



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2016

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
5	Friday, August 12, 2016	August 31, 2016
6	Wednesday, August 24, 2016	September 14, 2016
7	Friday, September 9, 2016	September 28, 2016

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 Friday, August 5, 2016, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Agenda published in the July 20, 2016, Iowa Administrative Bulletin.

COMMERCE DEPARTMENT[181]

Organization and operation; petitions for rule making; declaratory orders, amend ch 1;
rescind chs 2, 3 Filed **ARC 2650C** 8/3/16

ECONOMIC DEVELOPMENT AUTHORITY[261]

Main street Iowa program, amendments to ch 39 Notice **ARC 2653C** 8/3/16

EMPLOYMENT APPEAL BOARD[486]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"
Peace officer and capitol security appeals, 6.1 Filed **ARC 2642C** 8/3/16

HUMAN SERVICES DEPARTMENT[441]

Process for approving subacute mental health care facility licensing applications to the
department of inspections and appeals, amendments to ch 25 Filed **ARC 2637C** 8/3/16
Children in foster care settings—supervision, provider liability, medical authorizations and
releases, inspections and codes, transition services, amendments to chs 105, 113, 114,
202 Notice **ARC 2652C** 8/3/16
Child care centers, amendments to ch 109 Filed **ARC 2646C** 8/3/16
Child development homes, ch 110 Filed **ARC 2647C** 8/3/16
Child care homes, ch 120 Filed **ARC 2648C** 8/3/16
Child care assistance eligibility—in-home care, nonregistered providers, 170.4 Filed **ARC 2649C** 8/3/16
Abuse of children—trafficking, 175.21, 175.22(2), 175.24 Notice **ARC 2651C** 8/3/16

INSPECTIONS AND APPEALS DEPARTMENT[481]

Residential care facilities—training requirements for certified medication aides, 57.19(3),
62.15(2), 63.18(3) Filed **ARC 2643C** 8/3/16

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"
Requirements for surplus lines, risk retention groups and purchasing groups, amendments to
ch 21 Notice **ARC 2664C** 8/3/16
Motor vehicle service contracts, rescind ch 23; adopt ch 104 Notice **ARC 2665C** 8/3/16
Regulation of securities offerings and those who engage in the securities business, 50.60,
50.70, 50.90 Notice **ARC 2668C** 8/3/16
Residential service contracts, rescind ch 54; adopt ch 103 Notice **ARC 2666C** 8/3/16
Sales of cemetery merchandise, funeral merchandise and funeral services, 100.1, 100.15(1),
100.19, 100.33(1)"f" Notice **ARC 2667C** 8/3/16

IOWA FINANCE AUTHORITY[265]

Low-income housing tax credits, 12.1, 12.2 Notice **ARC 2659C** 8/3/16

LOTTERY AUTHORITY, IOWA[531]

"Scratchless" instant tickets, amendments to chs 12, 18 to 20 Notice **ARC 2660C** 8/3/16

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Authorization to dispense up to 72-hour supply of prescription drugs to hospital emergency
department patients, 7.12(3) Notice of Termination **ARC 2638C** 8/3/16
Electronic transmission of a prescription, 21.8(4) Filed **ARC 2639C** 8/3/16
Iowa monitoring program for pharmacy professionals, ch 30 Notice **ARC 2662C** 8/3/16

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Licensing of barbers—continuing education, 21.16, 24.2 Notice **ARC 2670C** 8/3/16

PUBLIC HEALTH DEPARTMENT[641]

Central registry for brain and spinal cord injuries, amendments to ch 21 Filed **ARC 2655C** 8/3/16
Practice of tattooing, 22.1 to 22.17 Filed **ARC 2656C** 8/3/16
Collection of and access to health data, amendments to ch 177 Filed **ARC 2654C** 8/3/16

PUBLIC SAFETY DEPARTMENT[661]

Public fueling of motor vehicles with liquid petroleum gas, 226.4(5), 226.9, 226.10 Notice **ARC 2658C**..... 8/3/16

REVENUE DEPARTMENT[701]

Dissolution of state board of tax review; appeals; duties of director and department, rescind
chs 1, 2; amend chs 6, 7, 10, 11, 67, 71, 73, 76, 77, 80, 81, 85, 103 Filed **ARC 2657C**..... 8/3/16
Fiduciary income tax—deduction for administrative expenses and debts of the decedent not
allowed on federal tax return, 89.8(8)“g” Filed **ARC 2661C**..... 8/3/16

SECRETARY OF STATE[721]

Absentee voting—Intelligent Mail barcode (IMb) Tracing, 21.1(7), 21.2(2), 21.12, 21.14
Notice **ARC 2669C**, also Filed Emergency **ARC 2663C**..... 8/3/16

TRANSPORTATION DEPARTMENT[761]

Outdoor advertising; logo signing, amendments to chs 117, 118 Filed **ARC 2645C**..... 8/3/16
Authorized emergency vehicle certificate of designation; update of department office name,
424.1(1), 430.1(1), 451.1, 451.2(1), 451.3 Notice **ARC 2640C**..... 8/3/16
Classes of driver’s licenses, amendments to ch 602 Filed **ARC 2644C**..... 8/3/16

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Representative Lisa Heddens
2401 Westwind Drive
Ames, Iowa 50010

Senator Mark Costello
37265 Rains Avenue
Imogene, Iowa 51645

Representative Megan Jones
4470 Highway 71
Sioux Rapids, Iowa 50585

Senator Thomas Courtney
2609 Clearview
Burlington, Iowa 52601

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

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

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

Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001

Representative Guy Vander Linden
1610 Carbonado Road
Oskaloosa, Iowa 52577

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

EDUCATION DEPARTMENT[281]

Individual career and academic plan, ch 49 IAB 7/20/16 ARC 2627C (see also ARC 2620C)	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	August 9, 2016 10 to 11 a.m.
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ENVIRONMENTAL PROTECTION COMMISSION[567]

Flood plains—construction criteria for bridges, embankments, culverts; permit requirements; waivers and variances; technical updates, amendments to chs 70 to 72 IAB 7/20/16 ARC 2629C	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	August 10, 2016 1 p.m.
Solid waste management and disposal, amendments to chs 100, 101, 111 IAB 7/20/16 ARC 2630C	Conference Room 2 North Wallace State Office Bldg. Des Moines, Iowa	August 9, 2016 1 p.m.

INSURANCE DIVISION[191]

Requirements for surplus lines, risk retention groups and purchasing groups, amendments to ch 21 IAB 8/3/16 ARC 2664C	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	August 23, 2016 10 a.m.
Motor vehicle service contracts, rescind ch 23; adopt ch 104 IAB 8/3/16 ARC 2665C	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	August 23, 2016 3 p.m.
Regulation of securities offerings and those who engage in the securities business, 50.60, 50.70, 50.90 IAB 8/3/16 ARC 2668C	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	August 23, 2016 2 p.m.
Residential service contracts, rescind ch 54; adopt ch 103 IAB 8/3/16 ARC 2666C	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	August 23, 2016 3:30 p.m.
Sales of cemetery merchandise, funeral merchandise and funeral services, 100.1, 100.15(1), 100.19, 100.33(1)“f” IAB 8/3/16 ARC 2667C	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	August 23, 2016 2:30 p.m.

IOWA FINANCE AUTHORITY[265]

Low-income housing tax credits, 12.1, 12.2 IAB 8/3/16 ARC 2659C	Authority Offices 2015 Grand Ave. Des Moines, Iowa	August 23, 2016 9 to 11 a.m.
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PHARMACY BOARD[657]

Iowa monitoring program for pharmacy professionals, ch 30 IAB 8/3/16 ARC 2662C	Large Conference Room, Suite E 400 SW 8th St. Des Moines, Iowa	August 30, 2016 3 to 4 p.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Licensing of barbers—continuing education, 21.16, 24.2 IAB 8/3/16 ARC 2670C	Fourth Floor Conference Room 418 Lucas State Office Bldg. Des Moines, Iowa	August 23, 2016 9 to 9:30 a.m.
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PUBLIC HEALTH DEPARTMENT[641]

Board-certified behavior analyst and board-certified assistant behavior analyst (BCBA/BCaBA) grants program, ch 107 IAB 7/20/16 ARC 2621C (ICN Network)	Fourth Floor Conference Room 415 Lucas State Office Bldg. Des Moines, Iowa <i>To participate by conference call:</i> Dial 1-866-685-1580 Conference Code: 0008881777	August 17, 2016 1 to 3 p.m.
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PUBLIC SAFETY DEPARTMENT[661]

Public fueling of motor vehicles with liquid petroleum gas, 226.4(5), 226.9, 226.10 IAB 8/3/16 ARC 2658C	First Floor Public Conference Room 125 Oran Pape State Office Bldg. 215 E. 7th St. Des Moines, Iowa	August 31, 2016 10 a.m.
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TRANSPORTATION DEPARTMENT[761]

Authorized emergency vehicle certificate of designation; update of department office name, 424.1(1), 430.1(1), 451.1, 451.2(1), 451.3 IAB 8/3/16 ARC 2640C	Motor Vehicle Division Offices 6310 SE Convenience Blvd. Ankeny, Iowa	August 25, 2016 10 a.m. (If requested)
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UTILITIES DIVISION[199]

Telecommunications services, amendments to ch 22 IAB 6/8/16 ARC 2569C	Room 69, Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	August 9, 2016 9 a.m.
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The following list will be updated as changes occur.

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

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

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

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ARC 2653C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 15.106A, the Economic Development Authority gives Notice of Intended Action to amend Chapter 39, “Iowa Main Street Program,” Iowa Administrative Code.

The rules in Chapter 39 describe Iowa’s Main Street program. Iowa’s Main Street program is designed in accordance with the National Main Street Center’s program. The proposed amendments update the title of Iowa’s program, add new program definitions, update the description of the application process, update the four strategies of the Main Street Iowa program and modify the selection criteria to align with recent programmatic changes made by the National Main Street Center program.

The Economic Development Authority Board approved these amendments at the Board meeting held on June 17, 2016.

Interested persons may submit comments on or before August 23, 2016. Comments may be submitted to Jim Engle, Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone number (515)725-3058; e-mail james.engle@iowa.gov.

These amendments do not have any fiscal impact to the state of Iowa.

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

These amendments are intended to implement Iowa Code section 15.108.

The following amendments are proposed.

ITEM 1. Amend **261—Chapter 39**, title, as follows:

IOWA MAIN STREET IOWA PROGRAM

ITEM 2. Amend rule 261—39.1(15) as follows:

261—39.1(15) Purpose. The purpose of the ~~Iowa~~ main street Iowa program is to stimulate economic development within the context of historic preservation and to establish a strong public/private partnership to revitalize traditional commercial districts in Iowa communities. The main street Iowa program emphasizes community self-reliance and the traditional assets of personal service, local ownership and unique architecture historically prevalent in traditional commercial districts. The main street Iowa program is based on four strategies which, when applied together, create a positive image and an improved economy in these districts. The strategies are organization, promotion, design and economic ~~restructuring~~ vitality.

Communities selected for participation in this ~~demonstration~~ program will receive technical assistance from the ~~department’s~~ authority’s main street Iowa staff, professional staff of the National ~~Trust~~ Main Street Center, and other professional consultants and may have professional services of other state agencies to draw upon in order to facilitate the communities’ local main street ~~program~~ programs.

ITEM 3. Amend rule 261—39.2(15) as follows:

261—39.2(15) Definitions. The following definitions will apply to the ~~Iowa~~ main street Iowa program unless the context otherwise requires:

“Authority” means the economic development authority created in Iowa Code section 15.105.

“Department” means the Iowa department of economic development.

“Director” means the director of the Iowa department of economic development authority.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

“Eligible activity” includes organization, promotion, design and economic restructuring vitality activities to create a positive image and an improved economy in a city’s traditional commercial districts district.

“Eligible applicant” means a city in Iowa that files a joint application with a local nonprofit organization established by the community to govern the local main street program.

“National Trust Main Street Center” refers to an entity within the National Trust for Historic Preservation, a nonprofit national organization chartered by Congress means a nonprofit subsidiary of the National Trust for Historic Preservation, a nonprofit organization chartered by the United States Congress. The National Main Street Center owns the licensed, trademarked Main Street Four-Point Approach®.

“Program” means the main street Iowa program established in this chapter.

“Traditional commercial district” means a downtown or neighborhood area that is walkable and is dominated by historic or older commercial architecture and contiguous commercial uses. A traditional commercial district defines the target area of the local program efforts.

ITEM 4. Amend subrules 39.3(1) to 39.3(3) as follows:

39.3(1) Administering agency. ~~The Iowa main street program is administered by the Iowa department of economic development authority.~~

39.3(2) Subcontracting. ~~The department authority may contract with the National Trust Main Street Center of the National Trust for Historic Preservation for technical and professional services as well as with other appropriate consultants and organizations.~~

39.3(3) Request for applications (RFA) Applications. ~~The department authority, upon availability of funds, will distribute a request for applications which describes. The application will describe the Iowa main street program, outlines outline eligibility requirements, and includes an application and a description of describe the application procedures process. Selection will be made on a competitive basis.~~

ITEM 5. Rescind subrule 39.3(4) and adopt the following new subrule in lieu thereof:

39.3(4) Program agreement. Each selected community shall enter into a standard program agreement with the authority. The program agreement will describe the obligations of the authority and the community.

ITEM 6. Rescind subrule **39.3(5)**.

ITEM 7. Renumber subrule **39.3(6)** as **39.3(5)**.

ITEM 8. Rescind and reserve rule **261—39.4(15)**.

ITEM 9. Amend rule 261—39.6(15) as follows:

261—39.6(15) Selection Application and selection process.

39.6(1) ~~The authority will conduct application workshops around the state. Cities that wish to apply for selection as a main street community must attend one application workshop in order to receive an application form. The authority will send standard application forms to workshop attendees. A completed application shall be returned to the authority, be postmarked no later than the date specified by the authority in the application, and contain the information requested in the application.~~

~~**39.6(1) 39.6(2)** The director will determine, contingent upon the availability of state funding, the number of cities to be selected for inclusion in the main street program.~~

~~**39.6(2) 39.6(3)** Cities will be selected for participation in the program on a competitive basis as described in these rules.~~

~~**39.6(3) 39.6(4)** Upon selection of the demonstration projects communities, the department shall prepare an agreement which will include the terms and conditions of participation authority will notify selected communities in writing.~~

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

ITEM 10. Rescind rule 261—39.7(15) and adopt the following new rule in lieu thereof:

261—39.7(15) Selection criteria. The following factors shall be considered in the selection of a city for participation in the program:

39.7(1) The applicant has a well-planned budget demonstrating sustainable funding for ongoing operations and evidence of adequate local sources of funding to support the traditional commercial district revitalization organization and its programming.

39.7(2) The applicant has garnered broad-based financial and philosophical community support for the local program including support from the city.

39.7(3) The applicant has provided evidence of willingness by local stakeholders to get involved in the effort.

39.7(4) The applicant has demonstrated its commitment to the main street approach and has hired or will be hiring an executive director to manage the local program.

39.7(5) The applicant is committed to historic preservation and preservation-based economic development and has demonstrated its commitment by a track record of preservation planning and a commitment to future preservation projects.

39.7(6) The applicant has provided evidence of traditional commercial district planning efforts and clearly defined goals for the future.

39.7(7) The applicant has defined an organizational structure to manage local program efforts.

39.7(8) The applicant demonstrates an eagerness to learn and implement traditional commercial district revitalization strategies and techniques.

39.7(9) The applicant has clearly defined the boundaries of the proposed traditional commercial district and has articulated the reasons behind the location of the boundaries.

39.7(10) The applicant has identified a traditional commercial district that has clear potential for success, as demonstrated by the presence of the following elements:

a. Existence of historic character of the traditional commercial district.

b. Plans for the traditional commercial district demonstrate a recognition of traditional commercial district trends and address the challenges unique to that district.

c. Present market capacity defined by a current business environment upon which the district can build its revitalization efforts.

d. Present physical capacity defined by building stock and built environment upon which the district can build its revitalization efforts.

ITEM 11. Amend rule 261—39.9(15) as follows:

261—39.9(15) Performance reviews Reports. Participating main street communities shall submit performance reports to the ~~department~~ authority as required. The reports shall document the progress of the program activities.

ITEM 12. Amend rule 261—39.10(15) as follows:

261—39.10(15) Noncompliance. If the ~~department~~ authority finds that a participating main street community is not in compliance with the requirements under this program or the terms of the program agreement, the ~~department~~ authority shall terminate the program agreement.

ARC 2652C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 217.6 and 2016 Iowa Acts, Senate File 2258, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 105, “Juvenile Detention and Shelter Care Homes,” Chapter 113, “Licensing and Regulation of Foster Family Homes,” Chapter 114, “Licensing and Regulation of All Group Living Foster Care Facilities for Children,” and Chapter 202, “Foster Care Placement and Services,” Iowa Administrative Code.

These amendments implement the federal Preventing Sex Trafficking and Strengthening Families Act. These amendments update the description of reasonable supervision of foster children. These amendments also update language regarding liability of foster parents and add new requirements regarding annual fire inspections and building codes. Finally, these amendments change the requirement for provision of transition plan documents to any child leaving foster care at the age of 18 or older.

These amendments will provide better transition services for youths 14 years of age or older in foster care who are expected to age out of care when the youths reach 18 years of age.

Any interested person may make written comments on the proposed amendments on or before August 23, 2016. 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. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

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

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

These amendments are intended to implement Iowa Code section 217.6 and 2016 Iowa Acts, Senate File 2258.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrule 105.8(9):

105.8(9) Liability. Juvenile shelter care homes that apply the reasonable and prudent parent standard reasonably and in good faith in regard to a child in foster care shall have immunity from civil or criminal liability which might otherwise be incurred or imposed. This subrule shall not remove or limit any existing liability protection afforded under any other law.

ITEM 2. Amend subrule 105.17(5) as follows:

105.17(5) Other information. The following information shall be requested when the child remains in the facility more than four days and, when available, shall be placed in the child’s record.

a. to *c.* No change.

d. Medical.

(1) A record of all illnesses, immunizations, communicable diseases and follow-up treatment.

(2) Medical and surgical ~~authorization~~ releases or authorizations signed by the parent, guardian, custodian or court, including releases or authorizations for anesthesia and emergency medical and surgical treatment.

(3) A record of all medical and dental examinations, including findings.

(4) Date of last physical examination prior to placement.

e. No change.

f. Placement agreement, court order, and other releases and authorizations.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- (1) ~~Agreement shall authorize~~ An agreement authorizing the facility to accept the child.
- (2) ~~The An agreement shall set~~ setting forth the terms of payment for care.
- (3) ~~Medical release authorizing emergency medical and surgical treatment, including the administration of anesthesia.~~
- (4) (3) ~~All Other~~ releases and authorizations shall be signed by the parent or legal guardian applicable to the placement.
- (5) (4) All court orders affecting the custody or guardianship of the child.

ITEM 3. Adopt the following **new** definitions of “Age- or developmentally appropriate activities” and “Reasonable and prudent parent standard” in rule **441—113.2(237)**:

“*Age- or developmentally appropriate activities*” means activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

“*Reasonable and prudent parent standard*” means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encourage the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural, and social activities. For the purposes of this definition, “caregiver” means a foster parent with whom a child in foster care has been placed or a designated official for a child care institution (including group homes, residential treatment, shelters, or other congregate care settings) in which a child in foster care has been placed.

ITEM 4. Amend subrule 113.7(7) as follows:

113.7(7) Supervision. The foster parents shall provide reasonable supervision of foster children to ensure their safety.

a. Foster parents shall ~~monitor~~ reasonably supervise foster children while the children are using any hazardous items. All or dangerous objects or equipment, including but not limited to trampolines, motorized vehicles, and power tools, shall be inaccessible to a child unless: In order for foster children to participate in age- or developmentally appropriate activities, the foster parent would apply the reasonable and prudent parent standard.

- (1) ~~There is reasonable supervision by the foster parent, and~~
- (2) ~~Permission has been obtained from the parent or guardian for the foster child to use the equipment or vehicle.~~

b. No change.

ITEM 5. Adopt the following **new** subrule 113.7(9):

113.7(9) Liability. Foster parents who apply the reasonable and prudent parent standard reasonably and in good faith in regard to a foster child placed in their home shall have immunity from civil or criminal liability which might otherwise be incurred or imposed. This subrule shall not remove or limit any existing liability protection afforded under any other law.

ITEM 6. Adopt the following **new** subrule 114.5(3):

114.5(3) Fire inspection. Each facility shall procure an annual fire inspection approved by the state fire marshal and shall meet the recommendations thereof.

ITEM 7. Adopt the following **new** subrule 114.5(4):

114.5(4) Local codes. Each facility shall meet local building, zoning, sanitation and fire safety ordinances. Where no local standards exist, state standards shall be met.

ITEM 8. Adopt the following **new** subrule 114.10(12):

114.10(12) Liability. Licensed group living foster care facilities that apply the reasonable and prudent parent standard reasonably and in good faith in regard to a child in foster care shall have

HUMAN SERVICES DEPARTMENT[441](cont'd)

immunity from civil or criminal liability which might otherwise be incurred or imposed. This subrule shall not remove or limit any existing liability protection afforded under any other law.

ITEM 9. Amend subparagraph **202.11(7)“c”(4)** as follows:

(4) The transition plan shall document that any child leaving foster care at the age of 18 or older was provided with the following documents and information unless the child has been in foster care for less than ~~six months~~ 30 days or is not eligible to receive such document:

1. to 5. No change.

ARC 2651C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code chapters 232 and 235A and 2016 Iowa Acts, Senate File 2258, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 175, “Abuse of Children,” Iowa Administrative Code.

These amendments implement the federal Justice for Victims of Trafficking Act (Pub. L. No. 114-22). This law requires state child protective service agencies to consider a child to be a victim of “child abuse and neglect” and of “sexual abuse” if the child is identified as being a victim of sex trafficking or a victim of a severe form of trafficking in persons. This law also requires individuals who patronize or solicit persons for a commercial sex act to be equally culpable for sex trafficking offenses.

In addition, these amendments add an eleventh category of abuse, child sex trafficking, in accordance with Pub. L. No. 114-22 and 2016 Iowa Acts, Senate File 2258, and modify the current categories of sexual abuse.

Any interested person may make written comments on the proposed amendments on or before August 23, 2016. 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. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

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

After analysis and review of this rule making, there may be an impact on jobs. All perpetrators of child sex trafficking who have a confirmed finding of child abuse will be placed on the Central Abuse Registry. Additionally, persons 14 years of age or older who reside in a home with the child whom they are confirmed to have sexually abused will be placed on the Central Abuse Registry. Perpetrators of sexual abuse who are 14 to 17 years of age may also have their names withheld from the Central Abuse Registry upon order from the court.

These amendments are intended to implement Iowa Code chapters 232 and 235A and 2016 Iowa Acts, Senate File 2258.

The following amendments are proposed.

ITEM 1. Amend rule **441—175.21(232,235A)**, definitions of “Child abuse assessment,” “Sex trafficking,” and “Sex trafficking victim,” as follows:

“*Child abuse assessment*” means an assessment process by which the department responds to all accepted reports of child abuse which allege child abuse as defined in Iowa Code section 232.68(2)“a”(1) through (3) and (5) through ~~(10)~~ (11); or which allege child abuse as defined in Iowa Code section 232.68(2)“a”(4) as amended by 2016 Iowa Acts, Senate File 2258, that also allege imminent danger,

HUMAN SERVICES DEPARTMENT[441](cont'd)

death, or injury to a child. A “child abuse assessment” results in a disposition and a determination of whether a case meets the definition of child abuse and a determination of whether criteria for placement on the registry are met.

~~“Sex trafficking,” as provided in 22 U.S.C. Section 7102(10), means the recruitment, harboring, transportation, provision, or obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act sexual activity as defined in Iowa Code section 710A.1.~~

~~“Sex trafficking victim,” as provided in 42 U.S.C. Section 675(9), means any of the following: a victim of sex trafficking.~~

- ~~1. A victim of sex trafficking.~~
- ~~2. A victim of a severe form of trafficking in persons.~~

ITEM 2. Adopt the following new definitions of “Home” and “Reside” in rule **441—175.21(232,235A)**:

“Home” means a permanent or temporary structure where one resides, including a licensed foster family home. For the purpose of this chapter, “home” shall not be construed to include any public or private facility, such as an institution, hospital, health care facility, intermediate care facility for persons with an intellectual disability, residential care facility for persons with an intellectual disability, skilled nursing facility, group care, mental health facility, residential treatment facility, shelter care facility, detention facility, licensed day care center, or child foster care provided by an agency.

“Reside” or *“resides”* means to habitually sleep or live. A person’s subjective intent as to where the person resides is not relevant.

ITEM 3. Rescind the definitions of “Commercial sex act” and “Severe form of trafficking in persons” in rule **441—175.21(232,235A)**.

ITEM 4. Amend paragraph **175.22(2)“b”** as follows:

b. If a report constitutes an allegation of child sexual abuse as defined under Iowa Code section ~~232.68(2)“c,”~~ 232.68(2)“a”(3) as amended by 2016 Iowa Acts, Senate File 2258, except that the suspected abuse resulted from the acts or omissions of a person who was not a caretaker or was not a person who resides in a home with the child, the department shall refer the report to law enforcement orally ~~and~~, as soon as practicable, and follow up in writing within 72 hours of receiving the report.

ITEM 5. Amend paragraph **175.24(1)“b”** as follows:

- b.* The alleged perpetrator of child abuse is ~~a caretaker~~:
- (1) A caretaker; or
 - (2) A person who resides in a home with the child, if the allegation is sexual abuse, as defined in Iowa Code section 232.68(2)“a”(3) as amended by 2016 Iowa Acts, Senate File 2258; or
 - (3) A person who engages in or allows child sex trafficking as defined in Iowa Code section 232.68(2)“a”(11).

ITEM 6. Amend paragraph **175.24(2)“a”** as follows:

a. A child abuse assessment is required for all accepted reports which allege child abuse as defined in Iowa Code section 232.68(2)“a”(1) through (3) and (5) through ~~(4)~~ (11); or which allege child abuse as defined in Iowa Code section ~~232.68(4)~~ 232.68(2)“a”(4) as amended by 2016 Iowa Acts, Senate File 2258, that also allege imminent danger, death, or injury to a child. If one or more of the following factors are met, a child abuse assessment shall be required:

- (1) to (10) No change.

ARC 2664C**INSURANCE DIVISION[191]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 515E.14 and 515I.15, the Insurance Division (the Division) hereby gives Notice of Intended Action to amend Chapter 21, “Requirements for Excess and Surplus Lines, Risk Retention Groups and Purchasing Groups,” Iowa Administrative Code.

These amendments are proposed to implement Iowa Code chapter 515E, which regulates risk retention groups and purchasing groups, and Iowa Code chapter 515I, which regulates surplus lines insurance. The proposed amendments allow surplus lines insurance producers to electronically deliver to insureds, under a defined method, notices required by rule 191—21.4(515) that nonadmitted companies are not covered by the Iowa Insurance Guaranty Association. The amendments also propose updates to many citations and general updates to the chapter. One of those updates includes rule 191—21.6(515E), risk retention groups, and rule 191—21.7(515E), procedures for qualification as a risk retention group, which are rescinded and replaced to amend their language and reverse their order to provide more logical progression in the chapter.

The Division intends that these amendments shall go into effect November 2, 2016.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 23, 2016. Such written materials should be directed to Doug Ommen, Iowa Insurance Division, Market Regulation Bureau, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50319; fax (515)281-3059; e-mail doug.ommen@iid.iowa.gov.

Also, there will be a public hearing on August 23, 2016, at 10 a.m. at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

The Division’s general waiver provisions in 191—Chapter 4 apply to these rules.

These amendments will impose no fiscal impact on the State.

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

These amendments are intended to implement Iowa Code chapters 515E and 515I.

The following amendments are proposed.

ITEM 1. Amend **191—Chapter 21**, title, as follows:

REQUIREMENTS FOR ~~EXCESS AND~~ SURPLUS LINES,
RISK RETENTION GROUPS AND PURCHASING GROUPS

ITEM 2. Amend rule 191—21.1(515) as follows:

191—21.1(~~515~~ 515E,515I) Definitions. In addition to the definitions provided in Iowa Code chapters ~~515 and~~ 515E and 515I, the following definitions shall apply to this chapter, unless the context clearly requires otherwise:

“Division” means the Iowa insurance division, supervised by the commissioner pursuant to Iowa Code section 505.8, in the division’s performance of the duties of the commissioner under Iowa Code chapters 515E and 515I.

“Division’s Web site” means the Web site of the Iowa insurance division, www.iid.iowa.gov.

“Excess and surplus lines insurance” means surplus lines insurance.

INSURANCE DIVISION[191](cont'd)

~~“NAIC UCAA” means a National Association of Insurance Commissioners Uniform Certificate of Authority Application form.~~

~~“Nonadmitted insurer” means an insurer that is not licensed by or admitted to do business in this state.~~

~~“Place” or “places” means obtaining insurance for an insured with a specific insurer.~~

~~“Producer” means the person who places the policy with the insurance company. The producer may be either a resident or nonresident of this state and must be licensed in Iowa to sell insurance classified as excess and surplus lines.~~

~~“Qualified surplus lines carrier” means a nonadmitted insurer that the division has determined is qualified to provide surplus lines coverage as set forth in Iowa Code section 515.120, but in no event shall “qualified surplus lines carrier” include an insurer described in Iowa Code section 515.122.~~

~~“Surplus lines insurance” means insurance on a risk or a part of a risk for which there is no market available through the original insurance producer in Iowa; therefore, the risk needs to be placed with a qualified surplus lines carrier, in accordance with the provisions of Iowa Code chapter 515 and this chapter.~~

ITEM 3. Amend rule 191—21.2(515) as follows:

191—21.2(515 515I) Qualified Eligible surplus lines carriers² insurer’s duties.

21.2(1) Insurer liable. Where, pursuant to Iowa Code section ~~515.120~~ chapter 515I, coverage is placed with a ~~qualified~~ eligible surplus lines carrier insurer, the qualified eligible surplus lines carrier insurer shall be liable for the premium tax required by Iowa Code section ~~515.120~~ chapter 515I.

21.2(2) How premium tax quoted. A ~~qualified~~ eligible surplus lines carrier insurer or a broker for a ~~qualified~~ eligible surplus lines carrier insurer is authorized to quote a premium which includes tax as is required by Iowa Code section ~~515.120~~ chapter 515I, and thereafter no additional tax amount may be charged or collected. Premium tax may be stated in the contract of insurance as a separate component of the total premium only when the premium is not based upon rates or premiums which included a premium tax component when promulgated. Any fees collected from residents of this state are considered part of the premium and thus are subject to taxation.

ITEM 4. Amend rule 191—21.3(515) as follows:

191—21.3(515 515I) Producers’ Surplus lines insurance producer’s duties.

21.3(1) Producer Surplus lines insurance producer’s collection of tax. A surplus lines insurance producer who places insurance in ~~qualified~~ with an eligible surplus lines carriers insurer shall collect premium tax from the qualified eligible surplus lines carriers insurer by withholding 1 percent of the premiums for such tax.

21.3(2) Electronic reporting of premium tax. A surplus lines insurance producer who places insurance with a ~~qualified~~ eligible surplus lines carrier insurer shall file electronically the premium tax information with the division on or before March 1 for policies issued during the preceding calendar year.

21.3(3) Annual report. On or before March 1 of each year, every surplus lines insurance producer who has placed insurance with ~~qualified~~ an eligible surplus lines carriers insurer when the policies have been issued during the preceding calendar year shall file electronically with the division or as otherwise directed by the division a sworn report of all such business written during the preceding calendar year and shall submit the amount to cover the taxes due on ~~said~~ all such business. If no business was written during the preceding calendar year, no report is required. Failure to file an annual ~~return~~ report or pay the taxes imposed by Iowa Code section ~~515.120 et seq.,~~ chapter 515I will be deemed grounds for the revocation of a surplus lines insurance producer’s license by the ~~insurance~~ division, and failure to file an annual ~~return~~ report or pay taxes within the time requirements of this rule will subject the surplus lines insurance producer to the penalties of Iowa Code section ~~515.124~~ 515I.12.

INSURANCE DIVISION[191](cont'd)

ITEM 5. Amend rule 191—21.4(515) as follows:

191—21.4(515 515I) Producers' Surplus lines insurance producer's duty to insured; ~~evidence of coverage.~~ A surplus lines insurance producer who places coverage with a ~~qualified~~ an eligible surplus lines carrier insurer as defined ~~herein~~ in Iowa Code section 515I.2 shall deliver to the insured, within 30 days of the date the policy is issued, a notice that states the following: "This policy is issued, pursuant to Iowa Code ~~section 515.120~~ chapter 515I, by a nonadmitted company in Iowa and as such is not covered by the Iowa Insurance Guaranty Association." A surplus lines insurance producer may comply with this rule by ~~typing or stamping a verbatim copy~~ verifying disclosure of this language in a clear and conspicuous ~~place~~ position on the policy or by electronic delivery authorized by Iowa Code chapter 505B, if the method of delivery of the notice allows the division, the surplus lines insurance producer and the intended recipient to verify receipt of the specific notice.

ITEM 6. Amend rule 191—21.5(515) as follows:

191—21.5(515 515I) Procedures for qualification and renewal of a nonadmitted insurer as a ~~qualified~~ an eligible surplus lines carrier insurer.

21.5(1) *Application and procedures for initial qualification of a nonadmitted insurer as a ~~qualified~~ an eligible surplus lines carrier insurer.*

a. Any nonadmitted insurer who wishes to qualify under Iowa Code ~~section 515.120~~ chapter 515I as a ~~nonadmitted~~ an eligible surplus lines insurer shall make an application.

b. The nonadmitted insurer's application shall contain the following information, which also is listed on the division's Web site, ~~www.iid.state.ia.us~~:

(1) A completed NAIC UCAA National Association of Insurance Commissioners Uniform Certificate of Authority Application (NAIC UCAA) Expansion Application, available through the division's Web site, ~~www.iid.state.ia.us~~, or through the NAIC Web site, www.naic.org/industry.

(2) ~~A designation~~ The name of a licensed Iowa resident surplus lines insurance producer qualified to write excess and surplus lines insurance whom the nonadmitted insurer is designating as the person upon whom service of process can be made on behalf of the insurer, pursuant to Iowa Code section 515I.6.

(3) Remittance of the greater of a \$100 filing fee or a retaliatory fee, and a \$500 examination fee for all new applicants.

c. In addition to the above requirements, the insurer shall:

(1) Maintain the greater of either minimum capital and surplus of \$5 million or risk-based capital pursuant to Iowa Code chapter 521E, and

(2) Have been actively in operation for at least three years without significant changes in ownership or management during the three-year period.

These financial and management requirements may be waived by the division upon a finding that the insurer will be offering coverage in a line of insurance for which there is an unavailability of capacity and an extraordinary need for coverage in this state. The division may require other information as deemed necessary.

21.5(2) *Procedures for renewal of a nonadmitted insurer as a ~~qualified~~ an eligible surplus lines carrier insurer.* A nonadmitted insurer that is not an alien insurer as defined in Iowa Code section 515.70 and that ~~met the division's requirements for becoming a qualified surplus lines carrier~~ was approved by the division as an eligible surplus lines insurer shall, by March 1 of each year following the year of qualification approval:

a. Continue to comply with paragraph 21.5(1)"c";

b. Pay a \$100 renewal fee; and

c. Submit to the division the documents and materials listed on the division's Web site, ~~www.iid.state.ia.us~~.

21.5(3) *Failure to comply.* Failure of a nonadmitted insurer to timely submit the materials required in this rule or to otherwise fail to comply with this rule shall result in the termination of the nonadmitted insurer's status as a ~~qualified~~ an eligible surplus lines carrier insurer.

INSURANCE DIVISION[191](cont'd)

ITEM 7. Rescind rules 191—21.6(515E) and 191—21.7(515E) and adopt the following new rules in lieu thereof:

191—21.6(515E) Procedures for qualification as a risk retention group.

21.6(1) Any insurer who wishes to register under Iowa Code chapter 515E as a risk retention group shall file with the division an application that contains:

a. The information required by Iowa Code section 515E.4, which also is listed on the division's Web site; and

b. Remittance of a \$100 filing fee plus any additional retaliatory fees.

21.6(2) A risk retention group shall pay a \$100 renewal fee by March 1 of each year following the year of registration. The risk retention group shall annually provide information requested by the division for determination of continued registration.

191—21.7(515E) Risk retention groups. A risk retention group as defined in Iowa Code chapter 515E may utilize its producers to report and pay premium taxes or may pay the taxes directly. If producers are utilized, the producers shall file the premium tax information electronically with the division through the division's Web site on or before March 1 for policies issued during the preceding calendar year.

ITEM 8. Amend paragraph **21.8(1)“a”** as follows:

a. The information set forth in Iowa Code section 515E.8, which also is listed on the division's Web site, www.iid.state.ia.us; and

ITEM 9. Amend rule 191—21.9(515,515E) as follows:

191—21.9(515,515E,515I) Failure to comply; penalties. Failure of a producer, surplus lines insurance producer, insurer, risk retention group or purchasing group to comply with this chapter or with Iowa Code section ~~515.120, 515.121, or 515.122~~, or chapter chapters 515E and 515I may subject the producer, surplus lines insurance producer, insurer, risk retention group or purchasing group to penalties set forth in Iowa Code chapter 507B ~~or Iowa Code section 515.121, 515E or 515I.~~

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INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 516E.7, the Insurance Division (the Division) hereby gives Notice of Intended Action to rescind Chapter 23, “Motor Vehicle Service Contracts,” and adopt new Chapter 104, “Motor Vehicle Service Contracts,” Iowa Administrative Code.

Proposed new Chapter 104 is intended to implement Iowa Code chapter 516E and to comply with Iowa Code section 17A.7(2). The proposed new chapter updates provisions in existing Chapter 23 including, among other things, procedures allowing more electronic administration of Iowa Code chapter 516E and the associated rules.

The Division intends that these amendments shall go into effect November 2, 2016.

Any interested person may make written suggestions or comments on this proposed new chapter on or before August 23, 2016. Such written materials should be directed to Rosanne Mead, Iowa Insurance Division, Securities and Regulated Industries Bureau, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50319; fax (515)281-3059; e-mail rosanne.mead@iid.iowa.gov.

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Also, there will be a public hearing on August 23, 2016, at 3 p.m. at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

The Division's general waiver provisions in 191—Chapter 4 apply to these rules.

These rules will impose no fiscal impact on the State.

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

These amendments are intended to implement Iowa Code chapter 516E.

The following amendments are proposed.

ITEM 1. Rescind and reserve **191—Chapter 23**.

ITEM 2. Adopt the following new 191—Chapter 104:

CHAPTER 104
MOTOR VEHICLE SERVICE CONTRACTS

191—104.1(516E) Purpose. This chapter is promulgated to implement and administer the provisions of Iowa Code chapter 516E, which regulates the sale of motor vehicle service contracts.

191—104.2(516E) Applicability and definitions.

104.2(1) Applicability. This chapter shall apply to the following:

a. Any person who issues motor vehicle service contracts in this state, i.e., the obligor under the motor vehicle service contract.

b. Any person who offers or sells a motor vehicle service contract in this state, such as automobile dealers and financial institutions.

c. Third-party administrators, as defined in Iowa Code section 516E.1(15), administering motor vehicle service contracts or claims.

d. Motor vehicle service contract reimbursement insurance policies and surety policies issued in this state by an insurer.

