correctional services.

(6) The sixth judicial district department of correctional services.

(7) The seventh judicial district department of correctional services.

(8) The eighth judicial district department of correctional services.

*b.* ~~Shall further provide~~ Is responsible for providing assistance and support to the judicial district departments of correctional services and for periodic review and accreditation of these programs. The following services shall be provided in addition to parole and work release:

(1) to (7) No change.

*c.* Is responsible for programming for and treatment of incarcerated individuals to include the following:

(1) Interstate compact administration.

(2) Substance abuse treatment services.

(3) Cognitive learning.

(4) Batterers' education programs.

(5) Sex offender treatment.

(6) Preemployment programs.

**1.8(3)** The ~~deputy director~~ fiscal manager for the division of administration shall be responsible for the following:

*a.* to *h.* No change.

**1.8(4)** No change.

**1.8(5)** ~~The deputy director for offender services shall be responsible for the following services within the department of corrections and for providing assistance to the judicial district departments of correctional services:~~ The director of research/recidivism reduction shall be responsible for the following:

*a.* ~~Offender classification.~~ Learning center.

*b.* ~~Interstate compact administration.~~ Research department.

~~*c.* Offender records.~~

~~*d.* Offender transfers.~~

~~*e.* Program development.~~

~~*f.* Substance abuse treatment services.~~

~~*g.* Cognitive learning.~~

~~*h.* Batterers' education programs.~~

~~*i.* Sex offender treatment.~~

~~*j.* Offender education programs.~~

~~*k.* Offender preemployment programs.~~

**1.8(6)** The general counsel/inspector general shall be responsible for the following:

*a.* Legal services.
*b.* Coordination of court orders.
*c.* Investigations.
*d.* EEO/AA.
*e.* Administrative law judges.
*f.* Jail inspections.
*g.* ~~Policy~~ Legislative program.
*h.* Administrative rules.

**1.8(7)** The director of media and public relations shall be responsible for the following:

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

~~*c.* Supervising the office of victims and restorative justice.~~

**1.8(8)** The ~~director of training and professional development~~ medical services director shall be responsible for the following:

*a.* ~~Comprehensive oversight of the development, implementation and review of the department's agencywide staff development training.~~ Institutional medical services.

*b.* ~~Training policies/plans including implementation, curriculum approval, program/policy audit, and evaluation.~~ Central pharmacy.

ITEM 8. Amend **201—Chapter 5**, chapter preamble, as follows:

The Iowa department of corrections hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are ~~printed in the first volume of the Iowa Administrative Code~~ published at www.legis.gov/docs/Rules/Current/UniformRules.pdf on the General Assembly's website.

ITEM 9. Adopt the following **new** definitions in rule **201—5.1(17A,22)**:

*"Custodian"* means an agency or a person lawfully delegated authority by the agency to act for the agency in implementing Iowa Code chapter 22.

*"Personally identifiable information"* means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

*"Record"* means the whole or a part of a public record, as defined in Iowa Code section 22.1, that is owned by or in the physical possession of this agency.

*"Record system"* means any group of records, under the control of the agency, from which a record may be retrieved by a personal identifier, such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

ITEM 10. Amend subrule 5.3(1) as follows:

**5.3(1)** *Location of record.* A request for access to a record should be directed to the office where the record is kept:

*a.* Records of current inmates are maintained at the inmates' place of confinement. Such requests should be directed to the Records Office at:

~~Iowa State Men's Reformatory~~ Anamosa State Penitentiary
~~Box B~~ 406 North High Street
Anamosa, Iowa 52205
(319)462-3504

Mount Pleasant Correctional Facility
~~Medium Security Unit~~ 1200 East Washington
Mount Pleasant, Iowa 52641
(319)385-9511

Clarinda Correctional Facility
~~Box 1338~~ 2000 N. 16th Street
Clarinda, Iowa 51632
(712)542-5634

~~Correctional Release Center~~ Newton Correctional Facility
307 S. 60th Avenue W, Box 218
Newton, Iowa 50208
~~(515)~~ (641)792-7552

Iowa State Penitentiary
~~31 Avenue G~~ 2111 330th Avenue
P.O. Box 316

Iowa Medical and Classification Center
~~Box A~~ 2700 Coral Ridge Avenue
~~Oakdale, Iowa 52319~~ Coralville, IA 52241

Fort Madison, Iowa 52627
(319)372-5432

(319)626-2391

Iowa Correctional Institution for Women
~~300 Elm Avenue, S.W.~~
~~P.O. Box 700~~ 420 Mill Street SW
Mitchellville, Iowa 50169
(515)967-4236

North Central Correctional Facility
~~P. O. Box 313,~~ 313 Lanedale
Rockwell City, Iowa 50579
(712)297-7521

Fort Dodge Correctional Facility
1550 L Street
Fort Dodge, IA 50501
(515)574-4700

If the requester does not know the current place of confinement, the request for a record should be directed to the Iowa Medical and Classification Center as previously listed.

*b.* Records of former ~~inmates~~ incarcerated individuals and other individuals served by the department's division of institutions should be directed to records office at the Iowa Medical and Classification Center as previously listed.

*c.* Requests for other records, including administration or operation, should be directed to the Director, Department of Corrections, ~~Capitol Annex, East 12th and Des Moines Streets~~ Jessie Parker Building, 510 East 12th Street, Des Moines, Iowa 50319, ~~(515)281-4811~~ (515)725-5701.

ITEM 11. Adopt the following **new** subrules 5.3(5) and 5.3(6):

**5.3(5)** *Security of record.* No person may, without permission from the custodian, search or remove any record from agency files. The examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

**5.3(6)** *Copying.* A reasonable number of copies of an open record may be made in the agency's office. If photocopy equipment is not available in the agency's office where an open record is kept, the custodian shall permit examination of the record in that office and shall arrange to have copies promptly made elsewhere.

ITEM 12. Amend subrule 5.3(7) as follows:

**5.3(7)** *Fees.*

*a. When charged.* The agency may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

*b. Copying and postage costs.* Price schedules for published materials and for photocopies of records supplied by the agency shall be prominently posted in agency offices. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined and posted in agency offices by the custodian. When the mailing of copies of records is requested, the actual cost of such mailing may also be charged to the requester.

*c.* No change.

*d. Advance deposits.*

(1) When the estimated total fee chargeable under this subrule exceeds $25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

ITEM 13. Adopt the following **new** rule 201—5.4(17A,22):

**201—5.4(17A,22) Access to confidential records.** Pursuant to Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release

specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in Iowa Code section 904.602.

**5.4(1)** *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

**5.4(2)** *Requests.* The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

**5.4(3)** *Notice to subject of record and opportunity to obtain injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

**5.4(4)** *Request denied.* When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

*a.* The name and title or position of the custodian responsible for the denial; and

*b.* A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

**5.4(5)** *Request granted.* When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

ITEM 14. Amend rule 201—5.14(17A,22) as follows:

**201—5.14(17A,22) Personally identifiable information.**

**5.14(1)** No change.

**5.14(2)** The type of record. Disclosures are in accordance with the following code:

| CODE | MEANING |
|---|---|
| O | The records are open for public inspection. |
| C | The records are confidential and are not open to public inspection. |
| D | The department has discretion whether to allow public inspection of the record when the record contains information that is partially open or partially confidential. |

**5.14(3)** The records systems maintained by the department are:

*a.* *Director's office*

CORRECTIONS DEPARTMENT[201](cont'd)

| Description of Record | Type of Record | Legal Authority | Storage | Comparison |
|---|---|---|---|---|
| 1. Bd. Mtg. Minutes | O, D | 22, 904 | Hard Copy Automated | Full |
| 2. ~~Inmate~~ Incarcerated Individual Corres. | O, C, D | 904 | Hard Copy | N/A |
| 3. Business Corres. | O, C | 22, 904 | Hard Copy Automated | Partial |
| 4. General Corres. | O | 904 | Hard Copy Automated | Partial |
| 5. Investigations | C | 904 | Hard Copy | N/A |
| 6. Incident Reports | C | 904 | Hard Copy | N/A |
| 7. Press Releases | O | 904 | Hard Copy Automated | N/A |

*b. Institutions*

| Description of Record | Type of Record | Legal Authority | Storage | Comparison |
|---|---|---|---|---|
| 1. ~~Inmate~~ Incarcerated Individual Records | | | | |
| a. Demographic Data/Action Section | O, C, D | 904 | Hard Copy Automated | ~~Partial~~ Full |
| b. Admission Documents | C, D | 904 | Hard Copy Automated | N/A |
| c. Classification and Release Documents | O, C, D | 904 | Hard Copy Automated | ~~Partial~~ Full |
| d. Time Computation | O, C, D | 904 | Hard Copy Automated | ~~Partial~~ Full |
| e. Clinical and Medical | O, C, D | 904 | Hard Copy Automated | ~~Partial~~ Full |
| f. Correspondence and Visiting | O, C | 904 | Hard Copy Automated | ~~Partial~~ Full |
| g. Legal Documents | O, C | 904 | Hard Copy Automated | ~~Partial~~ Full |
| 2. ~~Inmate~~ Incarcerated Individual Accounts | O, C, D | 904 | Hard Copy Automated | ~~Partial~~ Full |
| 3. Security Records | | | | |
| a. Disciplinary Records | O, C | 904 | Hard Copy Automated | ~~Partial~~ Full |
| b. Segregation Logs | C | 904 | Hard Copy | N/A |
| c. Housing Unit Logs | C | 904 | Hard Copy | N/A |
| d. Incident Reports | C | 904 | Hard Copy Automated | N/A |
| 4. Contracts and Agreements | O | ~~312, 313, 315, 318~~ 904 | Hard Copy | N/A |
| 5. Volunteers | D | 904 | Hard Copy | N/A |
| 6. Staff Training | O, C | 904 | Hard Copy Automated | ~~Partial~~ Full |
| 7. ~~Inmate~~ Incarcerated Individual Movement | O | 904 | Hard Copy Automated | N/A |

CORRECTIONS DEPARTMENT[201](cont'd)

| Description of Record | Type of Record | Legal Authority | Storage | Comparison |
|---|---|---|---|---|
| 8. Meeting Minutes | D | 22, 904 | Hard Copy Automated | Full |
| 9. Lawsuits and Attorney Corres. | C | 22, 904 | Hard Copy | N/A |
| 10. Library Records | D | 904 | Hard Copy | N/A |
| 11. Education and Vocation Records | C | 904 | Hard Copy Automated | ~~Partial~~ Full |
| 12. Press Releases | O | 904 | Hard Copy Automated | N/A |
| 13. ~~Inmate~~ Incarcerated Individual Grievances | C | 904 | Hard Copy Automated | ~~Partial~~ Full |
| 14. Miscellaneous | O | 904 | Hard Copy Automated | ~~Partial~~ Full |

*c. ~~Community~~ Community-Based Corrections - Interstate Compact*

| Description of Record | Type | Legal Authority | Storage | Comparison |
|---|---|---|---|---|
| Interstate Compact | | | Hard Auto-mated | |
| I. Parole/Probation Supervision | | 904.602 | | |
| A. Investigation Requests | O, C, D | 904.602 | Hard Auto-mated | ~~Partial~~ Full |
| B. Acceptance | C, D | 904.602 | Hard Auto-mated | ~~Partial~~ Full |
| C. Rejection | C, D | 904.602 | Hard Auto-mated | ~~Partial~~ Full |
| D. Progress | C, D | 904.602 | Hard | N/A |
| E. Violations | C, D | 904.602 | Hard Auto-mated | ~~Partial~~ Full |
| F. Discharge Request | C, D | 904.602 | Hard | N/A |
| G. Other Closures | C, D | 904.602 | Hard Auto-mated | ~~Partial~~ Full |
| Presentence Investigation Request | | | | |
| H. Presentence Investigation | C | 904.602 | Hard | N/A |
| Absconder Tracking | | | | |
| I. Parole Violators | O, C, D | 904.602 | Hard Auto-mated | ~~Partial~~ Full |
| J. Miscellaneous Reports and Correspondence | O, C, D | 904.602 | Hard | N/A |
| II. Parole/Probation/Pretrial/ Presentence/Residential | | | | |
| A. Classification | O, C, D | 904.602 | Hard Auto-mated | ~~Partial~~ Full |
| B. Status Reports | O, C, D | 904.602 | Hard Auto-mated | ~~Partial~~ Full |
| C. Charge/Disposition | O, C, D | 904.602 | Hard Auto-mated | ~~Partial~~ Full |
| III. Work Release | | | | |
| A. Progress Reports | C, D | 904.602 | Hard Auto-mated | ~~N/A~~ Full |

| Description of Record | Type | Legal Authority | Storage | Comparison |
|---|---|---|---|---|
| B. Violation Reports | C, D | 904.602 | Hard Auto-mated | ~~N/A~~ Full |
| C. Discharge Reports | C, D | 904.602 | Hard Auto-mated | ~~N/A~~ Full |
| D. Disciplinary Records | O, C | 904.602 | Hard Auto-mated | ~~N/A~~ Full |
| E. Time Computation | O, C, D | 904.602 | Hard Auto-mated | ~~N/A~~ Full |
| F. Legal Documents | O, C | 904.602 | Hard Auto-mated | ~~N/A~~ Full |
| G. Incident Reports | C | 904.602 | Hard Auto-mated | ~~N/A~~ Full |
| H. Demographic Data/Action Section | O, C, D | 904.602 | Hard Auto-mated | ~~Partial~~ Full |
| I. Admission Documents | C, D | 904.602 | Hard Auto-mated | N/A |
| J. Classification and Release Documents | O, C, D | 904.602 | Hard | ~~Partial~~ Full |
| K. Clinical and Medical | O, C, D | 904.602 | Hard | N/A |
| L. Correspondence and Visiting | O, C | 904.602 | Hard | ~~Partial~~ Full |
| IV. Client Complaints | C | 904.602 | Hard | N/A |
| V. Jail Inspections | O, C, D | 904.602 | Hard Auto-mated | ~~N/A~~ Full |

*d. Iowa state industries*

| Description of Record | Type of Record | Legal Authority | Storage | Comparison |
|---|---|---|---|---|
| 1. Customer Lists | C | 22, 904 | Hard Copy Automated | ~~Partial~~ Full |
| 2. Formulas, Mixture and Special Designs | C | 22, 904 | Hard Copy | N/A |
| 3. Unaudited Monthly Balance Sheets and Income Statements | C | 22, 904 | Hard Copy Automated | ~~Partial~~ Full |
| 4. Cost Calculations for Sealed Bids | C | 22, 904 | Hard Copy | ~~N/A~~ Full |
| 5. Yearly Audits | O | 22, 904 | Hard Copy | ~~N/A~~ Full |

**5.14(4)** and **5.14(5)** No change.

ITEM 15. Amend rule 201—10.3(17A) as follows:

**201—10.3(17A) Copies of proposed rules.** A trade or occupational association, which has registered its name and address with the department of corrections, may receive, by mail, copies of proposed rules. Registration of the association's name and address with the department is accomplished by written notification to the Director of Corrections, Department of Corrections, ~~420 Watson Powell Jr. Way, Des Moines, Iowa 50309~~ 510 East 12th Street, Des Moines, Iowa 50319. In the written notification, the association must designate the type of proposed rules and the number of copies of each rule it wishes to receive. A charge will be assessed pursuant to ~~IAC~~ 201—subrule 5.3(7).

This rule does not prevent an association which has registered with the department in accordance with this rule from changing its designation of types of proposed rules or number of copies of proposed

rules which the association desires to receive. If an association makes such change designation, it must do so by written notification to the director of corrections.

This rule is intended to implement Iowa Code sections 17A.4 and 22.11.

ITEM 16. Amend rule 201—10.8(17A) as follows:

**201—10.8(17A) Petition for rule making.** A petition for rule making shall be filed in the director's office, Department of Corrections, ~~420 Watson Powell Jr. Way, Des Moines, Iowa 50309~~ 510 East 12th Street, Des Moines, Iowa 50319. The petition shall either be mailed certified, return receipt requested, or may be delivered in person. An additional copy may be provided if the petitioner wishes to retain a filed stamped copy of the petition. The petition may be either typewritten or legibly printed in ink and must substantially conform to the following form:

DEPARTMENT OF CORRECTIONS
~~420 WATSON POWELL JR. WAY~~ 510 EAST 12TH STREET
DES MOINES, IOWA ~~50309~~ 50319

| | |
|---|---|
| Petition by<br>_____(Name)_____<br>to (Amend, Adopt, or Repeal)<br>Rules Relating to (state subject matter) | PETITION FOR<br>RULE MAKING |

(Petition must state in separate numbered paragraphs)

1. Petitioner's name, address and telephone number.
2. The nature of petitioner's interest in the matter.
3. The text or substance of any requested rule adoption, amendment or repeal, including the text and citation for any current rule in effect.
4. The reasons for seeking the requested action, including any statute, rule, data, evidence or arguments which are relevant to the request. Copies of any statute, rule, evidence, etc., shall be attached to the petition.

_____
(Petitioner's Signature)

**10.8(1)** and **10.8(2)** No change.

ITEM 17. Amend rule 201—11.2(17A) as follows:

**201—11.2(17A) Petition for declaratory rulings.** A petition for a declaratory ruling shall be filed in the director's office, Department of Corrections, ~~420 Watson Powell Jr. Way, Des Moines, Iowa 50309~~ 510 East 12th Street, Des Moines, Iowa 50319. The petition shall either be mailed certified, return receipt requested, or delivered in person. An additional copy may be provided if the petitioner wishes to retain a filed stamped copy of the petition. The petition shall be typewritten and must substantially conform to the following:

DEPARTMENT OF CORRECTIONS
~~420 WATSON POWELL JR. WAY~~ 510 EAST 12TH STREET
DES MOINES, IOWA ~~50309~~ 50319

| | |
|---|---|
| Petition by _____(Name)_____<br>For a Declaratory Ruling on<br>(state statute, rule citation to be ruled on) | PETITION FOR<br>DECLARATORY RULING |

(Petition must state in separately numbered paragraphs)

1. Petitioner's name, address and telephone number.
2. A clear, concise and complete statement of all relevant facts on which the ruling is requested.

3. A clear and concise statement of the controversy or uncertainty.
4. Reference to the statutory authority or rules in question, along with attached copies.
5. The reasons for prompting the petition and a full disclosure of petitioner's interest.
6. Whether petitioner is currently a party to a contested case, rule making or judicial proceeding involving the controversy or uncertainty.
7. The names and addresses, when known, of other persons who may be affected by the declaratory ruling.

_____
(Petitioner's Signature)

ITEM 18. Amend rule 201—20.2(904) as follows:

**201—20.2(904) Title II definitions.**

*"Class I Disciplinary Report"* means the same as a major report and is defined in department policy ~~IO-RD-01~~ IO-RD-03.

*"Class II Disciplinary Report"* means the same as a minor report and is defined in department policy ~~IO-RD-01~~ IO-RD-02.

*"Contraband"* means weapons; alcohol; drugs; money; obscene materials; or materials advocating disruption of or injury to ~~offenders~~ incarcerated individuals, employees, programs, or physical facilities. Contraband shall also include anything which is illegal to possess under federal or state law; anything which is against institutional regulations; drugs or alcohol or materials which are used in the production or use of drugs or alcohol or weapons, explosives, or potential weapons and explosives; and altered authorized property. The term also includes possession or use of any prohibited communication device.

*"Department"* means the Iowa department of corrections.

*"Furlough"* means any temporary release from custody as granted in accordance with Iowa Code section 904.108(2).

*"Furlough residence"* means any private dwelling, apartment, house, trailer court, hotel, motel or community dwelling place.

*"Immediate family"* means an ~~offender's~~ incarcerated individual's spouse, mother, father, sister, brother, child, grandparent, established legal guardian or other who acted in place of parents, and step- or half-relation if the step- or half-relation and the ~~offender~~ incarcerated individual were raised as cohabiting siblings.

For the purpose of visitation, all the above will be included as immediate family provided a positive relationship exists. Immediate family members may be subject to criminal background investigation.

*"Law enforcement checks"* means prescheduled, in person, check-ins at designated law enforcement agencies such as police departments, sheriff's offices and highway patrol offices.

*"Medical practitioner"* means medical doctor, osteopathic physician or ~~physician's~~ physician assistant employed by the department.

*"Obscene material"* means the same as that described in ~~20.6(4)~~ 20.6(5).

*"Performance evaluation"* means evaluation of work and program participation as well as other areas of behavior.

*"Plan of payment"* means the method by which the ~~offender~~ incarcerated individual is to make restitution. The plan may include legal financial obligations. The plan is to reflect the ~~offender's~~ incarcerated individual's present circumstances, such as income, physical and mental health, education, employment and family circumstances.

*"Plan of restitution"* means a plan stating the amount of restitution as set by the court.

*"Responsible person"* means an individual on the ~~offender's~~ incarcerated individual's visiting list of legal age and, in the judgment of the staff, is a person of accountability, is able to think and act rationally, and is willing to facilitate the ~~offender's~~ incarcerated individual's successful completion of furloughs within the furlough rules and facilitate the return of the ~~offender~~ incarcerated individual to the institution. A responsible person shall further mean an individual not now under indictment, sentence or conviction

of an indictable public offense. Ex-felons will not be permitted to act as responsible persons for furlough until the demonstration of two years' successful adjustment in the community after release from any supervision.

This rule is intended to implement Iowa Code section 904.108(1)*"k."*

ITEM 19. Amend rule 201—20.3(904) as follows:

**201—20.3(904) Visits to ~~offenders~~ incarcerated individuals.** Visiting is a privilege which allows ~~offenders~~ incarcerated individuals to maintain and strengthen relationships with family members and friends. Though visits are encouraged, institutions' space, schedules, personnel constraints, treatment considerations, or other safety and security issues of the institutions and their operations may result in limiting the number and length of visits. Visitation is additionally governed by the provisions of department of corrections policy OP-MTV-04.

**20.3(1)** *Definitions.*

*"Application"* means a written application identifying the visitor and the visitor's relationship to the ~~offender~~ incarcerated individual.

*"Background investigation"* means the process by which central visiting authority staff verify the accuracy of a visitor's application for any reason.

*"Central visiting authority"* or *"CVA"* means the department office that conducts the visitor application approval process.

*"Extended family"* means the ~~offender's~~ incarcerated individual's aunts, uncles, nieces, nephews, cousins, great-grandparents, great-grandchildren, and in-laws.

*"Group"* means a family unit (e.g., aunt, uncle and minor nieces and nephews) residing at the same address.

*"Immediate family"* means an ~~offender's~~ incarcerated individual's spouse, mother, father, sister, brother, child, grandparent, grandchild (when minors become adults, they will be required to complete the formal visiting application process), established legal guardian or other who acted in place of parents, and step- or half-relation if the step- or half-relation and the ~~offender~~ incarcerated individual were raised as cohabiting siblings.

*"~~Offender~~ Incarcerated individual"* means a person who has been committed to the custody of the department of corrections or to a judicial district department of correctional services. ~~"Offender" also includes a "violator" as that term is defined in 20.18(2).~~

*"Personal search"* means a pat-down search on top of the visitor's clothes or the nonintrusive use of an electronic search process.

*"Visiting list"* means the screened list of approved visitors with authorized visiting privileges at all department of corrections institutions.

**20.3(2)** *Schedule.* Each department of corrections institution will structure a visiting schedule allowing visitation for a minimum of four days per week. Each institution's visiting room will be open a minimum of four hours on each authorized day of visiting. The ~~warden/superintendent~~ warden will designate the time for visiting on certain days/holidays and advise the ~~offenders~~ incarcerated individuals. The ~~offender~~ incarcerated individual is responsible for informing the visitor of the days and hours for visitation.

**20.3(3)** *Authorized visitors.*

*a.* The central visiting authority will establish an approved visiting list for each ~~offender~~ incarcerated individual. This visiting list remains valid when the ~~offender~~ incarcerated individual is transferred to another institution.

*b.* To meet facility design limitations and security considerations, the visiting list shall be limited to the following individuals:

(1) Immediate family members.

(2) A total of ~~four~~ six other individuals or groups who are the ~~offender's~~ incarcerated individual's friends or extended family members.

(3) Minor children under the immediate supervision of their parent or legal guardian. The minor children of an ~~offender~~ incarcerated individual shall also be allowed to visit under the immediate supervision of any adult on the ~~offender's~~ incarcerated individual's approved visiting list.

*c.* Limitation. An individual on the approved visiting list of one ~~offender~~ incarcerated individual shall not be on the approved visiting list of another ~~offender~~ incarcerated individual, regardless of the location(s) of the ~~offenders~~ incarcerated individuals. An exception may only be granted pursuant to 20.3(5)*"b."*

**20.3(4)** *Nonauthorized visitors.*

*a.* The following persons shall not be authorized to visit:

(1) Individuals whose behavior represents a control problem or is counterproductive to stable ~~offender~~ behavior of an incarcerated individual. This determination may be reflected in the background investigation report which shows that the individual has a record of carrying concealed weapons, use of a controlled substance, previous violation of institutional rules, or similar behavior.

(2) Individuals under criminal indictment.

(3) Individuals on probation, work release, or parole.

(4) Individuals found to be involved with or convicted of incidents of aiding an escape or introducing contraband in any detention or supervised correctional setting.

(5) Individuals who intentionally give false information on the visitor's application form.

(6) Individuals convicted of a felony.

(7) Individuals who may compromise the order and security of the institution.

*b.* A person working in any institution as a volunteer shall not be on an ~~offender's~~ incarcerated individual's visiting list except with the permission of the ~~warden/superintendent~~ warden or designee.

*c.* Neither a victim of a sex offense, whether registered or not, nor the victim's family members will be approved for the visiting list of the perpetrator in the victim's case until department staff consult with the victim and restorative justice administrator of the department. Visitation requests from victims shall be considered only when the ~~offender~~ incarcerated individual has successfully completed all recommended treatment programs of the department or board of parole. If the victim's or victim's family member's visitation request is denied, the victim or victim's family member may file an appeal pursuant to 20.3(6)*"d."*

*d.* A sex offender whose victim was a minor shall not be permitted to have any children on the ~~offender's~~ incarcerated individual's visiting list until the ~~offender~~ incarcerated individual has completed the sex offender treatment program. After the ~~offender's~~ incarcerated individual's completion of the treatment program, a minor victim of the ~~offender~~ incarcerated individual may be added to the ~~offender's~~ incarcerated individual's visiting list only with the approval of the institutional treatment team and the victim and restorative justice administrator of the department. Other children may be added to the ~~offender's~~ incarcerated individual's visiting list after the ~~offender's~~ incarcerated individual's completion of the treatment program and approval of the institutional treatment team.

*e.* An application from a victim of a crime other than a sex offense who seeks to be added to the visiting list of the perpetrator in the victim's case shall be reviewed with the victim and restorative justice administrator of the department prior to any approval or denial.

**20.3(5)** *Exceptions.* The following exceptions may be implemented by the central visiting authority upon the approval of the ~~warden/superintendent~~ warden or designee.

*a.* The ~~offender's~~ incarcerated individual's spouse, child, mother or father who is currently under department supervision or on probation, work release, or parole may be approved to visit the ~~offender~~ incarcerated individual by the ~~warden/superintendent~~ warden or designee after consultation with the supervising parole/probation officer. The ~~warden/superintendent~~ warden or designee may authorize either contact or noncontact visiting.

*b.* The ~~warden/superintendent~~ warden or designee may grant an exception to the limitation in 20.3(3)*"c"* when the person is an immediate family member of more than one ~~offender~~ incarcerated individual and seeks to be added to the visiting lists of only those ~~offenders~~ incarcerated individuals.

*c.* A former or current department employee or volunteer who is a member of an ~~offender's~~ incarcerated individual's immediate family may be approved to visit the ~~offender~~ incarcerated individual by the ~~warden/superintendent~~ warden or designee.

*d.* A former department employee or volunteer who is not an immediate family member of an ~~offender~~ incarcerated individual may be allowed to visit six months after leaving employment or ceasing volunteer service if the former employee or volunteer passes the normal background investigation, there are no security issues arising from the person's prior employment or volunteer service, and the CVA receives approval from the ~~warden/superintendent~~ warden or designee.

*e.* An ~~offender~~ incarcerated individual who is an immediate family member discharged from prison without correctional supervision must wait six months before contact visits may be arranged. Noncontact visiting may be authorized only for the spouse, child, mother or father of an ~~offender~~ incarcerated individual.

**20.3(6)** *Application process.*

*a.* Visitor application forms shall be provided to ~~offenders~~ incarcerated individuals at each institution. ~~Offenders~~ Incarcerated individuals are responsible for mailing visitor application forms to prospective visitors, who may then apply to be added to the ~~offender's~~ incarcerated individual's visiting list. The completed visitor application form must be sent for processing to the central visiting authority at the following address: Mt. Pleasant Correctional Facility, Attn: Central Records, 1200 E. Washington, Mt. Pleasant, Iowa 52641.

*b.* All adults, including the ~~offender's~~ incarcerated individual's own children if they are 18 years of age or older, must complete the visitor application process in order to be considered for inclusion on an ~~offender's~~ incarcerated individual's visiting list.

*c.* Written notification. Written notification of denial of a visitor application will be given to both the ~~offender~~ incarcerated individual and the applicant within 30 days from the CVA's receipt of the application. Notification of approval of a visitor application will be given only to the ~~offender~~ incarcerated individual. The ~~offender~~ incarcerated individual is responsible for notifying the approved visitor.

*d.* Appeals. When an application is denied, the applicant and the ~~offender~~ incarcerated individual shall be apprised of the reasons for denial.

(1) Applicants may appeal to the ~~warden/superintendent~~ warden or designee in writing. An appeal by an applicant who is the victim of a sex offense, or who is the victim's family member, and is seeking to visit the perpetrator of the crime shall be reviewed in consultation with the department sex offender treatment director or the institution's treatment director for the moderate intensity family violence prevention program.

(2) The decision of the ~~warden/superintendent~~ warden or designee may be appealed to the director of the department of corrections or the director's designee. The decision of the director or the director's designee constitutes final agency action.

**20.3(7)** *Removal from visiting list.* If an ~~offender~~ incarcerated individual wishes to have a visitor removed from the ~~offender's~~ incarcerated individual's visiting list, the ~~offender~~ incarcerated individual shall complete the Removal of Visitor form contained in department policy OP-MTV-04 and send it to the central visiting authority. Upon receipt of the removal request, the central visiting authority shall respond to the request within seven business days and send a copy of the removal form to the ~~offender~~ incarcerated individual. Once a visitor has been removed from a visiting list, six months must elapse before reapplication by the removed visitor.

**20.3(8)** and **20.3(9)** No change.

**20.3(10)** *Special visitors.*

*a.* *Law enforcement.* Division of criminal investigation agents, Federal Bureau of Investigation agents, and law enforcement officials shall present proof of identity upon entrance to the institution.

*b.* *Attorneys.* Attorneys must complete an initial visitor application form to visit an ~~offender~~ incarcerated individual; however, this initial application shall apply to multiple visiting lists. After initial approval is established, attorneys must contact the central visiting authority at (319)385-9511 to be added to the visiting lists of additional ~~offenders~~ incarcerated individuals. Background checks are

not required, and attorneys shall not be counted as a friend on an ~~offender's~~ incarcerated individual's visiting list as set forth in 20.3(3)*"b."*

Attorneys shall present proof of identity upon entrance to the institution. The ~~offender~~ incarcerated individual must express a desire to visit with an attorney before the attorney will be admitted. Attorney visits shall be during normal visiting hours unless a special visit has been requested by the ~~offender~~ incarcerated individual and approved by the ~~warden/superintendent~~ warden or designee prior to the visit.

An attorney testing positive by an electronic detection device may be required to visit without direct contact.

*c. Ministers.* Ministers must complete an initial visitor application form to visit an ~~offender~~ incarcerated individual; however, this initial application shall apply to multiple visiting lists. After initial approval is established, ministers must contact the central visiting authority at (319)385-9511 to be added to the visiting lists of additional ~~offenders~~ incarcerated individuals. Background checks are required. Ministers shall not be counted as a friend on an ~~offender's~~ incarcerated individual's visiting list as set forth in 20.3(3)*"b."*

Ministers shall present proof of identity upon entrance to the institution. The ~~offender~~ incarcerated individual must express a desire to visit with a minister before the minister will be admitted. Minister visits shall be during normal visiting hours unless a special visit has been requested by the ~~offender~~ incarcerated individual and approved by the ~~warden/superintendent~~ warden or designee prior to the visit.

A minister testing positive by an electronic detection device may be required to visit without direct contact.

**20.3(11)** *Termination of visiting privileges.* Individuals may have visiting privileges modified or terminated when:

*a.* The ~~offender~~ incarcerated individual or visitor engages in behavior that may in any way be disruptive to the order and control of the institution.

*b.* The visitor or ~~offender~~ incarcerated individual fails to follow the established rules and procedures of the institution.

*c.* The visitor and ~~offender~~ incarcerated individual directly exchange or attempt to exchange any object or article. This restriction does not apply to purchases from the canteen or visiting room vending machines that are consumed during the visit.

*d.* The visitor tests positive for drugs or explosives as determined by an authorized electronic detection device calibrated and operated for testing for the presence of drugs or other contraband.

*e.* The visit or future visiting is detrimental to the health or welfare of the ~~offender~~ incarcerated individual or visitor.

*f.* The visitor does not supervise the visitor's children to prevent them from interfering with or disrupting other visits.

~~Offenders~~ Incarcerated individuals may request reconsideration of denied visitors six months after resolution of the reason for denial or when approved by the ~~warden/superintendent~~ warden or designee or ~~regional~~ institutional deputy director.

**20.3(12)** *Noncontact visiting.* The ~~warden/superintendent~~ warden or designee may allow noncontact visits when the order or security of the institution may be threatened or when disciplinary rules or procedures have been violated. Noncontact visiting hours will be provided on a scheduled basis. The hours and days will be posted by the ~~warden/superintendent~~ warden or designee, and notice will be posted at least one week prior to any change. Visitors on the noncontact list at the time of a schedule change will be notified of the schedule change by regular mail sent to the last-known address.

**20.3(13)** *Clothing.* Visitors shall be properly attired prior to entering a correctional setting. All visitors shall wear shoes. Visitors wearing miniskirts, shorts (that are above the knee), muscle shirts, see-through clothing or halter tops will not be allowed to visit. Visitors wearing clothing with slogans, pictures, or words intended to deprecate race, sex, or cultural values will not be allowed entry. Visitors may be required to remove for the duration of the visit outerwear such as, but not limited to, coats, hats, gloves, or sunglasses. A medical need for sunglasses must be verified by prescription.

**20.3(14)** *Security procedures.* Visitors may be requested to submit to a personal search (pat down) or an electronic search for weapons or contraband. "Personal search" means a pat-down search on top

of the visitor's clothes or the nonintrusive use of an electronic search process. If the initial electronic test confirms the presence of a controlled substance, the visitor will be given a second confirmation test. When the electronic detection device alarm is activated, the visitor shall produce the item that set off the alarm or a personal search may be made to find the item. If the visitor refuses to submit to a search, access to visiting shall be denied and entrance shall be denied. All searches shall be conducted in a courteous manner to respect the visitor's privacy. Minors are subject to personal and electronic searches. When a visitor accompanied by a minor refuses to leave the minor with a staff person and does not want the minor present during the search, the visit will be denied. When a minor is searched, the supervising adult shall be present in the room at all times.

*a.* The ~~warden/superintendent~~ warden or designee will maintain records of all searches which produce positive results, including the name of each person subjected to a search, the names of the persons conducting and in attendance at the search, and the time, date, and place of the search. The written record shall reflect the reason for the search and the results of the search. The written authorization for the search shall be included in the record. Testing records will be maintained by the institution for one year and then expunged. Records of positive tests will be maintained for five years and then expunged. All testing records are confidential and will be released only upon the order of a court of proper jurisdiction.

*b.* When a visitor tests positive by an electronic search device, the visitor may appeal to the ~~warden/superintendent~~ warden or designee in writing. The decision of the ~~warden/superintendent~~ warden or designee may be appealed to the director of the department of corrections or the director's designee. The decision of the director or the director's designee constitutes final agency action.

*c.* No change.

~~*d.* Facilities will establish procedures for personnel selection and training of search personnel. Operators will be trained in accordance with manufacturer's standards, which require 16 hours of initial certification and 4 hours of annual training thereafter. Each facility will have at least two certified trainers of trainers.~~

~~**20.3(15)** *Sanctions.* Visitors testing positive or refusing to be tested by an electronic detection device will be restricted.~~

~~*a. Testing positive.* The following restrictions will apply to visitors testing positive:~~

~~(1) First occurrence. Visiting privileges will be suspended from the date and time of the test for the next 2 visiting days. Future visits may be restricted to noncontact status.~~

~~(2) Second occurrence. Visiting privileges will be suspended from the date and time of the test for the next 7 visiting days. Future visits may be restricted to noncontact status.~~

~~(3) Third occurrence. Visiting privileges will be suspended from the date and time of the test for the next 15 visiting days. Future visits may be restricted to noncontact status.~~

~~(4) Fourth occurrence. Visiting privileges will be suspended from the date and time of the test for the next 30 visiting days. In addition, the visitor will be placed on noncontact visiting status for 180 days from the date of the first eligible visit. If the visitor tests positive from this date forward, visiting privileges may be permanently restricted to noncontact status.~~

~~Upon request by the visitor, the warden/superintendent or designee may allow visits in noncontact status for the first, second, and third occurrence pending the receipt of laboratory reports for any visitor testing positive by an electronic detection device.~~

~~*b. Refusing to be tested.* Refusal to submit to a drug test by an electronic testing device will result in suspension of visiting privileges for 15 calendar days from the time of refusal.~~

~~*c. Written notification.* Written notice regarding visiting status or facility access will be presented or mailed within 5 working days to any individual (nonoffenders) who tests positive or who refuses consent to search. Such notice will include the duration of any restriction and procedures for reconsideration or reinstatement.~~

~~**20.3(16)**~~ **20.3(15)** *Money orders, cashier's checks, and electronic funds transfers.* Money orders and cashier's checks for deposit in the ~~offender's~~ incarcerated individual's account must be made payable to the Iowa Department of Corrections ~~Offender~~ Incarcerated Individual Fiduciary Account (IDOC ~~OFA~~ IIFA) and sent to: Fort Dodge Correctional Facility, 1550 L Street, Suite B, Fort Dodge, Iowa 50501, and

must include the ~~offender's~~ incarcerated individual's name and ID number and the sender's name and complete address. Funds will also be accepted via electronic funds transfers from authorized vendors. Personal checks and cash will not be accepted. An ~~offender's~~ incarcerated individual's suspected abuse of requests for money from the public may be cause for limits or restrictions on the amounts of money which can be received and from whom money can be received.

~~**20.3(17)**~~ **20.3(16)** *Limits.* Each institution, according to its facilities and conditions, shall limit the number of visitors an ~~offender~~ incarcerated individual may have at any one time and the length of visits.

~~**20.3(18)**~~ **20.3(17)** *Segregation status.* ~~Offenders~~ Incarcerated individuals who are assigned to special units such as disciplinary detention or administrative segregation status may have visits modified in regard to place, time, and visitor, depending on the staff and space available.

~~**20.3(19)**~~ **20.3(18)** *Abuse of visiting privileges.* Visiting privileges may be modified, suspended, or terminated when abuses are evidenced or planned.

~~**20.3(20)**~~ **20.3(19)** *Special visits.* The ~~warden/superintendent~~ warden or designee may permit special visits not otherwise provided for in this rule. These may include, but are not limited to, extended visits for close family members traveling extended distances, immediate visits for close relatives or friends about to leave the area, visits necessary to straighten out critical personal affairs, and other visits for similar reasons. All these visits shall be at the sole discretion of the ~~warden/superintendent~~ warden or designee. When ruling on such visits, the ~~warden/superintendent~~ warden or designee shall consider appropriate factors including the uniqueness of the circumstances involved for both the ~~offender~~ incarcerated individual and the visitor; security, order, and administrative needs of the institution; and available alternatives to a special visit. The decision of the ~~warden/superintendent~~ warden or designee in these cases constitutes final agency action.

~~**20.3(21)**~~ **20.3(20)** *Temporary modifications.* Visiting procedures may be temporarily modified or suspended in the following circumstances: riot, disturbance, fire, labor dispute, space and personnel restrictions, natural disaster, or other emergency.

This rule is intended to implement Iowa Code section 904.512.

ITEM 20. Amend rule 201—20.4(904) as follows:

**201—20.4(904) Mail.** Constructive, unlimited correspondence with family, friends, and community sources will be encouraged and facilitated. ~~Offenders~~ Incarcerated individuals have the responsibility in the use of correspondence to be truthful and honest. Institutions have the responsibility to maintain a safe, secure, and orderly procedure for ~~offender~~ use of the mail by an incarcerated individual. Mail is additionally governed by the provisions of department of corrections policy OP-MTV-01.

**20.4(1)** *Nonconfidential.*

*a.* ~~Mail will not be read or censored on a regular basis unless there is justifiable cause.~~ In an effort to maintain proper security measures, mail may be monitored and read on a random basis.

*b.* All nonconfidential mail shall be inspected for contraband. ~~Nonconfidential mail shall be read when there is suspected abuse of correspondence or a threat to the good sense of order and security of the institution.~~

**20.4(2)** *Confidential.*

*a.* No change.

*b.* Confidential mail will be delivered unopened and then, in the presence of the ~~offender~~ incarcerated individual, will be opened and inspected for contraband and to ensure that the contents are from the return addressee.

Confidential mail may be read only after a finding of probable cause by a court of competent jurisdiction that a threat to the order and security of the institution or abuse of correspondence exists.

*c.* and *d.* No change.

**20.4(3)** *General.*

*a.* Pursuant to Iowa Code chapter 2C, mail received from the ~~office of citizens' aide~~ ombudsman office shall be delivered unopened.

*b.* When sending confidential mail, ~~offenders~~ incarcerated individuals may be requested to seal the envelope in the presence of staff after the envelope and letters have been inspected for contraband.

*c.* ~~No mail lists will be maintained restricting persons from writing to offenders or offenders writing to persons in the public.~~ All letters mailed by ~~offenders~~ incarcerated individuals will be left unsealed for inspection of the contents only. Envelopes shall contain letters to the addressee only.

*d.* and *e.* No change.

*f.* Persons under the age of 18 must provide written permission to the ~~warden/superintendent~~ warden from parents or guardian before correspondence with ~~offenders~~ incarcerated individuals will be allowed.

*g.* ~~Offenders~~ Incarcerated individuals under correctional supervision or detention will not be allowed to correspond with other ~~offenders~~ incarcerated individuals unless the individuals are immediate family and approved by the authority of the institution or both authorities in the case of correspondence between facilities.

"Immediate family" means mother, father, sister, brother, half sister, half brother, spouse, son, daughter, natural grandparents, and natural grandchildren. Legal guardian, foster parents, stepparents, stepchildren, stepsister, and stepbrother will be included provided a positive relationship exists or contact will confer a benefit to the ~~inmate~~ incarcerated individual.

*h.* ~~Offenders~~ Incarcerated individuals will be denied mail privileges with persons that might present a risk to the order and security of the institution.

*i.* No change.

*j.* No limit will be placed on the number of letters mailed for ~~offenders~~ incarcerated individuals able to pay the mailing costs. ~~Offenders that~~ Incarcerated individuals who are unable to pay mailing costs for legal mail will receive limited assistance which may be recoverable.

*k.* Stamped, return-addressed envelopes will be sold through canteen services for all outgoing letters and will be purchased by the ~~offender~~ incarcerated individual.

*l.* Special equipment may be used to review envelopes for items in the envelopes other than the letter. When the contents of the correspondence is inappropriate or contraband items which are not illegal to possess under the law are found in the mail, the mail will be rejected and the ~~offender~~ incarcerated individual shall be notified with the option to return to sender or destroy.

*m.* When mail is rejected due to inappropriate contents of the correspondence or contraband is found, provided the correspondence is not retained for investigation or prosecution, the ~~offender that~~ incarcerated individual to whom the mail was addressed ~~to~~ will have the option of paying the postage to return the mail to the sender or having the mail destroyed by institutional staff. The ~~offender~~ incarcerated individual must choose one of the two options within three days of the rejection notice. This rule is in reference to the return of opened mail per United States Postal Service, Office of Classification and Rates Administration, Ruling #206.

The sender of rejected correspondence may protest the decision in writing to the ~~warden/superintendent~~ warden.