104.2(2) Definitions. The definitions in Iowa Code section 516E.1 are incorporated by this reference. In addition, the following definitions shall apply to this chapter.

“*Division*” shall mean the Iowa insurance division, supervised by the commissioner pursuant to Iowa Code section 505.8, in the division's performance of the duties of the commissioner under Iowa Code chapter 516E.

“*Division's Web site*” shall mean the Web site of the Iowa insurance division, www.iid.iowa.gov.

191—104.3(516E) Annual registration of service companies and providers.

104.3(1) Registration of a service company. In order for a service company to be permitted to issue a service contract or arrange to perform services pursuant to a service contract each year, no later than August 1, the service company shall do all of the following using forms and instructions available on the division's Web site:

a. File an application for registration with the division, pursuant to Iowa Code section 516E.2(2).

b. Provide documentation demonstrating that the service company has financially secured its service contracts in compliance with Iowa Code section 516E.3(1)“*a*,” 516E.4 or 516E.21.

c. File a consent to service of process on the commissioner, pursuant to Iowa Code section 516E.3(1)“*b*.”

d. Provide to the division other information the division requires, pursuant to Iowa Code section 516E.3(1)“*b*.”

e. Pay a registration fee of \$500 to the division, as required by Iowa Code section 516E.2, and other fees or payments as required by the division in the instructions.

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104.3(2) *Registration of a provider.* Each year, no later than August 1, a provider shall do all of the following using forms and instructions available on the division's Web site:

- a. File a notice with the division, as required by Iowa Code section 516E.3(2) "a."
- b. File a consent to service of process on the commissioner, pursuant to Iowa Code section 516E.3(2) "a."
- c. Provide to the division other information the division requires, pursuant to Iowa Code section 516E.3(2) "a."
- d. Pay a notice filing fee of \$100 to the division, as required by Iowa Code section 516E.3(2) "a," and other fees or payments as required by the division.

104.3(3) *Prompt filing of changes in information.*

a. Pursuant to Iowa Code section 516E.3(1) "c" or 516E.3(2) "b," a service company or a provider shall promptly file the following information with the division:

- (1) Any change in the name or ownership of the service company or provider.
- (2) Notice of the termination of the service company's or provider's business.
- (3) If material amendments have been made to any of the documents filed with the division pursuant to Iowa Code section 516E.3(1) "b" or 516E.3(2) "a," copies of those amended documents.

b. The division shall not charge a filing fee for interim filings made pursuant to this subrule to keep the materials previously filed with the division current and accurate.

191—104.4(516E) A service company's filing of service contracts.

104.4(1) Pursuant to Iowa Code section 516E.3(1) "a," a service company shall file with the division a true and correct copy of each service contract prior to issuing, selling or offering the service contract for sale in Iowa. The service company shall submit to the division \$10 for each service contract filed.

104.4(2) If material amendments, including any new riders, attachments, addenda or the like, have been made to any of the documents filed with the division pursuant to Iowa Code section 516E.3(1) "b," a service company shall promptly file copies of those amended documents. The division shall not charge a filing fee for interim filings made to keep the materials previously filed with the division current and accurate.

104.4(3) Copies of all required forms, procedures and instructions can be found on the division's Web site. Required fees and other payments are described in the instructions.

104.4(4) A motor vehicle service contract form filed pursuant to Iowa Code section 516E.3 may be used in this state immediately after the contract form has been filed with the division.

191—104.5(516E) A service company's use of surety bond in lieu of reimbursement insurance policy.

104.5(1) In lieu of obtaining a reimbursement insurance policy as required by Iowa Code section 516E.2, a service company may file with the division a surety bond. The surety bond shall be in the form as directed by the division and as available on the division's Web site.

104.5(2) A surety bond claimant, for purposes of this rule, includes any service contract holder whose service contract predates the effective date of the surety bond or was executed during the surety bond's period of coverage and whose service contract has not been rescinded, fulfilled, or secured by another bond or by other insurance.

104.5(3) Except as provided in Iowa Code section 516E.4 and subrule 104.5(6), no suit or action shall be commenced by a surety bond claimant later than one year after the expiration date of the surety bond.

104.5(4) Any surety bond claimant as set forth in subrule 104.5(2) may maintain an action on the surety bond. A surety's aggregate liability shall not exceed the penal sum of the bond.

104.5(5) A surety shall not cancel a surety bond except upon written notice of cancellation given by the surety to the division by certified mail. The effective date of the cancellation shall not be less than 60 days after the division receives the surety's notice. The surety shall specify the reason for the cancellation.

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104.5(6) The surety shall not be liable for any surety bond claim related to the service company's insolvency or cessation of business unless the surety claim is made within five years of the date of insolvency or business cessation.

104.5(7) If the surety notifies the service company that the surety intends to cancel a surety bond, the service company, within 30 days, shall submit to the division a substitute surety bond or reimbursement insurance policy.

104.5(8) A service company seller shall maintain an adequate surety bond and shall continuously monitor the surety amount to assure its adequacy. The surety bond amount shall be calculated based on the value of the service contracts sold and not performed or canceled and for which no trust fund or insurance is in place.

191—104.6(516E) Costs of audits and examinations. When the commissioner chooses to conduct an audit or examination pursuant to Iowa Code section 516E.14, 516E.21(1)“d,” or 516E.11(1)“c,” the actual costs of the audit or examination shall be borne by the provider, service company, or third-party administrator being audited or examined. The provider, service company, or third-party administrator may request that the division waive all or part of the costs.

191—104.7(516E) Prohibited acts.

104.7(1) *Unfair or deceptive trade practices involving used or rebuilt parts.*

a. Used parts. A motor vehicle service contract provider shall not use used parts to repair a motor vehicle covered by a motor vehicle service contract without prior written authorization by the vehicle owner, except as provided in paragraph 104.7(1)“b.”

b. Rebuilt parts. A motor vehicle service contract provider shall not use rebuilt parts to repair a motor vehicle covered by a motor vehicle service contract unless all of the following are true:

- (1) The parts have been dismantled and reconstructed as necessary.
- (2) All of the internal and external parts have been cleaned and made free from rust and corrosion.
- (3) All impaired, defective, or substantially worn parts have been restored to a sound condition or replaced with new, rebuilt, or unimpaired used parts.
- (4) All missing parts have been replaced with new, rebuilt, or unimpaired used parts.
- (5) All rewinding or machining or other necessary operations have been performed.
- (6) The rebuilt parts have been put in working condition, using, as minimum standards, the manufacturer's performance specifications in existence when the parts were originally manufactured if those specifications are publicly available.

104.7(2) *Unfair discrimination or trade practices.* A motor vehicle service contract or provider shall not make or permit any unfair discrimination between individuals of the same class in the rates charged for any contract, or in any other manner.

191—104.8(516E) Violations. Failure to comply with this chapter or with Iowa Code chapter 516E shall be deemed a violation which shall subject a person or entity to the procedures and penalties set forth in Iowa Code chapter 516E.

These rules are intended to implement Iowa Code chapter 516E.

ARC 2668C**INSURANCE DIVISION[191]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 502.204(24)“g” and section 502.305(2) as amended by 2016 Iowa Acts, House File 2394, section 2, the Insurance Division (the Division) hereby gives Notice of Intended Action to amend Chapter 50, “Regulation of Securities Offerings and Those Who Engage in the Securities Business,” Iowa Administrative Code.

Iowa Code chapter 502 is the Iowa Uniform Securities Act, which regulates the sale of securities in Iowa. The proposed amendments will bring the rules into accordance with Iowa Code section 502.305 as amended by 2016 Iowa Acts, House File 2394, related to the fee charged for filing a registration statement or a notice filing under Iowa Code section 502.305. The amendments also propose updates to many citations and general updates to the chapter.

The Division intends that these amendments shall go into effect November 2, 2016.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 23, 2016. Such written materials should be directed to Rosanne Mead, Iowa Insurance Division, Securities and Regulated Industries Bureau, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50319; fax (515)281-3059; e-mail rosanne.mead@iid.iowa.gov.

Also, there will be a public hearing on August 23, 2016, at 2 p.m. at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

The Division’s general waiver provisions in 191—Chapter 4 apply to these rules.

These amendments will impose no fiscal impact on the State.

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

These amendments are intended to implement Iowa Code section 502.305 as amended by 2016 Iowa Acts, House File 2394, section 2.

The following amendments are proposed.

ITEM 1. Amend paragraph **50.60(3)“b”** as follows:

b. Payment of the applicable fee under Iowa Code section ~~502.302(1)“a” as amended by 2015 Iowa Acts, House File 632.~~ 502.302(1)“a.”

ITEM 2. Amend subrule 50.60(4) as follows:

50.60(4) Amendments to notice filings are made on Form NF and are effective upon receipt by the administrator. Withdrawal or termination of a notice filing is made by filing Form NF or providing the administrator with notice of the withdrawal or termination in a similar format. An amendment, withdrawal, or termination is effective upon receipt by the administrator of the required notice and all fees required by Iowa Code section ~~502.302(1)“a” as amended by 2015 Iowa Acts, House File 632.~~ 502.302(1)“a.”

This subrule is intended to implement Iowa Code section 502.302 ~~and 2015 Iowa Acts, House File 632.~~

ITEM 3. Amend subrule 50.60(6) as follows:

50.60(6) An investment company that makes a notice filing under subrule 50.60(2) and that pays an initial \$400 filing fee under Iowa Code section 502.302(1)“a” ~~as amended by 2015 Iowa Acts, House~~

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~~File 632~~, shall pay a \$400 renewal fee prior to the notice filing's annual renewal date. Notice filings that are not renewed by the annual renewal date shall expire.

This subrule is intended to implement Iowa Code section 502.302 ~~and 2015 Iowa Acts, House File 632~~.

ITEM 4. Adopt the following new rule 191—50.70(502):

191—50.70(502) Fee for securities registration filings under Iowa Code section 502.305. Except as provided in Iowa Code sections 502.302(3) and 502.304A(3) "g," a person who files a registration statement or a notice filing pursuant to Iowa Code section 502.305 as amended by 2016 Iowa Acts, House file 2394, section 2, shall pay the following fees:

50.70(1) For the initial filing, \$400 for one year; and

50.70(2) On each anniversary date of the initial filing, an annual renewal fee of \$400.

ITEM 5. Amend rule 191—50.90(502) as follows:

191—50.90(502) Intrastate crowdfunding exemption.

50.90(1) Purpose and authority.

a. The purpose of this rule is to set out the requirements, procedures and fees relating to the registration and conduct of intrastate crowdfunding, as established by Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3.

b. This rule is authorized by Iowa Code ~~section~~ sections 502.202 and 502.605 ~~and Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, and is intended to implement 2015 Iowa Acts, House File 632.~~

50.90(2) Definitions. For purposes of this rule, the definitions in Iowa Code chapter 502 as amended by 2015 Iowa Acts, House File 632, and the following definitions shall apply unless the context requires otherwise:

"*Administrator's Web site*" means the Web site of the Iowa insurance division, www.iid.iowa.gov.

"*Issuer*" means a person that has filed a certificate of formation with the Iowa secretary of state and is authorized to do business in Iowa and has been approved by the administrator as a crowdfunding issuer pursuant to paragraph 50.90(8) "a."

"*Management*" means an issuer's directors or executive officers or the individuals who perform such functions for the issuer.

"*Portal Web site*" means the Internet Web site through which a registered Iowa crowdfunding portal provides intrastate crowdfunding offers and sales of exempt securities in Iowa.

"*Purchaser*" means an investor or person that purchases crowdfunding securities through an Iowa crowdfunding intermediary.

50.90(3) Intermediary registration. To act as a registered intermediary as defined and required by Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3:

a. and *b.* No change.

50.90(4) Iowa crowdfunding portal registration. To request administrator approval of a registration as an Iowa crowdfunding portal as defined and required by Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, a person shall submit all of the following to the administrator:

a. to *d.* No change.

50.90(5) No change.

50.90(6) Duties of an Iowa crowdfunding portal.

a. No change.

b. Background and regulatory checks. Prior to offering securities to residents of Iowa, the Iowa crowdfunding portal shall conduct a reasonable investigation of the background and regulatory history of each issuer whose securities are offered on the portal Web site and of each of the issuer's control persons. "Control persons" for purposes of this subrule means the issuer's officers or directors; other persons having the power, directly or indirectly, to direct the management or policies of the issuer, whether by

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contract or otherwise; and persons holding more than 20 percent of the outstanding equity of the issuer. The Iowa crowdfunding portal shall deny an issuer access to the portal Web site if:

(1) The issuer or any of its control persons are subject to a disqualification under Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, ~~section 502.202(24) "b"(5)~~ section 502.202(24) "b"(5) or this rule;

(2) and (3) No change.

c. to e. No change.

f. *Enforcement of investment limits.* The Iowa crowdfunding portal shall take reasonable measures to ensure that no purchaser exceeds the sales limits set forth in Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3 ~~section 502.202(24) "e" and "d"~~ section 502.202(24) "c."

g. *Administrator access.* The Iowa crowdfunding portal shall provide the administrator purchaser-level access at all times to the portal Web site, pursuant to Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3 ~~section 502.202(24) "g"(8)~~ section 502.202(24) "g"(8).

50.90(7) No change.

50.90(8) *Duties of a crowdfunding issuer.*

a. *Notice to administrator.* Pursuant to Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, at least 30 days prior to the offer of any security in this state in reliance upon the exemption provided by this rule, the crowdfunding issuer shall file with the administrator for approval a crowdfunding exemption notice application form, available on the administrator's Web site.

(1) and (2) No change.

b. and c. No change.

50.90(9) to **50.90(13)** No change.

This rule is intended to implement Iowa Code section ~~502.605 and section 502.202 as amended by 2015 Iowa Acts, House File 632.~~

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INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 523C.10, the Insurance Division (the Division) hereby gives Notice of Intended Action to rescind Chapter 54, "Residential Service Contracts," and adopt new Chapter 103, "Residential Service Contracts," Iowa Administrative Code.

Proposed new Chapter 103 is intended to implement Iowa Code chapter 523C. The proposed new chapter updates existing provisions in Chapter 54 and provides new procedures allowing more electronic administration of Iowa Code chapter 523C and the associated rules.

The Division intends that these amendments shall go into effect November 2, 2016.

Any interested person may make written suggestions or comments on the proposed new chapter on or before August 23, 2016. Such written materials should be directed to Rosanne Mead, Iowa Insurance Division, Securities and Regulated Industries Bureau, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50319; fax (515)281-3059; e-mail rosanne.mead@iid.iowa.gov.

Also, there will be a public hearing on August 23, 2016, at 3:30 p.m. at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

The Division's general waiver provisions in 191—Chapter 4 apply to these rules.

These rules will impose no fiscal impact on the State.

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

These amendments are intended to implement Iowa Code chapter 523C.

The following amendments are proposed.

ITEM 1. Rescind and reserve **191—Chapter 54**.

ITEM 2. Adopt the following **new** 191—Chapter 103:

CHAPTER 103
RESIDENTIAL SERVICE CONTRACTS

191—103.1(523C) Purpose. The purpose of this chapter is to administer Iowa Code chapter 523C, relating to residential service contracts as defined in Iowa Code section 523C.1(9).

191—103.2(523C) Applicability, scope, and definitions.

103.2(1) This chapter shall apply to any person who issues or offers to issue a residential service contract as defined in Iowa Code section 523C.1(9).

103.2(2) This chapter shall apply when an offer to sell a residential service contract is made or accepted in this state. An offer to sell is made in this state when the offer either originates from this state or is directed by the offeror to a person in this state.

103.2(3) The definitions in Iowa Code sections 523C.1 and 523C.8A(3) are incorporated by this reference. In addition, the following definitions shall apply to this chapter.

“Division” means the Iowa insurance division, supervised by the commissioner pursuant to Iowa Code section 505.8, in the division's performance of the duties of the commissioner under Iowa Code chapter 523C.

“Division's Web site” means the Web site of the Iowa insurance division, www.iid.iowa.gov.

“Guarantee or warranty” means:

1. Any written affirmation or written promise made by a manufacturer or seller in connection with the sale of structural components or any tangible personal property which relates to the nature of the material or workmanship and affirms or promises that the material or workmanship is free of defects or will meet a specified level of performance over a specified period of time; or

2. Any written affirmation, promise or undertaking by a manufacturer or seller in connection with the sale of structural components or any tangible personal property to refund, repair, replace or take other remedial action with respect to a product if the product fails to meet the specifications set forth in the undertaking, which written affirmation, promise or undertaking becomes part of the basis of the bargain for purposes other than resale.

“Residential customer” means any person (whether or not the person is the owner of the residential property) who purchases a service contract relating to a residential property.

“Residential property” means any single- or multiple-unit structure, including a house, townhouse, condominium, mobile home, or other habitable structure which is used primarily for residential purposes.

“Structural components” means the roof, foundation, basement, walls, ceiling or floors of a residential property.

191—103.3(523C) Application of insurance laws. The sale of a residential service contract by a licensed service company shall not be deemed to include the sale of insurance. Thus, unless the service company is otherwise engaged in the sale of insurance, the provisions of the insurance laws of this state shall not be applicable to any service company granted a license by the division. However, this provision may not be construed to exempt any other warranties or service contracts from the provisions of the insurance laws of this state.

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191—103.4(523C) Forms and instructions. Instructions for fees, forms and other filings, and copies of all required forms are available on the division's Web site.

191—103.5(523C) Fees and costs.

103.5(1) When a service company files a residential service contract form with the division for approval pursuant to Iowa Code section 523C.7, the service company shall also submit a residential service contract form approval fee of \$100 for each form of residential service contract filed; except that, if the residential service contract form is filed as part of the service company's annual report required by Iowa Code section 523C.15, the fee shall be the amount described in rule 191—103.8(523C).

103.5(2) When the commissioner chooses to conduct an audit or examination pursuant to Iowa Code section 523C.12, the actual costs of the audit or examination shall be borne by the service company being audited or examined. The service company may request that the division waive all or part of the costs.

191—103.6(523C) Prohibited acts or practices.

103.6(1) Defamation. A service company is prohibited from, directly or indirectly, doing, or aiding, abetting or encouraging, the following: the making, publishing, disseminating, or circulating of any oral or written statement, or of any pamphlet, circular, article or literature which is false or maliciously critical as to the financial condition of any person and which is calculated to injure that person.

103.6(2) Boycott, coercion, and intimidation. A service company is prohibited from entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the residential service contract industry.

103.6(3) False statements. A service company is prohibited from knowingly filing with any supervisory or other public official, or knowingly making or causing directly or indirectly to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

103.6(4) False entries. A service company is prohibited from knowingly making any false entry of a material fact in any book, report or statement of any person and from knowingly omitting to make a true entry of any material fact pertaining to the business of that person in any book, report or statement of that person.

103.6(5) Misrepresentation, false advertising, and unfair practices.

a. A service company shall not:

(1) Use in its name, contracts, or literature, any of the words "insurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty or surety business or deceptively similar to the name or description of any insurance or surety corporation, or any other service company. This subparagraph does not apply to a residential service company also licensed as an insurance company.

(2) Represent or imply in any manner that the service company has been sponsored or recommended, or that the service company's abilities or qualifications have in any respect been passed upon, by the division or by the state of Iowa. Nothing in this subrule prohibits a statement, other than in a paid advertisement, that a person has received a license, if the statement is true in fact and if the effect of the license's issuance is not misrepresented.

(3) Without the written consent of the residential customer, knowingly charge for duplication of coverage or duties required by state or federal law, or duplication of a warranty expressly issued by a manufacturer or seller of a product or any implied warranty enforceable against the lessor, seller or manufacturer of a product.

(4) Make, permit or cause any false or misleading statements, either oral or written, in connection with the sale, offer to sell or advertisement of a service contract.

(5) Permit or cause the omission of any material statement that, under the circumstances, should have been made in connection with the sale, offer to sell, or advertisement of a service contract, in order that other statements also made in connection with the sale, offer to sell or advertisement of a service contract would not be misleading.

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(6) Make, permit or cause any false or misleading statements, either oral or written, about the benefits or services available under the service contract.

(7) Make, permit or cause any statement or practice which has the effect of creating or maintaining a fraud.

(8) Cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation, or statement with respect to the residential service contract industry or with respect to any service company which is untrue, deceptive or misleading.

b. A bank, savings and loan association, insurance company or other lending institution shall not require the purchase of a residential service contract as a condition of a loan and shall not sell a residential service contract to a borrower unless the borrower signs an affidavit acknowledging that the purchase is not required.

191—103.7(523C) Service company licenses.

103.7(1) A person shall not issue a residential service contract or undertake or arrange to perform services pursuant to a residential service contract unless the person is a corporation, limited liability company, partnership or limited liability partnership and has procured a service company license from the division.

103.7(2) Service company licenses shall not be transferable. A service company which sells its business shall cancel its service company license, and the purchaser of the business shall apply for a new service license under the purchaser's name.

191—103.8(523C) Annual form filing. In addition to the information required by Iowa Code section 523C.15, a licensed service company shall include with its annual report one copy of each residential service contract form to be issued or used in this state, filed for review as an exhibit to the annual report; and a form review fee of 3 percent of the aggregate amount of payments the service company received for residential service contracts in the state during the preceding fiscal year, but the fee shall in no case be less than \$100 or more than \$50,000.

191—103.9(523C) Financial statements and calculation of net worth.

103.9(1) All financial statements, including balance statements, filed pursuant to or prepared for purposes of Iowa Code chapter 523C or this chapter shall be prepared in accordance with generally accepted accounting principles and certified by an independent certified public accountant.

103.9(2) For purposes of Iowa Code section 523C.6, "net worth" means the excess of all assets over liabilities, and any required reserves shall be treated as a liability rather than as an asset.

191—103.10(523C) Records.

103.10(1) All licensed service companies and independent depositories shall keep accurate accounts, books, and records concerning transactions regulated under Iowa Code chapter 523C.

103.10(2) A licensed service company's accounts, books, and records shall include:

- a.* Copies of all contracts;
- b.* The name and address of each residential customer;
- c.* The name and address of each independent depository; and
- d.* The dates and amounts of all receipts and expenditures.

103.10(3) A licensed service company shall retain all required accounts, books, and records pertaining to each residential service contract for at least two years after the expiration of the specified period of time.

103.10(4) All licensed service companies and independent depositories shall make all accounts, books, and records concerning transactions regulated under Iowa Code chapter 523C available to the division for the purpose of examination.

INSURANCE DIVISION[191](cont'd)

103.10(5) A licensed service company discontinuing business in this state shall maintain its records until it furnishes the division satisfactory proof that it has discharged all obligations to contract holders in this state.

191—103.11 to 103.14 Reserved.

191—103.15(523C) Violations. Failure to comply with this chapter or with Iowa Code chapter 523C shall be deemed a violation which shall subject a person or entity to the procedures and penalties set forth in Iowa Code chapter 523C.

These rules are intended to implement Iowa Code chapter 523C.

ARC 2667C

INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 523A.809, the Insurance Division (the Division) hereby gives Notice of Intended Action to amend Chapter 100, “Sales of Cemetery Merchandise, Funeral Merchandise and Funeral Services,” Iowa Administrative Code.

Chapter 100 provides for the Iowa Insurance Commissioner’s administration of the provisions of Iowa Code chapter 523A, relating to the regulation of the sales of cemetery merchandise, funeral merchandise, and funeral services; the establishment and maintenance of trust funds; and the administration of violations of Iowa Code chapter 523A or Chapter 100. The proposed amendments to Chapter 100 are intended to do the following:

- Clarify that preneed sellers must maintain records of the sales agents who have made sales on behalf of the preneed sellers and that preneed sellers shall report to the Division each year the names of any affiliated sales agents.
- Clarify how preneed sellers and financial institutions should create and report funds and transactions of master trust agreement accounts.
- Remove references to 2015 Iowa Acts, as the Acts have been incorporated into the 2016 Iowa Code.

The Division intends that these amendments shall go into effect November 2, 2016.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 23, 2016. Such written materials should be directed to Rosanne Mead, Iowa Insurance Division, Securities and Regulated Industries Bureau, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50319; fax (515)281-3059; e-mail rosanne.mead@iid.iowa.gov.

Also, there will be a public hearing on August 23, 2016, at 2:30 p.m. at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

The Division’s general waiver provisions in 191—Chapter 4 apply to these rules.

These amendments will impose no fiscal impact on the State.

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

These amendments are intended to implement Iowa Code chapter 523A.

INSURANCE DIVISION[191](cont'd)

The following amendments are proposed.

ITEM 1. Amend rule 191—100.1(523A) as follows:

191—100.1(523A) Purpose. This chapter is promulgated to implement and administer Iowa Code chapter 523A as amended by 2015 Iowa Acts, House File 632, which regulates the sale of cemetery merchandise, funeral merchandise, funeral services and any combination of those items.

ITEM 2. Amend subrule 100.15(1) as follows:

100.15(1) Procedure for renewal. The commissioner shall renew preneed sellers' licenses, pursuant to Iowa Code section 523A.501(7) as amended by 2015 Iowa Acts, House File 632, section 38, or sales agents' licenses, pursuant to Iowa Code section 523A.502(5) as amended by 2015 Iowa Acts, House File 632, section 39, for both active and restricted status licenses, if the preneed sellers or sales agents provide to the commissioner all of the following, which must be received by the commissioner on or before April 15 of each year:

a. Annual report. A preneed seller or sales agent shall file a complete and accurate annual report in the form and manner directed by the commissioner. A preneed seller's report must include information on affiliated sales agents as provided in the instructions. The form and instructions may be obtained through the commissioner's Web site.

b. and c. No change.

ITEM 3. Adopt the following **new** rule 191—100.19(523A):

191—100.19(523A) Master trusts.

100.19(1) Creation of master trusts. Pursuant to Iowa Code section 523A.203, a preneed seller may commingle the care funds of multiple beneficiaries in a master trust. When a preneed seller enters into a master trust agreement and establishes a master trust agreement at a financial institution:

a. The title of the financial account shall include the name of the preneed seller and be identified as a master trust account.

b. Either the preneed seller or the financial institution shall be the trustee of the master trust account.

c. Either the preneed seller or the financial institution shall maintain the detailed listing as required by Iowa Code section 523A.203(3) by keeping the following:

(1) One listing of the amount deposited in trust for each beneficiary; and

(2) A separate accounting of each purchaser's principal, interest, and income, and balance in trust for each beneficiary who has care funds in the master trust account.

100.19(2) Reporting of master trusts.

a. As part of the preneed seller's annual report required by paragraph 100.15(1)"a," a preneed seller shall submit all of the following:

(1) The aggregate amount of deposits made to the master trust account during the calendar year.

(2) The aggregate amount of withdrawals made from the master trust account during the calendar year.

(3) Information detailing the name of any beneficiary related to a deposit to or withdrawal from the master trust account with the amount deposited or withdrawn by the beneficiary. The report shall include aggregate amounts of deposits and withdrawals for each beneficiary.

(4) Transactions, as described in the division's instructions for the annual report, for the calendar year in which the transactions took place.

b. A financial institution shall submit a report annually that includes all of the following information relating to activities in the master trust:

(1) The aggregate amount of deposits made to the master trust account for each beneficiary during the calendar year.

(2) The aggregate amount of withdrawals made from the master trust account for each beneficiary during the calendar year.

INSURANCE DIVISION[191](cont'd)

(3) Transactions, as described in the division's instructions for the annual report, for the calendar year in which the transaction took place.

(4) A copy of the bank account statement for the master trust account.

ITEM 4. Adopt the following **new** paragraph **100.33(1)“f”**:

f. Record of sales agents. A preneed seller shall maintain a list of all sales agents who sold purchase agreements on behalf of the preneed seller during each calendar year. The records shall include the license number of each sales agent and the dates of the sales agent's employment. Upon the commissioner's request, these records shall be provided to the commissioner.

ITEM 5. Amend **191—Chapter 100**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 523A as amended by 2015 Iowa Acts, House File 632.

ARC 2659C

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(1)“r,” the Iowa Finance Authority proposes to amend Chapter 12, “Low-Income Housing Tax Credits,” Iowa Administrative Code.

These amendments replace the current qualified allocation plans for the Low-Income Housing Tax Credit Program with two updated qualified allocation plans (QAPs), one for 9 percent tax credits and another for 4 percent tax credits, both of which are to be incorporated by reference in rule 265—12.1(16).

The qualified allocation plans set forth the purposes of the plans, the administrative information required for participation, threshold criteria, selection criteria, post reservation requirements, the appeal process, and the compliance monitoring component. 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 Web site at www.iowafinanceauthority.gov. It is the Authority's intent to incorporate the qualified allocation plans by reference consistent with Iowa Code chapter 17A and 265—subrules 17.4(2) and 17.12(2).

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority's general rules concerning waivers. The qualified allocation plans are subject to state and federal requirements that cannot be waived. (See Internal Revenue Code Section 42 and Iowa Code section 16.52.)

The Authority will receive written comments on the proposed amendments and on the qualified allocation plans until 4:30 p.m. on August 23, 2016. Comments may be addressed to Dave Vaske, Low-Income Housing Tax Credit Manager, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Dave Vaske at (515)725-4941 or e-mailed to housingtaxcredits@iowa.gov.

The Authority will hold a public hearing on August 23, 2016, to receive public comments on these amendments and on the proposed qualified allocation plans. The public hearing will be held from 9 to 11 a.m. at the Authority's offices, located at 2015 Grand Avenue, Des Moines, Iowa.

The Authority anticipates that it may make changes to the qualified allocation plans based on comments received from the public.

IOWA FINANCE AUTHORITY[265](cont'd)

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.

These amendments are intended to implement Iowa Code sections 16.5(1)“r,” 16.52, 17A.12, and 17A.16 and IRC Section 42.

The following amendments are proposed.

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 July 6, 2016, 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 ~~October 8, 2014~~ July 6, 2016.

12.1(2) Nine percent qualified allocation plan. The qualified allocation plan entitled Iowa Finance Authority Low-Income Housing Tax Credit Program 2016 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 ~~October 7, 2015~~ July 6, 2016.

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 at <http://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. The 4% QAP incorporates by reference IRC Section 42 and the regulations in effect as of ~~October 8, 2014~~ July 6, 2016. 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.

12.2(2) 9% QAP. The 9% QAP can be reviewed and copied in its entirety on the authority's Web site at <http://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. The 9% QAP incorporates by reference IRC Section 42 and the regulations in effect as of ~~October 7, 2015~~ July 6, 2016. 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.

ARC 2660C**LOTTERY AUTHORITY, IOWA[531]****Notice of Intended Action**

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

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

Pursuant to the authority granted in Iowa Code section 99G.9(3), the Board of Directors of the Iowa Lottery Authority hereby gives Notice of Intended Action to amend Chapter 12, “Licensing,” Chapter 18, “Scratch Ticket General Rules,” Chapter 19, “Pull-Tab General Rules,” and Chapter 20, “Computerized Games—General Rules,” Iowa Administrative Code.

Chapters 12 and 18 to 20 are each being modified to update and modernize the rules regarding the Iowa Lottery’s sale of traditional lottery products known as “instant tickets.”

Historically, the Iowa Lottery has utilized the terms “instant tickets” and “scratch tickets” synonymously, to refer to printed lottery tickets that contain play symbols concealed by a removable coating that the player must scratch to reveal. Indeed, the first game ever sold by the Lottery, a scratch ticket called “Scratch, Match & Win,” was introduced in 1985.

Scratch tickets remain popular with Iowa Lottery players, having accounted for 65 percent of total Iowa Lottery sales in fiscal year 2015. Certainly, scratch tickets will remain core Iowa Lottery offerings for years to come.

However, in light of the specialized paper stock and latex coating utilized to produce scratch tickets, scratch tickets are necessarily more expensive for the Iowa Lottery to produce than computerized lotto games such as the popular Powerball® or Mega Millions® games. Since 2004, 13 lotteries in the United States have introduced a different type of instant ticket. These instant tickets are printed using the same lotto terminals and secure paper that licensed retailers already use for printing plays in computerized lotto games such as Powerball® or Mega Millions®.

Those instant tickets use play symbols just like traditional scratch tickets. However, the symbols are not concealed by any latex coating. By using the secure paper already in place to print lotto tickets, these “scratchless” printed tickets are far less expensive to produce. And, they still provide the same play symbols and entertainment value that lottery players have come to expect from traditional scratch tickets.

The Iowa Lottery and its Board have the authority under Iowa Code chapter 99G to introduce and administer lottery games, including these instant play games. However, the Lottery seeks to update its administrative rules to reflect that printed instant tickets may not always contain a latex covering that must be removed by the player.

These modifications were identified through a regular review of the Iowa Lottery Authority’s administrative rules.

Interested persons may submit comments orally or in writing by 4:30 p.m. on August 23, 2016, to Rob Porter, Vice President/General Counsel, Iowa Lottery Authority, through the following methods:

- Via mail to 13001 University Avenue, Clive, Iowa 50325-8225;
- Via e-mail to rkporter@ialottery.com; or
- Via telephone to (515)725-7851.

The Board does not intend to grant waivers under the provisions of these rules.

After analysis and review of this rule making, the Board finds that there is no adverse fiscal impact or impact on jobs from the adoption of these amendments.

These amendments are intended to implement Iowa Code chapter 99G.

The following amendments are proposed.

LOTTERY AUTHORITY, IOWA[531](cont'd)

ITEM 1. Amend subrule 12.4(1) as follows:

12.4(1) The lottery has discretion to license a qualified applicant to sell any one of the following lottery products or any combination of the following products: ~~scratch~~ instant tickets; pull-tab tickets; and computerized game tickets, if available. The lottery may require an applicant to sell one or more lottery products as a condition of selling any other lottery product. A lottery license authorizes the licensee to sell only the type of lottery products specified on the license.

ITEM 2. Amend **531—Chapter 18**, title, as follows:

SCRATCH INSTANT TICKET GENERAL RULES

ITEM 3. Amend rule 531—18.1(99G) as follows:

531—18.1(99G) Authorization of ~~scratch~~ instant ticket games. The lottery authority board authorizes the sale of ~~scratch~~ instant tickets that meet the criteria set forth in this chapter.

This rule is intended to implement Iowa Code Supplement section 99G.9(3).

ITEM 4. Amend rule 531—18.2(99G) as follows:

531—18.2(99G) Definitions.

“Instant ticket” means a scratch ticket or an instaplay ticket as defined in this chapter.

“Instaplay ticket” means an instant ticket printed on lotto terminal paper with play symbols that are not concealed by a removable covering.

“Play symbols” means the numbers or symbols appearing under the removable covering on ~~the~~ a scratch ticket or on the face of an instaplay ticket.

“Scratch ticket” as used in this chapter means an instant lottery ticket that is played by removing a rub-off covering on the ticket.

“Validation number” means the characters or numbers found on a ticket or ticket stub.

This rule is intended to implement Iowa Code Supplement sections 99G.3 and 99G.9(3).

ITEM 5. Amend rule 531—18.3(99G) as follows:

531—18.3(99G) ~~Scratch~~ Instant ticket price. The lottery shall specify the price of scratch tickets and instaplay tickets in the specific game rules for each game.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

ITEM 6. Amend subrule 18.5(2) as follows:

18.5(2) At the lottery’s discretion, a scratch ticket game or an instaplay game may include a special prize event. The number of prizes and the amount of each prize in the prize event shall be determined by the lottery. The dates and times, as well as the procedures for conducting any elimination drawings or prize events, shall be determined by the lottery in the specific game rules. Finalists for prize events shall be selected in the manner stated in the specific game rules.

ITEM 7. Amend rule 531—18.6(99G) as follows:

531—18.6(99G) Annuity prizes. If a prize offered in a scratch game or an instaplay game is an annuity, the prize shall consist of an initial prize payment followed by yearly installments as described in the specific game rules. If the current cash value of an annuity prize attributable to a single ticket or entry is less than \$100,000, the lottery may elect to pay the current cash value of the prize in one lump-sum payment.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

ITEM 8. Amend subrule 18.8(1) as follows:

18.8(1) Claim period. Prizes Scratch ticket prizes must be claimed within 90 days of the announced end of the scratch game. Instaplay ticket prizes must be claimed within 90 days of the date of sale of the instaplay ticket.

LOTTERY AUTHORITY, IOWA[531](cont'd)

ITEM 9. Amend subrule 18.8(5) as follows:

18.8(5) *Variation by specific game rules.* The specific game rules may vary the terms of this rule in respect to the manner in which prizes are claimed or the claim period applicable to any scratch or instaplay game or special event.

ITEM 10. Amend rule 531—18.9(99G) as follows:

531—18.9(99G) Ticket validation requirements.

18.9(1) To be a valid scratch ticket, a ticket must meet all of the following validation requirements.

A ticket must:

- a. Have been issued ~~by the lottery~~ in an authorized manner as determined by the lottery.
- b. Not be altered, unreadable, reconstructed or tampered with in any manner.
- c. Not be counterfeit in whole or in part.
- d. Not be stolen or appear on any list of omitted tickets on file with the lottery.
- e. Be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.
- f. Have play symbols and captions as described in the specific game rules. All symbols, numbers and codes must be present in their entirety, legible, right side up, and not reversed in any manner.
- g. Have the appropriate bar code, pack-ticket number, retailer verification code and security code.
- h. Have a validation number that appears on the lottery's official list of validation numbers of winning tickets. A ticket with that validation number shall not have been previously paid.
- i. Pass all additional validation requirements stated in the specific game rules and any confidential validation requirements established by the lottery.

18.9(2) To be a valid instaplay ticket, a ticket must meet all of the following validation requirements.

A ticket must:

- a. Have been issued in an authorized manner as determined by the lottery.
- b. Not be altered, unreadable, reconstructed or tampered with in any manner.
- c. Not be counterfeit in whole or in part.
- d. Not be stolen, canceled, or appear on any list of omitted or test tickets on file with the lottery.
- e. Be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.
- f. Have play symbols and captions as described in the specific game rules. All symbols, numbers and codes must be present in their entirety, legible, right side up, and not reversed in any manner.
- g. The information on the ticket or share must correspond precisely with the lottery's computer record.
- h. The ticket or share serial number must appear in its entirety, and correspond, using a computer validation file, to the winning game play or plays printed on the ticket or share.
- i. A ticket or share shall be void unless the ticket or share is printed on a paper stock roll that was validly issued to and used, at the time of the play, by the retailer from whom the ticket or share was purchased.
- j. Pass all additional validation requirements stated in the specific game rules and any confidential validation requirements established by the lottery.

18.9(2) 18.9(3) Any ticket not passing all applicable validation requirements is invalid and is ineligible for any prize. The chief executive officer's determination that a ticket is invalid is final.

The chief executive officer, in the chief executive officer's sole discretion, may choose to pay an amount equal to the prize that would have been won on an invalid ticket if the lottery is able to determine the prize which would have been won by use of a symbol, number, color code, or other mechanism. The chief executive officer's decision as to whether to pay a player the sum equal to the prize on an invalid ticket is final.

If an invalid ticket is purchased by a player, the only responsibility or liability of the lottery shall be to replace the invalid ticket with an unplayed ticket from the same game or any other game or issue a refund of the sale price.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

LOTTERY AUTHORITY, IOWA[531](cont'd)

ITEM 11. Amend rule 531—18.10(99G) as follows:

531—18.10(99G) Official end of game. The lottery shall announce the official end of each scratch game and each instaplay game. Retailers may continue to sell tickets for each game up to the cutoff date specified by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

ITEM 12. Amend rule 531—18.11(99G) as follows:

531—18.11(99G) Board approval of games. The lottery shall provide board members with a written description of each specific scratch game and each specific instaplay game. The chairperson or a quorum of the board may call a special meeting to review the instant game selection. The board shall not contest the selection of a scratch game or an instaplay game more than five days after receiving written notice of the selection.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

ITEM 13. Amend rule 531—19.2(99G) as follows:

531—19.2(99G) Definitions. As used in this chapter the following definitions are applicable.