*n.* All outgoing parcel post items will be packed and sealed by the mail room and postage charged to the ~~offender~~ incarcerated individual.

*o.* Letters will not be delivered which are written in a foreign language or code unless the foreign language is the only language of the ~~offender~~ incarcerated individual (exceptions may be made by the ~~warden/superintendent~~ warden).

*p.* No change.

*q.* The ~~offender's~~ incarcerated individual's name, ID number ~~(if known)~~, box number or street address, city, state, and zip code shall also appear on the envelope of incoming mail.

*r.* All outgoing mail shall contain a return address including ~~offender~~ the incarcerated individual's name and ID number as well as the name of the institution, address, and zip code.

*s.* and *t.* No change.

*u.* Only first-class letters and packages will be forwarded after an ~~offender's~~ incarcerated individual's transfer or release.

*v.* An individual may deposit funds in an ~~offender's~~ incarcerated individual's account by money order, cashier's check, or electronic funds transfer. Personal checks and cash will not be accepted. Only money orders and cashier's checks will be accepted for deposit into an ~~offender's~~ incarcerated

individual's account by mail. Money orders and cashier's checks must be made payable to the Iowa Department of Corrections ~~Offender~~ Incarcerated Individual Fiduciary Account (IDOC ~~OFA~~ IIFA) and sent to: Fort Dodge Correctional Facility, 1550 L Street, Suite B, Fort Dodge, Iowa 50501, and must include the ~~offender's~~ incarcerated individual's name and ID number and the sender's name and complete address. Funds will also be accepted via electronic funds transfers from authorized vendors. An ~~offender's~~ incarcerated individual's suspected abuse of requests for money from the public may be cause for limits or restrictions on the amounts of money which can be received and from whom money can be received.

*w.* No change.

*x.* O-mail. "O-mail" is electronic mail that can be sent to and from ~~offenders~~ incarcerated individuals and the public.

(1) The ~~offender's~~ incarcerated individual's family and friends shall be responsible for registering on the corrlinks Internet site to enroll in the O-mail system: ~~http://www.corrlinks.com~~ www.corrlinks.com.

(2) and (3) No change.

(4) Incoming and outgoing O-mail shall meet the same standards as referenced in this rule for ~~offender~~ incarcerated individuals' mail.

(5) No change.

ITEM 21. Amend rule 201—20.5(904) as follows:

**201—20.5(904) Money orders, cashier's checks, and electronic funds transfers for ~~offenders~~ incarcerated individuals.** An individual may deposit funds in an incarcerated individual's account by money order, cashier's check, or electronic funds transfer. Personal checks and cash will not be accepted. Only money orders and cashier's checks will be accepted for deposit into an ~~offender's~~ incarcerated individual's account by mail. ~~Personal checks and cash will not be accepted.~~ Money orders and cashier's checks must be made payable to the Iowa Department of Corrections ~~Offender~~ Incarcerated Individual Fiduciary Account (IDOC ~~OFA~~ IIFA) and sent to: Fort Dodge Correctional Facility, 1550 L Street, Suite B, Fort Dodge, Iowa 50501, and must include the ~~offender's~~ incarcerated individual's name and ID number and the sender's name and complete address. Funds will also be accepted via electronic funds transfers from authorized vendors. An ~~offender's~~ incarcerated individual's suspected abuse of requests for money from the public may be cause for limits or restrictions on the amounts of money which can be received and from whom money can be received.

ITEM 22. Amend rule 201—20.6(904) as follows:

**201—20.6(904) Publications.**

**20.6(1)** The institution shall allow ~~offenders~~ incarcerated individuals access to publications when doing so is consistent with institutional goals of maintaining internal order, safety, security, and rehabilitation.

**20.6(2)** Publications include any periodical, newspaper, book, pamphlet, magazine, newsletter, or similar material published by any individual, organization, company, or corporation, and made available for a commercial purpose. All publications shall be unused and sent directly from an approved publisher or bookstore which does mail order business. Any exceptions must be authorized by the warden ~~or superintendent~~. No publication will be denied solely on the basis of its appeal to a particular ethnic, racial, religious, or political group. The quantity of printed materials, as with other personal property, will be controlled for safety and security reasons.

**20.6(3)** All publications not on the approved list shall be reviewed by a publication review committee for approval, denial, or control of the publication.

*a.* The committee shall be appointed by the director or designee, department of corrections, and shall include a person with broad exposure to various publications and two representatives of correctional operations.

*b.* The committee shall fairly review all types of publications to be received by ~~offenders~~ incarcerated individuals in accordance with these rules.

**20.6(4)** The following procedures shall be used when a publication not on the approved list is reviewed:

*a.* The committee shall approve, deny, or control publications within 30 working days of receipt of the publication.

*b.* When a publication is denied or controlled, the committee shall send the ~~offender~~ incarcerated individual a written notice stating the publication involved, the reason for denial or control, and the ~~offender's~~ incarcerated individual's available appeal process.

*c.* The ~~offender~~ incarcerated individual shall have five days from receipt of the notice of denial or control to notify the designated institution staff to destroy the publication, to specify where to send the publication at the ~~offender's~~ incarcerated individual's expense, or to notify the institution that the decision is being appealed.

*d.* No change.

**20.6(5)** No change.

**20.6(6)** Portrayal or simulation of fellatio, cunnilingus, masturbation, ejaculation, sexual intercourse, male erection, bestiality, sadomasochism, excretory functions, lewd exhibition of genitals, or other sexually explicit materials will be denied to ~~offenders~~ incarcerated individuals when the material is inconsistent with rehabilitation goals.

**20.6(7)** Publications which contain material portraying or simulating fellatio, cunnilingus, masturbation, ejaculation, sexual intercourse or male erection and are not approved or denied by the review committee will be controlled for the security and order of the institution and to assist in enabling its control from those ~~offenders~~ incarcerated individuals denied access by 20.6(6) above. Institutional procedures shall be established for the ~~offender~~ incarcerated individual to reserve time in a designated controlled area and obtain the controlled publication for reading during specified times. The controlled publication will be secured until the ~~offender~~ incarcerated individual makes arrangements for further review of the controlled publication. An ~~offender~~ incarcerated individual may have secured no more than ten publications at any given time, none of which are over three months old from publication date or receipt, and any that are in excess of the ten limit or over three months old must be sent out of the institution at the ~~offender's~~ incarcerated individual's expense, destroyed, or taken with the ~~offender~~ incarcerated individual upon release.

**20.6(8)** An ~~offender~~ incarcerated individual may appeal the committee's decision or the denial of a publication because the publication is inconsistent with rehabilitation goals within ten days of receipt of the decision by filing a written appeal and sending it to ~~Administrator, Division of Investigative Services~~ Office of Inspector General, Department of Corrections, 510 East 12th Street, Des Moines, Iowa 50319. The ~~administrator's~~ inspector general's decision shall be final.

ITEM 23. Amend rule 201—20.7(904) as follows:

**201—20.7(904) Interviews and statements.**

**20.7(1)** When ~~offenders~~ incarcerated individuals are selected to be interviewed and photographed within the institution, either individually or as part of a group, identifiable interviews or pictures shall have the written consent of the ~~offender~~ incarcerated individual involved as well as prior consent of the warden~~, superintendent,~~ or designee.

**20.7(2)** The warden ~~or superintendent~~ is responsible for all communications with mass media.

ITEM 24. Amend rule 201—20.8(904) as follows:

**201—20.8(904) Guests of institution.** Persons wishing to visit the institution shall give prior notice of their intended visit and receive approval for the visit. The prior notice and approval may be waived by the warden~~, superintendent,~~ or designee for emergencies.

**20.8(1)** No change.

**20.8(2)** Persons under 18 years of age may only visit with prior approval of the warden~~, superintendent,~~ or designee~~,~~ and shall be accompanied by a responsible adult. An adult shall be in charge of no more than four children. Persons under 18 years of age shall not be allowed to make institutional tours of maximum security prisons.

**20.8(3)** Guests shall be escorted by a staff member. Any exception shall have prior approval of the warden~~, superintendent,~~ or designee.

**20.8(4)** Guests shall be allowed personal contact with an ~~offender~~ incarcerated individual only when it serves the best interests of the ~~offender~~ incarcerated individual as determined by the warden~~, superintendent,~~ or designee.

**20.8(5)** All contacts with ~~offenders~~ incarcerated individuals shall be absent of any encouragement, support, or suggestion of activity which would bring disorder to the institution.

~~**20.8(6)** Rescinded IAB 3/20/91.~~

ITEM 25. Amend rule 201—20.9(904) as follows:

**201—20.9(904) Donations.** Donations of money, books, games, recreation equipment or other such gifts shall be made directly to the warden ~~or superintendent~~. The warden ~~or superintendent~~ shall evaluate the donation in terms of the nature of the contribution to the institution program. The warden ~~or superintendent~~ is responsible for accepting the donation and reporting the gift to the ~~regional~~ institutional deputy director on a monthly basis.

ITEM 26. Adopt the following **new** rule 201—20.10(904):

**201—20.10(904) Incarceration fees.** The director may charge incarcerated individuals an incarceration fee, pursuant to Iowa Code section 904.108.

ITEM 27. Amend rule 201—20.11(904,910) as follows:

**201—20.11(904,910) Restitution.**

**20.11(1)** Every ~~offender~~ incarcerated individual required by a court order to pay restitution shall have a restitution plan and a restitution plan of payment developed, unless a court-ordered restitution plan has been completed.

**20.11(2)** The restitution plan of payment shall consider the present circumstances of an ~~offender's~~ incarcerated individual's physical/mental health and other legal financial obligations.

**20.11(3)** The deputy director of institutions shall ensure that there are written procedures governing the development and modification of each restitution plan and plan of payment.

**20.11(4)** Each ~~offender~~ incarcerated individual shall be given a Predeprivation Notice: Notice of Intent to Deduct Restitution From All Account Credits and Notice of Opportunity to Respond during initial reception following admission to the Iowa medical and classification center (IMCC) or the Iowa correctional institution for women (ICIW).

**20.11(5)** Initial ~~offender~~ complaints by incarcerated individuals regarding restitution plans of payment or modifications may be addressed via the ~~offender~~ grievance procedure for incarcerated individuals.

**20.11(6)** The staff shall explain the restitution plan of payment to the ~~offender~~ incarcerated individual. Each ~~offender~~ incarcerated individual shall receive a copy of the restitution plan of payment.

**20.11(7)** Restitution payments shall be deducted from all credits to an ~~offender's~~ incarcerated individual's account. Up to 50 percent may be deducted. The following are exempt for deductions from credits to an ~~offender's~~ incarcerated individual's account from an outside source:

*a.* An amount, assessed by the ~~warden/superintendent~~ warden or designee, specifically for medical costs. The same percent as established in the restitution plan will be deducted from any amount over the total amount assessed. If the medical procedures are not performed or carried out, the money shall be returned to the sender at the ~~offender's~~ incarcerated individual's expense.

*b.* An amount, assessed by the ~~warden/superintendent~~ warden or designee, specifically for the cost of a funeral trip. The same percent as established in the restitution plan will be deducted from any amount over the total amount assessed.

*c.* to *f.* No change.

*g.* Any other exception approved by the ~~warden/superintendent~~ warden or designee.

**20.11(8)** and **20.11(9)** No change.

**20.11(10)** A percent greater than that established in the restitution plan of payment may be deducted from a credit to an ~~offender's~~ incarcerated individual's account by authorization of either the ~~offender,~~ incarcerated individual or the ~~warden/superintendent~~ warden or designee~~,~~ or by court order.

**20.11(11)** No change.

This rule is intended to implement Iowa Code chapter 904 and sections 910.2, 910.3 and 910.5.

ITEM 28. Amend rule 201—20.12(904) as follows:

**201—20.12(904) Furloughs.**

**20.12(1)** Furloughs are a privilege, not a right, and may be denied or canceled at any time for reasons deemed sufficient by the ~~warden/superintendent~~ warden. Reasons for denial or cancellation shall be given to the ~~offender~~ incarcerated individual.

**20.12(2)** No change.

**20.12(3)** Emergency medical furlough is for those ~~offenders~~ incarcerated individuals whose medical condition has deteriorated to the point of incapacitation or to a comatose state.

**20.12(4)** Both emergency family furloughs and emergency medical furloughs shall have approval of the ~~warden/superintendent~~ warden and the ~~respective regional~~ institutional deputy director.

**20.12(5)** Furloughs are additionally governed by the provisions of the department's furlough policy IS-RL-04.

ITEM 29. Amend rule 201—20.13(904) as follows:

**201—20.13(904) Board of parole interviews.** Each institution provides space for the conduct of interviews between the Iowa board of parole and institutional ~~offenders~~ incarcerated individuals. When these meetings are held in correctional institutions, attendance is subject to security and safety regulations as stated herein. Any exception to these rules must have prior approval of the director of the department of corrections or designee.

**20.13(1)** Persons desiring to attend a board of parole interview who are not on an ~~offender's~~ incarcerated individual's visiting list shall notify the warden ~~or superintendent~~ of the respective institution of their intent to attend. A visitor's application will be sent to the person, and the completed application must be received back by the institution at least 15 days prior to the scheduled date of the parole interview in order that a background investigation with law enforcement officials may be completed prior to attendance at the parole interview. Following a successful background investigation, authorization to attend parole interviews will be continuous subject to these rules and any subsequent background investigations conducted at the discretion of the warden ~~or superintendent~~.

**20.13(2)** Due to security considerations, those persons excluded from applying for visitation privileges pursuant to ~~subrule 20.3(1), paragraph *"f,"* subparagraphs (1) to (7)~~ subparagraphs 20.3(4)*"a"*(1) to (7), inclusive, are also excluded from attending parole board interviews as listed below:

*a.* Individuals who have been discharged from a correctional institution within the last 18 months.

*b.* Individuals whose behavior represents a control problem or is counterproductive to the rehabilitation of the ~~offender~~ incarcerated individual. This may be reflected in the background investigation report which shows the ~~individual~~ individual's having a record of carrying concealed weapons, irresponsible or illegal use of a controlled substance, previous violation of institutional rules, or similar behavior.

*c.* to *g.* No change.

**20.13(3)** Due to security considerations the following rules shall apply:

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

*c.* Individuals may be required to leave the institution when:

(1) The ~~offender~~ incarcerated individual or attendee engages in behavior that may in any way be disruptive to order and control of the institution.

(2) No change.

(3) The attendee and ~~offender~~ incarcerated individual directly exchange any object or article.

(4) The attendee talks or communicates with an ~~offender~~ incarcerated individual.

(5) No change.

(6) There is detriment to the health of the ~~offender~~ incarcerated individual or attendee.

(7) No change.

*d.* Minors outside the immediate family shall have written permission from their parent or guardian and be accompanied by an adult. All children shall have adult supervision. Exceptions shall have prior approval of the warden~~, superintendent~~ or designee.

*e.* No change.

*f.* Attendees may be requested to submit to a personal search (pat down) or review by an electronic device for weapons or contraband. When the electronic device alarm is activated, the attendee shall produce the item~~,~~ or a personal search may be made to find the item that set off the alarm. Attendees may be requested to submit to a strip search when there is an articulable reason to believe the person is concealing a weapon or contraband. Each institution shall designate the level of authority required to request a search through institutional policy. This person shall authorize the search in writing. The designation required pursuant to subrule ~~20.3(9)~~ 20.3(8) for visitation will suffice for this subrule as well. Entrance may be denied when the attendee is not willing to submit to a search. The request for a search shall be conducted in an inconspicuous manner. The attendee may verbally request a review by the warden~~, superintendent,~~ or designee at the time of request for a search.

(1) to (6) No change.

**20.13(4)** to **20.13(7)** No change.

**20.13(8)** Rules that apply to registered victims are found in subrule ~~20.15(8)~~ 20.15(7).

This rule is intended to implement Iowa Code sections 904.102 and 904.103.

ITEM 30. Amend rule 201—20.14(80A) as follows:

**201—20.14(80A) ~~Offender transportation~~ Transportation for incarcerated individuals.**

**20.14(1)** Companies under contract to county or state agencies to transport Iowa ~~offenders~~ incarcerated individuals must meet the requirements of this rule to qualify for exemption under Iowa Code section 80A.2 ~~as amended by 1998 Iowa Acts, Senate File 2331~~.

**20.14(2)** To comply with the exemption in Iowa Code section 80A.2 ~~as amended by 1998 Iowa Acts, Senate File 2331~~, the following requirements shall apply:

*a.* ~~A company(ies)~~ Companies contracting with any jurisdiction/agency within the state of Iowa shall provide, upon request, training and compliance with policy standards governing weapons, security, transportation, and ~~offender~~ management procedures for incarcerated individuals essential to accomplishing safe and secure movement of ~~offenders~~ incarcerated individuals.

*b.* ~~A company~~ Companies contracting to provide ~~offender~~ transportation for incarcerated individuals with a jurisdiction/agency within the state of Iowa shall provide proof of insurance coverage including, but not limited to, comprehensive general liability, automobile liability, workers' compensation insurance, all inclusive policies, general liability, and errors or omissions.

*c.* ~~A company~~ Companies contracting with any jurisdiction/agency within the state of Iowa shall provide the names, dates of birth, and social security numbers of all transportation personnel for criminal history checks.

*d.* to *f.* No change.

*g.* This exemption applies only to ~~offender~~ transportation companies for incarcerated individuals. This exemption does not provide exemption for any other part of this statute.

This rule is intended to implement Iowa Code section 80A.2 ~~as amended by 1998 Iowa Acts, Senate File 2331~~.

ITEM 31. Amend rule 201—20.15(910A) as follows:

**201—20.15(910A) Victim notification.**

**20.15(1)** No change.

**20.15(2)** A victim of a violent crime may become registered with the department of corrections which entitles the victim to be notified when the ~~offender~~ incarcerated individual is to be released in any of the following situations:

*a.* *Work release.* Approximate date of release and whether the ~~offender~~ incarcerated individual is expected to return to the community where the victim resides will be provided.

*b.* *Furlough.* Date of leave, date of return and whether the ~~offender~~ incarcerated individual is expected to return to the community where the victim resides will be provided.

*c.* to *e.* No change.

*f.* *Parole.* Approximate date of release and whether the ~~offender~~ incarcerated individual is expected to return to the community where the victim resides.

~~**20.15(3)** Rescinded IAB 3/20/91.~~

~~**20.15(4)**~~ **20.15(3)** A victim will become registered upon official request by the county attorney to the Director, or designee, Iowa Department of Corrections, ~~Capitol Annex, 523~~ 510 East 12th Street, Des Moines, Iowa 50319.

~~**20.15(5)**~~ **20.15(4)** Assistance for registering may be obtained through the county attorney or by contacting the department of corrections, director of ~~corrections~~ victim programs, at ~~(515)281-4811~~ (515)725-5701.

~~**20.15(6)**~~ **20.15(5)** All information with regard to a registered victim will be kept confidential.

~~**20.15(7)**~~ **20.15(6)** A registered victim is responsible for notifying the department of corrections of address or telephone changes.

~~**20.15(8)**~~ **20.15(7)** Registered victims of the Iowa board of parole may attend hearings in accordance with the following rules:

*a.* Registered victims by the parole board have the right to appear at the ~~offender(s)~~ parole/work release hearing of the incarcerated individual(s) either personally or by counsel.

*b.* The parole board notifies victims of any scheduled parole/work release hearings where the board will interview the ~~offender~~ incarcerated individual not less than 20 days prior to the hearing.

*c.* The parole board notification will request any victim(s) planning to attend a hearing to notify the ~~warden/superintendent~~ warden of the intention to attend prior to the hearing.

*d.* A victim may only be denied attendance when, in the opinion of the ~~warden/superintendent~~ warden or designee, the victim(s) presents a threat to the security and order of the institution.

*e.* No change.

*f.* The security director or designee should consider separation of the victim(s) and family/friends in attendance at the same hearing. If there are any signs of conflict between ~~victims~~ the victim(s) and family/friends of ~~offenders~~ incarcerated individuals, the ~~victims~~ victim(s) shall be escorted out of the institution to avoid an unsupervised contact situation on institution grounds.

This rule is intended to implement Iowa Code section 910A.9.

ITEM 32. Amend rule 201—20.17(904) as follows:

**201—20.17(904) Institutional community placement.**

**20.17(1)** *Home care program.* This program allows for selected ~~offenders~~ incarcerated individuals to be released from institutional confinement for a set period of time for the purpose of caring for the ~~offender's~~ incarcerated individual's immediate family. Release may be to a community correction residential facility/halfway house or to the ~~offender's~~ incarcerated individual's home, home of an immediate family member, or other approved arrangements, provided the living environment is suitable to institutional requirements. Release may be for a set number of hours or days as appropriate.

*a.* *Eligibility criteria.*

(1) The ~~offender~~ incarcerated individual must be the natural parent or legal guardian of the child/children.

(2) The ~~offender~~ incarcerated individual must show cause that this program can provide more suitable care than the present living situation of the child/children.

(3) No change.

(4) The ~~offender~~ incarcerated individual must have been the primary caretaker of the child/children prior to incarceration.

(5) Investigating staff must be able to confirm that the ~~offender~~ incarcerated individual had satisfactorily served this care prior to incarceration.

(6) The proposed living arrangements shall provide a suitable environment for the ~~offender~~ incarcerated individual and dependents.

(7) No change.

(8) It will be verified that the ~~offender~~ incarcerated individual, including spouse or immediate family member living at the same residence, can and will provide adequate support towards the child, children, or other dependent. Eligibility requirements for assistance through the department of human services programs (FIP, food stamps, etc.) will be verified prior to final approval.

(9) It will be verified that the ~~offender~~ incarcerated individual or immediate family living at the residence can provide adequate transportation or that public transportation is available.

(10) Adequate support services (medical, psychological, educational, as well as other treatment programs) must be arranged and available to both the ~~offender~~ incarcerated individual and dependents.

(11) Dependent care for an adult member of the ~~offender's~~ incarcerated individual's immediate family must include a medically documented need with periodic supervision or other approved arrangements by a health-trained professional.

*b.* *Requirements.*

(1) Education/employment/child care/adult dependent care. Where all dependents are involved in full-time school, participation in an educational or employment program may be required of the ~~offender~~ incarcerated individual. Where such dependents are not yet in school, child care may be considered as full-time employment.

(2) No change.

**20.17(2)** *Work program—eligibility criteria.* This program allows for selected ~~offenders~~ incarcerated individuals to be released from institutional confinement for a period of time for gainful employment in the community. The program may also include placement in a community corrections residential facility/halfway house, or to the ~~offender's~~ incarcerated individual's home, home of an immediate family member, or other approved arrangements, provided the living environment is suitable to institutional requirements. Release may be for a set number of hours or days as appropriate.

*a.* The ~~offender~~ incarcerated individual must show a substantial need and interest for participation in the program.

*b.* The ~~offender~~ incarcerated individual must seek and apply for employment through established procedures of the furlough program or through institutional correspondence, telephone, or visiting procedures.

*c.* No change.

**20.17(3)** *Educational program—eligibility criteria.* This program allows for selected ~~offenders~~ incarcerated individuals to be released from institutional confinement for a period of time for educational opportunities in the community. This program may also include placement in a community corrections residential facility/halfway house or to the ~~offender's~~ incarcerated individual's home, home of an immediate family member, or other approved arrangements, provided the environment is suitable to institutional requirements. Release may be for a set number of hours or days as appropriate.

*a.* The ~~offender~~ incarcerated individual must show a substantial need and interest for participation in the program.

*b.* The ~~offender~~ incarcerated individual must seek educational opportunities and financial support through established procedures of the furlough program or through institutional correspondence, telephone, or visiting procedures (financial arrangements can only include family support or grants). Educational loans or loans of any type will not be allowed while on institutional count. Additional community corrections restriction may apply while under community supervision.

**20.17(4)** *General requirements for all three programs.*

*a.* Participation in any of these programs at any level is a privilege, not a right, of which participating ~~offenders~~ incarcerated individuals are subject to and held accountable for all provisions of this policy as well as the specific program plan.

*b.* No change.

*c.* ~~Offenders~~ Incarcerated individuals must be furlough-eligible in accordance with furlough eligibility standards in DOC policy IS-RL-04 and ~~administrative~~ rule ~~20.12(904)~~ 201—20.12(904).

*d.* and *e.* No change.

*f.* The ~~offender~~ incarcerated individual may be required to submit to periodic or regular U.A. Testing (this procedure may be completed at any correctional institution, community corrections facility/office, or at the residence).

*g.* and *h.* No change.

*i.* Contact frequency. A minimum of one home visit and one other face-to-face contact per month is required of staff. Furthermore, a sufficient number of collateral contacts will be made each month to ensure that the ~~offender~~ incarcerated individual is meeting requirements of the program plan.

*j.* Special needs. In situations where ~~offenders~~ incarcerated individuals or the family have special needs, a case planning system shall be incorporated to address needs, capabilities, and specific goals. Special attention shall be given to past or immediate problems.

*k.* No change.

*l.* Temporary absence. ~~Offenders~~ Incarcerated individuals may temporarily leave the residence for necessary purposes such as shopping, religious services, family recreation, medical appointments, employment, etc., as indicated on the plan.

**20.17(5)** *Application procedures.*

*a.* to *c.* No change.

*d.* The classification committee's recommendation must be approved by the ~~warden/superintendent~~ warden.

*e.* If approved by the ~~warden/superintendent~~ warden, the recommendation and all pertinent information shall be forwarded to the institutional deputy director for final approval.

*f.* If the recommendation is approved by the institutional deputy director, the ~~offender~~ incarcerated individual must agree to abide by all rules established in the program plan including institutional rules and community corrections rules as well as all local, state, and federal laws.

*g.* No change.

*h.* ~~Offenders~~ Incarcerated individuals placed in any of these programs will not be relieved of paying restitution or any other financial obligation as required by the court or institution.

**20.17(6)** No change.

**20.17(7)** *Program activity.* This rule does not create any liberty interest in the ~~offender's~~ incarcerated individual's continued participation in any of the programs at any level listed under this rule, and the department of corrections or its designee(s) reserves the right to revoke, suspend, or limit/restrict program activity from the listed programs for any reason, without hearing.

**20.17(8)** *Waiver of liberty interests.* As a condition for an ~~offender~~ incarcerated individual to participate in any of the programs at any level listed under this rule, the ~~offender~~ incarcerated individual must voluntarily waive any and all liberty interests to a hearing should the department exercise its right to revoke, suspend or limit/restrict program activity. This waiver must be signed prior to an ~~offender's~~ incarcerated individual's acceptance into a program. The signed waiver shall remove any and all rights to due process should the department exercise its right to revoke, suspend or limit/restrict program activity.

This rule is intended to implement Iowa Code section 904.910.

ITEM 33. Rescind and reserve rule **201—20.18(904)**.

ITEM 34. Amend rule 201—20.20(904) as follows:

**201—20.20(904) ~~Offender~~ Incarcerated individuals' telephone commissions.**

**20.20(1)** *Definitions.*

*"Corrections board"* means the department of corrections board.

*"~~Deputy director~~ Financial manager of administration"* means the person responsible for budgeting and planning.

*"Director"* means the chief executive officer of the department of corrections.

*"~~Regional deputy~~ Deputy director of institutions"* means the person responsible for ~~regional~~ operation of ~~both~~ institution ~~and community corrections~~ services ~~in either the eastern or western portions of Iowa~~.

*"~~Warden/superintendent~~ Warden"* means the chief executive officer of the institution or correctional facility.

**20.20(2)** *Deposit of funds.* The department of corrections shall deposit and account for all telephone commissions in a clearing account within the central office. The ~~deputy director~~ financial manager of administration will determine commissions generated by each institution, based on a report from the vendor, for deposit in the institution's ~~offender~~ telephone rebate fund for incarcerated individuals.

**20.20(3)** *Request for funds.* Each ~~warden/superintendent~~ warden will determine recurring needs and special projects and submit a written proposal to the ~~respective regional~~ deputy director of institutions for all expenditures and encumbrances.

**20.20(4)** *Review and approval of expenditures.* The ~~regional~~ deputy director of operations and the ~~deputy director~~ financial manager of administration will review the proposals for a quarterly presentation by the director to the corrections board for approval. The director will notify the chairpersons and ranking members of the justice system's appropriations subcommittee of the proposals prior to the corrections board approval. All expenditures and encumbrances shall require prior approval from the corrections board and the ~~respective regional~~ deputy director of operations. Institutions shall not be allowed to encumber or expend funds without approval. Revenues generated by telephone commissions at each institution shall be used to determine the availability of funds for each project.

**20.20(5)** *Permitted expenditures.* The director shall advance to the corrections board for approval only projects that benefit ~~offenders~~ incarcerated individuals. Expenditures may include, but are not limited to, projects that provide educational, vocational or recreational services or projects, or work or treatment programs for ~~offenders~~ incarcerated individuals. Expenditures may also be used to initiate new programs, services, or projects. Institutions shall give spending priority to programs, services, and projects that promote the health and welfare of ~~offenders~~ incarcerated individuals.

This rule is intended to implement Iowa Code section 904.508A.

ITEM 35. Amend rule 201—38.2(692A,903B) as follows:

**201—38.2(692A,903B) Electronic monitoring.** It is the intent of the Iowa department of corrections that the electronic monitoring system (EMS) shall be used to enhance public safety. Appropriate levels of EMS should be used to verify the location and restrict the movement of sex offenders based upon a validated risk assessment, the sex offender's criminal history, progress in treatment and supervision, and other relevant factors. EMS is additionally governed by the provisions of department of corrections policy OP-SOP-06.

**38.2(1)** *Definitions.*

*"Electronic monitoring system"* or *"EMS"* is a term used collectively for technology that determines the location of ~~offenders~~ clients who have restricted movement while being supervised in their respective community. ~~EMS may also incorporate the ability to conduct random substance abuse testing.~~

*"~~Offender~~ Client"* means a person who is required to register with the Iowa sex offender registry.

**38.2(2)** *Selection of ~~offenders~~ clients for EMS.* All ~~offenders~~ clients on supervision for a current sex offense who are required to be registered as a sex offender under Iowa Code chapter 692A shall be

placed on EMS immediately after assignment to supervision. This level may be changed based on risk assessment.

**38.2(3)** *Risk assessment instrument.* ~~All required risk~~ Risk assessments used shall be ~~conducted utilizing the risk assessment instruments outlined below as~~ validated and approved by the department of corrections with collaborative input from the judicial districts and other affected stakeholders. The risk assessment should be completed within 30 days prior to the ~~offender's~~ incarcerated individual's release from custody or upon the ~~offender's~~ incarcerated individual's/client's placement on probation, parole, or work release.

~~*a. Static 99—revised.* Designed for adult male sex offenders aged 18 and over and juvenile male offenders waived to adult court who have a specific identified victim.~~

~~*b. ISORA.* Designed for adult male and female sex offenders aged 18 and over who may or may not have a specific identified victim.~~

~~*c. Stable 2007.* Designed to assess dynamic risk factors for sex offense recidivism for the purpose of treatment, supervision, and monitoring of sex offenders primarily on community correctional supervision.~~

~~*d. Level of service inventory—revised.* A quantitative risk assessment instrument to determine the offender's criminogenic risk, programming needs and the required level of service.~~

**38.2(4)** *Notification of victims.* ~~A~~ The supervising judicial district department of correctional services shall notify a registered victim regarding a sex offender who is convicted of a sex offense against a minor and who is under the supervision of a judicial district department of correctional services of the following:

*a.* The beginning date for use of an electronic tracking and monitoring system to supervise the sex offender and the type of electronic tracking and monitoring system used.

*b.* The date of any modification to the use of an electronic tracking and monitoring system and the nature of the change.

NOTE: Notification includes the initial notification to victims of the date that ~~an offender~~ a client has been placed on an electronic monitoring device, notification as to the date an electronic monitoring device was changed with greater or less monitoring capabilities (GPS to radio frequency or radio frequency to GPS), and notification as to the date the ~~offender~~ client was removed from an EMS.

**38.2(5)** No change.

ITEM 36. Amend rule 201—38.4(903B) as follows:

**201—38.4(903B) Hormonal intervention therapy.**

**38.4(1)** *Affected ~~offenders~~ clients.* All ~~offenders~~ clients convicted of a "serious sex offense" in which the victim was a child who, at the time the offense was committed, was 12 years of age or younger; or ~~offenders~~ clients convicted of a second or subsequent offense may be required to undergo hormonal intervention therapy as ordered by the court or board of parole in accordance with the provisions of ~~1998 Iowa Acts, Senate File 2398, section 21~~ Iowa Code section 903B.10.

**38.4(2)** *Agency responsibility.* The department of corrections, judicial districts' departments of correctional services, and the board of parole responsibilities are defined in ~~1998 Iowa Acts, Senate File 2398, section 21~~ accordance with the provisions of Iowa Code section 903B.10.

**38.4(3)** *Assessment of affected ~~offenders~~ clients.*

*a. Psychosexual assessment.* A psychosexual assessment shall be conducted on all "affected" ~~offenders~~ clients, as a part of the presentence investigation (PSI) prior to sentencing or upon entry into judicial district department of correctional services supervision or institutional placement if a referral for hormonal intervention therapy is being made.

(1) The psychosexual assessment shall be conducted by or under the direction of:

- A licensed psychologist; or
- A person specifically trained and experienced in the professional administration, scoring and interpretation of psychological tests (graduate level coursework in testing and assessment); or

- A staff member ~~that~~ who meets the experience and educational requirements of the Iowa department of ~~personnel~~ administrative services or Iowa community-based corrections psychologist classification.

(2) No change.

(3) The assessment shall follow the ~~department of corrections~~ statewide standardized format and shall include a determination as to the need and effectiveness of hormonal intervention therapy as well as treatment recommendations.

*b. Medical assessment.* If hormonal intervention therapy is recommended as an appropriate treatment component, the ~~offender~~ client shall receive a medical assessment to determine biological factors as related to hormonal intervention therapy.

**38.4(4)** No change.

**38.4(5)** *Educational/treatment programming.*

*a.* Hormonal intervention therapy is to be utilized in conjunction with a sex offender ~~educational/treatment~~ treatment program (SOTP). The ~~offender~~ client should be involved in concurrent cognitive-behavioral treatment. In all cases where the treatment plan includes hormonal therapy, the plan shall also include monitoring and counseling.

*b.* All institutional or community-based corrections ~~SOTP programs~~ SOTPs shall meet the current Iowa board for the treatment of sexual abusers (IBTSA) standards ~~dated March 2006~~.

**38.4(6)** *Application of hormonal therapy.*

*a. Utilization of hormonal therapy.*

(1) Therapy shall utilize medroxyprogesterone acetate (MPA) or other approved pharmaceutical agents.

(2) Therapy shall be initiated as soon as reasonably possible after the ~~offender~~ client is sentenced.

1. If the ~~offender~~ client is incarcerated within a local jurisdiction (jail, residential facility), the judicial district department of correctional services shall coordinate initiation of treatment prior to the release of the ~~offender~~ client from custody.

2. If the ~~offender~~ client is incarcerated within the department of corrections, initiation of treatment shall be determined by department of corrections medical staff.

(3) Requests for hormonal therapy by the ~~offender~~ client when the aforementioned criteria are not met shall be reviewed for consideration by the agency of jurisdiction.

(4) No change.

*b. Monitoring/termination of hormonal therapy.*

(1) Monitoring. The agency of jurisdiction shall continue to monitor the ~~offender's~~ client's therapy throughout the ~~offender's~~ client's confinement or supervision. The agency of jurisdiction may adjust medication, initiate other medication, or continue prescribed therapy with medical approval.

(2) No change.

**38.4(7)** ~~*Offender*~~ *Client fees.* ~~Offenders~~ Clients are required to pay a reasonable fee for the costs related to hormonal therapy. ~~Offender~~ Client fees shall be based on the ~~offender's~~ client's ability to pay as determined by the ~~supervising office~~ statewide client fee policy.

**38.4(8)** *Maintenance/transfer of records.* ~~Offender~~ Client file information shall be available and shared upon request between responsible agencies including court of jurisdiction.

ITEM 37. Amend **201—Chapter 38**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter~~ chapters 692A ~~as amended by 2009 Iowa Acts, Senate File 340,~~ and ~~Iowa Code chapter~~ 903B.

ITEM 38. Amend rule **201—40.1(905)**, definitions of "Deputy director" and "Medical practitioner," as follows:

*"Deputy director"* shall mean the ~~respective regional~~ deputy director for community-based corrections (CBC) of the department of corrections.

*"Medical practitioner"* means medical doctor, osteopathic physician ~~or physician's~~, physician assistant or nurse practitioner.

ITEM 39. Amend subrule 40.2(4) as follows:

**40.2(4)** The biennial team review shall include a complete review of the following:

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

*c.* Programs mandated by the Code of Iowa and any special programs approved by the department of corrections. Programs shall comply with program specific standards developed and approved by the department of corrections with collaborative input from the judicial districts and other affected stakeholders, i.e., domestic abuse, sex offender treatment, and intensive supervision program.

*d.* No change.

*e.* Any regular or special evaluations of the services provided by the district department.

The biennial review shall be conducted as provided in the "accreditation standards for community-based corrections" and any program specific standards which shall be open for public inspection at the offices of the department of corrections. A proposed draft of these standards will be made available to the districts 180 days prior to the biennial review. The accreditation and program specific final standards, and any changes in the standards, shall be made available to the district departments at least 90 days before the biennial review.

ITEM 40. Amend subrule 40.4(12) as follows:

**40.4(12)** Through their approval, the director, Iowa department of corrections, and the Iowa corrections board shall ensure that the director of the district department of correctional services, of districts authorized to carry firearms, has written standards and procedures which regulate the safe conveying and use of firearms. The standards shall include, but not be limited to, the following:

*a.* to *e.* No change.

*f.* Any officer who discharges a weapon shall submit a written report of the incident through the department of corrections critical incident reporting policy. The judicial district director shall file a report of the incident, the investigation, and the results of the investigation with the ~~regional~~ deputy director of CBCs within five days of the occurrence.

*g.* No officer shall be required to carry a firearm~~, and such~~; however, refusal ~~shall not~~ may affect job assignments~~, promotion consideration, or employment possibility~~.

*h.* Firearms shall be secured under lock and key when not in use in a location inaccessible to nonauthorized personnel.

ITEM 41. Amend rule 201—40.5(905) as follows:

**201—40.5(905) District director.**

**40.5(1)** The department shall have procedures governing the personnel employed by the judicial district, and a system of fiscal accountability which ~~assures~~ ensures compliance with the requirements of the department of corrections and the Code of Iowa.

**40.5(2)** The director shall ~~acquire current copies of~~ provide electronic access to the Code of Iowa and supplements thereof, the Iowa Administrative Code, and applicable federal regulations and shall prepare and maintain current a department of correctional services policies and procedures manual which shall include, but not be limited to, the following:

*a.* to *f.* No change.

**40.5(3)** The department shall ensure that an employee manual is readily accessible to all employees and shall include information which provides necessary guidance for the performance of the duties outlined in the employee's job description, personnel policies and procedures, and employee rights and responsibilities.

*a.* No change.

*b.* The district department shall enter and maintain information required by the department of corrections statewide database application called the Iowa corrections offender network (ICON). That information will include all details necessary for the department of corrections to generate accurate and timely periodic statistical reports of district department, pretrial release, presentence investigations, field services workloads, residential facility occupancy, and specially funded treatment/monitoring programs. The district department shall devise and implement local policies and procedures to provide adequate

training and support of data entry personnel and other end users, regularly audit data entry accuracy and timeliness and correct inaccurate or incomplete information discovered during that auditing process.

**40.5(4)** to **40.5(7)** No change.

**40.5(8)** The district department shall establish fiscal procedures in accordance with guidelines established by the department of corrections to ensure that funds generated from programs financed with state moneys or moneys collected by the use of state allocations be identified and expended to offset program costs as described and approved in the state purchase of service contract. All funds received by the district department and their source shall be reported to the department of corrections. All fund balances for the current fiscal year shall be reported by the district departments to the department of corrections ~~on December 31, March 31, and June 30, and for both fiscal years on September 30~~ quarterly on specific due dates. Funds so generated shall be expended during the fiscal year in which they are collected. However, such funds not expended during the fiscal year will be utilized by the judicial district department of correctional services to reduce budget requests for the subsequent fiscal year~~,~~ ~~with the exception of the discretionary funds identified in the following paragraph~~. All funds shall be applied as budgeted or be utilized as discretionary program funds with the approval of the department of corrections before applying other funds to an expenditure.

~~Commencing with fiscal year 1987, the district department may apply 50 percent of the growth in local funds earned over the average of the previous two fiscal years to discretionary programs in the following fiscal year with department of corrections approval. Additionally, local funds in excess of 10 percent of the purchase of service contract budget may be applied to discretionary programs by the district department in the following fiscal year with department of corrections approval. The total funds which may be carried over for discretionary purposes and not utilized to reduce the subsequent year's budget request shall not exceed 1 percent of the district department's purchase of service contract budget.~~

**40.5(9)** The district director shall administer the community-based corrections personnel classification system established by the district departments and the department of corrections and shall adhere to all salary ranges, policies, and procedures established for the purpose of implementing and maintaining the community-based corrections personnel classification ~~system~~ manual.

The district director shall administer the collective bargaining contract and adhere to all policies and procedures established by the department of corrections and department of ~~personnel~~ administrative services for contract administration.

Employee positions utilized by the district department shall be approved by the district board and the department of corrections through the purchase of service agreement. Any changes in the number and classification of positions authorized in the purchase of service agreement shall be approved by the district board and the department of corrections.

**40.5(10)** The district director shall administer preemployment testing to determine the suitability of applicants for corrections positions in district departments of correctional services in compliance with the Code of Iowa. Applicants, pursuant to the Code of Iowa, must satisfactorily complete ~~psychological and cognitive testing~~ mental fitness testing as approved by the department of corrections prior to hire. In addition, a background investigation and criminal records check will be completed on all hires.

ITEM 42. Amend rule 201—41.2(901,905) as follows:

**201—41.2(901,905) Presentence investigation.**

**41.2(1)** and **41.2(2)** No change.

**41.2(3)** The district department shall have written policies and procedures which ensure that the presentence investigation report includes an identification of client needs, protective factors and the results of a validated risk assessment as approved by the department of corrections with collaborative input from the judicial districts and other affected stakeholders.

**41.2(4)** and **41.2(5)** No change.

**41.2(6)** The district department shall have written policies and procedures concerning the content of presentence investigations ordered by the judiciary when the offense is ~~a serious~~ an aggravated misdemeanor or higher.

ITEM 43. Amend rule 201—42.1(907,908,910) as follows:

**201—42.1(907,908,910) Probation.**

**42.1(1)** No change.

**42.1(2)** The district department shall have written policies and procedures which ensure that ~~a~~ an electronic case record is maintained on each client under supervision.

**42.1(3)** The district department shall have uniform written policies and procedures governing the classification and supervision of probationers ~~which is in compliance with the classification system established by the eight district departments and approved by the department of corrections~~.

**42.1(4)** The district department shall have uniform written policies and procedures which ensure ~~that a case auditing system is developed and utilized according to established auditing standards which shall include a Level of Service Inventory-Revised (LSI-R), CMC/Jesness and Case File Audit System. The district department shall~~ the use of the statewide case management system ~~to ensure~~ so that ~~offender~~ client risk, ~~and~~ criminogenic needs and protective factors are identified using the approved uniform and validated risk/needs assessment instruments and are addressed in an effort to lower risk and reduce victimization. The system should be designed to focus the majority of resources on moderate- and high-risk ~~offenders~~ clients and shall include the following elements: ongoing risk and need assessment, responsivity, case planning, case plan follow-up and documentation, transfer of records, staff training, and continuous quality ~~assurance~~ improvement. ~~Districts shall ensure that all case management staff, i.e., staff whose job duties include administering the LSI-R or using the LSI-R to develop case plans, become certified to administer and score the LSI-R.~~

**42.1(5)** to **42.1(16)** No change.

**42.1(17)** The district department shall have written policies and procedures to prevent the transmission of contagious infectious disease in compliance with Iowa Code section 905.15.

This rule is intended to implement Iowa Code chapters 905 and 907 and sections 908.11 and 910.5.

ITEM 44. Amend rule 201—43.1(905,907,908,910) as follows:

**201—43.1(905,907,908,910) Residential facilities.**

**43.1(1)** The facility shall admit residents ~~only on an order of the~~ in accordance with the correctional continuum, court ~~or in accordance with a~~ order, release order from board of parole, or purchase of service agreement contract with the department of corrections, federal correctional agencies or a county board of supervisors.