“*Low-tier prizes*” are prizes which are included in the guaranteed low-end prize structure of a pull-tab game.

“*Pull-tab tickets*” are instant lottery tickets that are played by opening tabs to reveal if a prize was won. “Pull-tab tickets” do not include “scratch tickets” that are played by removing a rub-off covering from the play area or instaplay tickets that are played using the play symbols printed on lotto terminal paper.

This rule is intended to implement Iowa Code Supplement sections 99G.3 and 99G.9(3).

ITEM 14. Amend rule 531—20.2(99G), definitions of “Predetermined pool drawing machine” and “Scratch (instant) ticket vending machine,” as follows:

“*Predetermined pool drawing machine*” means a computer or other device external to a lotto terminal, ~~scratch~~ instant ticket vending machine, on-line vending machine, or monitor vending machine that predetermines winning and losing tickets or shares, assigns them to preprogrammed and prepackaged sequential electronic pool files and subsequently utilizes the files in production and distribution of electronic game cards and paper game tickets or shares produced in manufactured packs or through lotto terminals or vending machines.

“~~Scratch (instant)~~ Instant ticket vending machine” or “*ITVM*” means a vending machine or self-service kiosk that dispenses ~~preprinted~~ printed paper lottery tickets, with or without a scratch-off area or electronic game cards with preprogrammed and prepackaged sequential electronic pool files that have been determined to be winning or losing tickets by a predetermined pool drawing machine prior to the dispensing of the tickets.

ARC 2638C

PHARMACY BOARD[657]

Notice of Termination

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on December 9, 2015, as **ARC 2286C**, proposing to amend Chapter 7, “Hospital Pharmacy Practice,” Iowa Administrative Code.

The Notice proposed to eliminate restrictions regarding the dispensing of prescription drugs to patients seen in a hospital emergency department when 24-hour pharmacy services are available within 15 miles of the hospital. The amendment specifically would have authorized the dispensing, to hospital emergency department patients, of appropriately packaged and labeled prescription drugs in quantities not exceeding a 72-hour supply except as specifically identified in subrule 7.12(3). The proposed

PHARMACY BOARD[657](cont'd)

amendment would have eliminated the requirement that drugs dispensed through the emergency department only be dispensed in prepackaged quantities, clarifying that the prescriber is responsible for ensuring the drug is appropriately packaged and labeled but not that the prescriber must complete the labeling and adding that the quantity of the drug dispensed must be included on the dispensing label.

The Board is terminating the rule making commenced in **ARC 2286C** based on comments and suggestions received from members of the public and health care professionals. The Board has determined that more time is needed to study the suggestions and alternatives received relating to this proposed rule making and other closely related rules.

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

ARC 2662C**PHARMACY BOARD[657]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 272C.3, the Board of Pharmacy hereby gives Notice of Intended Action to rescind Chapter 30, “Impaired Pharmacy Professional and Technician Recovery Program,” and adopt new Chapter 30, “Iowa Monitoring Program for Pharmacy Professionals,” Iowa Administrative Code.

The amendment was approved at the June 30, 2016, regular meeting of the Board of Pharmacy.

The proposed amendment rescinds current Chapter 30 regarding the Impaired Pharmacy Professional and Technician Recovery Program and adopts new Chapter 30 establishing the Iowa Monitoring Program for Pharmacy Professionals. The program and committee established pursuant to the new chapter are intended to support the evaluation and monitoring of licensees who are impaired as a result of alcohol or drug abuse, dependency, or addiction, or by any mental or physical disorder or disability, while protecting the health, safety and welfare of the public. The program will provide an alternative to formal disciplinary actions against pharmacists, pharmacist-interns, and pharmacy technicians who recognize their impairment and seek assistance and monitoring under the guidance of the program committee. The proposed rules identify the members of the program committee, the organization of the committee, and the length of appointment terms.

Impaired professionals’ eligibility requirements and terms for participation and continued monitoring under the program are established. The proposed rules define actions that constitute noncompliance with the terms of participation in the program and the consequences of noncompliance. The proposed rules identify the circumstances under which program participant records and information may be disclosed to parties other than members of the committee. The proposed rules also authorize the committee to enter into 28E agreements with other health professional licensing boards to share administrative personnel to evaluate, assist, and monitor eligible program participants and to report noncompliant participants to the appropriate licensing board for appropriate action.

Requests for waiver or variance of the discretionary provisions of Board rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on August 30, 2016. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by e-mail to terry.witkowski@iowa.gov.

A public hearing will be held on August 30, 2016, from 3 to 4 p.m. in the large conference room, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309. Persons attending the hearing may present their

PHARMACY BOARD[657](cont'd)

views either orally or in writing. Persons will be asked to give their names and addresses for the record and to confine their remarks to the content of the proposed amendment.

After analysis and review of this rule making, the Board has determined that the effect of this proposed rule making on jobs cannot be accurately predicted. One of the goals of the Iowa Monitoring Program for Pharmacy Professionals is to encourage pharmacists, pharmacist-interns, and pharmacy technicians who recognize their impairment and who seek assistance and monitoring under the terms of the program to remain in practice within the profession. The continued employment and professional practice afforded these individuals, under the guidance and monitoring provided by this program, should have a positive impact on jobs in Iowa.

This amendment is intended to implement Iowa Code section 272C.3(1)“k.”

The following amendment is proposed.

Rescind 657—Chapter 30 and adopt the following new chapter in lieu thereof:

CHAPTER 30

IOWA MONITORING PROGRAM FOR PHARMACY PROFESSIONALS

657—30.1(272C) Iowa monitoring program for pharmacy professionals committee. Pursuant to the authority of Iowa Code section 272C.3(1)“k,” the board establishes the committee for the Iowa monitoring program for pharmacy professionals. The purpose of the committee is to provide a program to support the evaluation and monitoring of licensees who are impaired as a result of alcohol or drug abuse, dependency, or addiction, or by any mental or physical disorder or disability, while protecting the health, safety and welfare of the public.

657—30.2(272C) Definitions. For purposes of these rules, the following definitions shall apply:

“*Board*” means the Iowa board of pharmacy.

“*Committee*” means the Iowa monitoring program for pharmacy professionals committee.

“*Contract*” means the written document executed by an applicant or licensee and the committee after the committee receives a report from an approved treatment provider, which establishes the terms for participation in the program.

“*Impairment*” means an inability, or significant potential for inability, to practice with reasonable safety and skill as a result of a diagnosed substance use disorder or any diagnosed mental or physical health condition.

“*Initial agreement*” means the written document establishing the initial terms for participation in the program.

“*Licensee*” means a pharmacist licensed by the board, a pharmacist-intern registered with the board, or a pharmacy technician registered with the board.

“*Participant*” means an applicant or licensee who does any of the following: self-reports an impairment to the program, is referred to the program by the board, signs an initial agreement with the committee, or signs a contract with the committee.

“*Program*” means the Iowa monitoring program for pharmacy professionals.

“*Self-report*” means that an applicant or licensee provides written notification to the committee that the applicant or licensee has been, is, or may be impaired. Information related to impairment or a potential impairment which is provided on a license application or renewal form may be considered a self-report.

657—30.3(272C) Organization of the committee. The board shall appoint the members of the Iowa monitoring program for pharmacy professionals committee.

30.3(1) Membership. The membership of the committee includes, but is not limited to:

- a. The executive director of the board or the director’s designee from board staff;
- b. One representative from the Drake University College of Pharmacy and Health Sciences;
- c. One representative from the University of Iowa College of Pharmacy;

PHARMACY BOARD[657](cont'd)

- d.* One board of pharmacy licensee who has maintained sobriety for a period of no less than two years following successful completion of a recovery program;
- e.* One health care professional with expertise in substance use disorders;
- f.* One health care professional with expertise in mental health; and
- g.* One public member.

30.3(2) Officers. At the last meeting of each calendar year, the committee shall elect a chairperson and a vice chairperson, each of whom will begin serving a one-year term on January 1.

a. The chairperson is responsible for offering guidance and direction to staff between regularly scheduled committee meetings, including guidance and direction concerning program descriptions, interim restrictions on practice, and negotiation and execution of initial agreements and contracts on behalf of the committee. The committee retains authority to review all interim decisions at its discretion.

b. The vice chairperson is responsible for providing guidance and direction to staff between regularly scheduled committee meetings if the chairperson is unavailable or unable to assist in a particular matter.

30.3(3) Terms. Committee members, except the executive director or designee, shall be appointed for three-year terms and shall serve for a maximum of three terms. Each term shall expire on December 31 of the third year of the term.

657—30.4(272C) Eligibility.

30.4(1) Self-report. An applicant or a licensee shall self-report an impairment or potential impairment directly to the program.

30.4(2) Board referral. The board may refer an applicant or licensee to the program if a complaint or investigation reveals an impairment or potential impairment and the board determines that the individual is an appropriate candidate for review by the committee. The board may refer a licensee to the program in a public disciplinary order or other public order.

30.4(3) Review by the committee. The committee will determine on a case-by-case basis whether an applicant or licensee who self-reports or is referred by the board is an appropriate candidate for participation in the program. Several factors may lead to the committee's determination that an applicant or licensee is ineligible to participate in the program, including but not limited to if the committee finds sufficient evidence that the applicant or licensee:

- a.* Diverted drugs for distribution to third parties or for personal profit;
- b.* Adulterated, misbranded, or otherwise tampered with drugs intended for a patient;
- c.* Provided inaccurate, misleading, or fraudulent information or failed to fully cooperate with the committee;
- d.* Participated in the program, or a similar program offered by another state, without success; or
- e.* Failed to sign an initial agreement or a contract when offered by the committee.

30.4(4) Discretion. Eligibility of a person to participate in the program is at the sole discretion of the committee. No person is entitled to participate in the program.

30.4(5) Authority and jurisdiction. Participation in the program does not divest the board of its authority or jurisdiction over the participant. A participant with an impairment or potential impairment may be eligible to participate in the program while being subject to investigation or discipline by the board for matters other than the alleged impairment.

657—30.5(272C) Terms of participation. A participant shall agree to comply with the program terms of participation established in the initial agreement and the contract. Participants will be responsible for all expenses incurred to comply with the terms imposed by the program. Terms of participation specified in the contract shall include, but not be limited to:

30.5(1) Duration. The length of time a participant may participate in the program shall be determined by the committee in accordance with the following:

- a.* Participation in the program for participants impaired as a result of a substance use disorder is set at a minimum of three years. The committee may offer a contract with a shorter duration to a participant who can demonstrate successful participation in another state's monitoring program, who

PHARMACY BOARD[657](cont'd)

can document similar experience, or who, as a board referral, has successfully completed a portion of the monitoring period established in the board order.

b. Length of participation in the program for participants with impairments resulting from mental or physical conditions will vary depending upon the recommendations provided by health care providers and the determination of the committee following review of all relevant information.

30.5(2) Requirements. The committee shall establish terms of participation designed to meet the specific needs of a participant. The committee shall determine the type of recovery, rehabilitation, or maintenance program required to treat the participant's impairment. The contract shall provide a detailed description of the goals of the program, the requirements for successful participation, and the participant's obligations therein. The committee may establish terms of participation specific to a participant's impairment including, but not limited to, the following: treatment, aftercare, worksite monitoring, chemical screening, further evaluations, structured recovery meetings, therapy, and medication management.

30.5(3) Practice restrictions. The committee may impose restrictions on the license to practice as a term of the initial agreement or contract until such time as the committee receives a report from an approved evaluator, and the committee determines, based on all relevant information, that the participant is capable of practicing with reasonable skill and safety. As a condition of participation in the program, a licensee is required to agree to restricted practice in accordance with the terms specified in the initial agreement or contract. In the event the licensee refuses to agree to or comply with the practice restrictions, the committee shall refer the licensee to the board for appropriate action.

30.5(4) Noncompliance. Noncompliance is the failure to adhere to the terms of the initial agreement or contract. Participants shall promptly notify the committee of any instances of noncompliance, including relapse. Any instances of significant noncompliance shall be reported by the committee to the board. The report shall include a description of the noncompliance and the committee's recommendation as to whether the participant should remain in the program.

657—30.6(272C) Confidentiality. Information in the possession of the board or the committee shall be subject to the confidentiality requirements of Iowa Code section 272C.6. Information about participants in the program shall not be disclosed except as provided in this rule.

30.6(1) The committee is authorized, pursuant to Iowa Code section 272C.6(4), to communicate information about a current or former program participant to the applicable regulatory authorities or licensee monitoring programs in the state of Iowa and in any jurisdiction of the United States or foreign nations in which the participant is currently licensed or in which the participant seeks licensure. Program participants must report their participation to the applicable monitoring program or licensing authority in any state in which the participant is currently licensed or in which the participant seeks licensure.

30.6(2) The committee is authorized to communicate information about a program participant to any person assisting in the participant's treatment, recovery, rehabilitation, monitoring, or maintenance for the duration of the contract.

30.6(3) The committee is authorized to communicate information about a program participant to the board in the event a participant does not comply with the terms of the contract as set forth in rule 657—30.5(272C). The committee may provide the board with a participant's program file in the event the participant does not comply with the terms of the contract and the committee refers the case to the board for the filing of formal disciplinary charges or other appropriate action. If the board initiates disciplinary action against a licensee for noncompliance with the terms of the contract, the board may include in the public disciplinary documents information about a licensee's participation in the program. The committee is also authorized to communicate information about a participant to the board in the event that the participant is under investigation by the board.

30.6(4) The committee is authorized to communicate information about a current or former program participant to the board if reliable information held by the committee reasonably indicates that a significant risk to the public exists. If the board initiates disciplinary action based upon this information, the board may include in the public disciplinary documents information about a licensee's

PHARMACY BOARD[657](cont'd)

participation if necessary to address impairment issues related to the violations which are the subject of the disciplinary action.

657—30.7(28E) Authority for 28E agreements. The committee may enter into 28E agreements with other health professional licensing boards to evaluate, assist, and monitor impaired licensees from other health professions who self-report and to report to those professional licensing boards regarding the compliance of individual licensees. In the event of noncompliance, the licensee may be referred to the appropriate licensing board for appropriate disciplinary action.

These rules are intended to implement Iowa Code section 272C.3(1)“k.”

ARC 2670C**PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Barbering hereby gives Notice of Intended Action to amend Chapter 21, “Licensure,” and Chapter 24, “Continuing Education for Barbers,” Iowa Administrative Code.

This rule making proposes to amend the required number of continuing education hours a licensed barber must complete during a single biennium. 2015 Iowa Acts, Senate File 434, created new Iowa Code section 158.11 and amended Iowa Code section 272C.2A, reducing from eight hours to three hours the number of continuing education hours licensed barbers are required to complete during a single biennium. Because membership of the Board of Barbering was reduced to two members in April 2015, the Board was unable to hold a meeting due to lack of a quorum of Board members and was therefore unable to adopt administrative rules following the passage of 2015 Iowa Acts, Senate File 434. However, additional board members were appointed during the 2016 Session, with terms effective May 1, 2016, allowing the Board to resume operations, including amendment of these rules.

Any interested person may make written comments on the proposed amendments no later than August 23, 2016, addressed to Susan Reynolds, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; e-mail susan.reynolds@idph.state.ia.us.

A public hearing will be held on August 23, 2016, from 9 to 9:30 a.m. in Conference Room 418, Fourth Floor, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

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

These amendments are intended to implement Iowa Code chapters 158 and 272C and section 147.10. The following amendments are proposed.

ITEM 1. Amend subparagraph **21.16(3)“a”(2)** as follows:

(2) Verification of completion of ~~eight~~ three hours of continuing education that meet the continuing education standards defined in rule 645—24.3(158,272C) within two years of application for reactivation.

ITEM 2. Amend subparagraph **21.16(3)“b”(2)** as follows:

(2) Verification of completion of ~~eight~~ three hours of continuing education that meet the continuing education standards defined in rule 645—24.3(158,272C) within two years of application for reactivation; and

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 3. Amend subrule 24.2(1) as follows:

24.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on July 1 and ending on June 30 of each even-numbered year. Each biennium, each person who is licensed to practice as a barber in this state shall be required to complete a minimum of ~~eight~~ three hours of continuing education that meet the requirements of rule 645—24.3(158,272C). ~~Beginning August 1, 2010, a~~ A minimum of one hour of the ~~eight~~ three hours shall be in the content areas of Iowa barbering laws and administrative rules and sanitation. A licensee who is a barber instructor shall obtain four hours in teaching methodology in addition to meeting all continuing education requirements for renewal of the barber license.

ITEM 4. Amend subrule 24.2(2) as follows:

24.2(2) Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of ~~eight~~ three hours of continuing education per biennium for each subsequent license renewal.

ARC 2658C

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 101.1(1), 101.2, 101.4, and 101.5, the State Fire Marshal in the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 226, “Liquefied Petroleum Gas,” Iowa Administrative Code.

The proposed amendments allow for the public fueling of motor vehicles with liquefied petroleum gas, known as “LP gas,” and will authorize the owner of an LP-gas motor fuel dispensing facility or the owner’s designee to provide training for the safe operation of the system by the users who are fueling their vehicles. The proposed amendments are consistent with the recent amendments to rule 661—201.2(100), which incorporated by reference the International Fire Code, 2015 edition. With the adoption of the current edition of the International Fire Code, the public fueling of motor vehicles with LP gas is now authorized. Automakers are now making vehicles that run on alternative fuels that replace conventional gasoline and diesel; one of the more popular alternative fuels is LP gas. The Iowa Propane Gas Association supports these proposed amendments, and there are members who are in the process of creating fueling stations to be ready when new rule 661—226.10(101) is adopted. The additional fuel source will benefit Iowans and Iowa’s economy.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail to Agency Rules Administrator, Iowa Department of Public Safety, Oran Pape State Office Building, 215 East 7th Street, Des Moines, Iowa 50319; or by electronic mail to admrule@dps.state.ia.us by 4:30 p.m. on August 31, 2016.

In addition, a public hearing on the proposed amendments will be held on August 31, 2016, at 10 a.m. in the First Floor Public Conference Room (Room 125), Oran Pape State Office Building, 215 East 7th Street, Des Moines, Iowa. Persons may present their views orally or in writing at the public hearing.

The statutory requirements of Iowa Code chapter 101 regarding combustible and flammable liquids and compressed gases cannot be waived. To the extent that rules are not statutorily required, those rules are subject to the waiver provisions of rule 661—10.222(17A).

PUBLIC SAFETY DEPARTMENT[661](cont'd)

After analysis and review of this rule making, there should be a positive impact on jobs and a positive impact on the safety of the public. Any fiscal impact is expected to be minimal and less than \$100,000 annually or less than \$500,000 during the next five years.

These amendments are intended to implement Iowa Code sections 101.1(1) and 101.2.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrule 226.4(5):

226.4(5) The training requirements of subrules 226.4(1) to 226.4(4) shall not apply to users as defined in paragraph 226.10(2)“c.” If a user is also a person subject to the requirements of rule 661—226.4(101), then the person must comply with the requirements of rule 661—226.4(101).

ITEM 2. Amend rule 661—226.9(101) as follows:

661—226.9(101) NFPA standards. To the extent that NFPA standards are inconsistent with International Fire Code standards, the NFPA standards shall control. However, for rule 661—226.10(101), the provisions of the International Fire Code, 2015 edition, and the provisions of rule 661—226.10(101) shall control over the NFPA standards.

ITEM 3. Adopt the following **new** rule 661—226.10(101):

661—226.10(101) Public fueling of motor vehicles.

226.10(1) Self-service LP-gas dispensing systems, including key, code, and card lock dispensing systems, shall be limited to the filling of permanently mounted containers providing fuel to an LP-gas powered vehicle.

226.10(2) The requirements for self-service LP-gas dispensing systems shall be in accordance with the following:

a. The arrangement and operation of the transfer of product into a vehicle shall be in accordance with this chapter.

b. The system shall be provided with an emergency shutoff switch located within 100 feet (30,480 mm) of, but not less than 20 feet (6,096 mm) from, dispensers.

c. The owner of an LP-gas motor fuel-dispensing facility or the owner’s designee shall provide for the safe operation of the system and the training of users. “Users” means the person or persons using an LP-gas motor fuel-dispensing facility to transfer the product into a vehicle.

d. The dispenser and hose-end valve shall release not more than 1/8 fluid ounce (4 cc) of liquid to the atmosphere upon breaking the connection with the fill valve on the vehicle.

e. Approved portable fire extinguishers complying with Section 906 of the International Fire Code, 2015 edition, with a minimum rating of 2-A:20-B:C shall be provided and located such that an extinguisher is not more than 75 feet (22,860 mm) from pumps, dispensers, or storage tank fill-pipe openings, in accordance with Section 2305.5 of the International Fire Code, 2015 edition.

f. In accordance with Section 2305.6 of the International Fire Code, 2015 edition, warning signs shall be conspicuously posted within sight of each dispenser in the fuel-dispensing area and shall state the following:

(1) No smoking.
(2) Shut off motor.
(3) Discharge your static electricity before fueling by touching a metal surface away from the nozzle.

(4) To prevent static charge, do not reenter your vehicle while fuel is pumping.

(5) If a fire starts, do not remove nozzle—back away immediately.

(6) It is unlawful and dangerous to dispense fuel into unapproved containers.

(7) No filling of portable containers in or on a motor vehicle.

g. In accordance with Section 2305.7 of the International Fire Code, 2015 edition, the area around the dispenser shall be maintained. Fenced and diked areas surrounding above-ground tanks shall be kept free from vegetation, debris and other material that is not necessary to the proper operation of the tank

PUBLIC SAFETY DEPARTMENT[661](cont'd)

and piping system. Weeds, grass, brush, trash, and other combustible materials shall be kept not less than 10 feet (3,048 mm) from fuel-handling equipment.

ARC 2669C

SECRETARY OF STATE[721]

Notice of Intended Action

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

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

Pursuant to the authority of 2016 Iowa Acts, House File 2273, section 16, and Iowa Code section 47.1, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 21, “Election Forms and Instructions,” Iowa Administrative Code.

The proposed amendments will allow county commissioners of elections to utilize the United States Postal Service’s Intelligent Mail barcode (IMb) as an alternative to traditional postmarks when determining whether absentee ballots have been introduced into the federal mail system by the date required under Iowa Code chapter 53. These amendments require a county commissioner of elections to provide notice to the Secretary of State once the county commissioner decides to use IMb Tracing. The amendments further provide a procedure that the Absentee and Special Voters Precinct Board must use to determine whether the absentee ballot did in fact enter the federal mail system on time. Finally, these amendments require that a county commissioner who notifies the Secretary of State that IMb Tracing will be used in an election cycle must seek a waiver from the Secretary of State before discontinuing IMb Tracing for that election cycle.

Any interested person may make written suggestions or comments on the proposed amendments on or before August 23, 2016. Written suggestions or comments should be directed to Eric Gookin, Election Administrator, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Secretary of State’s office by telephone at (515)281-7550 or in person at the Secretary of State’s office on the first floor of the Lucas State Office Building.

Requests for a public hearing must be received by August 23, 2016.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 2663C**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

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

These amendments are intended to implement Iowa Code chapter 53 as amended by 2016 Iowa Acts, House File 2273, sections 11 to 15.

TRANSPORTATION DEPARTMENT

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, 2017.

TRANSPORTATION DEPARTMENT(cont'd)

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 June 20, 2016, 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 \$93,000 to \$87,000 effective January 1, 2017.
2. The bid threshold in Iowa Code section 314.1, subsection 2, for cities with a population of 50,000 or less will be adjusted from \$50,000 to \$47,000 effective January 1, 2017.
3. The bid threshold in Iowa Code section 314.1, subsection 2, for cities with a population of more than 50,000 will be adjusted from \$72,000 to \$67,000 effective January 1, 2017.

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 2640C**TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 321F.11, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 424, "Transporter Plates," Chapter 430, "Motor Vehicle Leasing Licenses," and Chapter 451, "Emergency Vehicle Permits," Iowa Administrative Code.

The proposed amendments:

- Correct the name of the Office of Vehicle and Motor Carrier Services.
- Eliminate a duplicative reference to Iowa Code section 321.451.
- Add language allowing the Department to deny an application for a privately owned vehicle to be designated as an authorized emergency vehicle if the vehicle does not comply with Iowa Code section 321.451 or does not demonstrate necessity.
- Add a new rule within Chapter 451 concerning the process used by the Department when denying an application or revoking a certificate of designation for authorized emergency vehicles.

These amendments do not provide for waivers. Any person who believes that the circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; e-mail: tracy.george@dot.iowa.gov.

5. Be received by the Office of Policy and Legislative Services no later than August 23, 2016.

A meeting to hear requested oral presentations is scheduled for Thursday, August 25, 2016, at 10 a.m. at the Iowa Department of Transportation's Motor Vehicle Division offices located at 6310 SE Convenience Boulevard, Ankeny, Iowa.

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

TRANSPORTATION DEPARTMENT[761](cont'd)

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

These amendments are intended to implement Iowa Code sections 321.58, 321.451 and 321F.11.

The following amendments are proposed.

ITEM 1. Amend subrule 424.1(1) as follows:

424.1(1) Information. Information and blank forms relating to this chapter may be obtained from and completed forms shall be submitted to the Office of Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278.

ITEM 2. Amend subrule 430.1(1) as follows:

430.1(1) Information. Information and blank forms relating to this chapter may be obtained from and completed forms shall be submitted to the Office of Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278.

ITEM 3. Amend rule 761—451.1(321) as follows:

761—451.1(321) Information. Information about certificates of designation for authorized emergency vehicles is available from the office of vehicle and motor carrier services. The address of the office of vehicle services is: Office of Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278.

This rule is intended to implement Iowa Code sections 321.2 and 321.3.

ITEM 4. Amend subrule 451.2(1) as follows:

451.2(1) Application. Application for a certificate which designates a privately owned vehicle as an authorized emergency vehicle shall be submitted to the office of vehicle and motor carrier services on a form prescribed by the department. ~~Iowa Code section 321.451 lists the types of privately owned vehicles that may be issued a certificate of designation and the requirements for designation.~~ The department shall deny an application if the department does not establish that the vehicle will be used as an authorized emergency vehicle, as described in Iowa Code section 321.451, or that the vehicle does not otherwise demonstrate necessity for the designation.

ITEM 5. Adopt the following **new** rule 761—451.3(17A,321):

761—451.3(17A,321) Application denial or certificate revocation.

451.3(1) The department may deny an application or revoke a certificate of designation if an applicant or certificate holder fails to comply with the applicable provisions of this chapter or Iowa Code section 321.231 or 321.451, the certificate holder is no longer eligible for the certificate, or the certificate holder otherwise abuses the certification.

451.3(2) The department shall send notice by certified mail to a person whose certificate of designation is to be revoked or denied. The notice shall be mailed to the person's mailing address as shown on departmental records and the revocation or denial shall become effective 20 days from the date mailed. A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13. The request shall be submitted in writing to the director of the office of vehicle and motor carrier services. The request shall be deemed timely submitted if it is delivered or postmarked on or before the effective date specified in the notice of revocation or denial.

This rule is intended to implement Iowa Code chapter 17A and sections 321.13, 321.231 and 321.451.

USURY

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

USURY(cont'd)

August 1, 2015 — August 31, 2015	4.25%
September 1, 2015 — September 30, 2015	4.25%
October 1, 2015 — October 31, 2015	4.25%
November 1, 2015 — November 30, 2015	4.25%
December 1, 2015 — December 31, 2015	4.00%
January 1, 2016 — January 31, 2016	4.25%
February 1, 2016 — February 29, 2016	4.25%
March 1, 2016 — March 31, 2016	4.00%
April 1, 2016 — April 30, 2016	3.75%
May 1, 2016 — May 31, 2016	4.00%
June 1, 2016 — June 30, 2016	3.75%
July 1, 2016 — July 31, 2016	3.75%
August 1, 2016 — August 31, 2016	3.75%

ARC 2663C

SECRETARY OF STATE[721]

Adopted and Filed Emergency

Pursuant to the authority of 2016 Iowa Acts, House File 2273, section 16, and Iowa Code section 47.1, the Secretary of State amends Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

The amendments allow county commissioners of elections to utilize the United States Postal Service's Intelligent Mail barcode (IMb) as an alternative to traditional postmarks when determining whether absentee ballots have been introduced into the federal mail system by the date required under Iowa Code chapter 53. These amendments require a county commissioner of elections to provide notice to the Secretary of State once the county commissioner decides to use IMb Tracing. The amendments further provide a procedure that the Absentee and Special Voters Precinct Board must use to determine whether the absentee ballot did in fact enter the federal mail system on time. Finally, these amendments require that a county commissioner who notifies the Secretary of State that IMb Tracing will be used in an election cycle must seek a waiver from the Secretary of State before discontinuing IMb Tracing for that election cycle.

Pursuant to Iowa Code section 17A.4(3), the Secretary of State finds that notice and public participation are unnecessary because 2016 Iowa Acts, House File 2273, section 16, expressly authorizes the filing of emergency rules.

Pursuant to Iowa Code section 17A.5(2)"b"(1)(a), the Secretary of State also finds that the normal effective date of the amendments, 35 days after publication, should be waived and the amendments made effective August 1, 2016, because 2016 Iowa Acts, House File 2273, section 16, provides for emergency adoption of the amendments.

After analysis and review of this rule making, no fiscal impact to the state has been found.

No waivers are provided for because 2016 Iowa Acts, House File 2273, and these amendments relate to voluntary use of IMb Tracing. If a county commissioner does not use IMb Tracing, these amendments would not apply.

The Secretary of State adopted these amendments on July 13, 2016.

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

These amendments are also published herein under Notice of Intended Action as **ARC 2669C** to allow public comment.

These amendments are intended to implement Iowa Code chapter 53 as amended by 2016 Iowa Acts, House File 2273, sections 11 to 15.

These amendments became effective August 1, 2016.

The following amendments are adopted.

ITEM 1. Amend subrule 21.1(7) as follows:

21.1(7) Absentee voting in postponed elections. Absentee ballots shall be delivered to voters pursuant to Iowa Code section 53.22 until the date the election is actually held. Absentee ballots shall be accepted at the commissioner's office until the hour the polls close on the date the election is held. Absentee ballots which are postmarked or which bear an Intelligent Mail barcode (IMb) traceable to a date of entry into the federal mail system no later than the day before the election is actually held shall be accepted if received no later than the time prescribed by the Iowa Code for the usual conduct of the election. The time shall be calculated from the date on which the election is held, not the date for which the election was originally scheduled. However, if absentee ballots have been tabulated before the election is postponed, the absentee ballots shall be sealed in an envelope by the absentee and special voters precinct board and stored securely until the date the election is actually held. The sealed envelopes shall be opened by the absentee and special voters precinct board on the date the election is actually held, counters on the tabulating equipment (if any) shall be reset to zero, and all absentee ballots tabulated on the original election date shall be retabulated.

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ITEM 2. Amend subrule 21.2(2) as follows:

21.2(2) Original absentee ballot applications. The original absentee ballot application submitted electronically shall also be mailed or delivered to the commissioner. If mailed, the envelope bearing the original absentee ballot application shall be postmarked not later than the Friday before the election. This subrule shall not apply to documents submitted electronically by UOCAVA voters pursuant to rule 721—21.320(53).

a. The voter's absentee ballot shall be rejected by the absentee and special voters precinct board if the original absentee ballot application which was filed electronically is not received by the time the polls close on election day.

b. The voter's absentee ballot shall be rejected by the absentee and special voters precinct board if the postmark or Intelligent Mail barcode (IMb) on the envelope containing the original absentee ballot application is either illegible or later than the Friday before the election.

ITEM 3. Amend rule 721—21.12(47,53) as follows:

721—21.12(47,53) Absentee ballot receipt deadline when the United States post office is closed on the deadline for receipt of absentee ballots. When the United States post office is closed in observance of a federal holiday and is not delivering mail on the deadline for receipt of absentee ballots as set forth in Iowa Code section 53.17, the deadline to receive mailed ~~and absentee ballots that are determined to have entered the federal mail system timely,~~ postmarked absentee ballots as indicated by the postmark or Intelligent Mail barcode (IMb) Tracing, shall move to the next business day on which mail delivery is available.

This rule is intended to implement Iowa Code sections 47.1, and 47.4 and sections 53.17 and 52.22 as amended by 2016 Iowa Acts, House File 2273, sections 11 to 15.

ITEM 4. Adopt the following new rule 721—21.14(53):

721—21.14(53) Intelligent Mail barcode (IMb) Tracing. A commissioner may choose to use Intelligent Mail barcode (IMb) Tracing (IMb Tracing) to determine when an absentee ballot has entered into the federal mail system as an alternative to a traditional postmark verification.

21.14(1) Notice to state commissioner of elections required.

a. Prior to a commissioner's implementation of IMb Tracing for an election, notice must be sent to the state commissioner.

b. A commissioner may not implement or discontinue the use of IMb Tracing while an election is open once absentee ballots have been mailed pursuant to Iowa Code section 53.8.

c. The state commissioner may issue a waiver to paragraph "b" if a commissioner's ability to use IMb Tracing is impacted by issues beyond the commissioner's control.

21.14(2) Determining the eligibility of IMb-marked absentee ballots. An absentee ballot shall be counted once it is determined that the absentee ballot arrived in the federal mail system by the deadline specified in Iowa Code chapter 53. The absentee ballot's entry into the federal mail system may be verified either by a postmark or by information obtained through IMb Tracing. For absentee ballots received after election day, but before the official canvass:

a. If the postmark or IMb Tracing information indicates that an absentee ballot was received by the deadline specified in Iowa Code chapter 53, the ballot shall be included for canvass by the absentee and special voters precinct board (board).

b. If the postmark is illegible, missing, or dated on or after election day, the commissioner shall attempt to verify the absentee ballot's entry into the federal mail system by using the IMb Tracing information for the ballot. The commissioner shall provide all of the materials to the board.

c. If there is a date discrepancy between the postmark and the IMb, the earlier of the two shall determine whether or not the absentee ballot can be counted.

d. If neither the postmark nor the IMb indicate that the absentee ballot entered the federal mail system by the deadline specified in Iowa Code chapter 53, the absentee ballot shall not be counted.

SECRETARY OF STATE[721](cont'd)

e. The information provided by the commissioner to the board must contain the numeric value assigned to the IMb barcode and a full report from the United States Postal Service.

f. A board member from each political party for partisan elections or two members from the board for nonpartisan elections shall review the IMb Tracing information provided by the commissioner and shall certify the information by initialing the envelope and report.

g. If the board concludes that the IMb Tracing information verifies that the absentee ballot entered the federal mail system by the deadline specified in Iowa Code chapter 53, the absentee ballot shall be counted.

21.14(3) *Report to the state commissioner.* A commissioner who makes use of IMb Tracing shall file a report with the state commissioner for each general election no later than the first day of December following each general election. The report shall be on a form prescribed by the state commissioner.

This rule is intended to implement Iowa Code sections 53.17 and 53.22 as amended by 2016 Iowa Acts, House File 2273, sections 11 to 15.

[Filed Emergency 7/15/16, effective 8/1/16]

[Published 8/3/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/3/16.

ARC 2650C

COMMERCE DEPARTMENT[181]

Adopted and Filed

Pursuant to the authority of Iowa Code chapter 546, the Department of Commerce amends Chapter 1, "Organization and Operation," and rescinds Chapter 2, "Petitions for Rule Making," and Chapter 3, "Declaratory Rulings," Iowa Administrative Code.

These amendments update information related to the Divisions of the Commerce Department as a result of location changes and statutory changes over a number of years.

By statute, these amendments do not contain conditions for waiver.

Notice of Intended Action was published in the June 8, 2016, Iowa Administrative Bulletin as **ARC 2575C**. Public comments were allowed until 4:30 p.m. on June 28, 2016. No comments were received by the Department or posted online. No changes were made to the text of the proposed amendments.

After analysis and review of this rule making, the Department has determined that there will be no impact on jobs and no fiscal impact to the state.

These amendments are intended to implement Iowa Code chapters 546 and 17A.

These amendments will become effective September 7, 2016.

The following amendments are adopted.

ITEM 1. Amend rule 181—1.1(546,17A) as follows:

181—1.1(546,17A) Purpose. This chapter describes the organization and operation of the department of commerce (~~hereafter referred to as the "department"~~), ~~including the offices where, and the means by which any interested person may obtain public information and make submittals or requests.~~

ITEM 2. Rescind and reserve rule **181—1.3(546,17A)**.

ITEM 3. Amend rule 181—1.4(546,17A) as follows:

181—1.4(546,17A) Duties of the department. The commerce department administers and coordinates the various regulatory, service, and licensing functions of the state ~~regarding relating to the conduct conducting of business and or commerce in the state.~~ The department consists of ~~the director's office, an office of administrative services, and~~ the following divisions: banking, credit union, savings and loan, utilities, insurance, and alcoholic beverages, and professional licensing and regulation.

~~1.4(1) Office of administrative services.~~ The office of administrative services coordinates personnel services and shared administrative support services for the department, coordinates the development of the department's annual budget, and maintains monitoring and control systems for the department.

~~1.4(2)~~ **1.4(1) Banking division.** The banking division regulates and supervises state banks, regulated loan companies, industrial loan companies, mortgage bankers, mortgage brokers, real estate closing agents, debt management companies, money services companies, and delayed deposit service businesses and performs other duties assigned to it by law. In addition, as provided in Iowa Code section 546.10, the division administers and coordinates the activities of the following professional licensing boards: the engineering and land surveying examining board, the Iowa accountancy examining board, the real estate commission, the architectural examining board, the landscape architectural examining board, the real estate appraiser examining board, and the interior design examining board.

~~1.4(3)~~ **1.4(2) Credit union division.** The credit union division regulates and supervises the operation of credit unions within the state; the credit union review board performs duties assigned to it by Iowa Code chapter 533.

~~1.4(4) Savings and loan division.~~ The savings and loan division regulates and supervises savings and loan associations and savings banks which operate within the state.

~~1.4(5) Gaming division.~~ Rescinded IAB 11/23/94, effective 11/4/94.

~~1.4(6)~~ **1.4(3) Utilities division.** The utilities division regulates and supervises ~~all~~ certain public utilities which operate within the state, and enforces or administers the laws promulgated under Iowa

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Code chapters 476, 476A, 476B, 476C, 477A, 477C, 478, ~~and 479~~, 479A and 479B. The division performs other duties assigned to it by law.

~~1.4(7)~~ **1.4(4)** *Insurance division.* The insurance division regulates and supervises the conduct of the business of insurance within the state, and enforces the laws promulgated under Title XX, and Iowa Code chapters 502, 503, 505 to ~~523C~~ 523D, and ~~535C~~ 523I. The division performs other duties assigned to it by law.

~~1.4(8)~~ **1.4(5)** *Alcoholic beverages division.* The alcoholic beverages division supervises and regulates all matters relating to alcoholic beverages within the state, and enforces the laws promulgated under Iowa Code chapter 123.