**43.1(2)** At the time of intake, the facility staff shall discuss with each resident~~,~~ program goals, services available, rules governing conduct in the facility, disciplinary procedures, client fiscal management and residents' rights, ~~and~~ communication privileges and all federal Prison Rape Elimination Act (PREA) orientation and education standards and shall obtain written documentation from the resident that these matters were discussed.

**43.1(3)** and **43.1(4)** No change.

~~**43.1(5)** The district department shall have written policies and procedures which ensure that an individual case plan is maintained on each resident which includes an assessment of client needs and resources utilized to meet those needs.~~

~~**43.1(6)**~~ **43.1(5)** The district department shall have written policies which establish facility rules, possible sanctions, ~~and~~ appeal procedures and PREA standards that comply with all federal standards for all residents.

~~**43.1(7)**~~ **43.1(6)** The district department shall have written policies which establish a grievance procedure for residents which applies to activities other than disciplinary action.

~~**43.1(8)**~~ **43.1(7)** The district department shall have written policies and procedures establishing criteria governing the use of and reporting of the use of physical force by facility staff which conform to appropriate statutes or regulations.

~~**43.1(9)**~~ **43.1(8)** The district department shall have written policies and procedures for searching residents and their property and for seizure of resident property or contraband.

~~**43.1(10)**~~ **43.1(9)** The district department shall have a written policy which ensures that at least one staff member is ~~awake, dressed, in the facility, and~~ readily available to residents 24 hours a day. Facility staff shall know the whereabouts of all residents.

~~**43.1(11)**~~ **43.1(10)** The district department staff shall ~~assure~~ ensure the provision and maintenance of a safe environment for the residents, including compliance with fire, building, health, and safety regulations or standards applicable in the local jurisdiction.

~~**43.1(12)**~~ **43.1(11)** Infectious disease.

*a.* In compliance with Iowa Code section 905.15, the district department shall have written policies and procedures to prevent the transmission of contagious infectious disease, including notification to facility personnel if any person committed to the facility is found to have a contagious infectious disease.

*b.* The district department shall ~~provide~~ refer for a medical examination ~~of~~ any resident suspected of having a communicable disease, which safeguards both residents and employees. Employees who contract a communicable disease, except common colds, should not be permitted to work in a facility until the danger of contagion is ended. For purposes of this rule, communicable disease shall mean any disease which is transmittable from one person to another and is either temporarily or permanently debilitating.

~~**43.1(13)**~~ **43.1(12)** The district department shall have written policies and procedures which govern the medical care of residents in case of emergencies, sudden illnesses, or accidents.

~~**43.1(14)**~~ **43.1(13)** The district department shall have written policies and procedures governing the method of handling prescription and nonprescription drugs.

~~**43.1(15)**~~ **43.1(14)** The district department shall have written policies and procedures which ~~assure~~ ensure that all residents have access to three meals a day during the week and two meals on weekend days and that meals provided at the facility meet recognized minimum daily nutritional requirements.

~~**43.1(16)**~~ **43.1(15)** The district department shall have written policies which ensure that if food service is provided, all facilities including kitchen equipment and food handlers comply with applicable health and safety laws and regulations as evidenced by a certificate of rating from the Iowa department of agriculture and land stewardship or local restaurant inspection unit.

~~**43.1(17)**~~ **43.1(16)** The district department shall have written policies and procedures that are consistent with risk reduction for recommending ~~the~~ removal and revocation of resident status at the facility.

~~**43.1(18)**~~ **43.1(17)** The district department shall have written policies and procedures for discharge from the facility and which require a recommendation for discharge when it is clear that the resident has met the requirements of the court, is no longer believed to be a threat to the community, or cannot benefit substantially from further supervision.

~~**43.1(19)**~~ **43.1(18)** The district department shall have written policies and procedures which ensure ~~that a case auditing system is developed and utilized according to established auditing standards which shall include a Level of Service Inventory-Revised (LSI-R), CMC/Jesness and Case File Audit System. The district department shall~~ the use of the statewide case management system ~~to ensure~~ so that ~~offender~~ client risk, ~~and~~ criminogenic needs and protective factors are identified using the approved uniform and validated risk/needs assessment instruments and are addressed in an effort to lower risk and reduce victimization. The system should be designed to focus the majority of resources on ~~moderator-~~ moderate- and high-risk ~~offenders~~ clients and shall include the following elements: ongoing risk and need assessment, responsivity, case planning, case plan follow-up and documentation, transfer of records, staff training, and continuous quality ~~assurance~~ improvement. ~~Districts shall ensure that all case management staff, i.e., staff whose job duties include administering the LSI-R or using the LSI-R to develop case plans, become certified to administer and score the LSI-R.~~

~~**43.1(20)** Rescinded IAB 12/8/04, effective 1/12/05.~~

This rule is intended to implement Iowa Code section 907.3 and chapters 905, 908 and 910.

ITEM 45. Amend rule 201—44.1(904) as follows:

**201—44.1(904) Administration.**

**44.1(1)** No change.

**44.1(2)** *Facility requirements.*

*a.* The facility staff shall ~~assure~~ ensure the provision and maintenance of a safe environment for the residents. Each facility shall comply with fire, building, health and safety regulations or standards applicable in the local jurisdiction.

*b.* The district department shall have written policy which ensures that at least one staff member is ~~awake, dressed and~~ readily available to residents 24 hours a day in each work release facility.

*c.* to *e.* No change.

*f.* The district departments shall have ~~uniform~~ written policies and procedures for the ~~inventory and recording~~ control of a work release resident's property.

*g.* and *h.* No change.

*i.* The district departments shall have written policies and procedures which establish compliance with all federal PREA standards.

**44.1(3)** *Admission.*

*a.* The district departments shall admit residents in accordance with ~~a contract~~ the purchase of service agreement with the department of corrections or federal correctional agencies.

*b.* At the time of intake, the facility staff shall discuss with each resident program goals, services available, rules governing conduct in the facility, disciplinary procedures, client fiscal management and residents' responsibilities, rights, ~~and~~ communication privileges, and all federal PREA orientation and education standards and shall obtain written documentation from the resident that these matters were discussed.

**44.1(4)** No change.

**44.1(5)** *Records.*

*a.* No change.

*b.* The district departments shall maintain a case record for each client under supervision which shall include, when applicable, the following: (1) Identification data, (2) institutional information packet, (3) case plan, (4) restitution plan, (5) work release plans, (6) ~~chronological records~~ generic notes, (7) disciplinary reports, (8) hold orders, (9) transfer reports, (10) parole progress reports, (11) signed release of information forms, ~~(12) inventory sheets,~~ and ~~(13)~~ (12) discharge reports.

Written procedures shall exist at the facility concerning the security, maintenance, accessibility, closure and destruction of said case records.

*c.* The district department shall have uniform written policies and procedures which ensure ~~that a case auditing system is developed and utilized according to established auditing standards which shall include a Level of Service Inventory-Revised (LSI-R), CMC/Jesness and Case File Audit System. The district department shall~~ the use of the statewide case management system ~~to ensure~~ so that ~~offender~~ client risk, ~~and~~ criminogenic needs and protective factors are identified using the approved uniform and validated risk/needs assessment instruments and are addressed in an effort to lower risk and reduce victimization. The system should be designed to focus the majority of resources on moderate- and high-risk ~~offenders~~ clients and shall include the following elements: ongoing risk and need assessment, responsivity, case planning, case plan follow-up and documentation, transfer of records, staff training, and continuous quality ~~assurance~~ improvement. ~~Districts shall ensure that all case management staff, i.e., staff whose job duties include administering the LSI-R or using the LSI-R to develop case plans, become certified to administer and score the LSI-R.~~

~~*d.* The district department shall have written policies and procedures which ensure that a case auditing system is developed and utilized according to established auditing standards which shall include the CMC Audit System and a Case File Audit System.~~

ITEM 46. Amend rule 201—44.2(904) as follows:

**201—44.2(904) Provision of services.**

**44.2(1)** No change.

**44.2(2)** *Food service.*

*a.* The district department shall have policies and procedures which ~~assure~~ ensure that all work release residents have access to three meals a day during the week and two meals on weekend days and that meals provided at the work release facility meet recognized minimum daily nutritional requirements.

*b.* The district department shall have written policies which ensure that if food service is provided, all facilities including kitchen equipment and food handlers comply with applicable health and safety laws and regulations as evidenced by a certificate of rating from the Iowa department of agriculture and land stewardship or local restaurant inspection unit.

**44.2(3)** *Medical service.*

*a.* The district department shall ~~provide~~ refer for a medical examination ~~of~~ any work release resident suspected of having a communicable disease, which safeguards both residents and employees. Employees who contract a communicable disease, except common colds, should not be permitted to work in a facility until the danger of contagion is ended. For purposes of this rule, communicable disease shall mean any disease which is transmittable from one person to another and is either temporarily or permanently debilitating.

*b.* and *c.* No change.

*d.* ~~All personnel shall furnish a statement from a valid medical practitioner or registered nurse prior to starting employment, stating that they are in good health, able to perform the duties required and free from any communicable disease that could reasonably be determined to represent a public health hazard.~~ In compliance with Iowa Code section 905.15, the district department shall have written policies and procedures to prevent the transmission of contagious infectious disease. Notification to facility personnel is required if any person committed to the facility is found to have a contagious infectious disease.

**44.2(4)** *Visitation.* The district department shall have written policies and procedures which provide for visitation, but visiting privileges may be limited to the extent necessary for security and management reasons.

**44.2(5)** No change.

ITEM 47. Amend rule 201—44.3(910) as follows:

**201—44.3(910) Restitution.**

**44.3(1)** *Restitution plan of payment.* ~~There~~ The district departments shall ~~be a~~ have a policy and procedure for restitution ~~plan of payment developed on those work releasees who have been court ordered to pay restitution unless the court ordered restitution plan of payment has been completed~~. ~~Factors which must be considered in developing the restitution plan of payment are:~~ The restitution policy and procedure shall be administered in accordance with local judicial procedure and the Code of Iowa.

~~*a.* Present income/employment~~

~~*b.* Physical/mental health~~

~~*c.* Education~~

~~*d.* Financial situation~~

~~*e.* Family circumstances~~

~~The district department shall have written policies and procedures governing the development and modification of the restitution plan of payment. Final approval of the restitution plan of payment shall be by the district director.~~

~~The approved restitution plan of payment shall be forwarded to the appropriate clerk of court by the district department or to the person responsible for collection if collections are performed by the district department.~~

**44.3(2)** *Compliance.*

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

*c.* The district department ~~will~~ shall provide statements to the appropriate clerks of court when community service is ordered in lieu of financial restitution.

ITEM 48. Amend rule 201—44.6(904) as follows:

**201—44.6(904) Violations.**

**44.6(1)** *Preplacement violations.* When disciplinary problems occur with residents who have been approved for work release but not yet placed, designated staff shall determine whether or not the situation is serious enough to warrant further review by the board of parole. Designated staff herein shall mean authorized persons from the judicial district department of correctional services, the ~~community services division~~ deputy director of community-based corrections, or the sending institution.

**44.6(2)** No change.

**44.6(3)** *Request for temporary custody.* Requests for temporary custody in a county jail or municipal holding facility may be issued by an authorized staff person of the district department of correctional services, in those cases where the resident is considered dangerous, likely to flee or in serious violation of the work release program. The requests shall be consistent with department of corrections policy.

**44.6(4)** to **44.6(6)** No change.

**44.6(7)** *Special transfers.* Transfers from one facility to another or from a facility to ~~the~~ a designated Iowa ~~medical and~~ classification center may be allowed in special circumstances with the approval of the department of corrections.

ITEM 49. Amend rule 201—44.9(904,910) as follows:

**201—44.9(904,910) Home work release.** Pursuant to Iowa Code section 904.901, home work release provides the opportunity in exceptional circumstances for qualified ~~offenders~~ clients of correctional institutions to return to their homes ~~and care for dependent children under the age of 18~~.

**44.9(1)** *Administration.*

*a.* No change.

*b.* *Housing requirements.* The physical structure shall provide for adequate space, meet basic sanitary requirements and be in good repair. A functional telephone will be ~~maintained~~ available to the client in the residence at all times. The residence shall not be occupied by persons outside the nuclear family except in rare instances where financial considerations are a factor and prior approval has been granted by the board of parole or the deputy director.

*c.* to *e.* No change.

*f.* *Records.*

(1) No change.

(2) The district department shall maintain a case record for each home work releasee under supervision which shall include, when applicable, the following:

1. Identification date,
2. Institutional information packet,
3. Case plan,
4. Restitution plan,
5. Work release plans,
6. ~~Chronological records~~ Generic notes,
7. Disciplinary reports,
8. Hold orders,
9. Transfer reports,
10. Parole progress reports,
11. Signed release of information forms, and

~~12. Inventory sheets, and~~

~~13.~~ 12. Discharge reports.

The district department shall have written procedures concerning the security, maintenance, accessibility, closure and destruction of said case records.

(3) The district departments shall have written policies and procedures which ensure that an individual case plan is maintained on each work release resident which includes ~~an~~ a uniform, validated assessment of client risk, needs and protective factors, and resources utilized to meet those needs.

**44.9(2)** No change.

**44.9(3)** *Home work releasee finances.* The home work releasee shall assume total financial responsibility, including medical expenses, for ~~their~~ releasee care and the care of ~~their~~ the releasee's minor dependent children. Neither the department of corrections nor the district department shall incur any expense on the part of the home work releasee or dependents.

**44.9(4)** *Violations.*

*a.* *Preplacement violations.* When disciplinary problems occur with ~~offenders~~ clients who have been approved for home work release but not yet placed, designated staff shall determine whether or not the situation is serious enough to warrant further review by the board of parole. Designated staff herein shall mean authorized persons from the judicial district department of correctional services, the community services division or the sending institution.

*b.* No change.

*c.* *Requests for temporary custody.* Requests for temporary custody in a county jail or municipal holding facility may be issued by an authorized staff person of the district department of correctional services, in those cases where the home work releasee is considered dangerous, likely to flee or in serious violation of the work release program and shall be consistent with department of corrections policy.

*d.* to *g.* No change.

**44.9(5)** No change.

ITEM 50. Amend rule 201—45.1(906) as follows:

**201—45.1(906) Administration.**

**45.1(1)** *Supervision.* Persons committed to the director of the department of corrections and granted parole by the Iowa board of parole shall be supervised by the judicial district departments of correctional services. The district departments shall impose conditions of parole as contained in rule 201—45.2(906).

**45.1(2)** *Effective date/parole agreement.*

*a.* Parole is effective only upon the acceptance of the terms of parole as evidenced by the signing of the standard parole agreement form by the parolee before a district department employee. ~~In the event that emergency procedures are effected to reduce the institutional population, institutional staff shall authorize a temporary agreement by having the offender sign the standard form prior to leaving the institution. The temporary agreement shall be forwarded to the supervising parole agent who may revise the agreement in accordance with rule 45.2(906).~~ The parole agreement shall be issued only upon the written order of the board of parole and shall not be issued prior to the establishment of an approved parole plan. The parolee may not be released on parole prior to the execution of the parole agreement. The parole agreement shall contain the conditions of parole pursuant to rule 201—45.2(906) and shall contain the parolee's reporting instructions.

*b.* The district department shall have written uniform policies and procedures which ensure ~~that a case auditing system is developed and utilized according to established auditing standards which shall include a Level of Service Inventory-Revised (LSI-R), CMC/Jesness and Case File Audit System. The district department shall~~ the use of the statewide case management system ~~to ensure~~ so that ~~offender~~ client risk, ~~and~~ criminogenic needs and protective factors are identified using the approved uniform and validated risk/needs assessment instruments and are addressed in an effort to lower risk and reduce victimization. The system should be designed to focus the majority of resources on moderate- and high-risk ~~offenders~~ clients and shall include the following elements: ongoing risk and need assessment, responsivity, case planning, case plan follow-up and documentation, transfer of records, staff training, and continuous quality ~~assurance~~ improvement. ~~Districts shall ensure that all case management staff, i.e., staff whose job duties include administering the LSI-R or using the LSI-R to develop case plans, become certified to administer and score the LSI-R.~~

*c.* The district department shall have written policies and procedures to ensure the delivery of parole services which are consistent with statewide policy and expectations.

**45.1(3)** and **45.1(4)** No change.

**45.1(5)** *Parole release funds.* ~~Offenders~~ Clients approved for parole will receive clothing or a clothing allowance, money and transportation in accordance with the provisions of Iowa Code section 906.9.

**45.1(6)** to **45.1(8)** No change.

~~**45.1(9)** *Parole relief fund.* Rescinded IAB 10/2/91, effective 9/13/91.~~

ITEM 51. Amend rule 201—45.2(906) as follows:

**201—45.2(906) Conditions of parole.**

**45.2(1)** *Standard conditions.* ~~The following are standard conditions of parole supervision applicable to all parolees.~~ The district department shall have all persons on parole sign conditions of parole that are consistent with the standard conditions as established and approved by the board of parole. Standard conditions are applicable to all parolees.

*a.* *Restrictions on movement.* ~~The parolee shall obey all federal, state and local laws and ordinances.~~ The parolee shall report immediately to the supervising officer in the judicial district designated in the parole instructions. The parolee will reside at the place designated in the parole instructions and shall not change residence unless prior approval is received from the supervising judicial district director or director's designee. The parolee will obey any curfew restrictions placed upon the parolee by the supervising officer. The parolee shall not leave the county of residence unless prior permission to travel is received from the parolee's supervising judicial district director or director's designee.

*b.* *Supervision conduct.* ~~In the event of any arrest or citation, the parolee shall notify the district department of the arrest or citation within 24 hours.~~ The parolee shall maintain contact with the supervising officer as directed and shall not lie to, mislead, or misinform the parolee's supervising officer either by statement or omission of information. The parolee shall use the parolee's true name in all dealings. The parolee shall follow all conditions that can and may be placed on parole by the board of parole and any additional conditions that can be added by the supervising officer at any time during the parolee's supervision.

*c.* *Restrictions on association.* ~~The parolee shall secure and maintain employment as approved by the district department. The parolee shall obtain advance permission from the district department before changing or quitting a job. If the parolee is fired or laid off, the parolee shall notify the district department within 24 hours. If the parolee is unemployed, every effort shall be made to obtain employment, and such efforts shall be reported to the district department as directed.~~ The parolee shall not associate with any person having a criminal record, any person currently under supervision or any person known or suspected to be engaged in criminal activity, unless approved by the parolee's supervising judicial district director or director's designee. The parolee shall treat all persons with respect and courtesy and refrain from assaultive, intimidating, or threatening verbal or physical abuse. The parolee shall have no direct or indirect contact or communication with any victim or the family of any victim of the parolee's offense(s), unless contact or communication with any victim or the family of any victim is authorized by the parolee's supervising judicial district director or director's designee.

*d.* *Treatment, rehabilitation and other programming.* ~~The parolee will be restricted to the county of residence unless prior permission to travel has been granted by the district department or otherwise in accordance with the parole agreement. The parolee will secure advance written permission which may be a part of the parole agreement, from the district department before traveling outside the state of residence.~~ The parolee shall participate in and cooperate with any treatment, rehabilitation, or monitoring programs, including any electronic monitoring, required by the supervising officer in the district in which the parolee is being supervised. The parolee shall seek mental health services as appropriate. The parolee shall submit a DNA sample if requested by the parolee's supervising officer or other law enforcement official. If needed, the parolee shall continue to work toward attaining a GED or complete the requirements for a high school diploma. The parolee shall schedule and keep all appointments

necessary for the successful completion of programs and services in which the parolee is participating and for the successful completion of the parolee's parole supervision. The parolee shall sign any release or waiver requested by the parolee's parole officer to authorize the parole officer to receive and access any information relating to any treatment program or otherwise as requested by the parole officer.

*e.* *Substance abuse.* ~~The parolee shall obtain prior permission from the district department before changing residence.~~ The parolee shall not use, purchase, or possess alcoholic beverages and shall submit to alcohol tests and drug tests when directed by the parolee's supervising officer. The parolee shall not enter taverns or liquor stores or other establishments where the primary activity is the sale of alcoholic beverages. The parolee will not use, ingest, inject, huff, possess or smoke any illegal or synthetic substances. The parolee shall not use, purchase, possess or transfer any drugs unless they are prescribed by a physician.

*f.* *Legal conduct.* ~~The parolee shall maintain contact with the district department as directed by the district department or the department of corrections.~~ The parolee shall obey all laws and ordinances. The parolee shall notify a parole officer within 24 hours if the parolee is arrested or receives a citation or if the parolee has any contact with law enforcement. The parolee shall not own, possess, use or transport firearms, dangerous weapons, or imitations thereof, unless approved by the parolee's supervising officer. The parolee will submit the parolee's person, property, place of residence, vehicle, and personal effects to search at any time, with or without a search warrant, warrant of arrest or reasonable cause by any parole officer. The parolee waives extradition to the state of Iowa from any jurisdiction in or outside the United States (including Indian reservation or Indian trust land) and also agrees that the parolee will not contest any effort by any jurisdiction to return the parolee to the state of Iowa.

*g.* *Economic.* ~~The parolee shall maintain and, upon request, present proof of adequate liability insurance or proof of financial responsibility and a valid driver's license before owning or operating a motor vehicle.~~ The parolee shall pay restitution, court costs, and attorney fees as directed by the court. The parolee shall pay any fees associated with programs and services ordered by the supervising judicial district director or director's designee during the course of the parolee's supervision. The parolee will comply with all the terms of the parolee's restitution plan. The parolee will pay to the supervising district department of correctional services an enrollment fee to offset the cost of the parolee's supervision as provided in the Iowa Code. The parolee will pay this fee upon such terms as the supervising officer directs. The parolee understands that the parolee may not be discharged from parole until all fees are paid. The parolee shall secure and maintain employment as directed by the supervising officer. The parolee shall notify the supervising officer within 24 hours if the parolee's employment is terminated. The parolee shall seek employment if the parolee is unemployed and shall report the parolee's efforts to find employment as directed by the parolee's supervising officer.