~~1.4(9)~~ *Professional licensing and regulation division.* ~~The professional licensing and regulation division coordinates and administers the licensing and regulation of the engineering and land surveying examining board, the accountancy examining board, the real estate commission, the architectural examining board, the real estate appraisers examining board, and the landscape architectural examining board. The commission and boards within this division retain the regulatory and licensing powers conferred upon them by the statutes creating the commission and boards.~~

ITEM 4. Amend rule **181—1.5(546,17A)**, definition of “Administrator of professional licensing and regulation,” as follows:

~~“Administrator of professional licensing and regulation” means the chief administrative officer of the professional licensing and regulation division of the department of commerce~~ superintendent of banking.

ITEM 5. Rescind the definitions of “Administrator of public utilities” and “Superintendent of savings and loan associations” in rule **181—1.5(546,17A)**.

ITEM 6. Amend rule 181—1.6(546,17A) as follows:

181—1.6(546,17A) Central offices and communications. Correspondence and communications with the department of commerce shall be addressed or directed to the department’s ~~central office located at the Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa 50319, (515)281-7405.~~ The central office is the principal custodian of departmental orders, statements of law or policy issued by the department, legal documents, and other public documents on file with the department director. The director is the division head appointed by the governor to fulfill the responsibilities and duties of the director in addition to the individual’s responsibilities and duties as the head of a division. The department’s Web site is <http://commerce.iowa.gov/>.

1.6(1) Correspondence and communications with the banking division shall be addressed or directed to its central office located at 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827, (515)281-4014. The division’s Web site is <http://www.idob.state.ia.us/>.

1.6(2) Correspondence and communications with the professional licensing and regulation ~~division~~ bureau of the banking division shall be addressed or directed to its ~~central office located at 1918 S.E. Hulsizer, Ankeny, Iowa 50021, (515)281-3183~~ 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827, (515)725-9022. The bureau’s Web site is <https://plb.iowa.gov/>.

1.6(3) Correspondence and communications with the alcoholic beverages division shall be addressed or directed to its central office located at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3961, (515)281-7400. The division’s Web site is <https://abd.iowa.gov/>.

1.6(4) Correspondence and communications with the insurance division shall be addressed or directed to its central office located at ~~the Lucas State Office Building, East 12th and Grand Avenue, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50319~~ 50309-3738, (515)281-5705. The division’s Web site is <http://www.iid.iowa.gov/>.

1.6(5) Correspondence and communications with the utilities division shall be addressed or directed to its central office located at ~~the Lucas State Office Building, East 12th and Grand Avenue~~ 1375 East Court Avenue, Des Moines, Iowa 50319-0069, (515)281-5979 725-7300. The division’s Web site is <https://iub.iowa.gov/>.

COMMERCE DEPARTMENT[181](cont'd)

~~1.6(6)~~ Correspondence and communications with the savings and loan division shall be addressed to 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

~~1.6(7)~~ **1.6(6)** Correspondence and communications with the credit union division shall be addressed or directed to its central office located at 200 East Grand Avenue, Suite 370, Des Moines, Iowa 50309-1827, (515)281-6514 725-0505. The division's Web site is <https://creditunions.iowa.gov/>.

ITEM 7. Rescind subrules **1.7(1)** and **1.7(2)**.

ITEM 8. Amend subrule 1.8(5) as follows:

1.8(5) *Expenditure authorization.* Each division administrator may authorize expenditures from ~~any appropriation or trust~~ accounts for that division or office within the department of commerce revolving fund established ~~on the behalf of the division~~ in Iowa Code section 546.12, or otherwise use funds as permitted by Iowa Code section 546.12.

ITEM 9. Rescind and reserve **181—Chapter 2**.

ITEM 10. Rescind and reserve **181—Chapter 3**.

[Filed 7/13/16, effective 9/7/16]

[Published 8/3/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/3/16.

ARC 2642C

EMPLOYMENT APPEAL BOARD[486]

Adopted and Filed

Pursuant to the authority of Iowa Code section 10A.601(6), the Employment Appeal Board hereby amends Chapter 6, "Peace Officer and Capitol Security Appeals," Iowa Administrative Code.

These amendments update two subrules regarding the types of notices sent to the Board by the Iowa Department of Public Safety. Subrule 6.1(1) currently refers only to the notice of intent to dismiss, but Iowa Code section 10A.601 refers to notices dealing with suspension, disciplinary demotions, or other disciplinary action resulting in the loss of pay. The amendment in Item 1 brings the rule into compliance with the statutory language.

The amendment in Item 2 establishes a deadline on appealing the proposed decision of an administrative law judge to the Board. Deadlines have been established for Occupational Safety and Health Administration (OSHA), Iowa Public Employees' Retirement System (IPERS), and Department of Administrative Services (DAS) cases. Adding the language in Item 2 will provide consistency in decisions.

The Board approved these amendments at its meeting on May 12, 2016.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 8, 2016, as **ARC 2578C**. The Board received no comments during the public comment period. These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code sections 10A.601 and 17A.4.

These amendments will become effective September 7, 2016.

The following amendments are adopted.

ITEM 1. Amend subrule 6.1(1) as follows:

6.1(1) *Form and time of appeal.* The department of public safety shall file with the employment appeal board notice of intent to dismiss ~~or of intent to take other action, under the purview of Iowa Code section 80.15, regarding a member of the department, including capitol security officers covered under Iowa Code section 80.15.~~ The notice of intent to dismiss shall become final unless within 30 days a request (hereafter called an appeal) to appear and defend the charges is filed by the person named. No

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notice of intent to take action need be filed for action not under the purview of Iowa Code section 80.15. Such personnel actions are effective without following the process of Iowa Code section 80.15.

ITEM 2. Amend subrule 6.1(6) as follows:

6.1(6) Decisions. If the hearing is conducted by the employment appeal board, the decision of the board shall be the final decision. If the hearing is conducted by an administrative law judge, the decision shall be a proposed decision, which shall become the final decision 30 days after the issue date of that decision, unless a further appeal is taken to the employment appeal board. The employment appeal board on further review may reverse, modify, or remand the proposed decision. The decision of the employment appeal board shall be by majority vote. The decision of the employment appeal board shall be a final agency decision unless subject to review through a petition for judicial review is filed within 30 days of the date of the employment appeal board decision in the appropriate district court.

[Filed 7/13/16, effective 9/7/16]

[Published 8/3/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/3/16.

ARC 2637C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 225C.6, the Department of Human Services hereby amends Chapter 25, "Disability Services Management," Iowa Administrative Code.

These amendments establish the process by which the Department of Human Services will approve licensing applications to the Department of Inspections and Appeals (DIA) for subacute mental health care facilities. These amendments also establish the process to determine the disbursement of 75 beds to the most qualified providers.

Iowa Code chapter 135G establishes the law for subacute care facilities. DIA is responsible for licensing subacute care facilities, and the Department must approve a licensing application based on the established process, which must identify the most qualified providers and geographically disburse no more than 75 beds.

Subacute services are one of the additional core services to be provided by Mental Health and Disability Services (MHDS) regions when public funds become available. Some MHDS regions and providers are interested in developing subacute services provided in a subacute care facility. These amendments will provide another option to provide short-term, intensive mental health services to the citizens of Iowa.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2550C** on May 25, 2016. The Department received three comments from one respondent on the proposed rules. The comments and corresponding response from the Department are as follows:

Comments:

1. The respondent stated that under the type of license contemplated by the rules, facilities would be required to take individuals who have set fires, have assaulted other patients, and/or are sexual predators, and that there has yet to be a change in the rules regarding how facilities are to handle individuals with these types of known behaviors.

2. The respondent also stated that with the move towards PRN medications, the respondent's facilities would most likely need to have a psychiatrist in the building at all times or at a minimum have a psychiatrist available on call 24 hours per day, seven days per week.

3. Finally, the respondent stated that there is significant expense and exposure to liability for any facility that handles these individuals. There has been no discussion on increased reimbursement rates for facilities that choose to participate.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Department response: The questions posed by the respondent are not applicable to these amendments. The DIA is responsible for setting standards and licensing subacute care facilities. There were no changes made to the rules due to the comments submitted by the respondent.

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

The Mental Health and Disability Services Commission adopted these amendments on July 6, 2016.

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

After analysis and review of this rule making, it has been determined that there may be a need for more mental health professionals and other qualified staff to support licensed subacute care facilities.

These amendments are intended to implement Iowa Code section 135G.6.

These amendments will become effective September 7, 2016.

The following amendments are adopted.

ITEM 1. Reserve rules **441—25.108** to **441—25.116**.

ITEM 2. Adopt the following **new** 441—Chapter 25, division title, as follows:

DIVISION XI

PROCESS FOR APPROVING SUBACUTE MENTAL HEALTH CARE FACILITY LICENSING APPLICATIONS TO
THE DEPARTMENT OF INSPECTIONS AND APPEALS

ITEM 3. Adopt the following **new** 441—Chapter 25, Division XI, preamble:

PREAMBLE

This division establishes the process that the department of human services will use in approving licensing applications to the department of inspections and appeals for subacute care facilities as defined in Iowa Code chapter 135G and 481—Chapter 71.

ITEM 4. Adopt the following **new** rules 441—25.117(135G) and 441—25.118(135G):

441—25.117(135G) Definitions.

“Department” means the department of human services.

“Governing board” means the board that directs the operations of the mental health and disability services region.

“Mental health and disability services region” means counties that have formed through an agreement to administer the mental health and disability services for its member counties.

“Subacute care facility” means the same as defined in Iowa Code chapter 135G.

441—25.118(135G) Approval process for subacute care facility applications to be licensed by the department of inspections and appeals. The department will use the following process for approving licensing applications to the department of inspections and appeals for subacute care facilities described in 481—Chapter 71.

25.118(1) Applications for licensure of subacute care facilities must be submitted to the department of inspections and appeals in the form and manner established by the department of inspections and appeals in 481—Chapter 71.

25.118(2) The department of inspections and appeals may review the application and ascertain whether or not the applicant's facility and staff are adequate to provide the care and services required of a subacute care facility.

25.118(3) The department of inspections and appeals shall provide to the department:

- a. The completed licensure application;
- b. The date and time the department of inspections and appeals received the completed application;
- c. The number of beds proposed by the applicant for the subacute care facility; and
- d. The results of any review the department of inspections and appeals made of the adequacy of the applicant's facilities and staff.

25.118(4) The department will review subacute care facility applications as follows:

- a. Applications will be reviewed and acted upon in the order the completed application is received by the department of inspections and appeals.

HUMAN SERVICES DEPARTMENT[441](cont'd)

b. The department will review and act on applications until the department has approved applications for 75 subacute care facility beds.

c. The department will review additional applications for a number of beds above that specified in paragraph 25.118(4) “*b*” if the department of inspections and appeals denies or revokes a license to any subacute care facility approved by the department such that the number of publicly funded subacute care facility beds is less than 75.

d. The department will not review applications for subacute care facilities that will not access public funding.

25.118(5) The department will determine that the application for a subacute care facility is geographically dispersed from other subacute care facilities and provide notice to the mental health and disability services regions as follows:

a. Geographic dispersion of subacute care facility beds.

(1) The department will allocate a share of the statewide total of 75 subacute care facility beds to each mental health and disability services region by dividing the number of residents of the mental health and disability services region’s member county or counties by the total state population using the most recent available federal estimate of Iowa population multiplied by 75.

(2) The department will take under consideration the number of beds identified in the application and the number of beds allocated to mental health and disability services regions to ensure that the subacute care facility is geographically dispersed.

b. The department will notify the mental health and disability services regional chief executive officer when the department receives an application for subacute care facility licensure within 60 miles of one of the mental health and disability services region’s member counties. The notice will include:

- (1) The name of the facility;
- (2) The location of the facility;
- (3) The department of inspections and appeals’ facility application;
- (4) The number of beds requested in the facility application; and
- (5) The names of all mental health and disability services regions notified.

c. The governing boards of the mental health and disability services regions notified by the department may provide comment in writing to the department on the subacute care facility application. A governing board may comment on the number of beds in the subacute care facility consistent with the allocation made in paragraph 25.118(5) “*a.*”

25.118(6) The department will evaluate the subacute care facility’s qualifications based on the following:

a. Comments received within 21 days from the governing boards of the mental health and disability services region in which the subacute care facility will be located;

b. The department of inspections and appeals’ determination of the adequacy of the facility and staff;

c. Information contained in the subacute care facility’s application that describes the resources and staff needed to provide each of the services as required in 481—subrule 71.3(1), including the following:

(1) The name and résumé of the facility administrator and description of how the administrator meets the qualifications described in 481—subrule 71.10(2);

(2) The names and résumés of the psychiatrist or advanced registered nurse practitioner, registered nurse, mental health professional, and social services staff and a description of how these staff meet the requirements of 481—subrule 71.12(2); and

(3) The description of how the facility will coordinate with human services agencies to identify unnecessary duplication of services and plan for development and coordination of needed services.

d. Information related to adverse findings or founded complaints against the applicant in the provision of any service. The department will make reasonable efforts to obtain this information through a review of the following:

- (1) The Iowa Medicaid providers sanction list;
- (2) The Office of Inspector General’s List of Excluded Individuals and Entities; and

HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) The department of inspections and appeals health facilities division's public reports and final findings of complaint investigations.

25.118(7) All decisions made by the department related to this process are subject to administrative review in accordance with 441—Chapter 7.

These rules are intended to implement Iowa Code section 135G.6.

[Filed 7/6/16, effective 9/7/16]

[Published 8/3/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/3/16.

ARC 2646C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 237A.12, the Department of Human Services amends Chapter 109, "Child Care Centers," Iowa Administrative Code.

The federal Child Care and Development Block Grant (CCDBG) was reauthorized in November 2014. As a result, there are new federal laws outlining state requirements for child care providers that receive child care assistance dollars.

Some of these amendments are the result of the changes to CCDBG. The amendments implement an orientation training in health and safety content areas required for all staff within three months of employment and enhance emergency planning requirements. The amendments also implement safe sleep practice requirements.

These amendments also provide for enhancements to current regulations, including a requirement for the regulatory fee to be a part of a sufficient application. Including the fee with the application is a current practice but is not found in administrative rule. The amendments also limit the need for separate group and self-study training, add another approved training organization, require child care centers to implement a policy to protect child confidentiality, and require the same number of training hours for all staff, whether or not staff are employed for less than 20 hours per week as identified in the current rule.

These amendments also provide for technical cleanup of the administrative rules, such as removing form numbers, removing unnecessary citations to other agencies' rules, and removing references to years no longer applicable.

In addition, the amendments remove the requirement to "fully" comply with all standards to avoid downgrading to a provisional license. The amendments allow for being "imperfect." The Department does not require a provisional license if a provider is not 100 percent compliant at the time of annual inspection at the licensed child care facility.

Finally, these amendments update the education table to include postbachelor education, clarify expectations for sole providers in a child care center, and amend the definition of "child care" to be compliant with language found in Iowa Code chapter 237A.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2554C** on May 25, 2016. The Department received comments from four respondents during the public comment period. The comments from the respondents and the Department's responses are as follows:

Comment 1: A respondent who already has a training program approved by the Department requested that rule language for first aid and cardiopulmonary resuscitation (CPR) be modified to include the American Safety and Health Institute as an approved training organization. The request was specific to the Chapter 109 amendments.

Department response 1: The Department has long approved the American Safety and Health Institute as an approved training organization for first aid and CPR. Emergency Medical Planning, which is currently identified in the rules, has merged into the American Safety and Health Institute and is a major training organization for these content areas. The Department agrees with this comment and has modified paragraphs 109.7(1)"c" and "d" and 109.7(3)"c" and "d" to add a reference to the

HUMAN SERVICES DEPARTMENT[441](cont'd)

American Safety and Health Institute and has further modified paragraphs 109.7(1)“d” and 109.7(3)“d” to remove the references to Emergency Medical Planning.

Comment 2: A respondent requested that language be included that allows changes to the five-year requirement for health and safety training if information changes. Modifications will allow the Department to require the training more often or that the training be renewed if significant changes to the content occur.

Department response 2: The Department agrees with the respondent’s request and has added the following new paragraph to the end of paragraph 109.7(1)“e” to allow for health and safety training to be taken more frequently if content areas change significantly:

“Minimum health and safety training may be required prior to the five-year period if content has significant changes which warrant that the training be renewed.”

Comment 3: A respondent suggested additional modifications to these amendments to add standards regarding nutrition, physical activity, and screen time within child care homes and child care centers. The respondent recommended requiring nutrition standards based on the Child and Adult Care Food Program (CACFP), physical activity standards consistent with the YMCA’s Healthy Eating and Physical Activity (HEPA) as well as “screen time standards” for early childhood programs.

Department response 3: Child care centers are currently required to meet CACFP guidelines for nutritionally balanced meals and snacks (rule 441—109.15(237A)). Activity program requirements, including written curriculum and program structure that use developmentally appropriate practices, are outlined in subrule 109.12(1). A balance of active and quiet activities, individual and group activities, gross and fine motor development, as well as other activities must be included. Lastly, while quality programming is encouraged, screen time standards are not a requirement to meet the intent of the federal legislation to meet health and safety requirements. For these reasons, the Department did not modify these amendments based on the respondent’s comments.

Comment 4: A respondent requested that training in the use of an automated external defibrillator (AED) be included in the first-aid and cardiopulmonary resuscitation (CPR) training requirements.

Department response 4: At this time, it is not known if AED training is always provided during CPR courses. Additionally, if the Department required AED training, it would be reasonable to assume that the Department would need to require an AED on the child care premises, which would have a fiscal impact to child care providers. The National Resource Center on Health and Safety in Child Care and Early Education’s document “Caring for Our Children” was also reviewed. The suggestion in that document is that child care facilities should consider having an AED on the premises for potential use with adults. It further indicates that the use of AEDs with children would be rare. For these reasons, the Department will not modify these amendments based on the comments at this time.

Comment 5: A respondent requested that clarifications be made regarding items that are not designed for sleeping in the rule regarding safe sleep practices.

Department response 5: The Department agrees with the respondent and has modified subparagraph 109.12(5)“e”(3), which now reads as follows:

“(3) Infants shall not be allowed to sleep on a bed, sofa, air mattress or other soft surface. No child shall be allowed to sleep in any item not designed for sleeping including, but not limited to, an infant seat, car seat, swing, or bouncy seat.”

Comment 6: A respondent requested that these amendments should clarify that cribs are not allowed to have moving railings.

Department response 6: Administrative rules require that cribs meet current federal Consumer Product Safety Commission (CPSC) or ASTM International standards. Drop-side cribs are not allowed within current approved standards. However, there are some cribs that have partial “safe reach” options that do meet CPSC standards. There would be a fiscal impact to providers if the cribs with approved “safe reach” options are currently being used and those cribs then become prohibited as the result of these amendments. For these reasons, the Department did not modify these amendments based on the respondent’s comment.

The Council on Human Services adopted these amendments on July 13, 2016.

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

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

These amendments are intended to implement Iowa Code section 237A.12.

These amendments will become effective October 1, 2016.

The following amendments are adopted.

ITEM 1. Amend rule **441—109.1(237A)**, definition of “Child care,” as follows:

“*Child care*” means the care, supervision, or guidance of a child by a person other than the parent, guardian, or custodian for periods of less than 24 hours per day per child on a regular basis in a place other than the child's home, but does not include care, supervision, or guidance of a child by any of the following:

1. An instructional program for children attending prekindergarten as defined by the state board of education under Iowa Code section 256.11 or a higher level and are at least four years of age and administered by a public or nonpublic school system accredited by the department of education or the state board of regents or a nonpublic school system which is not accredited by the department of education or the state board of regents.

2. to 5. No change.

~~6. A nationally accredited camp.~~

~~7. 6.~~ A program administered by a political subdivision of the state which is primarily for recreational or social purposes and is limited to children who are five years of age or older and attending school.

~~8. An instructional program for children at least four years of age who are attending prekindergarten, as defined by the state board of education, or a higher grade level, administered by a nonpublic school system which is not accredited by the department of education or the state board of regents.~~

~~9. 7.~~ An after-school program continuously offered throughout the school year to children who are at least five years of age and enrolled in school and attend the program intermittently, or a summer-only program for such children. The program must be provided through a nominal membership fee or at no cost.

~~10. 8.~~ A special activity program which meets less than four hours per day for the sole purpose of the special activity. Special activity programs include but are not limited to music or dance classes, organized athletic or sports programs, recreational classes, scouting programs, and hobby or craft clubs or classes.

~~9. A nationally accredited camp.~~

~~11. 10.~~ A structured program for the purpose of providing therapeutic, rehabilitative, or supervisory services to children under any of the following:

- A purchase of service or managed care contract with the department.
- A contract approved by a local decategorization governance board.
- An arrangement approved by a juvenile court order.

~~12. 11.~~ Care provided on site to children of parents residing in an emergency, homeless, or domestic violence shelter.

~~13. 12.~~ A child care facility providing respite care to a licensed foster family home for a period of 24 hours or more to a child who is placed with that licensed foster family home.

~~14. 13.~~ A program offered to a child whose parent, guardian, or custodian is engaged solely in a recreational or social activity, remains immediately available and accessible on the physical premises on which the child's care is provided, and does not engage in employment while the care is provided. However, if the recreational or social activity is provided in a fitness center or on the premises of a nonprofit organization, the parent, guardian, or custodian of the child may be employed to teach or lead the activity.

ITEM 2. Amend subrule 109.2(1) as follows:

109.2(1) *Application for license.*

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a. Any adult or agency has the right to apply for a license. The application for a license shall be made to the department on ~~Form 470-0722, Application for a License to Operate a Child Care Center, provided by the department~~ a department-provided application for a license to operate a child care center.

b. Requested reports including the fire marshal's report and other information relevant to the licensing determination shall be furnished to the department upon application and renewal. A building owned or leased by a school district or accredited nonpublic school that complies with rules adopted by the state fire marshal for school buildings ~~under 661—Chapter 5~~ is considered appropriate for use by a child care facility.

c. When a center makes a sufficient application for an initial license, ~~it~~ the center may operate for a period of up to 120 calendar days from the date of issuance of ~~Form 470-4690, Permission to Open Without a License~~ the form granting permission to open without a license, pending a final licensing decision. A center has made a sufficient application when it has submitted the following to the department:

- (1) An application for a license.
- (2) An approved fire marshal's report.
- (3) A floor plan indicating room descriptions and dimensions, including location of windows and doors.
- (4) Information sufficient to determine that the center director meets minimum personnel qualifications.
- (5) The regulatory fee as specified in subrule 109.2(7), and the fee is received by the department's division of fiscal management.

d. Applicants shall be notified of approval or denial of initial applications within 120 days from the date the application is submitted.

(1) If the applicant has been issued ~~Form 470-4690, Permission to Open Without a License~~ a form granting permission to open without a license, the applicant shall be notified of approval or denial within 120 calendar days of the date of issuance of ~~Form 470-4690~~ the form.

(2) No change.

e. and *f.* No change.

ITEM 3. Amend paragraph **109.2(2)“a”** as follows:

a. An applicant showing ~~full~~ compliance with center licensing laws and these rules, including department approval of center plans and procedures and submission of the regulatory fee as specified in subrule 109.2(7) to the department by the date due, shall be issued a license for 24 months. In determining whether or not a center is in compliance with the intent of a licensing standard outlined in this chapter, the department shall make the final decision.

ITEM 4. Amend paragraph **109.2(3)“c”** as follows:

c. When the center submits documentation or it can otherwise be verified that the center ~~fully~~ complies with ~~all~~ standards imposed by law or these rules, the license shall be upgraded to a full license.

ITEM 5. Amend subrule 109.2(4) as follows:

109.2(4) Denial. Initial applications or renewals shall be denied when:

a. to *d.* No change.

e. The center is not able to obtain an approved fire marshal's certificate as prescribed by the state fire marshal ~~in 661—Chapter 5 or Iowa Code chapter 100~~ or fails to comply in correcting or repairing any deficiencies in the time determined by the fire marshal or the fire marshal determines the facility is not safe for occupancy.

f. The regulatory fee as specified in subrule 109.2(7) is not received by the department's division of fiscal management by the due date indicated on ~~Form 470-4834, Child Care Center Licensing Fee Invoice~~ the child care center licensing fee invoice.

ITEM 6. Amend paragraph **109.2(5)“e”** as follows:

e. The facility is not able to obtain an approved fire marshal's certificate as prescribed by the state fire marshal ~~in 661—Chapter 5 or Iowa Code chapter 100~~ or fails to comply in correcting or repairing

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any deficiencies in the time determined by the fire marshal or the fire marshal determines the facility is not safe for occupancy.

ITEM 7. Amend subrule 109.2(7) as follows:

109.2(7) Regulatory fees. ~~For relicensures with an effective date on or after August 1, 2010, as indicated on the license certificate, and for initial applications for licensure submitted on or after June 1, 2010, a~~ A fee based upon center capacity is due to the department before the issuance of the license in accordance with this subrule.

a. and *b.* No change.

c. Notification. Upon final determination of center capacity by the licensing consultant, the licensing consultant or designee shall sign and provide ~~Form 470-4834, Child Care Center Licensing Fee Invoice,~~ the child care center licensing fee invoice to the center.

d. Payment. The center shall return ~~Form 470-4834~~ the child care center licensing fee invoice to the department with the licensing fee payment within 30 calendar days from the date of the licensing consultant's or designee's signature on ~~Form 470-4834~~ the invoice. Payment may be in the form of cash, check, money order, or cashier's check.

(1) Payment must be received before the department will issue a full or provisional license.

(2) Regulatory fees are nonrefundable and ~~nontransferable~~ nontransferable.

ITEM 8. Adopt the following new paragraph **109.4(2)“i”**:

i. Develop and implement a policy for protection of each child's confidentiality.

ITEM 9. Amend paragraph **109.4(3)“a”** as follows:

a. Postings are required for the certificate of license, notice of exposure of children to a communicable disease, and notice of ~~action~~ decision to deny, suspend, or revoke the center's license or reduce the center's license to a provisional status. The center's license, reflecting current regulatory status, and all other required postings shall be conspicuously placed at the main entrance to the center. If the center is located in a building used for additional purposes and shares the main entrance to the building, the required postings shall be conspicuously placed in the center in an area that is frequented daily by parents or the public.

ITEM 10. Amend subrule 109.4(5) as follows:

109.4(5) Handbook. A copy of ~~Form SS-0711, “Child Care Centers and Preschools Licensing Standards and Procedures,”~~ shall be available in the child care center, and a notice stating that a copy is available for review upon request from the center director shall be conspicuously posted. The name, office mailing address and telephone number of the child care consultant shall be included in the notice.

ITEM 11. Amend subrule 109.5(2) as follows:

109.5(2) Parental evaluation. If requested by the department, centers shall assist the department in conducting an annual survey of parents being served by their center ~~by providing to parents Form 470-3409, Parent Survey: Child Care Centers.~~ The department shall notify centers of the time frames for distribution and completion of the survey and the procedures for returning the survey to the department. The purpose of the survey shall be to increase parents' understanding of developmentally appropriate and safe practice, solicit statewide information regarding parental satisfaction with the quality of care being provided to children and obtain the parents' perspective regarding the center's compliance with licensing requirements.

ITEM 12. Amend paragraph **109.6(1)“e”** as follows:

e. Has achieved a total of 100 points obtained through a combination of education, experience, and child development-related training as outlined in the following chart:

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EDUCATION		EXPERIENCE (Points multiplied by years of experience)		CHILD DEVELOPMENT- RELATED TRAINING
Bachelor's or higher degree in early childhood, child development, or elementary education	75	Full-time (20 hours or more per week) in a child care center or preschool setting	20	One point per contact hour of training
Associate's degree in child development or bachelor's degree in a child-related field	50	Part-time (less than 20 hours per week) in a child care center or preschool setting	10	
Child development associate (CDA) or one-year diploma in child development from a community college or technical school	40	Full-time (20 hours or more per week) child development-related experience	10	
Bachelor's or higher degree in a non-child-related field	40	Part-time (less than 20 hours per week) child development-related experience	5	
Associate's degree in a non-child-related field or completion of at least two years of a four-year degree	20	Registered child development home provider	10	
		Nonregistered family home provider	5	

(1) to (4) No change.

ITEM 13. Amend paragraph **109.6(2)“d”** as follows:

d. Has achieved a total of 75 points obtained through a combination of education, experience, and child development-related training as outlined in the following chart:

EDUCATION		EXPERIENCE (Points multiplied by years of experience)		CHILD DEVELOPMENT- RELATED TRAINING
Bachelor's or higher degree in early childhood, child development, or elementary education	75	Full-time (20 hours or more per week) in a child care center or preschool setting	20	One point per contact hour of training
Associate's degree in child development or bachelor's degree in a child-related field	50	Part-time (less than 20 hours per week) in a child care center or preschool setting	10	
Child development associate (CDA) or one-year diploma in child development from a community college or technical school	40	Full-time (20 hours or more per week) child development-related experience	10	
Bachelor's or higher degree in a non-child-related field	40	Part-time (less than 20 hours per week) child development-related experience	5	
Associate's degree in a non-child-related field or completion of at least two years of a four-year degree	20	Registered child development home provider	10	
		Nonregistered family home provider	5	

(1) to (4) No change.

ITEM 14. Rescind and reserve subrule **109.6(4)**.

ITEM 15. Amend subparagraph **109.6(6)“c”(2)** as follows:

(2) Unless a record check has already been conducted in accordance with subparagraph (1), the department shall conduct a criminal and child abuse record check in Iowa for a person who is subject to

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a record check. When the department conducts the records check, the fee shall be \$25 for each record check through June 30, 2010, and \$35 effective July 1, 2010 for each record check. The center shall submit the fee before the department initiates the record check process. Payment must be in the form of cash, check, money order, or cashier's check. The department may access SING to conduct the records check. The department may also conduct dependent adult abuse, sex offender, and other public or civil offense record checks in Iowa for a person who is subject to a record check.

ITEM 16. Amend subparagraph **109.6(6)“d”(8)** as follows:

(8) A center shall submit all required fingerprints to the department of public safety before the issuance or renewal of the center's license on or after June 1, 2010. ~~EXCEPTION: Centers that have an initial or renewal licensure date of June 1, 2010, shall have until July 1, 2010, to submit the fingerprints to the department of public safety.~~

ITEM 17. Amend rule 441—109.7(237A) as follows:

441—109.7(237A) Professional growth and development. The center director, on-site supervisor, and staff counted as part of the staff ratio shall meet the following minimum staff training requirements:

109.7(1) Required training within the first ~~six~~ three months of employment. During their first ~~six~~ three months of employment, all staff shall receive the following training:

a. Two hours of Iowa's training for mandatory reporting of child abuse.

b. At least one hour of training regarding universal precautions and infectious disease control.

c. Certification in American Red Cross, American Heart Association, American Safety and Health Institute, or MEDIC First Aid infant, child, and adult cardiopulmonary resuscitation (CPR) or equivalent certification approved by the department. A valid certificate indicating the date of training and expiration date shall be maintained.

d. Certification in infant, child, and adult first aid that uses a nationally recognized curriculum or is received from a nationally recognized training organization, including the American Red Cross, American Heart Association, the National Safety Council, the American Safety and Health Institute, or MEDIC First Aid or an equivalent certification approved by the department. A valid certificate indicating the date of training and expiration date shall be maintained.

e. Minimum health and safety trainings, approved by the department, in the following areas and every five years thereafter:

- (1) Prevention and control of infectious disease, including immunizations.
- (2) Prevention of sudden infant death syndrome and use of safe sleep practices.
- (3) Administration of medication, consistent with standards for parental consent.
- (4) Prevention of and response to emergencies due to food and allergic reactions.
- (5) Building and physical-premises safety, including identification of and protection from hazards that can cause bodily injury, such as electrical hazards, bodies of water, and vehicular traffic.
- (6) Prevention of shaken baby syndrome and abusive head trauma.
- (7) Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event.
- (8) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants.
- (9) Precautions in transporting children.

Minimum health and safety training may be required prior to the five-year period if content has significant changes which warrant that the training be renewed.

109.7(2) Center directors and all staff employed 20 hours or more per week. ~~The requirements of this subrule apply to all center directors, regardless of whether the director works on a full-time or part-time basis.~~

a. During their first year of employment, all center directors and all staff ~~employed 20 hours or more per week~~ shall receive the following training:

(1) ~~Certification in American Red Cross or American Heart Association infant, child, and adult cardiopulmonary resuscitation (CPR) or equivalent certification approved by the department. A valid certificate indicating the date of training and expiration date shall be maintained.~~

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~~(2) Certification in infant, child, and adult first aid that uses a nationally recognized curriculum or is received from a nationally recognized training organization including the American Red Cross, American Heart Association, the National Safety Council, and Emergency Medical Planning (Medic First Aid) or an equivalent certification approved by the department. A valid certificate indicating the date of training and expiration date shall be maintained.~~

~~(3) (1) Ten contact hours of training from one or more of the following content areas:~~

- ~~1. Planning a safe, healthy learning environment (includes nutrition).~~
- ~~2. Steps to advance children's physical and intellectual development.~~
- ~~3. Positive ways to support children's social and emotional development (includes guidance and discipline).~~
- ~~4. Strategies to establish productive relationships with families (includes communication skills and cross-cultural competence).~~
- ~~5. Strategies to manage an effective program operation (includes business practices).~~
- ~~6. Maintaining a commitment to professionalism.~~
- ~~7. Observing and recording children's behavior.~~
- ~~8. Principles of child growth and development.~~

~~(4) (2) At least four hours of the ten contact hours of training shall be received in a group setting as defined in subrule 109.7(7). Six hours may be received in self-study using a training package approved by the department as defined in subrule 109.7(8). Training received for cardiopulmonary resuscitation (CPR), first aid, mandatory reporting of child abuse, and universal precautions shall not count toward the ten contact hours. A provider shall not use a specific training or class to meet minimum continuing education requirements more than one time every five years.~~

~~(5) Center directors and on-site supervisors shall receive all ten hours of training in a group setting as defined in subrule 109.7(7).~~

~~(6) (3) Staff who have completed a comprehensive training package of at least ten contact hours offered through a child care resource and referral agency or community college within six months prior to initial employment shall have the first year's ten contact hours of training waived.~~

~~b. Following their first year of employment, all center directors and all staff who are employed 20 hours or more a week shall:~~

~~(1) Maintain current certification for Iowa's training for the mandatory reporting of child abuse; infant, child and adult CPR; and infant, child and adult first aid.~~

~~(2) Receive six contact hours of training annually from one or more of the content areas listed in subparagraph 109.7(2)"a"(3)(1). A provider shall not use a specific training or class to meet minimum continuing education requirements more than one time every five years.~~

~~(3) Center directors and on-site supervisors shall receive eight contact hours of training annually from one or more of the content areas listed in subparagraph 109.7(2)"a"(3)(1). At least four of the eight contact hours shall be in a group setting as defined in subrule 109.7(7).~~

~~c. Initial training obtained as identified in paragraph 109.7(1)"e" may be counted toward annual training hours during the year of employment in which the training is taken.~~

~~d. Training identified in paragraph 109.7(1)"e" shall not count towards annual professional development more than once.~~

~~**109.7(3) Staff employed less than 20 hours per week.**~~

~~a. During their first year of employment, all staff who are employed less than 20 hours a week shall receive the following training:~~

~~(1) Five contact hours of training from one or more of the following topical areas: child development, guidance and discipline, developmentally appropriate practices, nutrition, health and safety, communication skills, professionalism, business practices, and cross-cultural competence.~~

~~(2) At least two of the five contact hours shall be in a sponsored group setting.~~

~~(3) Staff who have completed a comprehensive training package of at least ten contact hours offered through a child care resource and referral agency or community college within six months prior to initial employment shall have the five contact hours required in the first year waived.~~

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~~b. Following their first year of employment, all staff who are employed less than 20 hours a week shall:~~

- ~~(1) Maintain current certification for Iowa's training for mandatory reporting of child abuse.~~
~~(2) Receive four contact hours of training annually from one or more of the following topical areas: child development, guidance and discipline, developmentally appropriate practices, nutrition, health and safety, communication skills, professionalism, business practices, and cross-cultural competence. At least two of the four contact hours shall be in a sponsored group setting.~~

~~109.7(4) 109.7(3) Staff employed in centers that operate summer-only programs. Staff who are employed in centers that operate only in the summer months when school is not in session shall receive the following training During their first three months of employment, all staff shall receive the following training:~~

- ~~a. Two hours of Iowa's training for mandatory reporting of child abuse.~~
~~b. At least one hour of training regarding universal precautions and infectious disease control.~~
~~c. At least one staff person on duty in the center and outdoor play area when children are present and on field trips shall have certification Certification in American Red Cross, or American Heart Association, American Safety and Health Institute, or MEDIC First Aid infant, child, and adult cardiopulmonary resuscitation (CPR) or equivalent certification approved by the department. A valid certificate indicating the date of training and expiration date shall be maintained.~~

~~d. At least one staff person on duty in the center and outdoor play area when children are present and on field trips shall receive certification Certification in infant, child, and adult first aid that uses a nationally recognized curriculum or is received from a nationally recognized training organization, including the American Red Cross, American Heart Association, the National Safety Council, and Emergency Medical Planning (Medic First Aid) the American Safety and Health Institute, or MEDIC First Aid or an equivalent certification approved by the department. A valid certificate indicating the date of training and expiration date shall be maintained.~~

- ~~e. Minimum health and safety trainings, approved by the department, in the following areas:~~
- ~~(1) Prevention and control of infectious disease, including immunizations.~~
 - ~~(2) Prevention of sudden infant death syndrome and use of safe sleep practices.~~
 - ~~(3) Administration of medication, consistent with standards for parental consent.~~
 - ~~(4) Prevention of and response to emergencies due to food and allergic reactions.~~
 - ~~(5) Building and physical-premises safety, including identification of and protection from hazards that can cause bodily injury, such as electrical hazards, bodies of water, and vehicular traffic.~~
 - ~~(6) Prevention of shaken baby syndrome and abusive head trauma.~~
 - ~~(7) Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event.~~
 - ~~(8) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants.~~
 - ~~(9) Precautions in transporting children.~~

~~109.7(5) 109.7(4) Training plans. Training shall supplement the educational and experience requirements in rule 441—109.6(237A) and shall enhance the staff's skill in working with the developmental and cultural characteristics of the children served.~~

~~109.7(6) 109.7(5) Substitution. A provider who submits documentation from a child care resource and referral agency that the provider has completed the Iowa Program for Infant/Toddler Care (IA PITC), ChildNet, or Beyond Business Basics training series may use those hours to fulfill a maximum of two years' training requirements, not including first-aid and mandatory reporter training.~~

~~109.7(7) 109.7(6) Group Approved training. Training received in a group setting is not self-study, but is training received with other adults, either in or out of the child care center.~~

~~a. The training must be conducted by a trainer who is employed by or under contract with one of the following entities or who uses curriculum or training materials developed or obtained with the written permission of one of the following entities:~~

- ~~(1) to (13) No change.~~
~~(14) Organizations that are certified by the International Association for Continuing Education and Training (IACET).~~

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b. to f. No change.

g. A training organization not approved by the department may submit ~~training for approval review to the department on Form 470-4528, Request for Child Care Training Approval~~ a request for child care training approval. All approvals, unless otherwise specified, shall be valid for five years. The department shall issue its decision within 30 business days of receipt of a complete request.

~~109.7(8) Self-study training.~~

a. ~~Self-study training packages approved by the department include curriculum developed and materials distributed by:~~

- ~~(1) Department child care licensing consultants,~~
- ~~(2) Iowa State University Extension, or~~
- ~~(3) A child care resource and referral agency.~~

b. ~~Self-study training materials not distributed by these entities may be submitted by the training organization to the department for approval on Form 470-4528, Request for Child Care Training Approval. All approvals, unless otherwise specified, shall be valid for five years. The department shall issue its decision within 30 business days of receipt of a complete request.~~

~~109.7(9) 109.7(7) Approved Elements of training.~~ Training provided to Iowa child care providers shall offer:

a. and b. No change.

c. An opportunity for ongoing interaction and timely feedback, including questions and answers within the contact hours ~~if training is delivered in a group setting~~.

d. A certificate of training for each participant that includes:

(1) to (7) No change.

~~(8) An indication of whether the training was delivered through self-study or in a group setting.~~

~~109.7(8) Training for supervisors and designees.~~ The director, on-site supervisor, and any person designated a lead in the absence of supervisory staff shall have completed all preservice/orientation training outlined in subrule 109.7(1).

ITEM 18. Amend paragraph ~~109.8(2)“h”~~ as follows:

h. For a period of two hours or less at the beginning or end of the center's hours of operation, one staff may care for six ~~or fewer children or less~~, provided no more than two of the children are under the age of two years and there are no more than six children in the center.

ITEM 19. Amend subparagraph ~~109.9(1)“b”(1)~~ as follows:

(1) A copy of Form 595-1396, a DHS ~~Criminal History Record Check Form B~~, criminal history record check form or any other permission form approved by the department of public safety for conducting an Iowa or national criminal history record check.

ITEM 20. Amend subparagraph ~~109.9(1)“b”(2)~~ as follows:

(2) A copy of ~~Form 470-0643, Request for Child Abuse Information~~ a request for child abuse information form, when applicable.

ITEM 21. Amend subrule 109.10(15) as follows:

~~109.10(15) Emergency plans.~~

a. The center shall have written emergency plans and diagrams for responding to fire, tornado, and flood (if area is susceptible to flood), and plans for responding to intruders within the center, intoxicated parents, and lost or abducted children. In addition, the center shall have guidelines for responding or evacuating in case of blizzards, power failures, bomb threats, chemical spills, earthquakes, or other disasters that could create structural damage to the center or pose health hazards. If the center is located within a ten-mile radius of a nuclear power plant or research facility, the center shall also have plans for nuclear evacuations. Emergency plans shall include written procedures including plans for ~~transporting children and notifying parents, emergency telephone numbers, diagrams, and specific considerations for immobile children.~~ the following:

(1) Evacuation to safely leave the facility.

(2) Relocation to a common, safe location after evacuation.

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(3) Shelter-in-place to take immediate shelter when the current location is unsafe to leave due to the emergency issue.

(4) Lockdown to protect children and providers from an external situation.

(5) Communication and reunification with parents or other adults responsible for the children which shall include emergency telephone numbers.

(6) Continuity of operations.

(7) To address the needs of individual children, including those with functional or access needs.

b. Emergency instructions, telephone numbers, and diagrams for fire, tornado, and flood (if area is susceptible to floods) shall be visibly posted by all program and outdoor exits. Emergency plan procedures shall be practiced and documented at least once a month for fire and for tornado. Records on the practice of fire and tornado drills shall be maintained for the current and previous year.

c. The center shall develop procedures for annual staff and volunteer training on these emergency plans and shall include information on responding to fire, tornadoes, intruders, intoxicated parents, and lost or abducted children in the orientation provided to new employees and volunteers.

d. The center shall conduct a daily check to ensure that all exits are unobstructed.

ITEM 22. Amend paragraph **109.12(5)“e”** as follows:

~~e. Children under the age of one year shall be placed on their backs when sleeping unless otherwise authorized by a parent or physician. A crib or criblike furniture which has a waterproof mattress covering and sufficient bedding to enable a child to rest comfortably and which meets the current standards or recommendations from the Consumer Product Safety Commission or the American Society for Testing and Materials for juvenile products shall be provided for each child under two years of age if developmentally appropriate. Crib railings shall be fully raised and secured when the child is in the crib. A crib or criblike furniture shall be provided for the number of children present at any one time. The center shall develop procedures for maintaining all cribs or criblike furniture and bedding in a clean and sanitary manner. There shall be no restraining devices of any type used in cribs. The provider shall follow safe sleep practices as recommended by the American Academy of Pediatrics for infants under the age of one. Requirements are as follows:~~

~~(1) Infants shall always be placed on their backs for sleep.~~

~~(2) Infants shall be placed on a firm mattress with a tight fitted sheet that meets U.S. Consumer Product Safety Commission federal standards.~~

~~(3) Infants shall not be allowed to sleep on a bed, sofa, air mattress or other soft surface. No child shall be allowed to sleep in any item not designed for sleeping including, but not limited to, an infant seat, car seat, swing, or bouncy seat.~~

~~(4) No toys, soft objects, stuffed animals, pillows, bumper pads, blankets, or loose bedding shall be allowed in the sleeping area with the infant.~~

~~(5) No co-sleeping shall be allowed.~~

~~(6) Sleeping infants shall be actively observed by sight and sound.~~

~~(7) If an alternate sleeping position is needed, a signed physician authorization with statement of medical reason is required.~~

ITEM 23. Amend paragraph **109.12(5)“f”** as follows:

~~f. When playpens are provided, no more than one child shall be placed in one at any time. A crib or criblike furniture which has a waterproof mattress covering and sufficient bedding to enable a child to rest comfortably and which meets the current standards or recommendations from the Consumer Product Safety Commission or ASTM International for juvenile products shall be provided for each child under two years of age if developmentally appropriate. Crib railings shall be fully raised and secured when the child is in the crib. A crib or criblike furniture shall be provided for the number of children present~~

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at any one time. The center shall develop procedures for maintaining all cribs or criblike furniture and bedding in a clean and sanitary manner. There shall be no restraining devices of any type used in cribs.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/3/16.

ARC 2647C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 237A.12, the Department of Human Services hereby rescinds Chapter 110, "Child Development Homes," Iowa Administrative Code, and adopts a new Chapter 110 with the same title.

The federal Child Care and Development Block Grant (CCDBG) was reauthorized in November 2014. As a result, there are new federal laws outlining state requirements for child care providers that receive child care assistance dollars. A new chapter of administrative rules has also been adopted, Chapter 120 (see **ARC 2648C** herein), to outline the requirements for child care providers that receive subsidy dollars but are not required by state law to register. In an effort to mirror requirements within Chapter 120 and other related chapters, existing Chapter 110 is rescinded and a new Chapter 110 is adopted herein. New Chapter 110 reflects a number of changes that have been made to be in compliance with federal requirements. In addition, technical changes have been incorporated to improve clarity and compliance with federal and state regulations and current departmental practice.

New Chapter 110 reflects the following changes as the result of federal legislation:

- Compliance checks for health, safety, and fire standards will be required prior to registration. Annual unannounced visits shall be conducted.
- Medications will not be administered without completion of preservice/orientation training.
- Emergency plans will include evacuation, relocation, shelter-in-place, lockdown, communication and reunification with families, continuity of operations, and procedures to address needs of individual children, including those with functional or access needs.
- Safe sleep standards as recommended by the American Academy of Pediatrics are included.
- Certification or documentation that minimum health and safety training has been completed must be maintained.
- A grace period is included for a child's file documentation required when a child meets the definition of homelessness as defined by the McKinney-Vento Homeless Education Assistance Act.
- Preservice/orientation training requirements and content areas are included.

New Chapter 110 contains the following provisions to enhance the safety of children in care:

- Provider requirements to abstain from use of illegal drugs, alcohol, or drugs that could impair ability to provide safe supervision. There is currently a similar rule expectation in Chapter 109, "Child Care Centers."
- Child transportation requirements and the requirement of a driver's license and insurance, as well as appropriate use of child restraint devices.
- A requirement that drinking water be accessible throughout the day. Similar language is already in Chapter 109.
- A provision allowing for a midmorning or afternoon snack but no longer requiring both.
- Limiting the need for separate group and self-study training and allowing training to be completed throughout the registration period and no longer limiting providers to only annual training hours.
- The addition of another approved training organization.

The following provisions in new Chapter 110 provide improvement to technical compliance and clarity to the rules:

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- Sewer system requirements and compliance with discharge restrictions.
- Use of the same language for fencing requirements for aboveground pools and in-ground pools.
- Modified requirements of file contents for the child care provider's own children residing in the household.
- Clarification that signed medical consent authorizing treatment is for both medical and dental treatment.
- Clarification that the immunization certificate must be from Iowa, which aligns with Iowa Department of Public Health rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2553C** on May 25, 2016. The Department received comments from three respondents during the public comment period. The comments and the Department's responses are as follows:

Comment 1: A respondent requested that language be included that allows changes to the five-year requirement for health and safety training if information changes. Modifications will allow the Department to require the training more often or that the training be renewed if significant changes to the content occur.

DHS response 1: The Department agrees with the respondent and has added the following new paragraph "g" to subrule 110.10(1) to allow for health and safety training to be taken more frequently if content areas change significantly.

"g. Minimum health and safety training may be required prior to the five-year period if content has significant changes which warrant that the training be renewed."

Comment 2: A respondent suggested additional modifications to these rules to add standards regarding nutrition, physical activity, and screen time within child care homes and child care centers. The respondent recommended requiring nutrition standards based on the Child and Adult Care Food Program (CACFP), physical activity standards consistent with the YMCA's Healthy Eating and Physical Activity (HEPA) as well as "screen time standards" for early childhood programs.

Department response 2: Child development homes are currently required to meet CACFP guidelines for nutritionally balanced meals and snacks (subrule 110.8(7)). Activity programs are also required in child development homes (subrule 110.8(8)). Activity programs must include a balance of active and quiet play, as well as activities for large- and small-muscle development. Lastly, while quality programming is encouraged, screen time standards are not a requirement to meet the intent of the federal legislation to meet health and safety requirements. For these reasons, the Department did not modify these rules based on the respondent's comments.

Comment 3: A respondent requested that training in the use of an automated external defibrillator (AED) be included in the first-aid and cardiopulmonary resuscitation (CPR) training requirements.

Department response 3: At this time, it is not known if AED training is always provided during CPR courses. Additionally, if the Department required AED training, it would be reasonable to assume that the Department would need to require an AED on the child care premises, which would have a fiscal impact to child care providers. The National Resource Center on Health and Safety in Child Care and Early Education's document "Caring for Our Children" was also reviewed. The suggestion in that document is that child care facilities should consider having an AED on the premises for potential use with adults. It further indicates that the use of AEDs with children would be rare. For these reasons, the Department will not modify these rules based on the comments at this time.

Comment 4: A respondent requested that clarifications be made regarding items that are not designed for sleeping in the rule regarding safe sleep practices.

Department response 4: The Department has modified paragraph 110.8(5) "c," which now reads as follows:

"c. Infants shall not be allowed to sleep on a bed, sofa, air mattress or other soft surface. No child shall be allowed to sleep in any item not designed for sleeping including, but not limited to, an infant seat, car seat, swing, or bouncy seat."

Comment 5: A respondent requested that these rules should clarify that cribs are not allowed to have moving railings.

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Department response 5: Administrative rules require cribs to meet current federal Consumer Product Safety Commission (CPSC) or ASTM International standards. Drop-side cribs are not allowed within current approved standards. However, there are some cribs that have partial “safe reach” options that do meet CPSC standards. There would be a fiscal impact to providers if the cribs with approved “safe reach” options are currently being used and those cribs then become prohibited as the result of a change to these rules. For these reasons, the Department did not modify the rules based on the respondent’s comment.

Technical changes. The Department has made technical changes to these rules. Rule language in subparagraphs 110.10(1)“c”(1) and 110.10(2)“a”(8) relating to first aid and CPR has been revised to include the American Safety and Health Institute as an approved training organization and to remove references to Emergency Medical Planning since it has merged into the American Safety and Health Institute.

The Council on Human Services adopted this amendment on July 13, 2016.

This amendment does not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217). After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 237A.12.

This amendment will become effective October 1, 2016.

The following amendment is adopted.

Rescind 441—Chapter 110 and adopt the following new chapter in lieu thereof:

CHAPTER 110
CHILD DEVELOPMENT HOMES

PREAMBLE

This chapter establishes registration procedures for child development homes. Included are application and renewal procedures, standards for providers, and procedures for compliance checks and complaint investigations.

441—110.1(237A) Definitions.

“*Adult*” means a person 18 years of age or older.

“*Assistant*” means a responsible person 14 years of age or older. The assistant may never be left alone with children. Ultimate responsibility for supervision is with the child care provider.

“*Child*” means either of the following:

1. A person 12 years of age or younger.
2. A person 13 years of age or older but younger than 19 years of age who has a developmental disability, as defined under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law No. 106-402, codified in 42 U.S.C. 15002(8).

“*Child care*” means the care, supervision, or guidance of a child by a person other than the child’s parent, guardian, or custodian for periods of less than 24 hours per day per child on a regular basis. “Child care” shall not mean special activity programs that meet on a regular basis such as music or dance classes, organized athletics or sports programs, scouting programs, or hobby or craft classes or clubs.

“*Child care facility*” or “*facility*” means a child care center, a preschool, or a registered child development home.

“*Child care home*” means a person or program providing child care to five or fewer children at any one time that is not registered to provide child care under this chapter, as authorized under Iowa Code section 237A.3.

“*Child development home*” means a person or program registered under this chapter that may provide child care to six or more children at any one time.

“*Department*” means the department of human services.

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“Involvement with child care” means licensed or registered as a child care facility, employed in a child care facility, residing in a child care facility, receiving public funding for providing child care, providing child care as a child care home provider, or residing in a child care home.

“Parent” means parent or legal guardian.

“Part-time hours” means the hours that child development homes in categories B and C are allowed to exceed their maximum preschool- or school-age capacity. A provider may use a total of up to 180 hours per month as part-time hours. No more than two children using part-time hours may be in the child development home at any one time.

“Person subject to an evaluation” means a person who has committed a transgression and who is described by any of the following:

1. The person is being considered for registration or is registered.
2. The person is being considered by a child care facility for employment involving direct responsibility for a child or with access to a child when the child is alone, or the person is employed with such responsibilities.
3. The person will reside or resides in a child care facility.
4. The person has applied for or receives public funding for providing child care.
5. The person will reside or resides in a child care home that is not registered but that receives public funding for providing child care.

“Provider” means the person or program that applies for registration to provide child care and is approved as a child development home.

“Registration” means the process by which child care providers certify that they comply with rules adopted by the department.

“Registration certificate” means the written document issued by the department to publicly state that the provider has certified in writing compliance with the minimum requirements for registration of a child development home.

“School” means kindergarten or a higher grade level.

“Transgression” means the existence of any of the following in a person’s record:

1. Conviction of a crime.
2. A record of having committed founded child or dependent adult abuse.
3. Listing in the sex offender registry established under Iowa Code chapter 692A.
4. A record of having committed a public or civil offense.
5. Department revocation or denial of a child care facility registration or license due to the person’s continued or repeated failure to operate the child care facility in compliance with licensing and registration laws and rules.

441—110.2(237A) Application for registration. A provider shall apply for registration on Form 470-3384, Application for Child Development Home Registration, provided by the department’s local office or, if available, on the department’s Web site. The provider shall also use Form 470-3384 to inform the department of any changes in circumstances that would affect the registration.

441—110.3(237A) Renewal of registration. Renewal of registration shall be completed every 24 months. To request renewal, a provider shall submit Form 470-3384, Application for Child Development Home Registration, and copies of certificates of training, which shall be retained in the registration file. The registration renewal process shall include completion of child abuse, sex offender, and criminal record checks.

441—110.4(237A) Compliance checks. Prior to registration, a compliance visit to inspect for compliance with health, safety, and fire standards shall be completed.

An unannounced compliance visit shall be conducted not less than annually to check for compliance with health, safety, and fire standards as well as all child care regulatory standards. Completed evaluation checklists shall be placed in the registration files.

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441—110.5(237A) Parental access. Parents shall be afforded unlimited access to their children and to the people caring for their children during the normal hours of operation or whenever their children are in the care of the child development home, unless parental contact is prohibited by court order.

441—110.6(237A) Number of children. The number of children in a child development home shall conform to the following standards:

110.6(1) Limit. Except as provided in subrule 110.6(3), no greater number of children shall be received for care at any one time than the number authorized on the registration certificate.

110.6(2) Children counted. To determine the number of children cared for at any one time in a child development home, each child present in the child development home shall be considered to be receiving care unless the child is described by one of the following exceptions:

a. The child's parent, guardian, or custodian established or operates the child development home and either the child is attending school or the child receives child care full-time on a regular basis from another person.

b. The child has been present in the child development home for more than 72 consecutive hours and meets the requirements of the exception in paragraph 110.6(2) "a" as though the person who established or operates the child development home is the child's parent, guardian, or custodian.

110.6(3) Exception for emergency school closing. On days when schools are closed due to emergencies such as inclement weather or physical plant failure, a child development home may have additional children present in accordance with the authorization for the registration category of the home and subject to all of the following conditions:

a. The child development home has prior written approval from the parent or guardian of each child present in the home concerning the presence of additional children in the home.

b. The child development home has a department-approved assistant, aged 14 or older, on duty to assist the care provider, as required for the registration category of the home.

c. One or more of the following conditions are applicable to each of the additional children present in the child development home:

(1) The home provides care to the child on a regular basis for periods of less than two hours.

(2) If the child were not present in the child development home, the child would be unattended.

(3) The home regularly provides care to a sibling of the child.

d. The provider shall maintain a written record including the date of the emergency school closing, the reason for the closing, and the number of children in care on that date.

441—110.7(237A) Provider requirements.

110.7(1) Provider. The provider shall:

a. Give careful supervision at all times.

b. Exchange information with the parent of each child frequently to enhance the quality of care.

c. Give consistent, dependable care and be capable of handling emergencies.

d. Be present at all times except when emergencies occur or an absence is planned, at which time care shall be provided by a department-approved substitute. When an absence is planned, the provider shall give parents at least 24 hours' prior notice.

e. Be free of the use of illegal drugs and shall not be under the influence of alcohol or of any prescription or nonprescription drug that could impair the provider's ability to give careful supervision.

110.7(2) Substitutes. The provider shall assume responsibility for providing adequate and appropriate supervision at all times when children are in attendance. Any designated substitute shall have the same responsibility for providing adequate and appropriate supervision. Ultimate responsibility for supervision shall be with the provider.

a. All standards in this chapter regarding supervision and care of children shall apply to substitutes.

b. Except in emergency situations, the provider shall inform parents in advance of the planned use of a substitute.

c. The substitute must be 18 years of age or older.

d. Use of a substitute shall be limited to:

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- (1) No more than 25 hours per month.
- (2) An additional period of up to two weeks in a 12-month period.

e. The provider shall maintain a written record of the number of hours care is provided by a substitute, including the date of the care and the name of the substitute.

441—110.8(237A) Standards. Conditions in the home shall be safe, sanitary, and free of hazards. The provider shall certify that the child development home meets the following standards and also the standards in either rule 441—110.13(237A), 441—110.14(237A), or 441—110.15(237A), specific to the category of home for which the provider requests registration.

110.8(1) Facility requirements.

a. The home shall have a nonpay, working landline or mobile telephone with emergency numbers posted for police, fire, ambulance, and the poison information center. The number for each child's parent, for a responsible person who can be reached when the parent cannot, and for the child's physician shall be written on paper and readily accessible by the telephone. The home must prominently display all emergency information, and all travel vehicles must have a paper copy of emergency parent contact information.

b. Electrical wiring shall be maintained, and all accessible electrical outlets shall be tamper-resistant outlets or shall be safely capped. Electrical cords shall be properly used. Improper use includes the running of cords under rugs, over hooks, or through door openings or other use that has been known to be hazardous.

c. Combustible materials shall be kept a minimum of three feet away from furnaces, stoves, water heaters, and gas dryers.

d. Approved safety gates at stairways and doors shall be provided and used as needed.

e. Annual laboratory analysis of a private water supply shall be conducted to show satisfactory bacteriological quality. When children under the age of two are to be cared for, the analysis shall include a nitrate analysis. When private water supplies are determined unsuitable for drinking, commercially bottled water or water treated through a process approved by the health department or designee shall be provided.

f. A safety barrier shall surround any heating stove or heating element, in order to prevent burns.

g. The home shall have at least one 2A 10BC-rated fire extinguisher located in a visible and readily accessible place on each child-occupied floor.

h. The home shall have at least one single-station, battery-operated, UL-approved smoke detector in each child-occupied room and at the top of every stairway. Each smoke detector shall be installed according to the manufacturer's recommendations. The provider shall test each smoke detector monthly and keep a record of testing for inspection purposes.

i. Smoking and the use of tobacco products shall be prohibited at all times in the home and in every vehicle in which children receiving care in the home are transported. Smoking and the use of tobacco products shall be prohibited in the outdoor play area during the home's hours of operation. "No smoking" signs shall be posted at every entrance of the child care home and in every vehicle used to transport children. All signs shall include:

- (1) The telephone number for reporting complaints, and
- (2) The Internet address of the department of public health (www.iowasmokefreeair.gov).

j. Homes served by private sewer systems shall be in compliance with discharge restrictions identified at 567—Chapter 69. Discharge of untreated waste water from private sewage disposal systems is prohibited. Compliance shall be verified by the local board of health at the time of registration renewal and new registration.

k. A provider operating in a facility built before 1960 shall assess and control lead hazards before being issued an initial child development home registration or a renewal of the registration. To comply with this requirement, the provider shall:

- (1) Conduct a visual assessment of the facility for lead hazards that exist in the form of chipping or peeling paint;

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(2) Apply interim controls on any chipping or peeling paint found, using lead-safe work methods in accordance with and as defined by department of public health rules at 641—Chapters 69 and 70, unless a certified inspector as defined in 641—Chapter 70 determines that the paint is not lead-based paint; and

(3) Submit Form 470-4755, Lead Assessment and Control, as verification of the visual assessment and completion of interim controls, if necessary.

l. The child development home shall be located in a single-family residence that is owned, rented, or leased by the person, or, for dual registrations, at least one of the persons, who is named on the child development home's certificate of registration.

m. Any driver who transports children for any purpose shall have a valid driver's license and adequate motor vehicle insurance that authorizes the driver to operate the type of vehicle being driven. Child restraint devices shall be utilized in compliance with Iowa Code section 321.446.

n. Providers shall inform parents of the presence of any pet in the home.

(1) Each dog or cat in the household shall undergo an annual health examination by a licensed veterinarian. Acceptable veterinary examinations shall be documented on Form 470-5153, Veterinary Health Certificate. This examination shall verify that the animal's routine immunizations, particularly rabies, are current and that the animal shows no evidence of endoparasites (roundworms, hookworms, whipworms) and ectoparasites (fleas, mites, ticks, lice).

(2) Each pet bird in the household shall be purchased from a dealer licensed by the Iowa department of agriculture and land stewardship and shall be examined by a veterinarian to verify that the bird is free of infectious diseases. Acceptable veterinary examinations shall be documented on Form 470-5153, Veterinary Health Certificate. Children shall not handle pet birds.

(3) Aquariums shall be well maintained and installed in a manner that prevents children from accessing the water or pulling over a tank.

(4) All animal waste shall be immediately removed from the children's areas and properly disposed of. Children shall not perform any feeding or care of pets or cleanup of pet waste.

(5) No animals shall be allowed in the food preparation, food storage, or serving areas during food preparation and serving times.

o. Using an injury report form, the provider shall document all injuries that require first aid or medical care. The form shall be completed on the date of occurrence, shared with the parent, and maintained in the child's file.

p. The provider shall have written policies regarding the care of mildly ill children and the exclusion of children due to illness and shall inform parents of these policies.

q. The provider shall have written policy and procedures for responding to health-related emergencies.

r. The certificate of registration shall be displayed in a conspicuous place.

110.8(2) Use of outdoor space.

a. A safe outdoor play area shall be maintained in good condition throughout the year. The play area shall be fenced off when located on a busy thoroughfare or near a hazard which may be injurious to a child and shall have both sunshine and shade areas. The play area shall be kept free from litter, rubbish, and flammable materials and shall be free from contamination by the drainage or ponding of sewage, household waste, or storm water.

b. When there is a swimming or wading pool on the premises:

(1) The wading pool shall be drained daily and shall be inaccessible to children when it is not in use.

(2) An aboveground or in-ground swimming pool that is not fenced shall be covered whenever the pool is not in use. The cover shall meet or exceed the ASTM International (formerly known as the American Society for Testing and Materials) specification intended to reduce the risk of drowning by inhibiting access to the water by children under five years of age.

(3) An uncovered aboveground swimming pool shall be enclosed with an approved fence that is nonclimbable and is at least four feet high.

(4) An uncovered in-ground swimming pool shall be enclosed with an approved fence that is nonclimbable and is at least four feet high and flush with the ground.

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- c.* If children are allowed to use an aboveground or in-ground swimming pool:
- (1) Written permission from parents shall be available for review.
 - (2) Equipment needed to rescue a child or adult shall be readily accessible.
 - (3) The child care provider shall accompany the children and provide constant supervision while the children use the pool.
 - (4) The child care provider shall complete training in cardiopulmonary resuscitation for infants, toddlers, and children, according to the criteria of the American Red Cross or the American Heart Association.

110.8(3) Medications and hazardous materials.

a. All medicines and poisonous, toxic, or otherwise unsafe materials shall be secured from access by a child.

b. A first-aid kit shall be available and easily accessible whenever children are in the child development home, in the outdoor play area, in vehicles used to transport children, and on field trips. The kit shall be sufficient to address first aid related to minor injury or trauma and shall be stored in an area inaccessible to children. The kit shall, at a minimum, include adhesive bandages, bottled water, disposable tweezers, and disposable plastic gloves.

c. Medications shall be given only with the parent's or doctor's written authorization. Each prescribed medication shall be accompanied by a physician's or pharmacist's direction. Both nonprescription and prescription medications shall be in the original container with directions intact and labeled with the child's name. All medications shall be stored properly and, when refrigeration is required, shall be stored in a separate, covered container so as to prevent contamination of food or other medications. All medications shall be stored so they are inaccessible to children. Any medication administered to a child shall be recorded, and the record shall indicate the name of the medication, the date and time of administration, and the amount administered.

d. All new providers and providers renewing registrations after September 30, 2016, shall not provide medications to a child if the provider has not completed preservice/orientation training that includes medication administration.

110.8(4) Emergency plans. Emergency plans in case of man-made or natural disaster shall be written and posted by the primary and secondary exits. The plans shall clearly map building evacuation routes and tornado and flood shelter areas.

a. Fire and tornado drills shall be practiced monthly, and the provider shall keep documentation evidencing compliance with monthly practice on file for the current year and the previous year.

b. The provider must have procedures in place for the following:

- (1) Evacuation to safely leave the facility.
- (2) Relocation to a common, safe location after evacuation.
- (3) Shelter-in-place to take immediate shelter where the child is when it is unsafe to leave that location due to the emergent issue.
- (4) Lockdown to protect children and providers from an external situation.
- (5) Communication and plans for reunification with families.
- (6) Continuity of operations.
- (7) To address the needs of individual children, including those with functional or access needs.

110.8(5) Safe sleep. The provider shall follow safe sleep practices as recommended by the American Academy of Pediatrics for infants under the age of one. Infant sleep shall conform to the following standards:

a. Infants shall always be placed on their backs for sleep.

b. Infants shall be placed on a firm mattress with a tight fitted sheet that meets U.S. Consumer Product Safety Commission federal standards.

c. Infants shall not be allowed to sleep on a bed, sofa, air mattress or other soft surface. No child shall be allowed to sleep in any item not designed for sleeping including, but not limited to, an infant seat, car seat, swing, or bouncy seat.

d. No toys, soft objects, stuffed animals, pillows, bumper pads, blankets, or loose bedding shall be allowed in the sleeping area with the infant.

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- e. No co-sleeping shall be allowed.
- f. Sleeping infants shall be actively observed by sight and sound.
- g. If an alternate sleeping position is needed, a signed physician authorization with statement of medical reason is required.

110.8(6) Discipline. Discipline shall conform to the following standards:

- a. Corporal punishment, including spanking, shaking and slapping, shall not be used.
- b. Punishment that is humiliating or frightening or that causes pain or discomfort to the child shall not be used.
- c. Punishment shall not be administered because of a child's illness, or progress or lack of progress in toilet training, nor shall punishment or threat of punishment be associated with food or rest.
- d. No child shall be subjected to verbal abuse, threats, or derogatory remarks about the child or the child's family.
- e. Discipline shall be designed to help the child develop self-control, self-esteem, and respect for the rights of others.

110.8(7) Meals and snacks.

- a. Regular meals and midmorning or midafternoon snacks shall be provided. The meals and snacks shall be well-balanced, nourishing, and in appropriate amounts as defined by the USDA Child and Adult Care Food Program.
- b. Children may bring food to the child development home for their own consumption but shall not be required to provide their own food.
- c. Clean, sanitary drinking water shall be readily available to children in indoor and outdoor areas, throughout the day.

110.8(8) Activity program. There shall be an activity program which promotes self-esteem and exploration and includes:

- a. Active play.
- b. Quiet play.
- c. Activities for large-muscle development.
- d. Activities for small-muscle development.
- e. Play equipment and materials in a safe condition, for both indoor and outdoor activities which are developmentally appropriate for the ages and number of children present.

441—110.9(237A) Files.

110.9(1) A provider file shall be maintained and shall contain the following:

- a. A physical examination report. Providers and all members of a provider's household over the age of 12 shall have good health as evidenced by a preregistration physical examination. Acceptable physical examinations shall be documented on Form 470-5152, Child Care Provider Physical Examination Report. The physical examination shall include any necessary testing for communicable diseases; shall include a discussion regarding current Advisory Committee on Immunization Practices (ACIP)-recommended vaccinations; shall be performed by a licensed medical doctor, doctor of osteopathy, physician assistant or advanced registered nurse practitioner within six months prior to the provider's registration; and shall be repeated at least every three years. All children residing in the household who are 12 years of age or younger must have the medical documentation outlined in paragraphs 110.9(4) "d," "f," and "g."
- b. Certificates or other documentation from the department verifying the following:
 - (1) Required training as set forth in subrule 110.10(1).
 - (2) Completion of all record checks as required in subrule 110.11(3), at initial application, at each application for change, and at each application for renewal.

110.9(2) An individual file for each staff assistant shall be maintained and shall contain the following:

- a. Documentation from the department which confirms that the record checks required under subrule 110.11(3) have been completed and authorizes or conditionally limits the person's involvement with child care.

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b. A completed Form 470-5152, Child Care Provider Physical Examination Report, that meets the requirements of paragraph 110.9(1)“a.”

c. Certification of a minimum of two hours of approved training relating to the identification and reporting of child abuse, completed within three months of employment and every five years thereafter, as required by Iowa Code section 232.69.

110.9(3) An individual file for each substitute shall be maintained and shall contain the following:

a. Documentation from the department which confirms that the record checks required under subrule 110.11(3) have been completed and authorizes or conditionally limits the person’s involvement with child care.

b. A completed Form 470-5152, Child Care Provider Physical Examination Report, that meets the requirements of paragraph 110.9(1)“a.”

c. Certification of a minimum of two hours of approved training relating to the identification and reporting of child abuse, completed within three months of employment and every five years thereafter, as required by Iowa Code section 232.69.

d. Certification in first aid that meets the requirements of paragraph 110.10(1)“c.”

e. Certification or other documentation that minimum health and safety training has been completed in compliance with paragraph 110.10(1)“a.”

110.9(4) Children’s files. An individual file for each child shall be maintained and updated annually or when the provider becomes aware of changes. The file shall contain:

a. Identifying information including, at a minimum, the child’s name and birth date; the parent’s name, address and telephone number; special needs of the child; and the parent’s work address and telephone number.

b. Emergency contact information including, at a minimum, where the parent can be reached, the name, street address, city and telephone number of the child’s regular source of health care, and the name, telephone number, and relationship to the child of another adult available in case of emergency.

c. A signed medical consent from the parent authorizing emergency medical and dental treatment.

d. An admission physical examination report signed by a licensed physician or a designee in a clinic supervised by a licensed physician.

(1) The date of the physical examination shall not be more than 12 months before the child’s first day of attendance at the child development home.

(2) The written report shall include the child’s past health history, status of the child’s present health, allergies and restrictive conditions, and recommendations for continued care when necessary.

(3) For a child who is five years of age or older and enrolled in school, a statement of health status signed by the parent or legal guardian may be substituted for the physical examination report.

(4) The examination report or statement of health status shall be on file before the child’s first day of care.

e. A statement of health condition signed by a physician or designee and submitted annually from the date of the admission physical examination. For a child who is five years of age or older and enrolled in school, a statement of health status signed by the parent or legal guardian may be substituted for the physician statement.

f. For each school-age child, on the first day of attendance, documentation of a physical examination that was completed at the time of school enrollment or since.

g. A signed and dated immunization certificate provided by the Iowa department of public health. For the school-age child, a copy of the most recent immunization record shall be acceptable.

h. A list that is signed by the parent and names persons authorized to pick up the child. The authorization shall include the name, telephone number, and relationship of the authorized person to the child.

i. Written permission from the parent for the child to attend activities away from the child development home. The permission shall include:

(1) Times of departure and arrival.

(2) Destination.

(3) Persons who will be responsible for the child.

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j. Injury report forms documenting injuries requiring first aid or medical care.

k. If the child meets the definition of homelessness as defined by Section 725(2) of the McKinney-Vento Homeless Education Assistance Act, the family shall receive a 60-day grace period to obtain medical documentation.

441—110.10(237A) Professional development.**110.10(1) Required training.**

a. Prior to registration and every five years thereafter, the provider shall complete minimum health and safety trainings, approved by the department, in all of the following areas:

- (1) Prevention and control of infectious disease, including immunizations.
- (2) Prevention of sudden infant death syndrome and use of safe sleep practices.
- (3) Administration of medication, consistent with standards for parental consent.
- (4) Prevention of and response to emergencies due to food and allergic reactions.
- (5) Building and physical-premises safety, including identification of and protection from hazards that can cause bodily injury, such as electrical hazards, bodies of water, and vehicular traffic.
- (6) Prevention of shaken baby syndrome and abusive head trauma.
- (7) Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event.
- (8) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants.
- (9) Precautions in transporting children.

b. Prior to registration and every five years thereafter, the provider shall complete two hours of Iowa's training for mandatory reporting of child abuse.

c. Prior to registration, the provider shall complete first-aid and cardiopulmonary resuscitation (CPR) training that meets the following requirements:

(1) Training shall be provided by a nationally recognized training organization, such as the American Red Cross, American Heart Association, National Safety Council, the American Safety and Health Institute, or MEDIC First Aid or by an equivalent trainer using curriculum approved by the department.

(2) First-aid training shall include certification in infant and child first aid.

(3) The provider shall maintain a valid certificate indicating the date of first-aid training and the expiration date.

(4) The provider shall maintain a valid certificate indicating the date of CPR training and the expiration date.

d. During each two-year registration period, the provider shall receive a minimum of 24 hours of training from one or more of the following content areas. A provider shall not use a specific training or class to meet minimum continuing education requirements more than one time every five years.

(1) Planning a safe, healthy learning environment (includes nutrition).

(2) Steps to advance children's physical and intellectual development.

(3) Positive ways to support children's social and emotional development (includes guidance and discipline).

(4) Strategies to establish productive relationships with families (includes communication skills and cross-cultural competence).

(5) Strategies to manage an effective program operation (includes business practices).

(6) Maintaining a commitment to professionalism.

(7) Observing and recording children's behavior.

(8) Principles of child growth and development.

e. A provider who submits documentation from a child care resource and referral agency that the provider has completed the Iowa Program for Infant/Toddler Care (IA PITC), ChildNet, or Beyond Business Basics training series may use those hours to fulfill a maximum of two years' training requirements, not including first-aid and mandatory reporter training.

f. Training identified in paragraph 110.10(1)"*a*" may be counted toward the total 24 hours of required training only at the initial time in which it is received.

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g. Minimum health and safety training may be required prior to the five-year period if content has significant changes which warrant that the training be renewed.

110.10(2) *Approved training.*

a. The training must be conducted by a trainer who is employed by or under contract with one of the following entities or who uses curriculum or training materials developed by or obtained with the written permission of one of the following entities:

- (1) An accredited university or college.
- (2) A community college.
- (3) Iowa State University Extension.
- (4) A child care resource and referral agency.
- (5) An area education agency.
- (6) The regents' center for early developmental education at the University of Northern Iowa.
- (7) A hospital (for health and safety, first-aid, and CPR training).
- (8) The American Red Cross, American Heart Association, National Safety Council, American Safety and Health Institute or MEDIC First Aid (for first-aid and CPR training).
- (9) An Iowa professional association, including the Iowa Association for the Education of Young Children (Iowa AEYC), the Iowa Family Child Care Association (IFCCA), the Iowa After School Alliance, and the Iowa Head Start Association.
- (10) A national professional association, including the National Association for the Education of Young Children (NAEYC), the National Child Care Association (NCCA), the National Association for Family Child Care (NAFCC), the National After School Association, and the American Academy of Pediatrics.
- (11) The Child and Adult Care Food Program (CACFP) and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).
- (12) The Iowa department of public health, department of education, or department of human services.
- (13) Head Start agencies or the Head Start technical assistance system.
- (14) Organizations that are certified by the International Association for Continuing Education and Training (IACET).

b. Training received in a group setting must follow a presentation format that incorporates a variety of adult learning methods. The material or content of the training must be obtained from one of the entities listed in paragraph 110.10(2) "a" or an entity approved under paragraph 110.10(2) "h."

c. Approved training shall be made available to Iowa child care providers through the child care provider training registry.

d. Training received in a group setting may include distance learning opportunities, such as training conducted over the Iowa communications network, online courses, or Web conferencing (webinars) if:

- (1) The training meets the requirements in subrule 110.10(3);
- (2) The training is taught by an instructor and requires interaction between the instructor and the participants, such as required chats or message boards; and
- (3) The training organization meets the requirements listed in this subrule or is approved by the department.

e. The department will not approve more than eight hours of training delivered in a single day.

f. The department may randomly monitor any state-approved training for quality control purposes.

g. Training conducted with the provider either during the hours of operation of the facility, provider lunch hours, or while children are resting must not diminish the required ratio coverage. The provider shall not be actively engaged in care and supervision and simultaneously participate in training.

h. A training organization not approved by the department may submit a request for review to the department on Form 470-4528, Request for Child Care Training Approval. All approvals, unless otherwise specified, shall be valid for five years. The department shall issue its decision within 30 business days of receipt of a complete request.

110.10(3) *Elements of training.* Training provided to Iowa child care providers shall offer:

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- a. Instruction that is consistent with:
 - (1) Iowa child care regulatory standards;
 - (2) The Iowa early learning standards; and
 - (3) The philosophy of developmentally appropriate practice as defined by the National Association for the Education of Young Children, the Program for Infant/Toddler Care, and the National Health and Safety Performance Standards.
- b. Content equal to at least one contact hour of training.
- c. An opportunity for teacher-student interaction and timely feedback, including questions and answers and with evaluation of learning.
- d. For each participant, a certificate of training that includes:
 - (1) The name of the participant.
 - (2) The title of the training.
 - (3) The dates of training.
 - (4) The content area addressed.
 - (5) The name of the training organization.
 - (6) The name of the instructor.
 - (7) The number of contact hours.

441—110.11(234) Registration decision. The department shall issue Form 470-3498, Certificate of Registration, when an applicant meets all requirements for registration. Each local office of the department shall maintain a current list of registered child development homes as a referral service to the community.