*h.* *Driving.* ~~The parolee shall not own, possess, use or transport firearms or other dangerous weapons or imitation thereof.~~ The parolee shall not operate a motor vehicle upon the public roads and highways unless the parolee has a current, valid driver's license and insurance. If the parolee's driving privileges were suspended, revoked or barred, and now have been reinstated by the department of transportation, the parolee must receive approval from the parolee's supervising judicial district director or director's designee prior to getting a driver's license.

~~*i.* The parolee shall cooperate in any treatment/rehabilitation/monitoring program as specified by the district department.~~

~~*j.* The parolee will make payments as directed by the restitution plan of payment.~~

**45.2(2)** *Special conditions.* Special conditions may be imposed at any time and shall only be imposed in accordance with the needs of the case as determined by the judicial district department of corrections, the department of corrections or the Iowa board of parole. Special conditions shall be handled in the following manner.

*a.* *Deletions.* ~~Immediately following the~~ When a condition is being deleted, the deletion shall be clearly noted on all copies of the parole agreement. Both the parolee and district department staff shall sign the notation of deletion including the date of the deletion and shall upload the updated agreement into the appropriate Iowa corrections offender network (ICON) module(s). The ~~district supervisor~~ district

director or designee and the board of parole shall be ~~immediately informed of the deletion in writing~~ notified of those deletions required by local policy and board of parole administrative rules.

*b.* *Additions.* Additional conditions may be imposed. ~~The~~ When a condition(s) is added, the additional ~~conditions~~ condition(s) shall be clearly indicated on all copies of the parole agreement and shall be signed and dated by the parolee and the supervising agent, and the updated agreement shall be uploaded into the appropriate ICON module(s). ~~The department of corrections and the parole board shall be notified of additional conditions in writing.~~

ITEM 52. Amend subrule 45.4(1) as follows:

**45.4(1)** *Offenses.* The district department may at any time report violations of the conditions of parole to the board of parole.

Within ~~ten calendar~~ five business days of receipt of knowledge of the commission of ~~certain~~ required reportable violations~~, listed below~~ as designated by the board of parole, the supervising officer shall make written report to the board of parole of the violations. ~~The report shall include a recommendation or revoke parole or continue the person on parole. When the subject of the report is the commission of a new offense, the supervising officer may withhold recommendation until disposition of the charges in district court.~~

~~*a.* Violation of any federal or state law; simple misdemeanors need not be reported.~~

~~*b.* Any violent or assaultive conduct.~~

~~*c.* Possession, control, or use of any firearms, imitation firearm, explosives, or weapons as defined in federal or state statutes.~~

~~*d.* Sale, possession, continual or problem use, transportation or distribution of any narcotic or other controlled substance, or repeated excessive use of alcohol by the parolee.~~

~~*e.* A parolee whose whereabouts are unknown and has been unavailable for contact for 30 days, or reliable information has been received indicating that the parolee is taking flight or absconding.~~

~~*f.* Any behavior indicating the parolee may be suffering from a mental disorder which impairs the parolee's ability to function in the community or which makes the parolee a danger to self or others when the mental disorder cannot be adequately treated while in the community.~~

~~*g.* Any other conduct or pattern of conduct in violation of the conditions of parole deemed sufficiently serious by the parole officer. The parole officer or supervisor is authorized to dispose of any other parolee misconduct not required to be reported above.~~

ITEM 53. Amend rule 201—45.5(906) as follows:

**201—45.5(906) Voluntary return to institution.** A parolee may ~~be returned~~ return to an Iowa department of corrections institution for a period not to exceed 90 days for treatment or further training, provided a voluntary return agreement is approved and signed by the district department and the warden ~~or superintendent~~ of said institution ~~and is signed by them~~ and by the parolee prior to the return. A parolee's voluntary return to the institution will also require a hearing with the parole board administrative law judge.

ITEM 54. Amend rule 201—45.6(906) as follows:

**201—45.6(906) Discharge from parole.** The parole officer shall make application for discharge to the district director following the parolee's satisfactory adjustment under supervision and upon the parole officer's determination that the parolee is able and willing to perform in a law-abiding fashion without further supervision. Discharge from parole may be granted prior to expiration of sentence, except for persons convicted for violation of Iowa Code section 709.3, 709.4 or 709.8, on or with a child. Such persons shall not be discharged until expiration of maximum sentence. Discharge granted by the district director shall terminate the person's sentence.

**45.6(1)** Recommendation. The recommendation for discharge from parole as submitted by the supervising officer shall include, but not be limited to, the following:

*a.* Parolee's ~~attitude and~~ adjustment to parole supervision.

*b.* to *e.* No change.

*f.* The reasons why the discharge is appropriate, based on the consideration of the parolee's level of risk.

**45.6(2)** Upon discharge, the parole officer shall give the discharged parolee the standard ~~form~~ information to be completed and submitted if the ex-parolee seeks restoration of citizenship rights. If the ex-parolee seeks restoration within 60 days of discharge, the parole agent shall recommend for or against the restoration. The standard ~~form~~ information shall be forwarded to the board of parole by the person seeking the restoration.

Under no circumstances shall parole supervision extend beyond the expiration of a parolee's sentence. (Iowa Code section 906.15)

**45.6(3)** No change.

ITEM 55. Adopt the following **new** rule 201—45.8(905):

**201—45.8(905) Infectious disease.** In compliance with Iowa Code section 905.15, the district department shall have a written policy and procedure to prevent the transmission of contagious infectious disease.

ITEM 56. Amend rule 201—47.1(904) as follows:

**201—47.1(904) OWI facilities.**

**47.1(1)** ~~Offenders~~ Clients convicted of an offense under Iowa Code chapter 321J, sentenced to the custody of the director of corrections, and assigned to a continuum of programming, including treatment providers, residential facilities and institutions, for the supervision and treatment of ~~offenders~~ clients shall be subject to the provisions of these rules and policies developed by the department of corrections.

**47.1(2)** The district department shall select appropriate facilities and treatment providers subject to the approval of the department of corrections, for the risk management and programming of ~~offenders~~ clients defined in this chapter.

**47.1(3)** Any facility operated by a district department directly or through a contract shall comply with the provisions of 201—Chapters 40 and 43 and policies developed by the department of corrections to include all federal PREA standards.

**47.1(4)** No change.

**47.1(5)** Any program operated pursuant to this chapter shall comply with licensure standards for correctional facilities ~~of the division of substance abuse,~~ set forth in 641—Chapter 156 of the department of public ~~health, 643—Chapter 6~~ health's rules.

~~**47.1(6)** Any facility operated in whole or in part under the provisions of this chapter shall review and consider the American Corrections Association Standards for Adult Community Residential Facilities.~~

~~**47.1(7)**~~ **47.1(6)** The district director is responsible for all programs and ~~offenders~~ clients that are subject to these rules and will develop consistent policies and procedures. Any change in the custody status of ~~offenders~~ clients shall be approved by the department of corrections in consultation with a district department official.

ITEM 57. Amend rule 201—47.2(904) as follows:

**201—47.2(904) Movement of ~~offenders~~ clients.**

**47.2(1)** The judicial district departments of correctional services and the department of corrections shall utilize standardized placement criteria founded on the presumption that assignment will be made to the least restrictive and most cost-effective component of the continuum for the purposes of risk management, substance abuse treatment, education, and employment. The continuum is defined as consisting of three basic components, namely (1) incarceration until released by the board of parole or expiration of sentence, (2) short-term incarceration for approximately ~~21~~ 60 days with subsequent transfer to a community corrections OWI residential program with differential levels of treatment and intervention, and (3) direct placement to a community corrections OWI residential program with differential levels of treatment and intervention. The criteria established to determine continuum

assignment consists of the ~~offender's~~ client's previous criminal record, present charges and attitude toward treatment.

**47.2(2)** When there is insufficient bed space in the community-based correctional program to accommodate the ~~offender~~ client, the court may order the ~~offender~~ client to be released on personal recognizance or bond, released to the supervision of the judicial district department of correctional services, or held in jail.

**47.2(3)** Priority for placement in the treatment program ~~will~~ shall be based on the date of sentence unless an exception is made by the department of corrections or district department for special circumstances.

**47.2(4)** When the ~~offender~~ client is sentenced to the director of the department of corrections and ordered to the supervision of the judicial district and space is not available in a community program, or supervision concerns arise, the district director or designee may request temporary placement at the Iowa Medical and Classification Center (IMCC)/Iowa Correctional Institution for Women (ICIW) for classification and assignment. Final approval is granted by the ~~regional~~ deputy director of community-based corrections or designee until space is available in the community program.

**47.2(5)** If medical conditions prohibit program participation and community resources, including University Hospitals, are not available to sufficiently meet ~~offender~~ client needs, the ~~offender~~ client may be assigned with the approval of the deputy director of ~~offender services~~ community-based corrections or designee to the Iowa Medical and Classification Center ~~at Oakdale~~ (IMCC)/Iowa Correctional Institution for Women (ICIW) for treatment until the ~~offender's~~ client's health status permits placement into a community-based correctional program.

**47.2(6)** The transfer of ~~offenders~~ clients placed with the department of corrections to community facilities may be delayed by the department of corrections for security or medical reasons. ~~Offenders~~ Clients with active detainers or ~~offenders~~ clients refusing to participate in the program may be transferred to an institution.

**47.2(7)** ~~Offenders~~ Clients placed with the department of corrections shall ~~be transferred in~~ typically transfer out of custody to their assigned facility unless an exception is ~~approved~~ required by the department of corrections.

**47.2(8)** The district department shall comply with established policies and develop procedures for the temporary confinement of ~~offenders~~ clients who present a threat to the safety or security of the public, facility staff, or residents.

**47.2(9)** ~~Offenders~~ Clients housed in community facilities may be transferred to the Iowa Medical and Classification Center (IMCC) or the Iowa Correctional Institution for Women (ICIW) on the recommendation of the district director or designee and with the approval of the ~~regional~~ deputy director of institutions or designee for reclassification and assignment to an institution. Transfer recommendations may be made for security, disciplinary, treatment, medical, or legal reasons.

**47.2(10)** The district department shall maintain a current contingency plan to ensure the continuation of programs or custody of ~~offenders~~ clients in the event of an emergency such as fire, tornado, chemical spill, or work stoppage.

**47.2(11)** ~~Offenders~~ Clients who have been housed in a community facility for substance abuse treatment, subsequently granted parole or work release, and said parole or work release is revoked, may be returned to the OWI Continuum, if eligible, or returned to the designated classification center for reclassification and placement in an institution.

ITEM 58. Amend rule 201—47.3(904) as follows:

**201—47.3(904) Fiscal.**

**47.3(1)** and **47.3(2)** No change.

**47.3(3)** The district department shall not enter into a subcontract for custody or treatment of ~~offenders~~ clients without the written approval of the ~~regional~~ deputy director of community-based corrections.

*a.* to *d.* No change.

**47.3(4)** The district department shall maintain a schedule of daily fees to be assessed to ~~offenders~~ clients.

**47.3(5)** ~~Offenders~~ Clients may not be denied services due to an inability to pay the daily fee.

**47.3(6)** The district department shall comply with established policies and develop procedures which require that all ~~offenders~~ clients surrender their earnings to facility staff for the purpose of financial management and savings. Those policies and procedures shall provide for the proper accounting and disbursement of all ~~offender~~ client funds including, but not limited to, deduction of a daily fee where appropriate.

**47.3(7)** Upon request by the district director or designee, the county shall provide temporary confinement of ~~offenders~~ clients allegedly violating the conditions of the assignment to a treatment program. The department of corrections shall negotiate a reimbursement rate with each county for the temporary confinement of ~~offenders~~ clients.

**47.3(8)** A county holding ~~offenders~~ clients ordered to jail due to insufficient space in a community-based corrections program will be reimbursed by the department of corrections.

**47.3(9)** If ~~an offender~~ a client escapes or participates in an act of absconding from the facility to which the ~~offender~~ client is assigned, the ~~offender~~ client shall reimburse the department of corrections for the cost of transportation.

ITEM 59. Amend rule 201—47.4(904) as follows:

**201—47.4(904) Program structure.**

**47.4(1)** The district department shall provide 24-hour housing and supervision of ~~offenders~~ clients either directly or through a contract with other agencies or individuals.

**47.4(2)** Each ~~offender~~ client shall sign a supervision agreement approved by the department of corrections. Failure to sign said agreement or abide by the requirements therein shall constitute reason to recommend returning the ~~offender~~ client to an institution.

**47.4(3)** The district department shall ensure that all ~~offenders~~ clients are involved in an appropriate continuum of programming which has been approved by the department of corrections.

**47.4(4)** No change.

**47.4(5)** The district department shall ensure, to the extent possible, that all ~~offenders~~ capable clients are employed a minimum of 30 hours per week.

**47.4(6)** The district department shall comply with established policies and procedures to allow ~~offenders~~ clients to leave the facility for treatment, employment, and food service when those activities are not provided at the facility. In all other circumstances, ~~offenders~~ clients may only leave the facility without supervision in accordance with department of corrections furlough procedures.

**47.4(7)** The district department, or subcontractor, shall utilize the department of corrections policies and procedures concerning ~~offender~~ client discipline.

**47.4(8)** ~~The~~ Each district department shall ~~comply with established~~ have policies and ~~develop~~ procedures ~~to ensure development and modification of~~ for a restitution plan of payment for each ~~offender~~ client entering the program. Said ~~plan~~ policies and procedures shall comply with the Code of Iowa ~~Code chapter 910~~ and local judicial procedure. Restitution payments shall be an integral part of each ~~offender's~~ client's financial management.

**47.4(9)** The district department shall comply with established policies and develop procedures to ensure that the ~~offenders~~ clients who are identified as needing continuing care receive follow-up treatment according to their identified needs. ~~An offender~~ The client will receive correctional supervision following release from the facility unless the ~~offender's~~ client's sentence has legally expired.

**47.4(10)** The district department shall have written policies and procedures which govern the medical care of OWI ~~offenders~~ clients in case of emergencies, sudden illnesses, accidents, or death.

**47.4(11)** The district department shall comply with established policies and develop procedures to ensure that a ~~written summary of the offender's progress in the program is~~ report of violations and a transfer classification decision are completed timely on all ~~offenders~~ clients who fail to satisfactorily complete the program and ~~are placed~~ who are being recommended for placement at the Iowa Medical and Classification Center/Iowa Correctional Institution for Women. ~~Said report shall be forwarded to the Iowa Medical and Classification Center immediately following termination from the program.~~

**47.4(12)** The district department shall comply with established policies and develop procedures and criteria for recommending parole from the facility which shall include the completion of a department of corrections approved continuum of programming. ~~The recommendation for parole shall specify the treatment hours completed and document that maximum benefits have been received. When physically able, the offender must demonstrate a satisfactory work record for at least 90 days. This requirement may be reduced by the department of corrections when justification exists.~~

**47.4(13)** Each ~~offender~~ client shall be awarded earned time in accordance with department of corrections policies and procedures. The district director or designee may recommend the loss of earned time pursuant to the same policy.

**47.4(14)** The district department shall comply with established policies and develop procedures which provide for visitation of ~~offenders~~ clients. However, visiting privileges may be limited to the extent necessary for treatment, security, or management reasons.

**47.4(15)** Reserved.

**47.4(16)** No change.

**47.4(17)** The district department shall comply with established policies and develop procedures for addressing an escape when ~~an offender~~ a client is absent from the facility without authorization or there is probable cause to believe the ~~offender~~ client is taking flight or involved in criminal activity.

ITEM 60. Amend rule 201—50.3(356,356A) as follows:

**201—50.3(356,356A) Inspection and compliance.** The chief jail inspector or authorized representatives shall visit and inspect each jail within this state at least annually to determine the degree of compliance with these standards and within 45 days of each inspection shall report the results to the sheriff and the governing body responsible for the facility.

~~If a residential facility is operated by a judicial district department of correctional services, the regional deputy director of the department of corrections and the regional deputy director's personnel shall be responsible for all inspections and approvals and shall have the same powers as the members of the jail inspection unit in carrying out these rules.~~

**50.3(1)** to **50.3(3)** No change.

This rule is intended to implement Iowa Code sections 17A.10, 17A.12 and 356.43.

ITEM 61. Amend subrule 50.9(2) as follows:

**50.9(2)** *Compliance with fire marshal rules.* No jail shall be occupied by a prisoner unless the state fire marshal or qualified local fire prevention authority has issued a certificate of inspection within the last ~~24~~ 18 calendar months documenting that the jail complies with the fire safety standards for jails included in administrative rules promulgated by the state fire marshal. Jails may be inspected by the fire marshal, or by personnel of local fire departments deemed by the fire marshal qualified to conduct inspections, on a schedule determined by the fire marshal. The state jail inspection unit of the department of corrections, a jail administrator, or the chief executive of an agency that administers a jail may request that the state fire marshal inspect a jail for compliance with fire safety standards. If the state fire marshal finds that a jail is not in substantial compliance with fire safety standards based on such an inspection, the state fire marshal may require the jail administrator to submit to the fire marshal a plan of correction of violations of these standards. The director of the Iowa department of corrections may initiate proceedings to close the jail if the jail does not comply with the plan of correction.

ITEM 62. Amend subrule 50.19(1) as follows:

**50.19(1)** *Prisoner mail.*

*a.* to *c.* No change.

*d.* Privileged correspondence if so marked may be opened only in the presence of the prisoner and then only to detect the presence of contraband; it may not be read except by the prisoner. Privileged correspondence is defined as incoming and outgoing mail to or from:

(1) An attorney;

(2) A judge;

(3) The governor of Iowa;

(4) The ~~citizen's aide office~~ ombudsman office;
(5) A member of the state or federal legislature.
*e.* No change.

ITEM 63. Rescind and reserve rule **201—50.23(356,356A)**.

ITEM 64. Amend rule 201—51.3(356,356A) as follows:

**201—51.3(356,356A) Inspection and compliance.** The chief inspector or authorized representatives shall visit and inspect each facility within this state at least annually to determine the degree of compliance with these standards and within 45 days of each inspection shall report the results to the temporary holding facility administrator and the governing body responsible for the facility. ~~If a residential facility is operated by a judicial district department of correctional services, the regional deputy director of the department of corrections and the regional deputy director's personnel shall be responsible for all inspections and approvals and shall have the same powers as the members of the inspection unit in carrying out these rules.~~

**51.3(1)** to **51.3(3)** No change.

This rule is intended to implement Iowa Code sections 17A.10, 17A.12 and 356.43.

ITEM 65. Amend subrule 51.8(2), introductory paragraph, as follows:

**51.8(2)** *Compliance with fire marshal rules.* No facility shall be occupied by a detainee unless the state fire marshal or qualified local fire prevention authority has issued a certificate of inspection within the last ~~24~~ 18 calendar months documenting that the facility complies with the fire safety standards for temporary holding facilities included in administrative rules promulgated by the state fire marshal.

ITEM 66. Adopt the following **new** subrule 51.16(5):

**51.16(5)** *Detainee mail.*

*a.* Detainees held beyond 24 hours shall be furnished a reasonable amount of writing materials upon request. Jail officials may prohibit a detainee from corresponding with a person who states in writing that the person does not want to correspond with the detainee. This mail restriction does not include a "prior approval" list.

*b.* A reasonable amount of postage shall be provided to indigent detainees who are held beyond 24 hours for communication with the courts and for at least two letters per week of a personal nature when other means of communication are not available.

*c.* General correspondence may be opened and inspected; it may be read for security reasons if the detainee is notified of this procedure.

*d.* Privileged correspondence if so marked may be opened only in the presence of the detainee and then only to detect the presence of contraband; privileged correspondence may not be read except by the detainee. Privileged correspondence is defined as incoming and outgoing mail to or from:

(1) An attorney;
(2) A judge;
(3) The governor of Iowa;
(4) The ombudsman office;
(5) A member of the state or federal legislature.

*e.* Written policy, procedure, and practice require that, excluding weekends and holidays, incoming and outgoing letters be held for no more than 24 hours and packages be held for no more than 48 hours for inspection before delivery to the detainee or post office.

[Filed 7/13/18, effective 9/5/18]
[Published 8/1/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/1/18.

# ARC 3930C

# INSPECTIONS AND APPEALS DEPARTMENT[481]

**Adopted and Filed**

**Rule making related to tuberculosis (TB) screening**

The Inspections and Appeals Department hereby rescinds Chapter 59, "Tuberculosis (TB) Screening," Iowa Administrative Code, and adopts a new Chapter 59 with the same title.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 10A.104(5), 135B.7 and 135C.14.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 135B.7 and 135C.14.

*Purpose and Summary*

Following the adoption of the Department's original tuberculosis screening rules in 2013, health care facilities, hospitals, and employees sought clarification regarding the applicability of the rules under a variety of circumstances, such as transfer of health care workers between facilities, testing time frames for "two-step TST" and whether health care students, such as nursing students, are included in the definition of "health care worker." This adopted rule making rescinds Chapter 59 and adopts a new Chapter 59 that incorporates several suggestions from the Department's stakeholders, clarifies the baseline TB screening process and what the TB risk assessment shall include, and clarifies and expands the definitions of "two-step tuberculin skin test," "health care worker," and "transfer" as the term relates to health care workers changing employment between health care facilities or hospitals.

The Hospital Licensing Board reviewed this rule making at its April 6, 2018, meeting.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 6, 2018, as **ARC 3818C**. No public comments were received. Three changes from the Notice have been made. In the definition of "Tuberculosis," "M." has been added to the term "canetti" to more clearly identify the species of the disease. Also, "that" has been changed to "who" in the second sentence of the definition of "TB patient" to more clearly identify that the relevant clause is referencing the person and not the type of TB. This same change has been made in 59.3(3) to clearly identify that the clause is referencing a person and not the type of TB.

*Adoption of Rule Making*

The rule making was initially reviewed by the State Board of Health at its May 8, 2018, meeting, and subsequently approved by the Board at its July 11, 2018, meeting. This rule making was adopted by the Department on July 11, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on September 5, 2018.

The following rule-making action is adopted:

Rescind 481—Chapter 59 and adopt the following **new** chapter in lieu thereof:

CHAPTER 59
TUBERCULOSIS (TB) SCREENING

**481—59.1(135B,135C) Purpose.** The intent of this chapter is to outline requirements and procedures to conduct tuberculosis screening for health care workers in health care facilities and hospitals and for residents of health care facilities regulated by the department.