110.11(1) Registration shall be denied or revoked if the department finds a hazard to the safety and well-being of a child and the provider cannot correct or refuses to correct the hazard, even though the hazard may not have been specifically listed under the health and safety rules. Registration may also be denied or revoked if the department determines that the provider has failed to comply with standards imposed by law and these rules.

110.11(2) Record of all denials or revocations of registration and the documentation of reasons for denying or revoking the registration shall be kept in an open file.

110.11(3) Record checks.

a. *Applicability.* The department shall conduct Iowa criminal history record and child abuse record checks for each registrant, substitute or staff member, anyone living in the home who is 14 years of age or older, and anyone having access to a child when the child is alone. The department shall conduct national criminal history record checks, based on fingerprints, for each registrant, substitute or staff member, anyone living in the home who is 18 years of age or older, and anyone 18 years of age or older having access to a child when the child is alone. In accordance with Iowa Code section 726.23, minors under the age of 18 will not be subject to the fingerprint requirement.

(1) The purpose of these record checks is to determine whether the person has committed a transgression that prohibits or limits the person's involvement with child care.

(2) The department may also conduct criminal history record and child abuse record checks in other states and may conduct dependent adult abuse, sex offender registry, and other public or civil offense record checks in Iowa or other states.

(3) Effective July 1, 2013, registration or renewal certificates shall not be issued until the results of all state and national record checks have been received and, when necessary, evaluated.

b. *Authorization.* The person subject to record checks shall complete the Iowa department of human services record check authorization form; Form DCI-45, Waiver Agreement; Form FD-258, Federal Fingerprint Card; and any other forms required by the department of public safety to authorize the release of records.

c. *Iowa records checks.* Checks and evaluations of Iowa child abuse and criminal history records shall be completed before the person's involvement with child care. Iowa records checks shall be repeated at a minimum of every two years and when the department or the registrant becomes aware of

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any possible transgressions. The department is responsible for the cost of conducting the Iowa records checks.

d. National criminal history record checks. Fingerprint-based checks of national criminal history records shall also be completed before a person's involvement with child care. This requirement shall be effective on or after July 1, 2013, for an initial application for registration or a renewal application for registration. The national criminal history record check shall be repeated for each person subject to the check every four years and when the department or registrant becomes aware of any new transgressions committed by that person in another state. The department is responsible for the cost of conducting the national criminal history record check.

(1) The registrant is responsible for any costs associated with the taking (rolling) of fingerprints of all persons subject to record checks and for submitting the fingerprints to the department so that the national criminal history record check can be completed. Fingerprints may be taken (rolled) by law enforcement agencies or by agencies or companies that specialize in taking (rolling) fingerprints.

(2) The department shall provide fingerprints to the department of public safety no later than ten business days after receipt of the fingerprint cards. The department shall submit the fingerprints on forms or in a manner allowed by the department of public safety.

(3) The department may rely on the results of previously conducted national criminal history record checks when a person subject to a record check in one child development home or child care home submits a request for involvement with child care in another child development home or child care home, so long as the person's national criminal history record check is within the allowable four-year time frame. All initial or new applications shall require a new national criminal history record check.

e. Mandatory prohibition. A person with any of the following convictions or founded abuse reports is prohibited from involvement with child care:

- (1) Founded child or dependent adult abuse that was determined to be sexual abuse.
- (2) Placement on the sex offender registry.
- (3) Felony child endangerment or neglect or abandonment of a dependent person.
- (4) Felony domestic abuse.
- (5) Felony crime against a child including, but not limited to, sexual exploitation of a minor.
- (6) Forcible felony.

f. Mandatory time-limited prohibition.

(1) A person with the following conviction or founded abuse report is prohibited from involvement with child care for five years from the date of the conviction or founded abuse report:

1. Conviction of a controlled substance offense under Iowa Code chapter 124.
2. Founded abuse that was determined to be physical abuse.

(2) After the five-year prohibition period (from the date of the conviction or the founded abuse report) as defined in subparagraph 110.11(3) "f"(1), the person may request the department to perform an evaluation under paragraph 110.11(3) "g" to determine whether prohibition of the person's involvement with child care continues to be warranted.

g. Evaluation required. For all other transgressions, and as requested under subparagraph 110.11(3) "f"(2), the department shall evaluate the transgression and make a decision about the person's involvement with child care.

(1) The person with the transgression shall complete and return the record check evaluation form within ten calendar days of the date on the form. The department shall use the information the person with the transgression provides on this form to assist in the evaluation. Failure of the person with the transgression to complete and return this form within ten calendar days of the date on the form shall result in denial or revocation of the registration certificate.

(2) The department may use information from the department's case records in performing the evaluation.

- (3) In an evaluation, the department shall consider all of the following factors:
1. The nature and seriousness of the transgression in relation to the position sought or held.
 2. The time elapsed since the commission of the transgression.
 3. The circumstances under which the transgression was committed.

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4. The degree of rehabilitation.
 5. The likelihood that the person will commit the transgression again.
 6. The number of transgressions committed by the person.
- (4) When a person subject to a record check has a transgression that has been determined in a previous evaluation not to warrant prohibition of the person's involvement with child care and the person has no subsequent transgressions, an exemption from reevaluation of the latest record check is authorized. The person may commence employment with another child care facility in accordance with the department's previous evaluation. The exemption is subject to all of the following conditions:
1. The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.
 2. Any restrictions placed on the person's employment by the department in the previous evaluation shall remain applicable in the person's subsequent employment.
 3. The person subject to the record check has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer or the previous employer provides to the subsequent employer the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, the record check shall be reevaluated.
 4. The subsequent employer may request a reevaluation of the record check and may employ the person while the reevaluation is being performed.
- h. Evaluation decision.* The department has final authority in determining whether prohibition of the person's involvement with child care is warranted and in developing any conditional requirements or corrective action plan.
- (1) Within 30 calendar days of receipt of a completed record check evaluation, the department shall make a decision on the person's involvement with child care.
 - (2) Within 30 calendar days of receipt of a completed record check evaluation, the department shall mail to the person subject to an evaluation a record check decision that explains the decision reached regarding the evaluation of the transgression and a notice of decision: child care.
 - (3) The department shall issue a notice of decision: child care prohibiting involvement with child care when the person subject to an evaluation fails to complete the record check evaluation within the ten-calendar-day time frame.
 - (4) If the department determines, through the record check evaluation process, that the person's prohibition of involvement with child care is warranted, the person shall be prohibited from involvement with child care. The department may identify a period of time after which the person may request that another record check and evaluation be performed.
 - (5) The department may permit a person who is evaluated to maintain involvement with child care if the person complies with the department's conditions relating to the person's involvement with child care, which may include completion of additional training or an individually designed corrective action plan, or both. For an employee of a registrant, these conditional requirements shall be developed with the registrant. All conditions placed on a person's involvement with child care shall be communicated, in writing, to both the person subject to the evaluation and the registrant.
- i. Notice to parents of abuse in care.* If there has been founded child abuse committed by an owner, director, or staff member of the child care facility or child care home, the department's administrator shall notify the parents, guardians, and legal custodians of each child for whom the facility or child care home provides care.
- (1) The child care facility or child care home shall cooperate with the department in providing the names and addresses of the parent, guardian, or custodian of each child for whom the facility provides child care.
 - (2) This information shall be provided to the department within ten calendar days from the date of the initial request.
 - (3) Failure or refusal to provide the requested information may result in revocation of registration.
- 110.11(4)** If the department has denied or revoked a registration because the provider has continually or repeatedly failed to operate in compliance with Iowa Code chapter 237A and this chapter,

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the person shall not own or operate a registered facility for a period of 12 months from the date of denial or revocation. The department shall not act on an application for registration submitted by the applicant or provider during the 12-month period. The applicant shall be prohibited from involvement with child care unless the department specifically permits the involvement.

110.11(5) Required notifications. If a certificate of registration is revoked, the administrator of the department shall notify the parent, guardian, or legal custodian of each child for whom the facility provides care. The provider shall cooperate with the department in providing the name and address of the parent, guardian, or legal custodian of each child for whom the facility provides child care.

110.11(6) Required notifications to the department.

a. The provider shall, within ten days, notify the department of any of the following:

- (1) Changes in assistants or substitutes;
- (2) Changes in household membership;
- (3) Address changes; and
- (4) Criminal convictions.

b. No assistant, substitute, or coprovider shall be utilized in the care of children and no person shall be permitted to reside in the household until approved by the department.

c. If the provider does not notify the department of changes within ten days, the provider may be subject to revocation of registration or to recoupment of child care assistance provided, or both.

110.11(7) Letter of revocation. A letter received by an owner or operator of a child development home initiating action to deny or revoke the home's registration shall be conspicuously posted where it can be read by parents or any member of the public. The letter shall remain posted until resolution of the action to deny or revoke an owner's or operator's certificate of registration.

441—110.12(237A) Complaints. The department shall conduct an on-site visit when a complaint is received.

110.12(1) After each complaint visit, the department shall document whether the child development home was in compliance with registration requirements.

110.12(2) The written documentation of the department's conclusion as to whether the child development home was in compliance with requirements shall be available to the public. However, the identity of all complainants shall be confidential, unless expressly waived by the complainant.

441—110.13(237A) Additional requirements for child development home category A. In addition to the requirements in rule 441—110.8(237A), a provider requesting registration in child development home category A shall meet the following standards:

110.13(1) *Limits on number of children in care.*

a. No more than six children not attending kindergarten or a higher grade level shall be present at any one time.

b. Of these six children, no more than four children who are 24 months of age or younger shall be present at any one time. Of these four children, no more than three may be 18 months of age or younger.

c. In addition to the six children not in school, no more than two children who attend school may be present for a period of less than two hours at a time.

d. No more than eight children shall be present at any one time when an emergency school closing is in effect.

110.13(2) *Provider qualifications.*

a. The provider shall be at least 18 years old.

b. The provider shall have three written references which attest to character and ability to provide child care.

441—110.14(237A) Additional requirements for child development home category B. In addition to the requirements in rule 441—110.8(237A), a provider requesting registration in child development home category B shall meet the following standards:

110.14(1) *Limits on number of children in care.*

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a. No more than six children not attending kindergarten or a higher grade level shall be present at any one time.

b. Of these six children, no more than four children who are 24 months of age or younger shall be present at any one time. Of these four children, no more than three may be 18 months of age or younger.

c. In addition to the six children not in school, no more than four children who attend school may be present.

d. In addition to these ten children, no more than two children who are receiving care on a part-time basis may be present.

e. No more than 12 children shall be present at any one time when an emergency school closing is in effect.

f. If more than eight children are present at any one time for a period of more than two hours, the provider shall be assisted by a department-approved assistant who is at least 14 years old.

110.14(2) Provider qualifications.

a. The provider shall be at least 20 years old.

b. The provider shall have a high school diploma, GED, or documentation of current or previous enrollment in credit-based coursework from a postsecondary educational institution that is an accredited college or university.

c. The provider shall either:

(1) Have two years of experience as a registered or nonregistered child care provider, or

(2) Have a child development associate credential or any two-year or four-year degree in a child care-related field and one year of experience as a registered or nonregistered child care home provider.

110.14(3) Facility requirements.

a. The home shall have a minimum of 35 square feet of child-use floor space for each child in care indoors, and a minimum of 50 square feet per child in care outdoors.

b. The home shall have a separate quiet area for sick children.

c. The home shall have a minimum of two direct exits to the outside from the main floor.

(1) If the second level or the basement of the home is used for the provision of child care, other than the use of a restroom, each additional child-occupied floor shall have at least one direct exit to the outside in addition to one inside stairway.

(2) All exits shall terminate at grade level with permanent steps.

(3) A basement window may be used as an exit if the window can be opened from the inside without the use of tools and it provides a clear opening of not less than 20 inches in width, 24 inches in height, and 5.7 square feet in area. The bottom of the opening shall be not more than 44 inches above the floor, with permanent steps inside leading up to the window.

(4) Occupancy above the second floor shall not be permitted for child care.

441—110.15(237A) Additional requirements for child development home category C. In addition to the requirements in rule 441—110.8(237A), a provider requesting registration in child development home category C shall meet the following standards:

110.15(1) Limits on number of children in care.

a. No more than 12 children not attending kindergarten or a higher grade level shall be present at any one time.

b. Of these 12 children, no more than four children who are 24 months of age or younger shall be present at any one time. Whenever four children who are under the age of 18 months are in care, both providers shall be present.

c. In addition to the 12 children not in school, no more than two children who attend school may be present for a period of less than two hours at any one time.

d. In addition to these 14 children, no more than two children who are receiving care on a part-time basis may be present.

e. No more than 16 children shall be present at any one time when an emergency school closing is in effect. If more than eight children are present at any one time due to an emergency school closing

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exception, the provider shall be assisted by a department-approved assistant who is at least 18 years of age.

f. If more than eight children are present, both providers shall be present. Each provider shall meet the provider qualifications for child development home category C.

110.15(2) Provider qualifications.

a. One provider who meets the following qualifications must always be present:

(1) The provider shall be at least 21 years old.

(2) The provider shall have a high school diploma, GED, or documentation of current or previous enrollment in credit-based coursework from a postsecondary educational institution that is an accredited college or university.

(3) The provider shall either:

1. Have five years of experience as a registered or nonregistered child care provider, or

2. Have a child development associate credential or any two-year or four-year degree in a child care-related field and four years of experience as a registered or nonregistered child care home provider.

b. The coprovider shall meet the requirements of subrule 110.14(2).

c. No more than two named providers shall be allowed on a registration certificate.

110.15(3) Facility requirements.

a. The home shall have a minimum of 35 square feet of child-use floor space for each child in care indoors, and a minimum of 50 square feet per child in care outdoors.

b. The home shall have a separate quiet area for sick children.

c. The home shall have a minimum of two direct exits to the outside from the main floor.

(1) If the second level or the basement of the home is used for the provision of child care, other than the use of a restroom, each additional child-occupied floor shall have at least one direct exit to the outside in addition to one inside stairway.

(2) All exits shall terminate at grade level with permanent steps.

(3) A basement window may be used as an exit if the window can be opened from the inside without the use of tools and it provides a clear opening of not less than 20 inches in width, 24 inches in height, and 5.7 square feet in area. The bottom of the opening shall be not more than 44 inches above the floor, with permanent steps inside leading up to the window.

(4) Occupancy above the second floor shall not be permitted for child care.

441—110.16(237A) Registration actions for nonpayment of child support. The department shall revoke or deny the issuance or renewal of a child development home registration upon the receipt of a certificate of noncompliance from the child support recovery unit of the department according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in Iowa Code chapter 252J, the rules in this chapter shall apply.

110.16(1) Service of notice. The notice required by Iowa Code section 252J.8 shall be served upon the applicant or registrant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the applicant or registrant may accept service personally or through authorized counsel.

110.16(2) Effective date. The effective date of the revocation or denial of the registration as specified in the notice required by Iowa Code section 252J.8 shall be 60 days following service of the notice upon the applicant or licensee.

110.16(3) Preparation of notice. The department director or designee of the director is authorized to prepare and serve the notice as required by Iowa Code section 252J.8 upon the applicant or registrant.

110.16(4) Responsibilities of registrants and applicants. Registrants and registrant applicants shall keep the department informed of all court actions, and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J, and shall provide the department copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in the actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

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110.16(5) District court. A registrant or applicant may file an application with the district court within 30 days of service of a department notice pursuant to Iowa Code sections 252J.8 and 252J.9.

a. The filing of the application shall stay the department action until the department receives a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed.

b. For purposes of determining the effective date of the revocation, or denial of the issuance or renewal of a registration, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

110.16(6) Procedure for notification. The department shall notify the applicant or registrant in writing through regular first-class mail, or such other means as the department deems appropriate in the circumstances, within ten days of the effective date of the revocation of a registration or the denial of the issuance or renewal of a registration, and shall similarly notify the applicant or registrant when the registration is issued, renewed, or reinstated following the department's receipt of a withdrawal of the certificate of noncompliance.

110.16(7) Appeal rights. Notwithstanding Iowa Code section 17A.18, the registrant does not have the right to a hearing regarding this issue but may request a court hearing pursuant to Iowa Code section 252J.9.

441—110.17(237A) Prohibition from involvement with child care. If the department has prohibited a person or program from involvement with child care, that person or program shall not provide child care as a nonregistered child care home provider.

These rules are intended to implement Iowa Code section 234.6 and chapter 237A.

[Filed 7/13/16, effective 10/1/16]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/3/16.

ARC 2648C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 237A.12, the Department of Human Services hereby adopts new Chapter 120, "Child Care Homes," Iowa Administrative Code.

The federal Child Care and Development Block Grant (CCDBG) was reauthorized in November 2014. As a result, there are new federal laws outlining health, safety, and fire standards for child care providers that receive child care assistance dollars. Chapter 120 has been created to outline the requirements for child care providers that receive subsidy dollars but are not required by state law to register to provide child care.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2552C** on May 25, 2016. The Department received comments from four respondents during the public comment period. The comments and Department responses are as follows:

Comment 1: A respondent requested that language be included that allows changes to the five-year requirement for health and safety training if information changes. Modifications will allow the Department to require the training more often or that training be renewed if significant changes to the content occur.

Department response 1: The Department agrees with the comment and has added the following subrule to allow for health and safety training to be taken more frequently if content areas change significantly.

"120.10(4) Minimum health and safety training may be required prior to the five-year period if content has significant changes which warrant that the training be renewed."

Comment 2: A respondent suggested additional modifications to these rules to add standards regarding nutrition, physical activity, and screen time within child care homes and child care centers.

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The respondent recommended requiring nutrition standards based on the Child and Adult Care Food Program (CACFP), physical activity standards consistent with the YMCA's Healthy Eating and Physical Activity (HEPA) as well as screen time standards for early childhood programs.

Department response 2: Chapter 120 is intended to regulate minimum health and safety standards for child care providers that are not required by state law to register as a child development home, but that do wish to receive Child Care and Development Fund (CCDF) funds. There is a current requirement at subrule 120.8(7) to require regular meals and snacks that are well balanced and nourishing to be provided. Physical activity requirements and screen time standards, while encouraging of a high quality environment, are not required to meet the intent of federal legislation for minimum health and safety standards. For these reasons, the Department has not modified these rules based on the respondent's comments.

Comment 3: One respondent identified that the new Chapter 120 includes requirements that do not currently exist. The respondent also stated that it is unclear if these amendments apply only to child care homes that wish to receive child care assistance payments or to all child care homes in Iowa. Finally, the respondent indicated that there is not an identified grace period for compliance. The respondent asked the Department to establish a grace period. The respondent also requested that the Department reach out to current child care home providers to inform them of proposed changes.

Department response 3: The preamble of Chapter 120 has been modified to clearly delineate the population to which Chapter 120 is intended to apply. The federal legislation goes into effect October 1, 2016, and all requirements must be met by that time. The Department is permitted to allow child care providers to obtain health and safety training up until September 30, 2017, at which point all persons must have the training completed. The Department has participated in significant outreach with child care providers across the state to advise the providers of new regulations and to gather input. In March 2016, a mass mailing via standard USPS mail was also sent to all regulated and nonregulated providers that receive child care assistance payments. This mass-mailing letter outlined the varied changes taking place as a result of the federal legislation. The first sentence of the preamble of new Chapter 120 has been revised to improve clarity. The preamble now reads as follows:

"This chapter establishes procedures for child care homes that have a child care assistance provider agreement to receive child care assistance funds. Included are application and renewal procedures, standards for providers, and procedures for compliance checks and complaint investigations."

Comment 4: A respondent requested that training in the use of an automated external defibrillator (AED) be included in the first-aid and cardiopulmonary resuscitation (CPR) training requirements.

Department response 4: At this time, it is not known if AED training is always provided during CPR courses. Additionally, if the Department required AED training, it would be reasonable to assume that the Department would need to require an AED on the child care premises, which would have a fiscal impact to child care providers. The National Resource Center on Health and Safety in Child Care and Early Education's document "Caring for Our Children" was also reviewed. The suggestion in that document is that child care facilities should consider having an AED on the premises for potential use with adults. It further indicates that the use of AEDs with children would be rare. For these reasons, the Department will not modify these rules based on the comments at this time.

Comment 5: A respondent requested that clarifications be made regarding items that are not designed for sleeping in the section regarding safe sleep practices.

Department response 5: The Department has modified paragraph 120.8(5)"c" regarding items not designed for sleeping. The paragraph now reads as follows:

"c. Infants shall not be allowed to sleep on a bed, sofa, air mattress or other soft surface. No child shall be allowed to sleep in any item not designed for sleeping including, but not limited to, an infant seat, car seat, swing, or bouncy seat."

Comment 6: A respondent requested that the rules clarify that cribs are not allowed to have moving railings.

Department response 6: Administrative rules require that cribs meet current federal Consumer Product Safety Commission (CPSC) or ASTM International standards. Drop-side cribs are not allowed within current approved standards. However, there are some cribs that have partial "safe reach" options

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that do meet CPSC standards. There would be a fiscal impact to providers if the cribs with approved “safe reach” options are currently being used and those cribs then become prohibited as the result of changes to these rules. For these reasons, the Department did not modify these rules based on the respondent’s comment.

Technical change. The Department reviewed the proposed rule making and determined that a technical change regarding first aid and cardiopulmonary resuscitation (CPR) was necessary and has modified paragraph 120.10(3)“a” to include the American Safety and Health Institute as an approved training organization and to remove the reference to Emergency Medical Planning, which has merged into the American Safety and Health Institute.

The Council on Human Services adopted this amendment on July 13, 2016.

This amendment does not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217). After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 237A.12.

The following amendment will become effective October 1, 2016.

The following amendment is adopted.

Adopt the following **new** 441—Chapter 120:

CHAPTER 120
CHILD CARE HOMES

PREAMBLE

This chapter establishes procedures for child care homes that have a child care assistance provider agreement to receive child care assistance funds. Included are application and renewal procedures, standards for providers, and procedures for compliance checks and complaint investigations.

441—120.1(237A) Definitions.

“*Adult*” means a person 18 years of age or older.

“*Child*” means either of the following:

1. A person 12 years of age or younger.
2. A person 13 years of age or older but younger than 19 years of age who has a developmental disability, as defined under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law No. 106-402, codified in 42 U.S.C. 15002(8).

“*Child care*” means the care, supervision, or guidance of a child by a person other than the child’s parent, guardian, or custodian for periods of less than 24 hours per day per child on a regular basis. “Child care” shall not mean special activity programs that meet on a regular basis such as music or dance classes, organized athletics or sports programs, scouting programs, or hobby or craft classes or clubs.

“*Child care facility*” or “*facility*” means a child care center, a preschool, or a registered child development home.

“*Child care home*” means a person or program providing child care to five or fewer children at any one time that is not registered to provide child care under this chapter, as authorized under Iowa Code section 237A.3.

“*Child development home*” means a person or program registered under this chapter that may provide child care to six or more children at any one time.

“*Department*” means the department of human services.

“*Involvement with child care*” means licensed or registered as a child care facility, employed in a child care facility, residing in a child care facility, receiving public funding for providing child care, providing child care as a child care home provider, or residing in a child care home.

“*Parent*” means parent or legal guardian.

“*Person subject to an evaluation*” means a person who has committed a transgression and who is described by any of the following:

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1. The person is being considered for registration or is registered.
2. The person is being considered by a child care facility for employment involving direct responsibility for a child or with access to a child when the child is alone, or the person is employed with such responsibilities.
3. The person will reside or resides in a child care facility.
4. The person has applied for or receives public funding for providing child care.
5. The person will reside or resides in a child care home that is not registered but that receives public funding for providing child care.

“*Provider*” means the person or program that applies to receive payment from the child care assistance program to provide child care and is approved as a child care home.

“*School*” means kindergarten or a higher grade level.

“*Transgression*” means the existence of any of the following in a person’s record:

1. Conviction of a crime.
2. A record of having committed founded child or dependent adult abuse.
3. Listing in the sex offender registry established under Iowa Code chapter 692A.
4. A record of having committed a public or civil offense.
5. Department revocation or denial of a child care facility registration or license due to the person’s continued or repeated failure to operate the child care facility in compliance with licensing and registration laws and rules.

441—120.2(237A) Application for payment. A provider shall apply for payment on Form 470-2890, Payment Application for Nonregistered Providers, provided by the department’s local office or on the department’s Web site. The provider shall also use Form 470-2890 to inform the department of any changes in circumstances that would affect the provider.

441—120.3(237A) Renewal of agreement. Renewal of the child care assistance provider agreement shall be completed every 24 months. To request renewal, a provider shall submit Form 470-2890, Payment Application for Nonregistered Providers, and copies of certificates of training, which shall be retained in the file. The agreement renewal process shall include completion of child abuse, sex offender, and criminal record checks.

441—120.4(237A) Compliance checks. An unannounced compliance visit shall be conducted not less than annually to check for compliance with health, safety, and fire standards. Completed evaluation checklists shall be placed in agency files.

441—120.5(237A) Parental access. Parents shall be afforded unlimited access to their children and to the people caring for their children during the normal hours of operation or whenever their children are in the care of the child care home, unless parental contact is prohibited by court order.

441—120.6(237A) Number of children. The number of children in a child care home shall conform to the following standards:

120.6(1) Limit. No more than five children shall receive care at any one time in the single-family residence.

120.6(2) Children counted. To determine the number of children cared for at any one time in a child care home, each child present in the child care home shall be considered to be receiving care unless the child is described by one of the following exceptions:

a. The child’s parent, guardian, or custodian established or operates the child care home and either the child is attending school or the child receives child care full-time on a regular basis from another person.

b. The child has been present in the child care home for more than 72 consecutive hours and meets the requirements of the exception listed above as though the person who established or operates the child care home is the child’s parent, guardian, or custodian.

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441—120.7(237A) Provider requirements.

120.7(1) Provider. The provider shall:

- a. Give careful supervision at all times.
- b. Exchange information with the parent of each child frequently to enhance the quality of care.
- c. Give consistent, dependable care and be capable of handling emergencies.
- d. Be present at all times except when emergencies occur or an absence is planned, at which time care shall be provided by a department-approved substitute. When an absence is planned, the provider shall give parents at least 24 hours' prior notice.
- e. Be free of the use of illegal drugs and shall not be under the influence of alcohol or of any prescription or nonprescription drug that could impair the provider's ability to give careful supervision.
- f. Be at least 18 years of age.

120.7(2) Substitutes. The provider shall assume responsibility for providing adequate and appropriate supervision at all times when children are in attendance. Any designated substitute shall have the same responsibility for providing adequate and appropriate supervision. Ultimate responsibility for supervision shall be with the provider.

- a. All standards in this chapter regarding supervision and care of children shall apply to substitutes.
- b. Except in emergency situations, the provider shall inform parents in advance of the planned use of a substitute.
- c. The substitute must be 18 years of age or older.
- d. Use of a substitute shall be limited to:
 - (1) No more than 25 hours per month.
 - (2) An additional period of up to two weeks in a 12-month period.
- e. The provider shall maintain a written record of the number of hours care is provided by a substitute, including the date of the care and the name of the substitute.

441—120.8(237A) Standards. Conditions in the home shall be safe, sanitary, and free of hazards. The provider shall certify that the child care home meets the following minimum standards.

120.8(1) Facility requirements.

- a. The home shall have a nonpay, working landline or mobile telephone with emergency numbers posted for police, fire, ambulance, and the poison information center. The number for each child's parent, for a responsible person who can be reached when the parent cannot, and for the child's physician shall be written on paper and readily accessible by the telephone. The home must prominently display all emergency information, and all travel vehicles must have a paper copy of emergency parent contact information.
- b. Electrical wiring shall be maintained, and all accessible electrical outlets shall be tamper-resistant outlets or shall be safely capped. Electrical cords shall be properly used. Improper use includes the running of cords under rugs, over hooks, or through door openings or other use that has been known to be hazardous.
- c. Combustible materials shall be kept a minimum of three feet away from furnaces, stoves, water heaters, and gas dryers.
- d. Approved safety gates at stairways and doors shall be provided and used as needed.
- e. Annual laboratory analysis of a private water supply shall be conducted to show satisfactory bacteriological quality. When children under the age of two are to be cared for, the analysis shall include a nitrate analysis. When private water supplies are determined unsuitable for drinking, commercially bottled water or water treated through a process approved by the health department or designee shall be provided.
- f. A safety barrier shall surround any heating stove or heating element, in order to prevent burns.
- g. The home shall have at least one 2A 10BC-rated fire extinguisher located in a visible and readily accessible place on each child-occupied floor.
- h. The home shall have at least one single-station, battery-operated, UL-approved smoke detector in each child-occupied room and at the top of every stairway. Each smoke detector shall be installed

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according to manufacturer's recommendations. The provider shall test each smoke detector monthly and keep a record of testing for inspection purposes.

i. Smoking and the use of tobacco products shall be prohibited at all times in the home and in every vehicle in which children receiving care in the home are transported. Smoking and the use of tobacco products shall be prohibited in the outdoor play area during the home's hours of operation. "No smoking" signs shall be posted at every entrance of the child care home and in every vehicle used to transport children. All signs shall include:

- (1) The telephone number for reporting of complaints, and
- (2) The Internet address of the department of public health (www.iowasmokefreeair.gov).

j. Homes served by private sewer systems shall be in compliance with discharge restrictions identified at 567—Chapter 69. Discharge of untreated waste water from private sewage disposal systems is prohibited. Compliance shall be verified by the local board of health at the time of renewal of the child care assistance provider agreement and new application.

k. A provider operating in a facility built before 1960 shall assess and control lead hazards before being issued an initial child care assistance provider agreement or a renewal of the provider agreement. To comply with this requirement, the provider shall:

- (1) Conduct a visual assessment of the facility for lead hazards that exist in the form of chipping or peeling paint;
- (2) Apply interim controls on any chipping or peeling paint found, using lead-safe work methods in accordance with and as defined by department of public health rules at 641—Chapters 69 and 70, unless a certified inspector as defined in 641—Chapter 70 determines that the paint is not lead-based paint; and
- (3) Submit Form 470-4755, Lead Assessment and Control, as verification of the visual assessment and completion of interim controls, if necessary.

l. The child care home shall be located in a single-family residence that is owned, rented, or leased by the provider.

m. Any driver who transports children for any purpose shall have a valid driver's license and adequate motor vehicle insurance that authorizes the driver to operate the type of vehicle being driven. Child restraint devices shall be utilized in compliance with Iowa Code section 321.446.

n. Providers shall inform parents of the presence of any pet in the home.

(1) Each dog or cat in the household shall undergo an annual health examination by a licensed veterinarian. Acceptable veterinary examinations shall be documented on Form 470-5153, Veterinary Health Certificate. This examination shall verify that the animal's routine immunizations, particularly rabies, are current and that the animal shows no evidence of endoparasites (roundworms, hookworms, whipworms) and ectoparasites (fleas, mites, ticks, lice).

(2) Each pet bird in the household shall be purchased from a dealer licensed by the Iowa department of agriculture and land stewardship and shall be examined by a veterinarian to verify that the bird is free of infectious diseases. Acceptable veterinary examinations shall be documented on Form 470-5153, Veterinary Health Certificate. Children shall not handle pet birds.

(3) Aquariums shall be well maintained and installed in a manner that prevents children from accessing the water or pulling over a tank.

(4) All animal waste shall be immediately removed from the children's areas and properly disposed of. Children shall not perform any feeding or care of pets or cleanup of pet waste.

(5) No animals shall be allowed in the food preparation, food storage, or serving areas during food preparation and serving times.

o. Using an injury report form, the provider shall document all injuries that require first aid or medical care. The form shall be completed on the date of occurrence, shared with the parent, and maintained in the child's file.

120.8(2) Use of outdoor space.

a. A safe outdoor play area shall be maintained in good condition throughout the year. The play area shall be fenced off when located on a busy thoroughfare or near a hazard which may be injurious to a child and shall have both sunshine and shade areas. The play area shall be kept free from litter, rubbish,

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and flammable materials and shall be free from contamination by the drainage or ponding of sewage, household waste, or storm water.

b. When there is a swimming or wading pool on the premises:

(1) The wading pool shall be drained daily and shall be inaccessible to children when it is not in use.

(2) An aboveground or in-ground swimming pool that is not fenced shall be covered whenever the pool is not in use. The cover shall meet or exceed the ASTM International (formerly known as the American Society for Testing and Materials) specification intended to reduce the risk of drowning by inhibiting access to the water by children under five years of age.

(3) An uncovered aboveground swimming pool shall be enclosed with an approved fence that is nonclimbable and is at least four feet high.

(4) An uncovered in-ground swimming pool shall be enclosed with an approved fence that is nonclimbable and is at least four feet high and flush with the ground.

c. If children are allowed to use an aboveground or in-ground swimming pool:

(1) Written permission from parents shall be available for review.

(2) Equipment needed to rescue a child or adult shall be readily accessible.

(3) The child care provider shall accompany the children and provide constant supervision while the children use the pool.

(4) The child care provider shall complete training in cardiopulmonary resuscitation for infants, toddlers, and children, according to the criteria of the American Red Cross or the American Heart Association.

120.8(3) Medications and hazardous materials.

a. All medicines and poisonous, toxic, or otherwise unsafe materials shall be secured from access by a child.

b. A first-aid kit shall be available and easily accessible whenever children are in the child care home, in the outdoor play area, in vehicles used to transport children, and on field trips. The kit shall be sufficient to address first aid related to minor injury or trauma and shall be stored in an area inaccessible to children. The kit shall, at a minimum, include adhesive bandages, bottled water, disposable tweezers, and disposable plastic gloves.

c. Medications shall be given only with the parent's or doctor's written authorization. Each prescribed medication shall be accompanied by a physician's or pharmacist's direction. Both nonprescription and prescription medications shall be in the original container with directions intact and labeled with the child's name. All medications shall be stored properly and, when refrigeration is required, shall be stored in a separate, covered container so as to prevent contamination of food or other medications. All medications shall be stored so they are inaccessible to children. Any medication administered to a child shall be recorded, and the record shall indicate the name of the medication, the date and time of administration, and the amount administered.

d. Medications shall not be provided to a child if the provider has not completed preservice/orientation training that includes medication administration.

120.8(4) Emergency plans. Emergency plans in case of man-made or natural disaster shall be written and posted by the primary and secondary exits. The plans shall clearly map building evacuation routes and tornado and flood shelter areas.

a. Fire and tornado drills shall be practiced monthly, and the provider shall keep documentation evidencing compliance with monthly practice on file.

b. The provider must have procedures in place for the following:

(1) Evacuation to safely leave the facility.

(2) Relocation to a common, safe location after evacuation.

(3) Shelter-in-place to take immediate shelter where the child is when it is unsafe to leave that location due to the emergent issue.

(4) Lockdown to protect children and providers from an external situation.

(5) Communication and plans for reunification with families.

(6) Continuity of operations.

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(7) To address the needs of individual children, including those with functional or access needs.

120.8(5) *Safe sleep.* The provider shall follow safe sleep practices as recommended by the American Academy of Pediatrics for infants under the age of one. Infant sleep shall conform to the following standards:

- a. Infants shall always be placed on their backs for sleep.
- b. Infants shall be placed on a firm mattress with a tight fitted sheet that meets U.S. Consumer Product Safety Commission federal standards.
- c. Infants shall not be allowed to sleep on a bed, sofa, air mattress or other soft surface. No child shall be allowed to sleep in any item not designed for sleeping including, but not limited to, an infant seat, car seat, swing, or bouncy seat.
- d. No toys, soft objects, stuffed animals, pillows, bumper pads, blankets, or loose bedding shall be allowed in the sleeping area with the infant.
- e. No co-sleeping shall be allowed.
- f. Sleeping infants shall be actively observed by sight and sound.
- g. If an alternate sleeping position is needed, a signed physician authorization with statement of medical reason is required.

120.8(6) *Discipline.* Discipline shall conform to the following standards:

- a. Corporal punishment, including spanking, shaking and slapping, shall not be used.
- b. Punishment that is humiliating or frightening or that causes pain or discomfort to the child shall not be used.
- c. Punishment shall not be administered because of a child's illness, or progress or lack of progress in toilet training, nor shall punishment or threat of punishment be associated with food or rest.
- d. No child shall be subjected to verbal abuse, threats, or derogatory remarks about the child or the child's family.
- e. Discipline shall be designed to help the child develop self-control, self-esteem, and respect for the rights of others.

120.8(7) *Meals and snacks.*

- a. Regular meals and snacks that are well-balanced and nourishing shall be provided.
- b. Children may bring food to the child care home for their own consumption but shall not be required to provide their own food.
- c. Clean, sanitary drinking water shall be readily available to children in indoor and outdoor areas, throughout the day.

441—120.9(237A) Children's files.

120.9(1) An individual file for each child shall be maintained and updated annually or when the provider becomes aware of changes.

120.9(2) The file shall contain:

- a. Identifying information including, at a minimum, the child's name and birth date; the parent's name, address and telephone number; the special needs of the child; and the parent's work address and telephone number.
- b. Emergency contact information including, at a minimum, where the parent can be reached, the name, street address, city and telephone number of the child's regular source of health care, and the name, telephone number, and relationship to the child of another adult available in case of emergency.
- c. A signed medical consent from the parent authorizing emergency medical and dental treatment.
- d. An admission physical examination report signed by a licensed physician or the designee in a clinic supervised by a licensed physician.
- e. A statement of health condition signed by a physician or designee submitted annually from the date of the admission physical examination. For a child who is five years of age or older and enrolled in school, a statement of health status signed by the parent or legal guardian may be substituted for the physician statement.

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f. A list that is signed by the parent and names persons authorized to pick up the child. The authorization shall include the name, telephone number, and relationship of the authorized person to the child.

g. A signed and dated immunization certificate provided by the Iowa department of public health. For the school-age child, a copy of the most recent immunization record shall be acceptable.

h. Written permission from the parent for the child to attend activities away from the child care home. The permission shall include:

- (1) Times of departure and arrival.
- (2) Destination.

i. If the child meets the definition of homelessness as defined by Section 725(2) of the McKinney Vento Homeless Education Assistance Act, the family shall receive a 60-day grace period to obtain medical documentation.

441—120.10(237A) Professional development.

120.10(1) Prior to the issuance of a provider agreement and every five years thereafter, the provider shall complete minimum health and safety trainings, approved by the department, in all of the following content areas:

- a.* Prevention and control of infectious disease, including immunizations.
- b.* Prevention of sudden infant death syndrome and use of safe sleep practices.
- c.* Administration of medication, consistent with standards for parental consent.
- d.* Prevention of and response to emergencies due to food and allergic reactions.
- e.* Building and physical-premises safety, including identification of and protection from hazards that can cause bodily injury, such as electrical hazards, bodies of water, and vehicular traffic.
- f.* Prevention of shaken baby syndrome and abusive head trauma.
- g.* Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event.
- h.* Handling and storage of hazardous materials and the appropriate disposal of biocontaminants.
- i.* Precautions in transporting children.

120.10(2) Prior to issuance of a provider agreement and every five years thereafter, the provider shall complete two hours of Iowa's training for mandatory reporting of child abuse.

120.10(3) Prior to issuance of a provider agreement, the provider shall complete first-aid and cardiopulmonary resuscitation (CPR) training that meets the following requirements:

- a.* Training shall be provided by a nationally recognized training organization, such as the American Red Cross, American Heart Association, National Safety Council, American Safety and Health Institute or MEDIC First Aid or by an equivalent trainer using curriculum approved by the department.
- b.* First-aid training shall include certification in infant and child first aid.
- c.* The provider shall maintain a valid certificate indicating the date of first-aid training and the expiration date.
- d.* The provider shall maintain a valid certificate indicating the date of CPR training and the expiration date.

120.10(4) Minimum health and safety training may be required prior to the five-year period if content has significant changes which warrant that the training be renewed.

441—120.11(237A) Child care assistance provider agreement decision. The department shall issue Form 470-3871, Child Care Assistance Provider Agreement, when an applicant meets all requirements for a child care home. The department shall maintain a current list of child care homes as a referral service to the community.

120.11(1) A provider agreement shall be denied or canceled if the department finds a hazard to the safety and well-being of a child and the provider cannot correct or refuses to correct the hazard, even though the hazard may not have been specifically listed under these rules. The provider agreement may

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also be denied or canceled if the department determines that the provider has failed to comply with standards imposed by law and rules found in this chapter or at 441—Chapter 170.

120.11(2) Record of all denials or cancellations of provider agreements and the documentation of reasons for denying or canceling the agreement shall be kept in an open file.

120.11(3) Record checks.

a. Applicability. The department shall conduct Iowa criminal history record and child abuse record checks for each provider, substitute or staff member, anyone living in the home who is 14 years of age or older, and anyone having access to a child when the child is alone. The department shall conduct national criminal history record checks, based on fingerprints, for each provider, substitute or staff member, anyone living in the home who is 18 years of age or older, and anyone 18 years of age or older having access to a child when the child is alone. In accordance with Iowa Code section 726.23, minors under the age of 18 will not be subject to the fingerprint requirement.

(1) The purpose of these record checks is to determine whether the person has committed a transgression that prohibits or limits the person's involvement with child care.

(2) The department may also conduct criminal history record and child abuse record checks in other states and may conduct dependent adult abuse, sex offender registry, and other public or civil offense record checks in Iowa or other states.

(3) Child care assistance provider agreements shall not be issued until the results of all state and national record checks have been received and, when necessary, evaluated.

b. Authorization. The person subject to record checks shall complete the Iowa department of human services record check authorization form; Form DCI-45, Waiver Agreement; Form FD-258, Federal Fingerprint Card; and any other forms required by the department of public safety to authorize the release of records.

c. Iowa records checks. Checks and evaluations of Iowa child abuse and criminal history records shall be completed before the person's involvement with child care. Iowa records checks shall be repeated at a minimum of every two years and when the department or the provider becomes aware of any possible transgressions. The department is responsible for the cost of conducting the Iowa records checks.

d. National criminal history record checks. Fingerprint-based checks of national criminal history records shall also be completed before a person's involvement with child care. This requirement shall be required for an initial application or a renewal application. The national criminal history record check shall be repeated for each person subject to the check every four years and when the department or provider becomes aware of any new transgressions committed by that person in another state. The department is responsible for the cost of conducting the national criminal history record check.

(1) The provider is responsible for any costs associated with the taking (rolling) of fingerprints of all persons subject to record checks and for submitting the fingerprints to the department so the national criminal history record check can be completed. Fingerprints may be taken (rolled) by law enforcement agencies or by agencies or companies that specialize in taking (rolling) fingerprints.

(2) The department shall provide fingerprints to the department of public safety no later than ten business days after receipt of the fingerprint cards. The department shall submit the fingerprints on forms or in a manner allowed by the department of public safety.

(3) The department may rely on the results of previously conducted national criminal history record checks when a person subject to a record check in one child development home or child care home submits a request for involvement with child care in another child development home or child care home, so long as the person's national criminal history record check is within the allowable four-year time frame. All initial or new applications shall require a new national criminal history record check.

e. Mandatory prohibition. A person with any of the following convictions or founded abuse reports is prohibited from involvement with child care:

- (1) Founded child or dependent adult abuse that was determined to be sexual abuse.
- (2) Placement on the sex offender registry.
- (3) Felony child endangerment or neglect or abandonment of a dependent person.
- (4) Felony domestic abuse.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- (5) Felony crime against a child including, but not limited to, sexual exploitation of a minor.
- (6) Forcible felony.

f. Mandatory time-limited prohibition.

(1) A person with the following conviction or founded abuse report is prohibited from involvement with child care for five years from the date of the conviction or the founded abuse report:

1. Conviction of a controlled substance offense under Iowa Code chapter 124.
2. Founded abuse that was determined to be physical abuse.

(2) After the five-year prohibition period (from the date of the conviction or the founded abuse report) as defined in subparagraph 120.11(3)“f”(1), the person may request the department to perform an evaluation under paragraph 120.11(3)“g” to determine whether prohibition of the person’s involvement with child care continues to be warranted.

g. Evaluation required. For all other transgressions, and as requested under subparagraph 120.11(3)“f”(2), the department shall evaluate the transgression and make a decision about the person’s involvement with child care.

(1) The person with the transgression shall complete and return the record check evaluation form within ten calendar days of the date on the form. The department shall use the information the person with the transgression provides on this form to assist in the evaluation. Failure of the person with the transgression to complete and return this form within ten calendar days of the date on the form shall result in denial or revocation of the child care assistance provider agreement.

(2) The department may use information from the department’s case records in performing the evaluation.

(3) In an evaluation, the department shall consider all of the following factors:

1. The nature and seriousness of the transgression in relation to the position sought or held.
2. The time elapsed since the commission of the transgression.
3. The circumstances under which the transgression was committed.
4. The degree of rehabilitation.
5. The likelihood that the person will commit the transgression again.
6. The number of transgressions committed by the person.

(4) When a person subject to a record check has a transgression that has been determined in a previous evaluation not to warrant prohibition of the person’s involvement with child care and the person has no subsequent transgressions, an exemption from reevaluation of the latest record check is authorized. The person may commence employment with another child care facility in accordance with the department’s previous evaluation. The exemption is subject to all of the following conditions:

1. The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.

2. Any restrictions placed on the person’s employment by the department in the previous evaluation shall remain applicable in the person’s subsequent employment.

3. The person subject to the record check has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer or the previous employer provides to the subsequent employer the previous evaluation from the person’s personnel file pursuant to the person’s authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, the record check shall be reevaluated.

4. The subsequent employer may request a reevaluation of the record check and may employ the person while the reevaluation is being performed.

h. Evaluation decision. The department has final authority in determining whether prohibition of the person’s involvement with child care is warranted and in developing any conditional requirements or corrective action plan.

(1) Within 30 calendar days of receipt of a completed record check evaluation, the department shall make a decision on the person’s involvement with child care.

(2) Within 30 calendar days of receipt of a completed record check evaluation, the department shall mail to the person subject to an evaluation a record check decision that explains the decision reached regarding the evaluation of the transgression and a notice of decision: child care.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) The department shall issue a notice of decision: child care prohibiting involvement with child care when the person subject to an evaluation fails to complete the record check evaluation within the ten-calendar-day time frame.

(4) If the department determines, through the record check evaluation process, that the person's prohibition of involvement with child care is warranted, the person shall be prohibited from involvement with child care. The department may identify a period of time after which the person may request that another record check and evaluation be performed.

(5) The department may permit a person who is evaluated to maintain involvement with child care if the person complies with the department's conditions relating to the person's involvement with child care, which may include completion of additional training or an individually designed corrective action plan, or both. For an employee of a provider, these conditional requirements shall be developed with the provider. All conditions placed on a person's involvement with child care shall be communicated, in writing, to both the person subject to the evaluation and the provider.

i. Notice to parents of abuse in care. If there has been founded child abuse committed by an owner, director, or staff member of the child care facility or child care home, the department's administrator shall notify the parents, guardians, and legal custodians of each child for whom the facility or child care home provides care.

(1) The child care facility or child care home shall cooperate with the department in providing the names and addresses of the parent, guardian, or custodian of each child for whom the facility provides child care.

(2) This information shall be provided to the department within ten calendar days from the date of the initial request.

(3) Failure or refusal to provide the requested information may result in cancellation of the provider agreement.

120.11(4) Required notifications to the department.

a. The provider shall, within ten days, notify the department of any of the following:

- (1) Changes in substitutes;
- (2) Changes in household membership;
- (3) Address changes; and
- (4) Criminal convictions.

b. No substitute shall be utilized in the care of children and no person shall be permitted to reside in the household until approved by the department.

c. If the provider does not notify the department of changes within ten days, the provider may be subject to revocation of the provider's child care assistance provider agreement or to recoupment of child care assistance provided, or both.

441—120.12(237A) Complaints. The department shall conduct an on-site visit when a complaint is received.

120.12(1) After each complaint visit, the department shall document whether the child care home was in compliance with requirements.

120.12(2) The written documentation of the department's conclusion as to whether the child care home was in compliance with requirements shall be available to the public. However, the identity of all complainants shall be confidential, unless expressly waived by the complainant.

HUMAN SERVICES DEPARTMENT[441](cont'd)

441—120.13(237A) Prohibition from involvement with child care. If the department has prohibited a person or program from involvement with child care, that person or program shall not provide child care as a nonregistered child care home provider.

These rules are intended to implement Iowa Code section 237A.12.

[Filed 7/13/16, effective 10/1/16]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/3/16.

ARC 2649C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 170, "Child Care Services," Iowa Administrative Code.

These amendments revise Chapter 170 to reflect new federal Child Care and Development Block Grant (CCDBG) rules regarding child care assistance eligibility. Specifically, these amendments remove provisions regarding nonregistered child care providers from Chapter 170 and incorporate the provisions in new Chapter 120, "Child Care Homes." (See **ARC 2648C** herein.) In addition, these amendments revise in-home provider language to mirror the new CCDBG rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2551C** on May 25, 2016. The Department received comments from two respondents during the public comment period. The comments and Department responses are as follows:

Comment 1: A respondent requested that language be included that allows changes to the five-year requirement for health and safety training if information changes. Modifications will allow DHS to require the training more often or that training be renewed if significant changes to the content occur.

Department response 1: The Department agrees with the respondent and has added a new paragraph to the end of 170.4(3)"e"(1)"1" to allow for health and safety training to be taken more frequently if content areas change significantly. The new paragraph reads as follows:

"Minimum health and safety training may be required prior to the five-year period if content has significant changes which warrant that the training be renewed."

Comment 2: A respondent requested that training in the use of an automated external defibrillator (AED) be included in the first-aid and cardiopulmonary resuscitation (CPR) training requirements.

Department response 2: At this time, it is not known if AED training is always provided during CPR courses. Additionally, if the Department required AED training, it would be reasonable to assume that the Department would need to require an AED on the child care premises, which would have a fiscal impact to child care providers. The National Resource Center on Health and Safety in Child Care and Early Education's document "Caring for Our Children" was also reviewed. The suggestion in that document is that child care facilities should consider having an AED on the premises for potential use with adults. It further indicates that the use of AEDs with children would be rare. For these reasons, the Department did not modify these amendments based on the respondent's comments.

Technical changes. Rule language in 170.4(3)"e"(1)"3" for first aid and CPR has been modified to include the American Safety and Health Institute as an approved training organization and to remove the reference to Emergency Medical Planning, an entity which has merged into the American Safety and Health Institute.

In addition, paragraph 170.4(3)"g" has been modified to strike provisions relating specifically to nonregistered child care homes since those homes are now covered in new Chapter 120, and the unamended text in subparagraph 170.4(7)"a"(1) has been updated to reflect a recently adopted amendment to the subparagraph (see **ARC 2555C**, IAB 6/8/16).

The Council on Human Services adopted these amendments on July 13, 2016.

HUMAN SERVICES DEPARTMENT[441](cont'd)

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

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

These amendments are intended to implement Iowa Code section 234.6.

These amendments will become effective October 1, 2016.

The following amendments are adopted.

ITEM 1. Amend subrule 170.4(3) as follows:

170.4(3) Method of provision. Parents shall be allowed to exercise their choice for in-home care, except when the parent meets the need for service under subparagraph 170.2(2)“b”(3), as long as the conditions in paragraph 170.4(7)“d” are met. When the child meets the need for service under 170.2(2)“b”(3), parents shall be allowed to exercise their choice of licensed, registered, or nonregistered child care provider except when the department service worker determines it is not in the best interest of the child. The provider must meet one of the applicable requirements set forth below.

~~The provider must meet one of the applicable requirements set forth below.~~

a. to d. No change.

e. *In-home care.* The adult caretaker selected by the parent to provide care in the child's own home shall be sent ~~the pamphlet Comm. 95 or Comm. 95(S), Minimum Health and Safety Requirements for Nonregistered Child Care Home Providers, and Form 470-2890 or 470-2890(S), Payment Application for Nonregistered Providers.~~ The provider shall complete and sign Form 470-2890 or 470-2890(S) and return the form to the department before payment may be made. An identifiable application is an application that contains a legible name and address and that has been signed. Signature on the form certifies the provider's understanding of and compliance with the conditions and requirements for nonregistered in-home care providers that include:

(1) ~~Minimum health and safety requirements;~~ Professional development. The provider shall complete:

1. Prior to provider agreement and every five years thereafter, minimum health and safety trainings, approved by the department, in the following content areas:

- Prevention and control of infectious disease, including immunizations.
- Prevention of sudden infant death syndrome and use of safe sleep practices.
- Administration of medication, consistent with standards for parental consent.
- Prevention of and response to emergencies due to food and allergic reactions.
- Building and physical-premises safety, including identification of and protection from hazards that can cause bodily injury, such as electrical hazards, bodies of water, and vehicular traffic.
- Prevention of shaken baby syndrome and abusive head trauma.
- Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event.

● Handling and storage of hazardous materials and appropriate disposal of biocontaminants.
● Precautions in transporting children.
Minimum health and safety training may be required prior to the five-year period if content has significant changes which warrant that the training be renewed.

2. Prior to provider agreement, two hours of Iowa's training for mandatory reporting of child abuse.

3. Prior to provider agreement, first-aid and cardiopulmonary resuscitation (CPR) training meeting the following requirements:

● Training shall be provided by a nationally recognized training organization, such as the American Red Cross, American Heart Association, National Safety Council, American Safety and Health Institute or MEDIC First Aid or by an equivalent trainer using curriculum approved by the department.

- First-aid training shall include certification in infant and child first aid.

● The provider shall maintain a valid certificate indicating the date of first-aid training and the expiration date.

HUMAN SERVICES DEPARTMENT[441](cont'd)

• The provider shall maintain a valid certificate indicating the date of CPR training and the expiration date.

- (2) Limits on the number of children for whom care may be provided;
- (3) Unlimited parental access to the child or children during hours when care is provided, unless prohibited by court order; and
- (4) Conditions that warrant nonpayment.

f. Nonregistered family child care home. ~~The adult caretaker selected by the parent to provide care in a nonregistered family child care home shall be sent the pamphlet Comm. 95 or Comm. 95(S), Minimum Health and Safety Requirements for Nonregistered Child Care Home Providers, and Form 470-2890 or 470-2890(S), Payment Application for Nonregistered Providers. The provider shall complete and sign Form 470-2890 or 470-2890(S) and return the form to the department before payment may be made. An identifiable application is an application that contains a legible name and address and that has been signed. Signature on the form certifies the provider's understanding of and compliance with the conditions and requirements for nonregistered providers that include: A nonregistered child care home shall meet the requirements set forth in 441—Chapter 120.~~

- ~~(1) Minimum health and safety requirements;~~
- ~~(2) Limits on the number of children for whom care may be provided;~~
- ~~(3) Unlimited parental access to the child or children during hours when care is provided, unless prohibited by court order; and~~
- ~~(4) Conditions that warrant nonpayment.~~

g. Iowa records checks for nonregistered child care homes and in-home care. If a nonregistered child care provider or a person who provides in-home care applies to receive public funds as reimbursement for providing child care for eligible clients, the provider shall complete and submit to the department Form 470-5143, Iowa Department of Human Services Record Check Authorization Form, for the provider, for anyone having access to a child when the child is alone, and for anyone 14 years of age or older living in the home. The department shall use this form to conduct Iowa criminal history record and child abuse record checks.

- (1) The purpose of these checks is to determine whether the person has committed a transgression that prohibits or limits the person's involvement with child care.
- (2) The department may also conduct criminal and child abuse record checks in other states and may conduct dependent adult abuse, sex offender registry, and other public or civil offense record checks in Iowa or in other states.
- (3) Records checks shall be repeated for each person subject to the check every two years and when the department or provider becomes aware of any new transgressions committed by that person.

h. National criminal history record checks for nonregistered child care homes and in-home care. If a nonregistered child care provider or a person who provides in-home care applies to receive public funds as reimbursement for providing child care for eligible clients, the provider shall complete Form DCI-45, Waiver Agreement, and Form FD-258, Federal Fingerprint Card, for the provider, for anyone 18 years of age or older who is living in the home, or for anyone having access to a child when the child is alone.

- (1) The provider or other person subject to this check shall submit any other forms required by the department of public safety to authorize the release of records.
- (2) The provider or other person subject to this check is responsible for any costs associated with obtaining the fingerprints and for submitting the prints to the department.
- (3) to (5) No change.

i. No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend subparagraph **170.4(7)“a”(1)** as follows:

(1) “Child care center” shall mean those providers as defined in 170.4(3)“a.” “Registered child development home” shall mean those providers as defined in 170.4(3)“b.” “Nonregistered family child care home” shall mean those providers as defined in ~~170.4(3)“e.”~~ 441—Chapter 120.

[Filed 7/13/16, effective 10/1/16]

[Published 8/3/16]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/3/16.

ARC 2643C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 57, “Residential Care Facilities,” Chapter 62, “Residential Care Facilities for Persons with Mental Illness (RCF/PMI),” and Chapter 63, “Residential Care Facilities for the Intellectually Disabled,” Iowa Administrative Code.

These amendments rescind rules which require that an individual first must be a certified nursing assistant (CNA) before becoming a certified medication aide (CMA) in residential care facilities, including facilities for persons with mental illness and facilities for the intellectually disabled. Eliminating this requirement will permit an individual to become trained as a CMA without first being trained as a CNA. These amendments also eliminate references to a residential aide course, as this course is no longer available, as well as remove requirements that an individual must be employed by a facility for at least six months prior to applying for the medication aide course.

Adoption of these amendments allows residential care facilities to more easily hire CMAs. The Department understands that it is difficult for residential care facilities to hire CMAs to work in smaller facilities when a CMA is expected to become a CNA before becoming a CMA. The University of Iowa is developing a training program for individuals wishing to become CMAs.

The Department does not believe that the adopted amendments will pose any financial hardship on any regulated entity or individual.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 3, 2016, as **ARC 2395C**. Comments were received from multiple residential care facilities, community colleges, and other interested persons. While most commenters agreed with eliminating the requirement that a CMA must first be a CNA, individuals representing the small residential care facilities in Iowa urged the Department to retain the medication manager provision.

The Notice of Intended Action proposed a provision that medication managers in residential care facilities with 15 or fewer beds must become a CMA within three years from the effective date of the rule making. The 36-month certification requirement, previously proposed in Items 2 and 5 of the Notice of Intended Action, has been eliminated.

The State Board of Health initially reviewed the proposed amendments at its January 13, 2016, meeting, and approved them at the Board’s July 13, 2016, meeting.

After analysis and review of this rule making, it has been determined that adoption of these amendments may increase employment opportunities for individuals seeking jobs as CMAs.

These amendments are intended to implement Iowa Code section 135C.14.

These amendments shall become effective September 7, 2016.

The following amendments are adopted.

ITEM 1. Amend paragraph **57.19(3)“d”** as follows:

d. Prior to taking a department-approved medication aide course, the person shall: have a letter of recommendation for admission to the medication aide course from the employing facility. (III)

~~(1) Successfully complete an approved residential aide course, nurse aide course, nurse aide training and testing program or nurse aide competency examination; (III)~~

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

~~(2) Have a letter of recommendation for admission to the medication aide course from the employing facility. (III)~~

ITEM 2. Amend paragraph **62.15(2)“d”** as follows:

d. Prior to taking a department-approved medication aide course, the individual shall: have a letter of recommendation for admission to the medication aide course from the employing facility.

~~(1) Successfully complete an approved residential aide course, nurse aide course, nurse aide training and testing program or nurse aide competency examination;~~

~~(2) Be employed in the same facility for at least six consecutive months prior to the start of the medication aide course. This requirement is not subject to waiver.~~

~~(3) Have a letter of recommendation for admission to the medication aide course from the employing facility.~~

ITEM 3. Amend paragraph **63.18(3)“d”** as follows:

d. Prior to taking a department-approved medication aide course, the individual shall: have a letter of recommendation for admission to the medication aide course from the employing facility.

~~(1) Successfully complete an approved residential aide course, nurse aide course, nurse aide training and testing program or nurse aide competency examination;~~

~~(2) Be employed in the same facility for at least six consecutive months prior to the start of the medication aide course. This requirement is not subject to waiver.~~

~~(3) Have a letter of recommendation for admission to the medication aide course from the employing facility.~~

[Filed 7/13/16, effective 9/7/16]

[Published 8/3/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/3/16.

ARC 2639C

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy hereby amends Chapter 21, “Electronic Data in Pharmacy Practice,” Iowa Administrative Code.

This amendment strikes the final sentence in subrule 21.8(4). The sentence was intended to enforce the requirement that a prescription that is created and transmitted electronically must be maintained by the pharmacy as an electronic record and that a printed hard copy of the electronic prescription cannot replace the electronic record as the original prescription record. The sentence has been misinterpreted to prohibit the printing of an electronically created and transmitted prescription.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the April 13, 2016, Iowa Administrative Bulletin as **ARC 2498C**. The Board received no written comments regarding the proposed amendment. The adopted amendment is identical to that published under Notice.

This amendment was approved during the June 30, 2016, meeting of the Board of Pharmacy.

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

This amendment is intended to implement Iowa Code sections 124.301, 124.306, 124.308, 155A.27, and 155A.35.

This amendment will become effective on September 7, 2016.

The following amendment is adopted.

Amend subrule 21.8(4) as follows:

21.8(4) Original prescription. The electronic transmission shall be deemed the original prescription drug order provided it meets the requirements of this rule. The electronic transmission of a prescription

PHARMACY BOARD[657](cont'd)

drug order for a controlled substance shall meet all requirements of the DEA for electronic prescribing. An electronically prepared and transmitted prescription shall be maintained electronically in the prescriber's electronic prescription application and the pharmacy prescription application for a minimum period of two years following the date of last activity on that prescription record. ~~Once a prescription is created and transmitted electronically, the prescription record shall not be printed and retained as a hard-copy record.~~

[Filed 7/11/16, effective 9/7/16]

[Published 8/3/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/3/16.

ARC 2655C**PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 135.22, the Department of Public Health hereby amends Chapter 21, "Central Registry for Brain and Spinal Cord Injuries," Iowa Administrative Code.

Required reportable conditions were revised in Iowa Code section 135.22 to align with a rule for eligibility for the home- and community-based services waiver for persons with brain injury under the medical assistance program. These amendments update these reportable conditions. As a result, the current hospital reporting structure does not meet these revised requirements. The Department receives information from the Iowa Hospital Association through the In Patient Out Patient (IPOP) database, which contains all the required components needed from the hospitals. These amendments remove the old injury reporting method and replace it to align with hospital reporting requirements for IPOP. This change will result in no additional burden on hospital reporting and will provide the Department with the necessary data to be compliant with Iowa Code section 135.22. The amendments also strike the word "traumatic" in reference to brain injury to align with the Iowa Code. Additional amendments reflect the reportable conditions for brain and spinal cord injury to transition to the International Classification of Diseases, 10th Revision, Clinical Modification.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2447C** on March 16, 2016. A public hearing was held on April 5, 2016. The Department received one comment during the public hearing from Tom Brown, chair of the Advisory Council on Brain Injuries, supporting the proposed amendments. The adopted amendments are not identical to those published under Notice. The definition of "reportable case" was revised to add clarity, and a reference to rule 641—21.7(135) was added to Item 2 to correct an omission from the Notice. No other changes were made.

The Iowa Department of Public Health adopted these amendments on July 13, 2016.

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

These amendments are intended to implement Iowa Code section 135.22.

These amendments will become effective September 7, 2016.

The following amendments are adopted.

ITEM 1. Amend rule 641—21.1(135) as follows:

641—21.1(135) Purpose. This chapter describes the central registry for brain and spinal cord injuries. Data from the registry shall be utilized to facilitate prevention strategies and the provision of appropriate rehabilitative services by the department and other state agencies.

ITEM 2. Strike "agency" and "agency's" wherever they appear in rules **641—21.2(135)** and **641—21.4(135)**, subrule **21.6(1)**, the introductory paragraph of subrule **21.6(2)**, and paragraphs

PUBLIC HEALTH DEPARTMENT[641](cont'd)

21.6(2)“a” to “d” and “g,” and rule **641—21.7(135)** and insert “department” or “department’s” in lieu thereof, as the context requires.

ITEM 3. Amend rule **641—21.2(135)**, definitions of “Brain injury” and “Reportable case,” as follows:

“Brain injury” means ~~any clinically evident brain damage resulting from trauma or anoxia which temporarily or permanently impairs a person’s physical or cognitive functions~~ clinically evident damage to the brain resulting directly or indirectly from trauma, infection, anoxia, vascular lesions, or tumor of the brain, not primarily related to a degenerative disease or aging process, which temporarily or permanently impairs a person’s physical, cognitive, or behavioral functions and is diagnosed by a physician.

“Reportable case” means a person who is ~~admitted or transferred to a hospital with a diagnosis of acute traumatic brain or spinal cord injury or a person who is pronounced dead in the emergency department of a hospital with an acute traumatic brain or spinal cord injury~~ discharged from an Iowa hospital for an inpatient acute care, medical rehabilitation, skilled nursing care, or outpatient care visit with a diagnosis of acute brain or spinal cord injury.

ITEM 4. Amend rule 641—21.3(135), introductory paragraph, as follows:

641—21.3(135) Reportable brain and spinal cord injuries. The brain and spinal cord injuries listed below are required to be reported to the Iowa Department of Public Health, ~~Division of Health Protection,~~ Lucas State Office Building, Des Moines, Iowa 50319-0075, or its designee, as part of a statewide population-based registry.

ITEM 5. Rescind subrule 21.3(1) and adopt the following **new** subrule in lieu thereof:

21.3(1) Brain injuries.

a. Reportable cases of brain injuries are those that are identified by the following codes from the International Classification of Diseases, 9th Revision, Clinical Modification, or the International Classification of Diseases, 10th Revision, Clinical Modification:

	International Classification of Diseases, 9th Revision, Clinical Modification		International Classification of Diseases, 10th Revision, Clinical Modification
191.00	Malignant neoplasms of brain, cerebrum	C71.0	Malignant neoplasm of cerebrum, except lobes and ventricles
191.10	Malignant neoplasms of brain, frontal lobe	C71.1	Malignant neoplasm of frontal lobe
191.02	Malignant neoplasms of brain, temporal	C71.2	Malignant neoplasm of temporal
191.30	Malignant neoplasms of brain, parietal lobe	C71.3	Malignant neoplasm of parietal lobe
191.40	Malignant neoplasms of brain, occipital lobe	C71.4	Malignant neoplasm of occipital lobe
191.50	Malignant neoplasms of brain, ventricles	C71.5	Malignant neoplasm of cerebral ventricle
191.60	Malignant neoplasms of brain, cerebellum	C71.6	Malignant neoplasm of cerebellum
191.70	Malignant neoplasms of brain, brain stem	C71.7	Malignant neoplasm of brain stem
191.80	Malignant neoplasms of brain, other part of brain, includes midbrain, peduncle, and medulla oblongata	C71.8	Malignant neoplasm of overlapping sites of brain
192.00	Malignant neoplasms of brain, cranial nerves	C72.50	Malignant neoplasm of unspecified cranial nerve
		C72.59	Malignant neoplasm of other cranial nerves
192.10	Malignant neoplasms of brain, cerebral meninges	C70.0	Malignant neoplasm of cerebral meninges
198.30	Secondary malignant neoplasm of brain	C79.31	Secondary malignant neoplasm of brain

PUBLIC HEALTH DEPARTMENT[641](cont'd)

198.40	Secondary malignant neoplasm of other parts of the nervous system, includes cerebral meninges	C79.32	Secondary malignant neoplasm of cerebral meninges
		C79.49	Secondary malignant neoplasm of other parts of nervous system
225.00	Benign neoplasm of brain and other parts of the nervous system, brain	D33.2	Benign neoplasm of brain, unspecified
225.10	Benign neoplasm of brain and other parts of the nervous system, cranial nerves	D33.3	Benign neoplasm of cranial nerves
225.20	Benign neoplasm of brain and other parts of nervous system, cerebral meninges	D32.0	Benign neoplasm of cerebral meninges
		D32.9	Benign neoplasm of meninges, unspecified
323.01-323.9	Encephalitis, myelitis and encephalomyelitis	G04.00-G05.4	Encephalitis, myelitis and encephalomyelitis
324.00	Intracranial and intraspinal abscess	G06.0	Intracranial abscess and granuloma
		G06.1	Intraspinal abscess and granuloma
348.10	Anoxic brain damage	G93.1	Anoxic brain damage, not elsewhere classified
430.00	Subarachnoid hemorrhage	I60.00-I60.8	Nontraumatic subarachnoid hemorrhage
431.00	Intracerebral hemorrhage	I61.0-I61.9	Nontraumatic intracerebral hemorrhage
432.00	Other and unspecified intracranial hemorrhage	I62.1	Nontraumatic extradural hemorrhage
433.00	Occlusion and stenosis of precerebral arteries	I65.01-I65.9	Occlusion and stenosis of precerebral arteries, not resulting in cerebral infarction
434.00	Occlusion of cerebral arteries	I66.01-I66.9	Occlusion and stenosis of cerebral arteries, not resulting in cerebral infarction
435.00	Transient cerebral ischemia	G45.0-G45.9	Transient cerebral ischemic attacks and related syndromes
436.00	Acute, but ill-defined, cerebrovascular disease	I67.89	Other cerebrovascular disease
		I67.9	Cerebrovascular disease, unspecified
437.00	Other and ill-defined cerebrovascular disease	I67.89	Other cerebrovascular disease
		I67.9	Cerebrovascular disease, unspecified
800.00-800.99	Fracture of vault of skull	S02.0X XA; S02.0X XB	Fracture of vault of skull
801.00-801.99	Fracture of base of skull	S02.1-S02.19	Fracture of base of skull
803.00-803.99	Other and unqualified skull fractures	S02.91 XA	Unspecified fracture of skull
804.00-804.99	Multiple fractures involving skull or face with other bones	S02.91 XA	Unspecified fracture of skull
850.00-850.99	Concussion	S06.0X 0A-S06.0X 9A	Concussion
851.00-851.99	Cerebral laceration and contusion	S06.31-S06.33	Contusion and laceration of cerebrum
852.00-852.59	Subarachnoid, subdural, and extradural hemorrhage following injury	S06.4; S06.5; S06.6	Traumatic epidural, subdural, and subarachnoid hemorrhage
853.00-853.19	Other and unspecified intracranial hemorrhage following injury	S06.36	Traumatic hemorrhage of cerebrum, unspecified
854.00-854.19	Intracranial injury of other and unspecified nature	S06.8-S06.9	Other specified intracranial injuries and unspecified intracranial injuries

PUBLIC HEALTH DEPARTMENT[641](cont'd)

b. Reportable cases of brain injury are those that are identified by the following codes from the International Classification of Diseases, 9th Revision, Clinical Modification, or the International Classification of Diseases, 10th Revision, Clinical Modification, only to the extent the injury or condition resulted in a brain injury.

	International Classification of Diseases, 9th Revision, Clinical Modification		International Classification of Diseases, 10th Revision, Clinical Modification
960-979	Poisoning by drugs, medicinal and biological substances	T41-T44	Poisoning by, adverse effect of and underdosing of drugs and gases
980-989	Toxic effects of substances	T51; T58	Toxic effect of alcohol; toxic effect of carbon monoxide
990-995	Effects of external causes	T71	Asphyxiation
994.7	Asphyxiation and strangulation		
994.1	Drowning and nonfatal submersion	T75.1X XA	Unspecified effects of drowning and nonfatal submersion
995.50-995.59	Child maltreatment syndrome	T74.1; T74.4	Physical abuse, confirmed; shaken infant syndrome
995.80-995.89	Adult maltreatment syndrome		

ITEM 6. Rescind subrule 21.3(2) and adopt the following **new** subrule in lieu thereof:

21.3(2) Spinal cord injuries. Reportable cases of spinal cord injuries are those that are identified by the following codes from the International Classification of Diseases, 9th Revision, Clinical Modification, or the International Classification of Diseases, 10th Revision, Clinical Modification:

a. Fracture.

(1) International Classification of Diseases, 9th Revision, Clinical Modification:

806.00-806.9	Fracture of vertebral column with spinal cord injury
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(2) International Classification of Diseases, 10th Revision, Clinical Modification:

S12.000A	Unspecified displaced fracture of the first cervical vertebra, initial encounter for closed fracture
S12.000B	Unspecified displaced fracture of first cervical vertebra, initial encounter for open fracture
S12.001A	Unspecified nondisplaced fracture of first cervical vertebra, initial encounter for closed fracture
S12.001B	Unspecified nondisplaced fracture of first cervical vertebra, initial encounter for open fracture
S12.100A	Unspecified displaced fracture of second cervical vertebra, initial encounter for closed fracture
S12.100B	Unspecified displaced fracture of second cervical vertebra, initial encounter for open fracture
S12.101A	Unspecified nondisplaced fracture of second cervical vertebra, initial encounter for closed fracture
S12.101B	Unspecified nondisplaced fracture of second cervical vertebra, initial encounter for open fracture
S12.200A	Unspecified displaced fracture of third cervical vertebra, initial encounter for closed fracture
S12.200B	Unspecified displaced fracture of third cervical vertebra, initial encounter for open fracture
S12.201A	Unspecified nondisplaced fracture of third cervical vertebra, initial encounter for closed fracture
S12.201B	Unspecified nondisplaced fracture of third cervical vertebra, initial encounter for open fracture
S12.300A	Unspecified displaced fracture of fourth cervical vertebra, initial encounter for closed fracture
S12.300B	Unspecified displaced fracture of fourth cervical vertebra, initial encounter for open fracture
S12.301A	Unspecified nondisplaced fracture of fourth cervical vertebra, initial encounter for closed fracture
S12.301B	Unspecified nondisplaced fracture of fourth cervical vertebra, initial encounter for open fracture
S12.400A	Unspecified displaced fracture of fifth cervical vertebra, initial encounter for closed fracture
S12.400B	Unspecified displaced fracture of fifth cervical vertebra, initial encounter for open fracture
S12.401A	Unspecified nondisplaced fracture of fifth cervical vertebra, initial encounter for closed fracture
S12.401B	Unspecified nondisplaced fracture of fifth cervical vertebra, initial encounter for open fracture

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S12.500A	Unspecified displaced fracture of sixth cervical vertebra, initial encounter for closed fracture
S12.500B	Unspecified displaced fracture of sixth cervical vertebra, initial encounter for open fracture
S12.501A	Unspecified nondisplaced fracture of sixth cervical vertebra, initial encounter for closed fracture
S12.501B	Unspecified nondisplaced fracture of sixth cervical vertebra, initial encounter for open fracture
S12.600A	Unspecified displaced fracture of seventh cervical vertebra, initial encounter for closed fracture
S12.600B	Unspecified displaced fracture of seventh cervical vertebra, initial encounter for open fracture
S12.601A	Unspecified nondisplaced fracture of seventh cervical vertebra, initial encounter for closed fracture
S12.601B	Unspecified nondisplaced fracture of seventh cervical vertebra, initial encounter for open fracture
S12.9XXA	Fracture of neck, unspecified, initial encounter
S14.101A	Unspecified injury at C1 level of cervical spinal cord, initial encounter
S14.102A	Unspecified injury at C2 level of cervical spinal cord, initial encounter
S14.103A	Unspecified injury at C3 level of cervical spinal cord, initial encounter
S14.104A	Unspecified injury at C4 level of cervical spinal cord, initial encounter
S14.105A	Unspecified injury at C5 level of cervical spinal cord, initial encounter
S14.106A	Unspecified injury at C6 level of cervical spinal cord, initial encounter
S14.107A	Unspecified injury at C7 level of cervical spinal cord, initial encounter
S14.109A	Unspecified injury at unspecified level of cervical spinal cord, initial encounter
S14.111A	Complete lesion at C1 level of cervical spinal cord, initial encounter
S14.112A	Complete lesion at C2 level of cervical spinal cord, initial encounter
S14.113A	Complete lesion at C3 level of cervical spinal cord, initial encounter
S14.114A	Complete lesion at C4 level of cervical spinal cord, initial encounter
S14.115A	Complete lesion at C5 level of cervical spinal cord, initial encounter
S14.116A	Complete lesion at C6 level of cervical spinal cord, initial encounter
S14.117A	Complete lesion at C7 level of cervical spinal cord, initial encounter
S14.121A	Central cord syndrome at C1 level of cervical spinal cord, initial encounter
S14.122A	Central cord syndrome at C2 level of cervical spinal cord, initial encounter
S14.123A	Central cord syndrome at C3 level of cervical spinal cord, initial encounter
S14.124A	Central cord syndrome at C4 level of cervical spinal cord, initial encounter
S14.125A	Central cord syndrome at C5 level of cervical spinal cord, initial encounter
S14.126A	Central cord syndrome at C6 level of cervical spinal cord, initial encounter
S14.127A	Central cord syndrome at C7 level of cervical spinal cord, initial encounter
S14.131A	Anterior cord syndrome at C1 level of cervical spinal cord, initial encounter
S14.132A	Anterior cord syndrome at C2 level of cervical spinal cord, initial encounter
S14.133A	Anterior cord syndrome at C3 level of cervical spinal cord, initial encounter
S14.134A	Anterior cord syndrome at C4 level of cervical spinal cord, initial encounter
S14.135A	Anterior cord syndrome at C5 level of cervical spinal cord, initial encounter
S14.136A	Anterior cord syndrome at C6 level of cervical spinal cord, initial encounter
S14.137A	Anterior cord syndrome at C7 level of cervical spinal cord, initial encounter
S14.151A	Other incomplete lesion at C1 level of cervical spinal cord, initial encounter
S14.152A	Other incomplete lesion at C2 level of cervical spinal cord, initial encounter
S14.153A	Other incomplete lesion at C3 level of cervical spinal cord, initial encounter
S14.154A	Other incomplete lesion at C4 level of cervical spinal cord, initial encounter
S14.155A	Other incomplete lesion at C5 level of cervical spinal cord, initial encounter
S14.156A	Other incomplete lesion at C6 level of cervical spinal cord, initial encounter
S14.157A	Other incomplete lesion at C7 level of cervical spinal cord, initial encounter

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S22.009A	Unspecified fracture of unspecified thoracic vertebra, initial encounter for closed fracture
S22.009B	Unspecified fracture of unspecified thoracic vertebra, initial encounter for open fracture
S22.019A	Unspecified fracture of first thoracic vertebra, initial encounter for closed fracture
S22.019B	Unspecified fracture of first thoracic vertebra, initial encounter for open fracture
S22.029A	Unspecified fracture of second thoracic vertebra, initial encounter for closed fracture
S22.029B	Unspecified fracture of second thoracic vertebra, initial encounter for open fracture
S22.039A	Unspecified fracture of third thoracic vertebra, initial encounter for closed fracture
S22.039B	Unspecified fracture of third thoracic vertebra, initial encounter for open fracture
S22.049A	Unspecified fracture of fourth thoracic vertebra, initial encounter for closed fracture
S22.049B	Unspecified fracture of fourth thoracic vertebra, initial encounter for open fracture
S22.059A	Unspecified fracture of T5-T6 vertebra, initial encounter for closed fracture
S22.059B	Unspecified fracture of T5-T6 vertebra, initial encounter for open fracture
S22.069A	Unspecified fracture of T7-T8 vertebra, initial encounter for closed fracture
S22.069B	Unspecified fracture of T7-T8 vertebra, initial encounter for open fracture
S22.079A	Unspecified fracture of T9-T10 vertebra, initial encounter for closed fracture
S22.079B	Unspecified fracture of T9-T10 vertebra, initial encounter for open fracture
S22.089A	Unspecified fracture of T11-T12 vertebra, initial encounter for closed fracture
S22.089B	Unspecified fracture of T11-T12 vertebra, initial encounter for open fracture
S24.101A	Unspecified injury at T1 level of thoracic spinal cord, initial encounter
S24.102A	Unspecified injury at T2-T6 level of thoracic spinal cord, initial encounter
S24.103A	Unspecified injury at T7-T10 level of thoracic spinal cord, initial encounter
S24.104A	Unspecified injury at T11-T12 level of thoracic spinal cord, initial encounter
S24.109A	Unspecified injury at unspecified level of thoracic spinal cord, initial encounter
S24.111A	Complete lesion at T1 level of thoracic spinal cord, initial encounter
S24.112A	Complete lesion at T2-T6 level of thoracic spinal cord, initial encounter
S24.113A	Complete lesion at T7-T10 level of thoracic spinal cord, initial encounter
S24.114A	Complete lesion at T11-T12 level of thoracic spinal cord, initial encounter
S24.131A	Anterior cord syndrome at T1 level of thoracic spinal cord, initial encounter
S24.132A	Anterior cord syndrome at T2-T6 level of thoracic spinal cord, initial encounter
S24.133A	Anterior cord syndrome at T7-T10 level of thoracic spinal cord, initial encounter
S24.134A	Anterior cord syndrome at T11-T12 level of thoracic spinal cord, initial encounter
S24.151A	Other incomplete lesion at T1 level of thoracic spinal cord, initial encounter
S24.152A	Other incomplete lesion at T2-T6 level of thoracic spinal cord, initial encounter
S24.153A	Other incomplete lesion at T7-T10 level of thoracic spinal cord, initial encounter
S24.154A	Other incomplete lesion at T11-T12 level of thoracic spinal cord, initial encounter
S32.009A	Unspecified fracture of unspecified lumbar vertebra, initial encounter for closed fracture
S32.009B	Unspecified fracture of unspecified lumbar vertebra, initial encounter for open fracture
S32.10XA	Unspecified fracture of sacrum, initial encounter for closed fracture
S32.10XB	Unspecified fracture of sacrum, initial encounter for open fracture
S32.019A	Unspecified fracture of first lumbar vertebra, initial encounter for closed fracture
S32.019B	Unspecified fracture of first lumbar vertebra, initial encounter for open fracture
S32.029A	Unspecified fracture of second lumbar vertebra, initial encounter for closed fracture
S32.029B	Unspecified fracture of second lumbar vertebra, initial encounter for open fracture
S32.039A	Unspecified fracture of third lumbar vertebra, initial encounter for closed fracture
S32.039B	Unspecified fracture of third lumbar vertebra, initial encounter for open fracture

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S32.049A	Unspecified fracture of fourth lumbar vertebra, initial encounter for closed fracture
S32.049B	Unspecified fracture of fourth lumbar vertebra, initial encounter for open fracture
S32.059A	Unspecified fracture of fifth lumbar vertebra, initial encounter for closed fracture
S32.059B	Unspecified fracture of fifth lumbar vertebra, initial encounter for open fracture
S32.2XXA	Fracture of coccyx, initial encounter for closed fracture
S32.2XXB	Fracture of coccyx, initial encounter for open fracture
S34.101A	Unspecified injury to L1 level of lumbar spinal cord, initial encounter
S34.102A	Unspecified injury to L2 level of lumbar spinal cord, initial encounter
S34.103A	Unspecified injury to L3 level of lumbar spinal cord, initial encounter
S34.104A	Unspecified injury to L4 level of lumbar spinal cord, initial encounter
S34.105A	Unspecified injury to L5 level of lumbar spinal cord, initial encounter
S34.109A	Unspecified injury to unspecified level of lumbar spinal cord, initial encounter
S34.111A	Complete lesion of L1 level of lumbar spinal cord, initial encounter
S34.112A	Complete lesion of L2 level of lumbar spinal cord, initial encounter
S34.113A	Complete lesion of L3 level of lumbar spinal cord, initial encounter
S34.114A	Complete lesion of L4 level of lumbar spinal cord, initial encounter
S34.115A	Complete lesion of L5 level of lumbar spinal cord, initial encounter
S34.119A	Complete lesion of unspecified level of lumbar spinal cord, initial encounter
S34.121A	Incomplete lesion of L1 level of lumbar spinal cord, initial encounter
S34.122A	Incomplete lesion of L2 level of lumbar spinal cord, initial encounter
S34.123A	Incomplete lesion of L3 level of lumbar spinal cord, initial encounter
S34.124A	Incomplete lesion of L4 level of lumbar spinal cord, initial encounter
S34.125A	Incomplete lesion of L5 level of lumbar spinal cord, initial encounter
S34.129A	Incomplete lesion of unspecified level of lumbar spinal cord, initial encounter
S34.131A	Complete lesion of sacral spinal cord, initial encounter
S34.132A	Incomplete lesion of sacral spinal cord, initial encounter
S34.139A	Unspecified injury to sacral spinal cord, initial encounter
S34.3XXA	Injury of cauda equina, initial encounter

b. Spinal cord injury.