**481—59.2(135B,135C) Definitions.** For purposes of this chapter, the following definitions apply:

*"Bacille Calmette-Guérin vaccination"* or *"BCG vaccination"* means a vaccine for TB. BCG vaccination is used in many countries with a high prevalence of TB to prevent childhood tuberculosis meningitis and miliary disease. BCG vaccination is not generally recommended for use in the United States because of the low risk of infection with *Mycobacterium tuberculosis*, the variable effectiveness of the vaccine against adult pulmonary TB, and the vaccine's potential interference with tuberculin skin test reactivity.

*"Baseline TB screening"* means the screening of health care workers (HCWs) of health care facilities or hospitals at the beginning of employment in a facility or hospital and of residents of health care facilities upon admission to a facility for latent tuberculosis infection (LTBI) and TB disease. Baseline TB screening includes a symptom screen for all HCWs and residents, and two-step tuberculin skin test (two-step TST) or single interferon-gamma release assay (IGRA) for *M. tuberculosis* for those persons with previous negative test results for *M. tuberculosis* infection.

*"Baseline TST"* or *"baseline IGRA"* means the two-step TST or IGRA, respectively, which is administered at the beginning of employment to newly hired HCWs or upon admission of residents to health care facilities.

*"Boosting"* means a phenomenon in which a person has a negative TST (i.e., false-negative) result years after infection with *M. tuberculosis* and then a positive subsequent TST result. The positive TST result is caused by a boosted immune response of previous sensitivity rather than by a new infection (false-positive TST conversion). Two-step testing reduces the likelihood of mistaking a boosted reaction for a new infection.

*"Department"* means the department of inspections and appeals.

*"Employment"* or *"employed"* means to be hired or retained for paid or unpaid work in a facility or hospital.

*"Extrapulmonary TB"* means TB disease in any part of the body other than the lungs (e.g., kidney, spine, or lymph nodes).

*"Health care facility"* or *"facility"* means a health care facility as defined in Iowa Code section 135C.1 or a long-term care service of a hospital as defined in rule 481—51.38(135B).

*"Health care worker"* or *"HCW"* means any paid or unpaid person (including health care students) working in a health care facility or hospital, including any person who is paid either by the health care facility or hospital or paid by any other entity (i.e., temporary agency, private duty, Medicaid/Medicare or independent contractors), or any volunteer who volunteers in a health care facility or hospital on a consistent and regularly scheduled basis for five or more hours per week. Specifically excluded from the definition of "health care worker" are individuals such as visitors, building contractors, repair workers or others who are in the facility or hospital for a very limited purpose and are not in the facility or hospital on a regular basis.

*"Hospital"* means a hospital as defined in Iowa Code section 135B.1.

*"Interferon-gamma release assay"* or *"IGRA"* means a whole-blood test that can aid in diagnosing *M. tuberculosis* infection.

*"Laryngeal TB"* means a form of TB disease that involves the larynx and may be highly infectious.

*"Latent TB infection"* or *"LTBI"* means infection with *M. tuberculosis* without symptoms or signs of disease having manifested.

*"Mantoux method"* means a skin test performed by intradermally injecting 0.1 mL of purified protein derivative (PPD) tuberculin solution into the volar or dorsal surface of the forearm.

*"Patient"* means a person admitted to a hospital.

*"Pulmonary TB"* means TB disease that occurs in the lung parenchyma, usually producing a cough that lasts greater than three weeks. Pulmonary TB is usually infectious.

*"Purified protein derivative tuberculin"* or *"PPD tuberculin"* means a material used in diagnostic tests for detecting infection with *M. tuberculosis*.

*"Resident"* means a person admitted to a health care facility or a long-term care service of a hospital as defined in rule 481—51.38(135B). For purposes of this chapter, "resident" does not include a patient admitted to a hospital.

*"Risk classification"* means the category that the infection control team, or designated other staff, determines is appropriate for the facility or hospital as a result of the TB risk assessment.

*"Serial TB screening"* means TB screening performed at regular intervals following baseline TB screening. Serial TB screening, also called annual or ongoing TB testing, consists of two components: (1) assessing for current symptoms of active TB disease, and (2) testing for the presence of infection with *M. tuberculosis* by administering either a TST or single IGRA.

*"Symptom screen"* means a procedure used during a clinical evaluation in which persons are asked if they have experienced any departure from normal in function, appearance, or sensation related to TB disease (e.g., cough).

*"TB patient"* means a person who had undiagnosed infectious pulmonary or laryngeal TB while in a health care facility or hospital during the preceding year. "TB patient" does not include persons with LTBI (treated or untreated), extrapulmonary TB disease, pulmonary TB, or laryngeal TB who have met criteria for noninfectiousness.

*"TB risk assessment"* means an initial and ongoing annual evaluation of the risk for transmission of *M. tuberculosis* in a particular health care setting.

*"TB screening"* means an administrative control measure in which evaluation for LTBI and TB disease is performed through baseline and serial screening of HCWs in hospitals and health care facilities and residents of health care facilities.

*"Transfer"* means an HCW changes employment from one health care facility or hospital to another health care facility or hospital where the time frame between employment does not exceed 90 days.

*"Treatment for LTBI"* means treatment that prevents the progression of *M. tuberculosis* infection into TB disease.

*"Tuberculin skin test"* or *"TST"* means a diagnostic aid for finding *M. tuberculosis* infection. The Mantoux method is the recommended method to be used for TST.

*"Tuberculosis"* or *"TB"* means the namesake member organism of *M. tuberculosis* complex and the most common causative infectious agent of TB disease in humans. In certain instances, the species name

refers to the entire *M. tuberculosis* complex, which includes *M. bovis*, *M. african*, *M. microti*, *M. canetti*, *M. caprae*, and *M. pinnipedii*.

*"Tuberculosis disease"* or *"TB disease"* means a condition caused by infection with a member of the *M. tuberculosis* complex that has progressed to causing clinical (manifesting signs or symptoms) or subclinical (early stage of disease in which signs or symptoms are not present, but other indications of disease activity are present) illness.

*"Two-step tuberculin skin test"* or *"two-step TST"* means the procedure used for the baseline skin testing of persons who may receive serial TSTs.

**481—59.3(135B,135C) TB risk assessment.**

**59.3(1)** Annually, a health care facility or hospital shall conduct a TB risk assessment to evaluate the risk for transmission of *M. tuberculosis*, regardless of whether a person with suspected or confirmed TB disease is expected to be encountered in the facility or hospital. The TB risk assessment shall be utilized to determine the types of administrative, environmental, and respiratory protection controls needed and serves as an ongoing evaluation tool of the quality of TB infection control and for the identification of needed improvements in infection control measures.

**59.3(2)** The TB risk assessment shall include the number of persons with infectious TB encountered in the facility or hospital that resulted in the facility's or hospital's conducting a contact investigation of exposed HCWs or patients during the previous 12 months.

**59.3(3)** TB cases include persons who had undiagnosed infectious pulmonary or laryngeal TB while in the facility or hospital during the preceding year. This does not include persons with LTBI (treated or untreated), persons with extrapulmonary TB disease, or persons with pulmonary and laryngeal TB who have met criteria for noninfectiousness.

**481—59.4(135B,135C) Health care facility or hospital risk classification.** The infection control team or designated staff in a health care facility or hospital is responsible for determining the type of risk classification. The facility's or hospital's risk classification is used to determine frequency of serial TB screening. The facility or hospital risk classification may change due to an increase or decrease in the number of TB cases during the preceding year. The following criteria are consistent with those of the Centers for Disease Control and Prevention (CDC), TB Elimination Division, as outlined in the MMWR December 30, 2005/Vol.54/No.RR-17, "Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings, 2005."

**59.4(1)** *Types of risk classifications.*

*a.* "Low risk" means that a facility or hospital is one in which persons with active TB disease are not expected to be encountered and in which exposure to TB is unlikely.

*b.* "Medium risk" means that a facility or hospital is one in which health care workers will or might be exposed to persons with active TB disease or to clinical specimens that might contain *M. tuberculosis*.

*c.* "Potential ongoing transmission" means that a facility or hospital is one in which there is evidence of person-to-person transmission of *M. tuberculosis*. This classification is a temporary classification. If it is determined that this classification applies to a facility or hospital, the facility or hospital shall consult with the department of public health's TB control program.

**59.4(2)** *Classification criteria—low risk.*

*a.* Inpatient settings with 200 beds or more. If a facility or hospital has fewer than six TB patients for the preceding year, the facility or hospital shall be classified as low risk.

*b.* Inpatient settings with fewer than 200 beds. If a facility or hospital has fewer than three TB patients for the preceding year, the facility or hospital shall be classified as low risk.

**59.4(3)** *Classification criteria—medium risk.*

*a.* Inpatient settings with 200 beds or more. If a facility or hospital has six or more TB patients for the preceding year, the facility or hospital shall be classified as medium risk.

*b.* Inpatient settings with fewer than 200 beds. If a facility or hospital has three or more TB patients for the preceding year, the facility or hospital shall be classified as medium risk.

**59.4(4)** *Classification criteria—potential ongoing transmission.* If evidence of ongoing *M. tuberculosis* transmission exists at a facility or hospital, the facility or hospital shall be classified as potential ongoing transmission, regardless of the facility's or hospital's previous classification.

**481—59.5(135B,135C) Baseline TB screening procedures for health care facilities and hospitals.**

**59.5(1)** All HCWs shall receive baseline TB screening upon employment. Baseline TB screening consists of two components: (1) assessing for current symptoms of active TB disease and (2) testing using the two-step TST procedure or a single IGRA to screen for infection with *M. tuberculosis*. If the first-step TST result is negative, the second stage of the two-step TST is recommended one to three weeks after the first TST result was read. Administration of the second stage of the two-step TST shall not exceed 12 months after the first TST result was read. If initiation of the second stage of the two-step TST is greater than 12 months from when the first TST result was read, the two-step procedure must be restarted. If the first-step TST result is positive, it is not necessary to perform the second stage of the two-step TST.

**59.5(2)** An HCW may begin working with patients or residents after a negative TB symptom screen (i.e., no symptoms of active TB disease) and a negative TST (i.e., first step) or negative IGRA. The second TST may be performed after the HCW starts working with patients or residents.

**59.5(3)** An HCW with a new positive test result for *M. tuberculosis* infection (i.e., TST or IGRA) shall receive one chest radiograph result to exclude TB disease. Repeat radiographs are not needed unless signs or symptoms of TB disease develop or unless a repeat radiograph is recommended by a clinician. Treatment for LTBI should be considered in accordance with CDC guidelines.

**59.5(4)** An HCW with documentation of past positive test results (i.e., TST or IGRA) and documentation of the results of a chest radiograph indicating no active disease, dated after the date of the positive TST or IGRA test result, does not need another chest radiograph at the time of hire.

**59.5(5)** TB, TST or IGRA tests for *M. tuberculosis* infection do not need to be performed for HCWs with a documented history of TB disease, documented previously positive test result for *M. tuberculosis* infection, or documented completion of treatment for LTBI or TB disease. A TB symptom screen and documentation of a previously positive test result for *M. tuberculosis* infection can be substituted for a baseline test result if the documentation includes a recorded TST result in millimeters or IGRA result. All other HCWs should undergo baseline testing for *M. tuberculosis* infection to ensure that the test result on record in the setting has been performed and measured using the recommended diagnostic procedures.

**59.5(6)** Previous BCG vaccination is not a contraindication to having an IGRA, a TST or a two-step skin testing administered. HCWs with previous BCG vaccination should receive baseline and serial testing in the same manner as those without BCG vaccination. Evaluation of TST reactions in persons BCG-vaccinated should be interpreted using the same criteria for those not BCG-vaccinated. An HCW's history of BCG vaccination should be disregarded when administering and interpreting TST results. Prior BCG vaccination does not cause a false-positive IGRA test result.

**481—59.6(135B,135C) Serial TB screening procedures for health care facilities and hospitals.**

**59.6(1)** *Health care facilities or hospitals classified as low risk.* After establishing baseline TB screening of HCWs, serial TB screening of HCWs is not necessary for health care facilities or hospitals classified as low risk.

**59.6(2)** *Health care facilities or hospitals classified as medium risk.*

*a.* After establishing baseline TB screening, HCWs in health care facilities or hospitals classified as medium risk shall receive serial TB screening annually. However, an HCW with a previous positive TB test result shall only receive annual TB symptom screening in accordance with 59.5(5).

*b.* An HCW with a baseline positive or new positive test result for *M. tuberculosis* infection or documentation of previous treatment for LTBI or TB disease shall receive one chest radiograph result to exclude TB disease. Instead of participating in serial testing, HCWs should receive a symptom screen annually. This screen should be accomplished by educating HCWs about symptoms of TB disease and

instructing HCWs to report any such symptoms immediately to the occupational health unit. Treatment for LTBI should be considered in accordance with CDC guidelines.

**59.6(3)** *Health care facilities or hospitals classified as potential ongoing transmission.* HCWs in facilities or hospitals classified as potential ongoing transmission shall receive serial TB screening every eight to ten weeks until lapses in infection control have been corrected and no additional evidence of ongoing transmission is apparent. However, an HCW with a previous positive TB test result shall only receive TB symptom screening in accordance with 59.5(5). The potential ongoing transmission classification should be used only as a temporary classification. This classification warrants immediate investigation and corrective steps. After a determination that ongoing transmission has ceased, the setting shall be reclassified as medium risk for a minimum of one year.

**481—59.7(135B,135C) Screening of HCWs who transfer to other health care facilities or hospitals.**

**59.7(1)** *HCWs transferring from a low-risk health care facility or hospital to another low-risk health care facility or hospital.* HCWs with documentation of baseline TB screening who are transferring from a low-risk health care facility or hospital to another low-risk health care facility or hospital do not need to repeat baseline TB screening if the time frame between employment from one facility or hospital to another does not exceed 90 days. If the time frame between employment from one facility or hospital to another exceeds 90 days, baseline TB screening shall be restarted for an HCW with a previous negative test result and a TB symptom screen shall be performed for an HCW with a previous positive TB test result in accordance with 59.5(5).

**59.7(2)** *HCWs transferring from a low-risk health care facility or hospital to a medium-risk health care facility or hospital.* HCWs with documentation of baseline TB screening who are transferring from a low-risk health care facility or hospital to a medium-risk health care facility or hospital do not need to repeat baseline TB screening if the time frame between employment from one facility or hospital to another does not exceed 90 days. If the time frame between employment from one facility or hospital to another exceeds 90 days, baseline TB screening shall be restarted for an HCW with a previous negative test result and a TB symptom screen shall be performed for an HCW with a previous positive TB test result in accordance with 59.5(5).

**59.7(3)** *HCWs transferring from a low- or medium-risk health care facility or hospital to a health care facility or hospital classified as potential ongoing transmission.* HCWs with documentation of baseline TB screening who are transferring to a potential ongoing risk health care facility or hospital do not need to repeat baseline TB screening if the time frame between employment from one facility to another does not exceed 90 days. If the time frame between employment from one facility or hospital to another exceeds 90 days, baseline TB screening shall be restarted for an HCW with a previous negative test result and a TB symptom screen shall be performed for an HCW with a previous positive TB test result in accordance with 59.5(5).

**59.7(4)** *HCWs transferring from a medium-risk health care facility or hospital to a low-risk health care facility or hospital.*

*a.* An HCW who is transferring from a medium-risk health care facility or hospital to a low-risk health care facility or hospital and whose previous TB test result was negative shall receive a symptom screen and a single TST or IGRA upon employment if the time frame between employment from one facility to another does not exceed 90 days. If the time frame between employment from one facility or hospital to another exceeds 90 days, baseline TB screening shall be restarted.

*b.* An HCW who is transferring from a medium-risk health care facility or hospital to a low-risk health care facility or hospital and whose previous TB test result was positive shall receive a symptom screen upon employment in accordance with 59.5(5).

**59.7(5)** *HCWs transferring from a health care facility or hospital classified as potential ongoing transmission to a low- or medium-risk health care facility or hospital.*

*a.* An HCW who is transferring from a health care facility or hospital classified as potential ongoing transmission to a low- or medium-risk health care facility or hospital and whose previous TB test result was negative shall receive a symptom screen and a single TST or IGRA upon employment if the time frame between employment from one facility to another does not exceed 90 days. If the

time frame between employment from one facility or hospital to another exceeds 90 days, baseline TB screening shall be restarted.

*b.* An HCW who is transferring from a health care facility or hospital classified as potential ongoing transmission to a low- or medium-risk health care facility or hospital and whose previous TB test result was positive shall receive a symptom screen upon employment in accordance with 59.5(5).

**481—59.8(135B,135C) Baseline TB screening procedures for residents of health care facilities.**

**59.8(1)** Baseline TB screening is a formal procedure to evaluate residents for LTBI and TB disease. Baseline TB screening consists of two components: (1) assessing for current symptoms of active TB disease, and (2) using the two-step TST procedure or a single IGRA to screen for infection with *M. tuberculosis*. If the first-step TST result is negative, the second stage of the two-step TST is recommended one to three weeks after the first TST result was read. Administration of the second stage of the two-step TST shall not exceed 12 months after the first TST result was read. If the second stage of the two-step TST is greater than 12 months from when the first TST result was read, the two-step procedure must be restarted. If the first-step TST result is positive, it is not necessary to perform the second stage of the two-step TST.

**59.8(2)** All residents shall be assessed for current symptoms of active TB disease upon admission. Within 72 hours of a resident's admission, baseline TB screening for infection shall be initiated unless baseline TB screening occurred within 90 days prior to the resident's admission.

**59.8(3)** A resident with a new positive test result for *M. tuberculosis* infection (i.e., TST or IGRA) shall receive one chest radiograph result to exclude TB disease. Repeat radiographs are not needed unless signs or symptoms of TB disease develop or unless a repeat radiograph is recommended by a clinician.

**59.8(4)** Residents with documentation of past positive test results (i.e., TST or IGRA) and documentation of the results of a chest radiograph indicating no active disease, dated after the date of the positive TST or IGRA test result, do not need another chest radiograph at the time of admission.

**59.8(5)** TB, TST or IGRA tests for *M. tuberculosis* infection do not need to be performed for residents with a documented history of TB disease, documented previously positive test result for *M. tuberculosis* infection, or documented completion of treatment for LTBI or TB disease. Documentation of a previously positive test result for *M. tuberculosis* infection can be substituted for a baseline test result if the documentation includes a recorded TST result in millimeters or IGRA result, including the concentration of cytokine measured (e.g., IFN-g). All other residents should undergo baseline testing for *M. tuberculosis* infection to ensure that the test result on record in the setting has been performed and measured using the recommended diagnostic procedures.

**481—59.9(135B,135C) Serial TB screening procedures for residents of health care facilities.** After baseline TB screening is accomplished, serial TB screening of residents is not recommended.

**481—59.10(135B,135C) Performance of screening and testing.** Any nurse licensed in Iowa and properly trained to screen for TB and perform TB testing may screen for TB and perform TB testing.

These rules are intended to implement Iowa Code sections 135B.7 and 135C.14.

[Filed 7/11/18, effective 9/5/18]
[Published 8/1/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/1/18.

**ARC 3931C**

# NATURAL RESOURCE COMMISSION[571]

**Adopted and Filed**

**Rule making related to Iowa River buoys and speed restrictions**

The Natural Resource Commission hereby amends Chapter 40, "Boating Speed and Distance Zoning," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 462A.26 and 462A.32.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 462A.26 and 462A.32.

*Purpose and Summary*

Pursuant to Iowa Code section 17A.7, the Scenic City Empress Boat Club (SCEBC) petitioned the Commission to amend Chapter 40 regarding regulation of buoys and speed restrictions in waters under the jurisdiction of the Commission. SCEBC operates riverboat cruises from its property at 1113 Union Street in Iowa Falls on the Iowa River. The petitioner has indicated that the safety of passengers loading and unloading from its Empress Riverboat is put at risk by the wakes of passing boats rocking the riverboat at its dock. SCEBC requested that the Commission designate a no-wake zone, marked by buoys, extending no more than 75 feet into the river channel, beginning at SCEBC's west property boundary and ending at its east property boundary.

The Commission supported the petition and undertook this rule making for the following reasons: (1) a no-wake zone will ensure passenger safety while passengers are boarding and unloading at the SCEBC dock, (2) safe operation of the Empress Riverboat will help support tourism which the riverboat cruises bring to Hardin County, and (3) the placement of buoys will clearly mark the no-wake zone for all river users.

Therefore, the Commission adopts new subrules 40.36(3) and 40.36(4) to change the zoning of the Iowa River in Hardin County to add a no-wake zone adjacent to the SCEBC property in Iowa Falls, Iowa.

The new subrules clarify that the SCEBC is responsible for the placement and maintenance of the buoys designating the no-wake zone. The language retains the provision that the City of Iowa Falls is responsible for the existing speed zone between the River Street Bridge and the dock at Dougan's Landing.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 9, 2018, as **ARC 3782C**. A public hearing was held on May 29, 2018, from 1 to 2 p.m. at Conference Room 4W, Wallace State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received during the open comment period. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Commission on July 12, 2018.

*Fiscal Impact*

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

NATURAL RESOURCE COMMISSION[571](cont'd)

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found. However, the Empress Riverboat is a large tourist draw for the county and positively impacts the local economy.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on September 5, 2018.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** subrule 40.36(3):

**40.36(3)** All vessels operated in a designated zone beginning at the west property boundary and ending at the east property boundary of the Scenic City Empress Boat Club property located at 1113 Union Street shall be operated at a no-wake speed. The zone shall not extend more than 75 feet into the Iowa River channel.

ITEM 2. Adopt the following **new** subrule 40.36(4):

**40.36(4)** The Scenic City Empress Boat Club shall designate and maintain the no-wake zone with marker buoys approved by the natural resource commission.

[Filed 7/13/18, effective 9/5/18]
[Published 8/1/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/1/18.

**ARC 3932C**

# PROFESSIONAL LICENSURE DIVISION[645]

**Adopted and Filed**

**Rule making related to practice of respiratory care and polysomnography**

The Board of Respiratory Care and Polysomnography hereby amends Chapter 261, "Licensure of Respiratory Care Practitioners, Polysomnographic Technologists, and Respiratory Care and Polysomnography Practitioners," and Chapter 262, "Continuing Education for Respiratory Care Practitioners and Polysomnographic Technologists," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 148G.5 and 152B.6.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 148G.5 and 152B.6.

*Purpose and Summary*

Item 1 corrects the name of the National Board for Respiratory Care. Item 2 updates the Board's address. Items 3 and 6 clarify the required documentation for a background check. Applicants will get informational documents in a packet from the Board of Respiratory Care and Polysomnography that do not need to be submitted with a license application. This rule making clarifies that for the background check, the Board needs the cards and not the informational documents. Items 4 and 5 add options for respiratory care students seeking to meet the requirements for polysomnography licensure. This change in rule more closely matches options given in the Iowa Code. Item 7 changes the number of continuing education hours that a dual licensee must earn from in-person courses. This change brings the requirements in line with the other two licenses issued by the Board. Item 8 reletters paragraph 262.3(2)"e" as 262.3(2)"f" to allow for the new paragraph in Item 9. Item 9 allows licensees to earn continuing education for trainings that may not be related to a clinical process but are still in an area of education that is utilized by the practitioner in the practitioner's regular practice.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 14, 2018, as **ARC 3617C**. A public hearing was held on March 7, 2018, at 8:30 a.m. in the Fifth Floor Conference Room 526, Lucas State Office Building, Des Moines, Iowa. No one attended the public hearing.

Public comment was received requesting that the Board change the term used to define a sleep education program. The current language uses "sleep add-on program" to reference additional education in polysomnography that respiratory care students may receive. The request from the public was to use the term "sleep specialist program option." Public comment also requested that the Commission on Accreditation of Allied Health Education Programs (CAAHEP) be added as an accrediting body. These changes match the terminology used by the accrediting body Commission on Accreditation for Respiratory Care (CoARC).

After a review of public comments, the Board voted to change the language in Item 4 to allow for a program accredited by CoARC or CAAHEP and voted to change "sleep add-on program" to "sleep specialist program option" in Item 5. The Board believes the changes from the Notice do not impact the intent or implementation of the rule.

*Adoption of Rule Making*

This rule making was adopted by the Board on May 15, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 645—Chapter 18.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on September 5, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule **645—261.1(148G,152B)**, definition of "NBRC," as follows:

*"NBRC"* means the National Board ~~of~~ for Respiratory Care.

ITEM 2. Amend paragraph **261.2(1)"a"** as follows:

*a.* The applicant shall complete a board-approved application packet. Application forms may be obtained from the board's ~~Web site (http://idph.iowa.gov/Licensing)~~ website (idph.iowa.gov/Licensing) or directly from the board office or may be submitted electronically at ~~https://IBPLicense.iowa.gov~~ IBPLicense.iowa.gov. Paper applications shall be sent to Board of Respiratory Care and Polysomnography, Professional Licensure Division, Fifth Floor, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075.

ITEM 3. Amend paragraph **261.2(1)"d"** as follows:

*d.* The applicant shall submit two completed sets of ~~the~~ fingerprint ~~packet~~ cards to facilitate a national criminal history background check. The cost for the evaluation of the fingerprint ~~packet~~ cards and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI) criminal history background checks shall be assessed to the applicant. The board may withhold issuing a license pending receipt of a report from the DCI and FBI.

ITEM 4. Amend subrule 261.4(2) as follows:

**261.4(2)** Graduation from ~~a respiratory care~~ an entry into respiratory care professional practice program accredited by CoARC ~~and completion of the sleep add-on program accredited by CoARC. A~~ or CAAHEP for which a transcript shall be submitted to the board office directly from the college or university; ~~or~~ and direct-source verification of one of the following:

*a.* Completion of a sleep specialist program option accredited by CoARC or CAAHEP, or

*b.* Obtaining the sleep disorder specialist credential from the NBRC, or

*c.* Obtaining the registered polysomnographic technologist credential from the BRPT; or

ITEM 5. Amend paragraph **261.5(2)"b"** as follows:

*b.* Completion of a sleep ~~add-on program~~ specialist program option accredited by CoARC~~. A~~ or CAAHEP for which a transcript shall be submitted to the board office directly from the college or university; ~~or~~ and direct-source verification of one of the following:

(1) Completion of the curriculum for a polysomnographic certificate established and accredited by the CAAHEP as an extension of the respiratory care program, or

(2) Obtaining the sleep disorder specialist credential from the NBRC, or

(3) Obtaining the registered polysomnographic technologist credential from the BRPT; or

ITEM 6. Amend subrule 261.14(3) as follows:

**261.14(3)** If the license has been inactive for two or more years, the licensee shall submit two completed ~~sets of the~~ fingerprint ~~packet~~ cards to facilitate a national criminal history background check. The cost for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks shall be assessed to the applicant. The board may withhold issuing a license pending receipt of a report from the DCI and FBI.

ITEM 7. Amend paragraph **262.2(1)"b"** as follows:

*b.* For respiratory care and polysomnography practitioner licensees: complete a minimum of 24 hours of continuing education. ~~Eighteen~~ Fourteen of the 24 hours of continuing education shall be earned by completing a program in which the instructor conducts the class in person or by employing an

electronic technology that allows for real-time communication between the instructor and licensee. At least 8 hours but not more than 12 hours shall be on sleep-related topics.

ITEM 8. Reletter paragraph **262.3(2)"e"** as **262.3(2)"f."**

ITEM 9. Adopt the following **new** paragraph **262.3(2)"e"**:

*e.* A maximum of 6 hours of continuing education may be obtained by completing programs which enhance a supplemental or complementary skill set directly related to the practice of respiratory care or polysomnography. Content areas include but are not limited to record keeping, electronic medical records, geriatric care, mandatory reporter training, and ethics.

[Filed 7/9/18, effective 9/5/18]
[Published 8/1/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/1/18.

**ARC 3933C**

# PUBLIC EMPLOYMENT RELATIONS BOARD[621]

**Adopted and Filed**

**Rule making related to retention and recertification elections**

The Public Employment Relations Board hereby amends Chapter 5, "Elections," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 20.6(5).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 20.15(2).

*Purpose and Summary*

The agency adopted emergency rules effective August 10, 2017, to implement provisions of 2017 Iowa Acts, House File 291. The agency subsequently adopted amendments to clarify the emergency rules, and those amendments became effective June 13, 2018.

The amendment adopted herein provides additional clarification to the rules regarding retention and recertification elections based on feedback and internal review. This amendment clarifies that the agency will only conduct an election if the employer and the certified employee organization are parties to a collective bargaining agreement. The adopted amendment conforms subrule 5.6(1) to Iowa Code section 20.15(2)"a."

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 6, 2018, as **ARC 3825C**. The agency requested that comments be submitted by June 26, 2018. The agency received no formal comments but did respond to clarifying questions. The agency received questions regarding the number of units that do not have collective bargaining agreements. Out of the nearly 1,200 certified bargaining units, only a handful of units have consistently gone without a collective bargaining agreement even before Iowa Code chapter 20 was amended in February of 2017. For units that do not have collective bargaining agreements, Iowa Code sections 20.15(2) and 20.15(3) do not authorize the agency to conduct either a retention and recertification election or a decertification election for those units, because both elections are predicated on the existence of a current collective bargaining agreement. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Board on July 12, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

These rules do not provide for a waiver of their terms, but are instead subject to the agency's general waiver provisions found at rule 621—1.9(17A,20).

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on September 5, 2018.

The following rule-making action is adopted:

Amend subrule 5.6(1) as follows:

**5.6(1)** *Timing of election periods.*

*a.* ~~The~~ When an employer and certified employee organization are parties to a collective bargaining agreement, the agency shall conduct an election, prior to the expiration of a collective bargaining agreement between an employer and a certified employee organization, to determine if the employees in a represented bargaining unit wish to retain and recertify the unit's certified representative. Elections will be conducted not less than once every five years.

*b.* For a certified employee organization that is a party to a collective bargaining agreement with a June 30 expiration date, the organization's retention and recertification election shall occur not earlier than June 1 nor later than November 1 in the year prior to the expiration of the agreement.

*c.* For a certified employee organization that is a party to a collective bargaining agreement with an expiration date other than June 30, the organization's retention and recertification election shall occur not earlier than 365 days nor later than 270 days prior to the expiration of the agreement, except as provided in subrule 5.6(10).

*d.* If the certified employee organization has paid the applicable election fee in a timely manner as provided in subrule 5.6(5), the organization's status shall not be adversely affected if the election is not concluded in compliance with this rule.

*e.* When scheduling a retention and recertification election, the agency will presume the collective bargaining agreement is for a term of one year commencing July 1 and ending June 30 unless the agreement clearly states an alternate term and effective dates.

*f.* Should an employer fail to file a collective bargaining agreement with the agency as required by Iowa Code section 20.29, ~~or if the parties have no agreement,~~ the agency will, for purposes of scheduling the election, presume a maximum expiration date of five years pursuant to Iowa Code section 20.9 or two years pursuant to Iowa Code section 20.15, whichever is applicable, unless the employer subsequently submits a collective bargaining agreement that allows the agency to conduct

an earlier election in accordance with subrule 5.6(1). The agency shall not conduct an election if the employer and certified employee organization are not parties to a collective bargaining agreement.

*g.* An extension of a collective bargaining agreement will alter the timing of the retention and recertification election only if the parties have reached agreement on the extension and have notified the agency in writing prior to the date the fee is due as set forth in the notice of intent to conduct the election. Should the parties' collective bargaining agreement inclusive of any extensions exceed five years, the agency will, for purposes of scheduling the election, presume a maximum duration of five years pursuant to Iowa Code section 20.9 or two years pursuant to Iowa Code section 20.15, whichever is applicable.

*h.* At least 30 days prior to the commencement of the retention and recertification election period, a public employer shall notify the agency if the certified employee organization has not been correctly identified as one which requires an upcoming election. The public employer shall submit to the agency all relevant information requested. The agency shall conduct an investigation to determine whether the election is required by statute and rule.

[Filed 7/13/18, effective 9/5/18]
[Published 8/1/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/1/18.

**ARC 3934C**

# SOIL CONSERVATION AND WATER QUALITY DIVISION[27]

**Adopted and Filed**

**Rule making related to forestry technical guide**

The Soil Conservation and Water Quality Division hereby amends Chapter 12, "Water Protection Practices—Water Protection Fund," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 161A.4(1).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 161A.2.

*Purpose and Summary*

This amendment updates the reference to the Department of Natural Resources' forestry technical guide.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 6, 2018, as **ARC 3819C**. No public comments were received. Two changes were made from the Notice. A URL was updated for the electronic field office technical guide, and a technical fix was made to the name of the referenced department.

*Adoption of Rule Making*

This rule making was adopted by the Division on July 11, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 27—Chapter 8.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on September 5, 2018.

The following rule-making action is adopted:

Amend rule 27—12.83(161C) as follows:

**27—12.83(161C) Practice standards and specifications.** Soil and water conservation practices shall meet Natural Resources Conservation Service conservation standards and specifications where applicable. These standards may be accessed through the electronic field office technical guide at ~~http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=IA~~ efotg.sc.egov.usda.gov/efotg_locator.aspx.

Tree planting, forest stand improvement, site preparation for natural regeneration and rescue treatment standards may be accessed through the department of natural ~~resource's~~ resources' forestry technical guide found at ~~http://www.iowadnr.com/forestry/pdf/techguide.pdf~~ www.iowadnr.gov/Portals/idnr/uploads/forestry/ForestryTechguide.pdf.

Standards and specifications are also available in hard copy in the district office where the practice will be implemented. These specifications and the general conditions, rule 27—10.81(161A), shall be met in all cases. To the extent of any inconsistency between the general conditions and the specifications, the general conditions shall control.

[Filed 7/11/18, effective 9/5/18]
[Published 8/1/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/1/18.

**ARC 3935C**

# TRANSPORTATION DEPARTMENT[761]

**Adopted and Filed**

**Rule making related to special registration plates**

The Department of Transportation hereby amends Chapter 401, "Special Registration Plates," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 307.12 and 321.34(13).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 17A and section 321.34.

*Purpose and Summary*

The Department is updating Chapter 401 by removing barriers to accepting certain registration plate applications electronically and conforming the rules with 2016 Iowa Acts, chapter 1068, section 1, which amended Iowa Code section 321.34(13) by replacing the provisions for a new special processed emblem license plate with provisions for a special decal license plate.

These amendments strike the requirement that the signatures on the emergency medical services plate application be original and notarized, which will allow the application to be submitted to the Department electronically. The amendments also align the chapter to current Iowa Code section 321.34 by rescinding the rules regarding special processed emblem license plates and adopting rules for a special license plate that contains a space for the display of an organization decal (sticker), including outlining the process for a qualifying organization's applying to create a new decal and the process for applying for a decal license plate. In addition, the amendments establish the correct dimensions for a decal and clarify the denial, revocation and appeal process.

Prior to the 2016 legislative change, anyone could submit a request to the Department for approval of a new special registration plate with a processed emblem. If the Department approved the request and the design of the proposed emblem, a minimum of 500 paid applications were required before the Department began issuing the plate. If sufficient applications were not received within one year, rules allowed the Department to cancel the approval. An alternative process within the Department's rules allowed for a state agency to sponsor a special registration plate. However, when the legislature amended Iowa Code section 321.34, the process for requesting a new special processed emblem plate was replaced with a process for requesting a special registration plate containing a space reserved for placement of an organization decal to be designed, produced, and issued by a qualifying organization. New rules 761—401.15(17A,321) and 761—401.16(17A,321) align the chapter to current Iowa Code section 321.34 by providing for a special license plate that contains a space for the display of an organization decal. The plate is available without an additional special plate fee at the time of initial registration of a vehicle and is renewed annually upon payment of the regular annual registration fee for the vehicle. The special decal plate is also available as a personalized plate upon payment of personalized plate fees.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 6, 2018, as **ARC 3820C**. The Department did not receive requests for a public hearing but did receive written comments from the Department of Public Safety. These comments related to the following:

- Whether the rules should prohibit a nonprofit organization from sponsoring or distributing an organizational decal that promotes the work or mission of another nonprofit organization when the sponsoring organization is not involved in that mission or work.
- If one nonprofit organization may sponsor the mission of another, whether there should be a procedure for the second organization to revoke approval if "problems develop with the sponsoring nonprofit."
- Whether existing registration plates are required to be surrendered if an approved decal is revoked.

After considering the comments, the Department determined no changes from the Notice should be made, and this decision has been communicated to the Department of Public Safety. Iowa Code section 321.34(13) specifies the eligibility requirements for a sponsoring nonprofit organization and limits collaboration with other organizations only to circumstances in which all of the organizations

share a common purpose and each organization is a nonprofit organization that meets the eligibility requirements of Iowa Code section 321.34(13), meaning that:

- The primary activity or interest of the organization serves the community, contributes to the welfare of others, and is not discriminatory in its purpose, nature, activity or name;
- The name and purpose of the organization do not promote any specific product or brand name that is provided for sale; and
- The organization is a nonprofit corporation which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code and is organized under the laws of this state or authorized to do business within this state.

The statute also prevents one organization from misappropriating images or logos of another organization and requires permission and agreement, in the circumstances that permit collaboration among organizations with a common mission, by providing that the application for approval of the decal must include "[c]ertification by the person who has legal rights to the decal design allowing use of the design." The rules conform to these statutory requirements, which do not require further administrative elaboration. Further, to the extent that any eligible organizations collaborate by agreement to distribute an approved decal, each organization retains the right to revoke that agreement and end the collaborative distribution, without further intervention by the Department. In this respect, it is important to remember that (1) the Department's only authority is to extend permission to distribute the approved decal, not to require or mandate that an approved decal be distributed, and (2) by the terms of Iowa Code section 321.34(13), the nonprofit organization, and not the Department, is responsible for production and distribution of approved decals. Under Iowa Code section 321.34(13), the Department is not authorized to distribute or require distribution of organization decals, and collaborating organizations may discontinue production and distribution according to any terms or circumstances that the organizations determine.

In regard to the surrendering of plates, revocation of a proposed design does not require the surrender of the registration plates to which decals have been applied. As a practical matter, because the scheme authorized by Iowa Code section 321.34(13) allows a person who obtains an organization decal plate to choose any approved decal and requires the person to obtain the decal from the organization authorized to distribute the decal, the Department will not have information in its records that associates a specific plate with a specific decal and will not have the ability to recall the plate based on the decal applied. Further, the organization decal is promotional only and does not affect the validity of the registration plate or the plate's association with a specific vehicle and owner, and a decal that has been revoked or discontinued may be removed or replaced with another approved decal without the owner's surrendering the plate to which the decal is affixed and replacing the plate with a new plate. Requiring the surrendering of the plates would result in unnecessary expense to the state and to customers and would be counter to the intent of the legislative change, which authorized the use of organization decals to reduce registration plate inventory and cost.

*Adoption of Rule Making*

This rule making was adopted by the Department on July 11, 2018.

*Fiscal Impact*

The amendments to the Department's rules have no known fiscal impact beyond that of the legislative changes the amendments are intended to implement.

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on September 5, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **401.2(1)"b"** as follows:

*b.* Collegiate plates, personalized plates, and special registration plates that have eligibility requirements must be requested using an application form prescribed by the department. Unless otherwise specified, completed application forms for these plates shall be submitted to the department at the following address: Office of Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278. Application forms may be obtained from the office of vehicle and motor carrier services or from any county treasurer's office. Application forms are also available on the department's ~~Web site~~ website at ~~http://www.iowadot.gov/mvd~~ www.iowadot.gov.

ITEM 2. Amend subrule 401.10(1) as follows:

**401.10(1)** Application for emergency medical services (EMS) plates shall be submitted to the department on a form prescribed by the department. The applicant and the applicant's service director shall sign the application form certifying that the applicant is a current member of a paid or volunteer emergency medical services agency. ~~The signatures must be original and notarized.~~ For purposes of this subrule, "service director" means a service director as defined in Iowa department of public health rule 641—132.1(147A).

ITEM 3. Rescind rule 761—401.15(321) and adopt the following **new** rule in lieu thereof:

**761—401.15(17A,321) Nonprofit organization decal.** The following shall apply to all applications for an organization decal under Iowa Code section 321.34(13).

**401.15(1)** Application to request a new decal shall be submitted to the department on Form 411346. The application shall be subject to the requirements in Iowa Code section 321.34(13) and shall include all of the information and documentation required by Iowa Code section 321.34(13)*"c."* An organization applying for approval of a decal shall meet the criteria set forth in Iowa Code section 321.34(13)*"b"*(1). A group of organizations applying for approval of a decal must have a common purpose as required by Iowa Code section 321.34(13)*"b"*(2), and each organization within the group must meet the criteria set forth in Iowa Code section 321.34(13)*"b"*(1).

**401.15(2)** The proposed decal shall be designed to be placed in the space reserved for the placement of an organization decal and shall be limited to dimensions of 2.875″ in width and 3″ in height. As required by Iowa Code section 321.34(13)*"d,"* the proposed decal design shall not:

*a.* Promote a specific religion, faith or anti-religious sentiment.

*b.* Have any sexual connotation.

*c.* Be vulgar, prejudiced, hostile, insulting, or racially or ethnically degrading.

**401.15(3)** The office of vehicle and motor carrier services may consult with other organizations, law enforcement authorities, and the general public concerning the decal design.

**401.15(4)** Within 60 days after receiving the application, the office of vehicle and motor carrier services shall advise the organization of the department's approval or denial of the application. The department reserves the right to approve or disapprove any decal design.

**401.15(5)** If the decal is approved and at a later date it is determined that a false application was submitted, or a violation of Iowa Code section 321.34(13) or this chapter occurred, the department shall revoke the decal and the organization shall no longer issue the decal.

**401.15(6)** If the department denies or revokes the decal design, the department shall send notice of the denial or revocation by certified mail to the organization at the address listed on the application. The revocation or denial shall become effective 20 days from the date of mailing. The organization may contest the decision of the department in accordance with 761—Chapter 13. The request shall be deemed timely if it is delivered or postmarked on or before the effective date specified in the notice.

ITEM 4. Rescind rule 761—401.16(321) and adopt the following **new** rule in lieu thereof:

**761—401.16(17A,321) Special plates with space reserved for a nonprofit organization decal.**

**401.16(1)** Application for special plates with space reserved for an organization decal shall be subject to the requirements in Iowa Code section 321.34(13).

**401.16(2)** A person shall obtain the decal to display on the special registration plate from an organization approved by the department. A person shall not display a decal on a vehicle registration plate other than a decal approved by the department. An approved decal shall only be affixed to and displayed in the space reserved for placement of the organization decal on the registration plate.

**401.16(3)** Personalized special plates with space reserved for an organization decal shall be limited to no more than five initials, letters, or combinations of numerals and letters.

ITEM 5. Rescind and reserve rule **761—401.17(321)**.

ITEM 6. Amend rule 761—401.18(321), introductory paragraph, as follows:

**761—401.18(321) Combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal, combat medical badge, fallen peace officers and civil war sesquicentennial plates.** Following is the application and approval process for special plate requests under Iowa Code section ~~321.34 as amended by 2011 Iowa Acts, House File 651, section 2~~ 321.34(20C).

ITEM 7. Amend subrule 401.18(1) as follows:

**401.18(1)** *Design.*

*a.* The plates shall be a standard background plate with a distinguishing processed emblem specific to each plate type~~, consistent with processed emblems approved pursuant to rule 761—401.15(321)~~.

*b.* The distinguishing processed emblem shall be limited to ~~3″ × 3½″~~ 2.875″ × 3″ on the registration plate.

*c.* No change.

*d.* The office of vehicle and motor carrier services may consult with other organizations, law enforcement authorities, and the general public concerning distinguishing processed emblems.

ITEM 8. Amend rule 761—401.35(321) as follows:

**761—401.35(321) Revocation of special registration plates—appeal.**

**401.35(1)** Special registration plates shall be revoked if they have been issued in conflict with the statutes or rules governing the plates' issuance. Revoked plates shall be surrendered to the department within 30 days of the date of revocation.

**401.35(2)** The department shall send the notice of revocation to a person's mailing address by certified mail, and the revocation shall become effective 20 days from the date of mailing. The person may contest the decision of the department in accordance with 761—Chapter 13. The request shall be deemed timely if it is delivered or postmarked on or before the effective date specified in the notice.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 9. Amend **761—Chapter 401**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 35A.11 ~~as amended by 2011 Iowa Acts, House File 651, section 1~~, 321.34 ~~as amended by 2011 Iowa Acts, House File 651, section 2~~, 321.105, 321.166 and 321L.1 and chapter 17A.

[Filed 7/13/18, effective 9/5/18]
[Published 8/1/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/1/18.