(1) International Classification of Diseases, 9th Revision, Clinical Modification:

952.00-952.9	Spinal cord injury without evidence of spinal bone injury
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(2) International Classification of Diseases, 10th Revision, Clinical Modification:

S14.101A	Unspecified injury at C1 level of cervical spinal cord, initial encounter
S14.102A	Unspecified injury at C2 level of cervical spinal cord, initial encounter
S14.103A	Unspecified injury at C3 level of cervical spinal cord, initial encounter
S14.104A	Unspecified injury at C4 level of cervical spinal cord, initial encounter
S14.105A	Unspecified injury at C5 level of cervical spinal cord, initial encounter
S14.106A	Unspecified injury at C6 level of cervical spinal cord, initial encounter
S14.107A	Unspecified injury at C7 level of cervical spinal cord, initial encounter
S14.108A	Unspecified injury at C8 level of cervical spinal cord, initial encounter
S14.109A	Unspecified injury at unspecified level of cervical spinal cord, initial encounter
S14.111A	Complete lesion at C1 level of cervical spinal cord, initial encounter
S14.112A	Complete lesion at C2 level of cervical spinal cord, initial encounter

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S14.113A	Complete lesion at C3 level of cervical spinal cord, initial encounter
S14.114A	Complete lesion at C4 level of cervical spinal cord, initial encounter
S14.115A	Complete lesion at C5 level of cervical spinal cord, initial encounter
S14.116A	Complete lesion at C6 level of cervical spinal cord, initial encounter
S14.117A	Complete lesion at C7 level of cervical spinal cord, initial encounter
S14.118A	Complete lesion at C8 level of cervical spinal cord, initial encounter
S14.121A	Central cord syndrome at C1 level of cervical spinal cord, initial encounter
S14.122A	Central cord syndrome at C2 level of cervical spinal cord, initial encounter
S14.123A	Central cord syndrome at C3 level of cervical spinal cord, initial encounter
S14.124A	Central cord syndrome at C4 level of cervical spinal cord, initial encounter
S14.125A	Central cord syndrome at C5 level of cervical spinal cord, initial encounter
S14.126A	Central cord syndrome at C6 level of cervical spinal cord, initial encounter
S14.127A	Central cord syndrome at C7 level of cervical spinal cord, initial encounter
S14.128A	Central cord syndrome at C8 level of cervical spinal cord, initial encounter
S14.131A	Anterior cord syndrome at C1 level of cervical spinal cord, initial encounter
S14.132A	Anterior cord syndrome at C2 level of cervical spinal cord, initial encounter
S14.133A	Anterior cord syndrome at C3 level of cervical spinal cord, initial encounter
S14.134A	Anterior cord syndrome at C4 level of cervical spinal cord, initial encounter
S14.135A	Anterior cord syndrome at C5 level of cervical spinal cord, initial encounter
S14.136A	Anterior cord syndrome at C6 level of cervical spinal cord, initial encounter
S14.137A	Anterior cord syndrome at C7 level of cervical spinal cord, initial encounter
S14.138A	Anterior cord syndrome at C8 level of cervical spinal cord, initial encounter
S14.151A	Other incomplete lesion at C1 level of cervical spinal cord, initial encounter
S14.152A	Other incomplete lesion at C2 level of cervical spinal cord, initial encounter
S14.153A	Other incomplete lesion at C3 level of cervical spinal cord, initial encounter
S14.154A	Other incomplete lesion at C4 level of cervical spinal cord, initial encounter
S14.155A	Other incomplete lesion at C5 level of cervical spinal cord, initial encounter
S14.156A	Other incomplete lesion at C6 level of cervical spinal cord, initial encounter
S14.157A	Other incomplete lesion at C7 level of cervical spinal cord, initial encounter
S14.158A	Other incomplete lesion at C8 level of cervical spinal cord, initial encounter
S24.101A	Unspecified injury at T1 level of thoracic spinal cord, initial encounter
S24.102A	Unspecified injury at T2-T6 level of thoracic spinal cord, initial encounter
S24.103A	Unspecified injury at T7-T10 level of thoracic spinal cord, initial encounter
S24.104A	Unspecified injury at T11-T12 level of thoracic spinal cord, initial encounter
S24.109A	Unspecified injury at unspecified level of thoracic spinal cord, initial encounter
S24.111A	Complete lesion at T1 level of thoracic spinal cord, initial encounter
S24.112A	Complete lesion at T2-T6 level of thoracic spinal cord, initial encounter
S24.113A	Complete lesion at T7-T10 level of thoracic spinal cord, initial encounter
S24.114A	Complete lesion at T11-T12 level of thoracic spinal cord, initial encounter
S24.131A	Anterior cord syndrome at T1 level of thoracic spinal cord, initial encounter
S24.132A	Anterior cord syndrome at T2-T6 level of thoracic spinal cord, initial encounter
S24.133A	Anterior cord syndrome at T7-T10 level of thoracic spinal cord, initial encounter
S24.134A	Anterior cord syndrome at T11-T12 level of thoracic spinal cord, initial encounter
S24.151A	Other incomplete lesion at T1 level of thoracic spinal cord, initial encounter

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S24.152A	Other incomplete lesion at T2-T6 level of thoracic spinal cord, initial encounter
S24.153A	Other incomplete lesion at T7-T10 level of thoracic spinal cord, initial encounter
S24.154A	Other incomplete lesion at T11-T12 level of thoracic spinal cord, initial encounter
S34.109A	Unspecified injury to unspecified level of lumbar spinal cord, initial encounter
S34.139A	Unspecified injury to sacral spinal cord, initial encounter
S34.3XXA	Injury of cauda equina, initial encounter

ITEM 7. Strike “traumatic” wherever it appears in rule **641—21.4(135)**, subrule **21.6(1)**, and paragraph **21.6(2)“g.”**

ITEM 8. Rescind rule 641—21.5(135) and adopt the following **new** rule in lieu thereof:

641—21.5(135) Method and frequency of reporting.

21.5(1) To the extent possible, activities conducted under this chapter shall be coordinated with other health data collection methods. The department shall obtain brain and spinal cord injury data from the Iowa Hospital Association pursuant to 641—Chapter 177, and the association shall serve as the department’s intermediary in the collection of brain and spinal cord injury data.

21.5(2) Hospitals shall report to the Iowa Hospital Association the required information for any reportable case of brain injury or spinal cord injury no later than 45 days after the end of the quarter during which the patient was discharged, transferred to another acute care hospital, or pronounced dead in the emergency department.

21.5(3) Reports shall meet the data quality, format, and timeliness standards prescribed by the department and the Iowa Hospital Association.

ITEM 9. Amend subrule 21.6(2), introductory paragraph, as follows:

21.6(2) A registry report of a ~~traumatic~~ brain or spinal cord injury ~~that~~ which is submitted to the ~~agency that~~ department and which can be associated with a particular individual shall be released as follows solely by the department and only under the following conditions:

ITEM 10. Rescind paragraph **21.6(2)“e”** and adopt the following **new** paragraph in lieu thereof:

e. To an authorized representative of a study or research project that shall be reviewed and approved by the department’s research and ethics review committee and approved by the director of the division of behavioral health. If information identifies individuals with brain or spinal cord injuries, the release of such information for research purposes shall be subject to the terms and conditions set by the department. Such study or research project shall maintain the identifying information as confidential and privileged.

ITEM 11. Rescind paragraph **21.6(2)“f.”**

ITEM 12. Reletter paragraph **21.6(2)“g”** as **21.6(2)“f.”**

ITEM 13. Amend **641—Chapter 21**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 135.22 ~~as amended by 1994 Iowa Acts, House File 2145.~~

[Filed 7/14/16, effective 9/7/16]

[Published 8/3/16]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/3/16.

ARC 2656C**PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 135.37, the Department of Public Health hereby amends Chapter 22, "Practice of Tattooing," Iowa Administrative Code.

The amendments to Chapter 22 update definitions, update application requirements and fee schedules, clarify general provisions for tattoo artists and tattoo establishments, clarify and update sanitation and infection control provisions, clarify tattoo equipment requirements and tattooing procedures, clarify establishment permit requirements, establish that no new mobile tattoo units will be permitted, clarify inspection and inspector requirements, and clarify enforcement actions. The amendments resulted from discussions held with a tattoo artist stakeholder group.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2459C** on March 16, 2016. A public hearing was held from 1 to 3 p.m. on April 8, 2016, in the fifth floor conference room of the Lucas State Office Building, Des Moines, Iowa.

The following comments were received from licensed tattoo artists, county sanitarians and the Administrative Rules Review Committee.

Comment 1: Concern was voiced as to why steam sterilization was preferred over dry-heat sterilization. The suggestion was made that if dry-heat sterilization was not being conducted properly, it should be removed.

Department response 1: Some members of the stakeholder group felt that because dry-heat sterilization takes longer than steam sterilization, there may be instances where dry-heat sterilization was not being done effectively. There is no documentation to support this theory, so it was decided to add steam sterilization as the preferred method of sterilization.

Comment 2: A question was asked about the reason for removing the criminal background information from subrule 22.7(3).

Department response 2: It was moved to subrule 22.7(2).

Comment 3: The suggestion was made that fees should be tripled for tattoo artists.

Department response 3: The Department acknowledges this comment.

Comment 4: A respondent asked about fees for other licenses issued by the Professional Licensure Division and about the tattoo licensure fees for surrounding states.

Department response 4: Professional Licensure Division fees may be found at <https://www.legis.iowa.gov/docs/ACO/chapter/645.5.pdf>. Surrounding states' fees are as follows:

Illinois: Artist, \$200; Est., \$500 + \$50 for each station

Missouri: Artist, \$100; Est., \$135

Nebraska: Each jurisdiction has its own fees.

Minnesota: <https://www.revisor.mn.gov/statutes/?id=146B.10>

Wisconsin: Artist, \$60; Est., \$135

South Dakota: Phone calls to request the fee information were not returned.

Comment 5: It was suggested that the Department continue to require a high school diploma or high school equivalency diploma for all artists who tattoo in Iowa.

Department response 5: In renumbered subrule 22.10(6), the proposed language relating to guest tattoo artists did not include the requirement of a high school diploma. That language was not adopted, and guest artists will be required to meet the same requirements as Iowa tattoo artists. Because of this change, all references to guest artists have been removed.

Comment 6: A respondent requested that no mobile tattoo units be permitted in the state of Iowa.

Department response 6: Currently, there are five mobile tattoo units permitted in Iowa. It is felt that this is a manageable number and that it is fairly easy to track the events in which these mobile units are participating. With a higher number of mobile units, it becomes increasingly difficult to track the events at which these mobile units may have a presence. The Department acknowledges this comment.

Comment 7: A respondent asked why the word "shall" in subrule 22.16(2) was changed to "may."

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Department response 7: This change in wording will allow more flexibility in proceeding through the steps relating to enforcement. It will also allow the Department to step in when these activities cannot be carried out by the local inspection agency.

Comment 8: A respondent asked which other professions involve inserting needles into people's skin but require no training.

Department response 8: Piercing, microneedling, microblading, and body modification.

Comment 9: A respondent commented that all the regulations for tattooing need to be tightened and that Chapter 22 should be rewritten.

Department response 9: The comment has been acknowledged.

Comment 10: A respondent suggested that the Department look at and mirror the Professional Licensure Division's requirements.

Department response 10: This suggestion has been acknowledged.

Comment 11: A respondent asked for an explanation of permanent makeup.

Department response 11: Permanent makeup is the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into the dermis portion of the skin so as to form indelible marks for cosmetic purposes. Permanent-makeup procedures are commonly used on eyebrows and lips and to add eyeliner.

Comment 12: A respondent pointed out that copies of birth certificates are not acceptable for providing proof of age.

Department response 12: The reference to providing proof of age has been changed to read "must submit government-issued documentation to show proof of attaining the age of 18 years."

Comment 13: A question was raised about the process of tattoo removal.

Department response 13: Tattoo removal is regulated by the Board of Medicine.

Comment 14: Respondents requested that an apprenticeship program be developed for tattoo artists.

Department response 14: The Department acknowledges this comment.

Comment 15: Respondents requested that all fees pertaining to the tattoo program be retained by the tattoo program.

Department response 15: The Department acknowledges this comment.

Comment 16: A request was made to allow alcohol in a tattoo establishment as long as tattooing is not being performed (for example, as is done at painting classes in which wine and beer are served).

Department response 16: This comment has been acknowledged.

Comment 17: A respondent commented on removal of the provision allowing tuberculocidal, single-use hand wipes as an acceptable means of hand sterilization.

Department response 17: Subrule 22.11(3) refers to the wipes as a means to augment the hand washing. When proper hand-washing procedures are followed, it is not necessary to augment with additional sterilization.

Comment 18: A respondent stated that machine heads should be covered.

Department response 18: The Department could find no scientific data supporting barriers on tattoo machines.

Comment 19: A respondent suggested that chloroprene gloves should be added to the listing of glove types that tattoo artists can wear.

Department response 19: This type of glove has been added.

Comment 20: A respondent stated that the Department needs to clearly define the term "adequate bandaging" and that Saran Wrap should not be used.

Department response 20: This comment has been acknowledged.

Comment 21: A respondent suggested that if the requirement to consult a physician is going to be dropped from subrule 22.6(10), then a list of recommendations for adequate aftercare should be included.

Department response 21: In rule 641—22.2(135), the definition of "aftercare" states "written instructions given to a client, specific to the procedures rendered, on care for the tattoo and surrounding area and guidance on when to seek medical attention."

Comment 22: A respondent did not approve of the tattoo stakeholder group.

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Department response 22: It is common practice at the Department to convene a stakeholder group that is representative of industry and local public health partners.

Comment 23: It was suggested that the definition of “tattooing” should include tattooing for radiation purposes.

Department response 23: The Department acknowledges this comment.

Comment 24: A respondent stated that there should be regulations for piercing.

Department response 24: The Department acknowledges this comment.

Comment 25: It was suggested that permanent-make-up tattoo artists should have the option of a lower inspection fee or a fee set by the local authority because these inspections take less time and because the fee causes a hardship on the establishment owner.

Department response 25: The Department acknowledges this comment.

Comment 26: A respondent requested that the Department modify the definition of “disinfectant” to mirror the definition used by the Board of Cosmetology Arts and Sciences.

Department response 26: The Department consulted with a microbiologist at the State Hygienic Lab (SHL) on this issue. The SHL recommended using the following definition for disinfectant:

“Disinfectant’ means a U.S. Environmental Protection Agency (EPA)-registered antimicrobial product that is applied to surfaces to destroy or irreversibly inactivate microorganisms on the surface but not necessarily bacterial spores.”

The term “antimicrobial” refers to bacterial, virucidal, fungicidal, pseudomonacidal chemical solutions that are used to clean inanimate objects and surfaces and that are effective against HIV-1 and human hepatitis B.

Comment 27: A respondent submitted a petition with 141 signatures supporting the following:

1. To obtain a tattoo establishment permit, a person must obtain an artist permit.
2. Individuals with felonies are not to be permitted as tattoo artists or tattoo establishment owners.
3. If the artist loses the artist’s position at an establishment, then the owner is responsible for reporting this to the local health department.
4. Random verification on new permits should be performed at the beginning of the year to make sure the applicant is not committing fraud.

Department response 27: This petition has been acknowledged.

Changes that were made from the published Notice of Intended Action include: removal of the concept of guest tattoo artist, including the definition of “guest tattoo artist,” the fee associated with this permit, and all of the proposed language in renumbered subrule 22.10(6); clarification of the definition of “disinfectant” by using the definition suggested by the SHL; the addition of chloroprene gloves to the list of acceptable disposable gloves tattoo artists shall wear in accordance with subrule 22.6(4); and clarification in renumbered subrule 22.10(3) relating to the type of acceptable documentation necessary for providing proof of meeting the age requirement to obtain a permit. In addition, the effective date included in renumbered rule 641—22.12(135) was updated to reflect the effective date of this rule making.

The Iowa Department of Public Health adopted these amendments on July 13, 2016.

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

These amendments are intended to implement Iowa Code section 135.37.

These amendments will become effective September 7, 2016.

The following amendments are adopted.

Amend **641—Chapter 22** as follows:

CHAPTER 22 PRACTICE OF TATTOOING

641—22.1(135) No change.

641—22.2(135) Definitions. For the purpose of these rules, the following definitions shall apply:

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“Aftercare” means written instructions given to a client, specific to the procedures rendered, on care for the tattoo and surrounding area and guidance on when to seek medical treatment.

“Department” means the Iowa department of public health.

“Director” means the director of the Iowa department of public health.

“Disinfectant” means a U.S. Environmental Protection Agency (EPA)-registered antimicrobial product that is applied to surfaces to destroy microorganisms that are living on the surface but not necessarily bacterial spores.

“Imminent health threat” means a condition or conditions that exist in a tattoo establishment and require immediate action to prevent endangering the health of people.

“Impervious” means nonporous, impenetrable, smooth, and washable.

“Inspection agency” means the department or a city, county or district board of health that has executed an agreement with the department pursuant to the authority of a city, county or district board of health to inspect tattoo establishments and enforce these rules. The authority of a city, county or district board of health is limited to the geographic area defined in the agreement executed with the department. Within the defined geographic area, the city, county or district board of health is the “local inspection agency.”

“Minor” means a person who is under the age of 18 years.

“Mobile tattoo unit” means a mobile establishment or unit that is self-propelled or otherwise movable from place to place, is self-sufficient for utilities such as gas, water, electricity and liquid waste disposal, and operates at a fixed location where a permitted artist performs tattooing procedures for no more than 14 days in conjunction with a single event.

“Permanent color technology” means the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into the dermis portion of the skin so as to form indelible marks for cosmetic purposes.

“Residential dwelling” is a place or structure intended to be occupied as a residence.

“Single use” means intended for one-time use and disposed of after use on a client. Single-use products or items include, but are not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, disposable razors, tattoo needles, scalpel blades, stencils, ink cups, and protective gloves. Cloth towels and linens are not included as “single use” and are prohibited.

“Sterilization” means a process resulting in the destruction of all forms of microbial life, including highly resistant bacterial spores that demonstrate tuberculocidal activity.

“Tattoo artist” means any person, including a permanent color technologist, engaged in the practice of tattooing within the state of Iowa.

“Tattoo establishment” means the building, or portion of the building designated by the owner, or mobile unit where tattooing is practiced.

“Tattooing” means to puncture the skin of a person with a needle and insert indelible permanent colors through the puncture to leave permanent marks or designs. “Tattooing” includes permanent color technology that is the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into the dermis portion of the skin so as to form indelible marks for cosmetic purposes. “Tattooing” does not include applying a tattoo for radiological purposes.

“Tattoo mobile unit” means a mobile establishment or unit which is self-propelled or otherwise movable from place to place, is self-sufficient for utilities such as gas, water, electricity and liquid waste disposal, and operates at a fixed location where a permitted artist performs tattooing procedures for no more than 14 days in conjunction with a single event.

“Temporary establishment permit” means a permit issued by the department to perform tattoo procedures at a temporary event.

“Temporary event” means any place or premises operating at a fixed location where a tattoo artist performs tattooing procedures for no more than seven 14 days consecutively in conjunction with a single event or celebration to which the general public is invited.

641—22.3(135) General provisions.

22.3(1) No change.

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22.3(2) No person shall tattoo ~~a minor~~ any person under the age of 18. Violators shall be guilty of a serious misdemeanor.

22.3(3) No ~~tattoo artist~~ person shall engage in the practice of tattooing without first ~~obtaining~~ applying for and receiving a tattoo artist permit from the department.

22.3(4) No change.

22.3(5) Tattooing shall be practiced only in facilities that have applied for and received a tattoo establishment permit from the department.

22.3(6) ~~Tattooing~~ Notwithstanding local zoning codes, where zoning codes exist, tattooing shall not be practiced in a residential dwelling, inclusive of an attached garage, pursuant to local zoning codes. Beginning January 1, 2010, all new tattoo establishments must be in a building that is zoned commercial where zoning ordinances exist. A waiver shall be granted to any tattoo establishment which is in a residential dwelling and which has been operating continuously since being granted a permit prior to January 1, 2010.

22.3(7) No change.

641—22.4(135) Sanitation and infection control.

22.4(1) Tables, chairs, and other general-use equipment in the tattoo area shall be constructed of impervious ~~or~~ smooth and easily cleanable material.

22.4(2) A sink for hand washing supplied with potable hot and cold running water under pressure to a mixing-type faucet shall be available easily accessible in the tattooing area. Hand-washing facilities shall be supplied with liquid soap and single-use paper towels or hand dryer.

22.4(3) ~~Toilet~~ Easily accessible toilet facilities with a sink for hand washing must be available for employee use and patron use.

22.4(4) The tattoo establishment shall have an area of ~~not less than~~ at least 300 square feet and shall be adequately lighted and ventilated.

22.4(5) Floors in the ~~immediate area where the tattoo procedure is to be performed~~ tattoo area shall be finished with an impervious, smooth, washable surface.

22.4(6) and **22.4(7)** No change.

22.4(8) Closed cabinets or containers shall be exclusively used for the ~~exclusive~~ storage of instruments, dyes, pigments, stencils, tattoo machines, and other equipment.

22.4(9) The following prohibitions apply to tattoo establishments:

a. No change.

b. Consumption of food or drink shall not be allowed in ~~any area where the actual tattoo area procedure is being performed~~.

c. The owner or tattoo artist must not use, consume or serve intoxicating beverages or controlled substances on the establishment's premises ~~during the hours the establishment is open to the public or while any procedure is being performed~~.

d. The owner or tattoo artist must not allow any other person to use, consume, or serve intoxicating beverages or controlled substances on the establishment's premises ~~during the hours the establishment is open to the public or while any procedure is being performed~~.

e. The owner or tattoo artist shall not in any manner possess or distribute or allow any other person to possess or distribute intoxicating beverages or controlled substances on the establishment's premises ~~during the hours the establishment is open to the public or while any procedure is being performed~~.

f. The tattoo establishment owner shall not allow a tattoo artist who is not currently permitted in the state of Iowa to tattoo in the establishment.

22.4(10) No animals, except service ~~dogs for visually or hearing-impaired persons~~ animals, shall be permitted in a tattoo establishment. Aquariums containing fish shall be allowed in waiting rooms and ~~nonprocedural~~ non-tattoo areas.

641—22.5(135) Equipment. All equipment shall be maintained in a clean and sanitary condition.

22.5(1) Cups to hold ink or dye shall be for single-patron use. Any ink or dye, once dispensed into an ink cup, must be disposed of immediately following use.

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22.5(2) No change.

22.5(3) All tubes, tips and ~~needle bars~~ grips used for the tattoo procedure which are not sterile, not for single-patron use, and not disposable shall be physically cleaned with a detergent according to manufacturers' recommendations and then steam-sterilized or dry-heat sterilized before use on another patron.

22.5(4) Steam sterilization shall be at 250 degrees Fahrenheit (121 degrees Celsius) for 15 minutes at a minimum pressure of 15 pounds per square inch. Steam sterilization is the preferred method of sterilization.

22.5(5) No change.

22.5(6) All instruments must be sterilized on site. All instruments to be sterilized shall be placed in closed pouches ~~and the instruments must be sterilized on site.~~ The pouches must be dated effective for 30 days, after which the instruments must be resterilized and the pouches redated.

22.5(7) and **22.5(8)** No change.

22.5(9) Each tattoo establishment shall be equipped with a puncture-resistant, leakproof container designated for disposal of used needles and other sharps. The container shall be red and labeled with the "biohazard" symbol and shall be closeable for handling, storage, transportation and disposal. A written plan for disposal shall be maintained in the establishment ~~and be made available upon request by the inspection agency.~~

22.5(10) and **22.5(11)** No change.

22.5(12) Topical ointments shall be prepared for single-patron use.

641—22.6(135) Procedures.

22.6(1) to **22.6(3)** No change.

22.6(4) Tattoo artists shall wear clean garments when performing tattoo procedures. Tattoo artists shall wear disposable latex, nitrile, chloroprene, or vinyl gloves during the tattoo procedure. Gloves shall be changed after each tattoo. Tattoo artists shall wash their hands before and after each tattoo procedure.

22.6(5) All items with which the gloved hands of the tattoo artist would normally come into contact during the tattooing procedure shall have appropriate barrier films covering them. These items include, but are not limited to, ~~machine heads,~~ clip cords, spray squeeze bottles, seat adjustment controls, power control dials or buttons, and work lamps.

22.6(6) and **22.6(7)** No change.

22.6(8) Tattooing shall not be performed on any area where there is evidence of skin infection, irritation, or abnormalities.

22.6(9) After the tattooing is completed, ~~an adequate dressing shall be applied to the tattoo area.~~ the tattoo artist shall:

a. Apply an adequate dressing or bandage to the tattoo area.

b. Provide to the persons tattooed printed aftercare instructions regarding tattoo care during the healing process.

c. Thoroughly clean the machine head with an acceptable disinfectant and spray an acceptable surface disinfectant over the work area during the clean-up procedures before the area is set up for the next tattoo procedure.

~~**22.6(10)** Persons tattooed shall be provided with printed instructions regarding tattoo care during the healing process and shall be instructed to consult a physician if signs and symptoms of an infection develop.~~

~~**22.6(11)** After the tattoo is finished, an acceptable surface disinfectant shall be sprayed over the work area during the clean-up procedures before the area is set up for the next tattoo procedure.~~

641—22.7(135) Permit issuance and renewal. The following criteria shall apply to application for a permit to practice as a tattoo artist or as a tattoo establishment.

22.7(1) ~~Applications may be obtained from the department's Web site at <http://www.idph.state-ia.us/eh/tattoo.asp> or are available upon request from the Iowa Department of Public Health, Division~~

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~~of Environmental Health, Tattoo Permit Program, Lucas State Office Building, Des Moines, Iowa 50319-0075. Online or paper applications.~~

a. An applicant shall complete either an online application or a paper application according to the instructions contained in the application.

b. Paper applications are available to download at <http://www.idph.iowa.gov/Tattoo> or may be obtained from the tattoo office by writing to Tattoo Program, Iowa Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319-0075; or by calling (515)242-6337.

c. Fees. In order to be processed, each application must be accompanied by the appropriate fee as determined in the fee schedule listed in subrule 22.8(2). All fees are nonrefundable. An application that includes insufficient or incorrect fees shall be considered incomplete.

d. A paper application shall be accompanied by the appropriate fee payable by check or money order to the Iowa Department of Public Health.

e. Online application fees shall be paid by credit card only.

f. If the applicant is notified that the application is incomplete, the applicant must contact the tattoo office within 90 days. Incomplete applications shall be considered invalid and after 90 days shall be destroyed.

~~22.7(2) The department will act within 60 days upon receiving a completed application. If an applicant satisfies permit requirements, satisfies the requirements of this chapter, and complies with inspection requirements, the department will issue a permit. Documentation of medical conditions and criminal convictions related to the practice of the profession shall include a full explanation from the applicant. No application shall be considered complete until the applicant responds to any program requests for additional information regarding the applicant's medical condition or criminal conviction.~~

~~22.7(3) If the applicant has been convicted of a felony or misdemeanor, the department shall review evidence including but not limited to the following:~~

~~a. Official court record, which includes charges and disposition;~~

~~b. Copies of arrest records;~~

~~c. A letter from the applicant explaining the nature of the conviction;~~

~~d. All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug or alcohol-related offense and if treatment was obtained or required; and~~

~~e. A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.~~

~~22.7(4) 22.7(3) All permits expire on December 31 of each year, regardless of date of issuance for the year issued. Permits shall be renewed annually upon acceptance of a renewal application provided by the department and receipt of the renewal fee. The applicant shall submit a completed application, supporting documentation and renewal fee by December 1. The permit holder must have a current permit in possession before performing tattooing. Applicants who submit applications for renewal received An applicant who submits a renewal application after December 31 1 will be required to pay an additional \$25 for each month delinquent.~~

~~22.7(5) The department shall send a renewal notice by regular mail to each permit holder at the address on record at least 60 days prior to the expiration of the permit.~~

~~22.7(6) 22.7(4) The permit holder is responsible for renewing the permit prior to its expiration. Failure of the permit holder to receive the notice does not relieve the permit holder of the responsibility for renewing the permit.~~

~~22.7(5) A permit which has not been renewed within 90 days of the permit expiration date will automatically be deactivated. There will be a \$25 reinstatement fee charged for reactivating a permit. This reactivation fee will be in addition to the renewal fee.~~

641—22.8(135) Fees.

22.8(1) All fees are nonrefundable.

22.8(2) Fees for all initial and renewal applications are as follows:

a. Tattoo artist - \$75.

b. Tattoo establishment - \$100.

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- c. Temporary tattoo establishment:
 - (1) 0 to 10 participating artists - \$100.
 - (2) 11 to 100 participating artists - \$200.
 - (3) 101 or more participating artists - \$300.
- d. Mobile tattoo unit - \$100.
- e. Mobile tattoo event - \$25 per event.
- f. Tattoo establishment change of ownership - \$25.
- g. Tattoo establishment change of location - \$25.
- h. Mobile tattoo unit change of location - \$25.

641—22.8 641—22.9(135) Establishment Tattoo establishment permit requirements.

~~22.8(1)~~ 22.9(1) No tattoo establishment shall be operated in the state without having a permit to operate issued by the department. Permits shall be posted in a conspicuous location in the tattoo establishment.

~~22.8(2)~~ 22.9(2) Each person acquiring or establishing a tattoo establishment shall apply for a permit prior to beginning operation and shall submit a floor plan of the establishment with the application.

~~22.8(3)~~ 22.9(3) A permit to operate shall be issued to a new establishment when the department or its representative has successfully completed an on-site inspection. ~~Permits shall be posted in a conspicuous place in the tattoo establishment.~~

~~22.8(4)~~ 22.9(4) An annual, nonrefundable application fee of \$100, payable by check or money order to the Iowa Department of Public Health, shall be remitted with the initial or renewal tattoo establishment permit application.

~~22.8(5)~~ 22.9(4) Tattoo establishment permits are nontransferable.

22.9(5) Client records. A tattoo establishment shall retain a record of all persons who have had tattoo procedures performed at the establishment.

a. Records shall include the client's name and date of birth, copy of client's identification, date of the procedure, name of the tattoo artist who performed the procedure(s), and signature of client.

b. Records shall be retained in a confidential manner for a minimum of three years and shall be available to the department and the inspection agency upon request.

~~22.8(6)~~ 22.9(6) Change in ownership. Within 30 days of a change in ownership of a tattoo establishment, the new owner shall submit ~~an~~ a change in ownership application and fee for a new permit. When a change of ownership occurs, an on-site inspection must be completed by the inspection agency before a permit to operate will be issued. The new permit must be posted in a conspicuous location in the establishment.

~~22.8(7)~~ 22.9(7) Change in location. Within 30 days of a change of location of a tattoo establishment, the owner shall submit a ~~new~~ change of location application and a ~~nonrefundable~~ fee of \$25 for a new permit. When a change of location occurs, an on-site inspection must be completed by the inspection agency before a permit to operate will be issued. The new permit must be posted in a conspicuous location in the establishment.

641—22.9 641—22.10(135) Tattoo artist permit requirements.

~~22.9(1)~~ 22.10(1) An annual, nonrefundable application fee of \$75, payable by check or money order to the Iowa Department of Public Health, shall be remitted with the initial or renewal tattoo artist permit application. ~~No person shall perform tattooing without a current permit to operate issued by the department. Each person shall apply for a permit prior to beginning operation.~~

~~22.9(2)~~ 22.10(2) Each permit issued shall be in effect solely for the tattoo artist named thereon and shall remain with the tattoo artist upon change of employment. Tattoo artist permits are nontransferable.

~~22.9(3)~~ 22.10(3) An applicant for a tattoo artist permit shall be at least 18 years of age and must submit a ~~photocopy of a birth certificate or other equivalent document~~ government-issued documentation to show proof of attaining the age of 18 years.

~~22.9(4)~~ 22.10(4) Applicants An applicant must have show proof of a high school diploma or general educational development certificate (GED) high school equivalency diploma. (NOTE: Tattoo

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artists granted a permit prior to January 1, 2010, will not be required to obtain a high school diploma or GED high school equivalency diploma.) A degree from an accredited college will be accepted in lieu of a high school diploma or high school equivalency diploma.

~~22.9(5)~~ 22.10(5) Upon initial application and permit renewal application, a tattoo artists artist must complete and be current in the following possess and show proof of current certification of American Red Cross or equivalent nationally recognized certifications: for blood-borne pathogens and standard first aid.

a. Bloodborne pathogens; and

b. Standard first aid.

~~22.9(6)~~ Applicants must submit proof of successful completion of the certification programs listed in subrules 22.9(4) and 22.9(5).

~~22.9(7)~~ Each permit issued shall be in effect solely for the artist named thereon and shall remain with the artist upon change of employment.

~~22.9(8)~~ 22.10(6) Permits shall be posted in a conspicuous place in the tattoo establishment.

641—22.10 641—22.11(135) Temporary establishment permit requirements.

~~22.10(1)~~ 22.11(1) A person who wishes to obtain a temporary establishment permit for a temporary event must submit a nonrefundable application fee of \$50, payable by check or money order to the Iowa Department of Public Health, and submit a floor plan(s) of the facility temporary tattoo establishment application form, a floor plan of the facility, promotional documentation for the event, and the appropriate fee at least 30 days prior to the event. Fees shall be based on the number of participating tattoo artists. The request application shall specify the following:

a. The purpose for which the permit is requested;

b. The period of time during which the permit is needed (not to exceed 7 14 calendar days per event, without reapplication);

c. The fulfillment of tattoo artist requirements as specified in 641—22.9(135); and 641—22.10(135). A list of participating tattoo artists shall be sent to the tattoo program no later than one week prior to the event.

d. The location for at which the temporary permit event will be used held.

~~22.10(2)~~ 22.11(2) The temporary event must be contained in a completely enclosed, nonmobile facility such as inside a permanent building.

~~22.10(3)~~ 22.11(3) The temporary establishment shall comply with the following:

a. Conveniently located hand-washing facilities with liquid soap, single-use towels or hand dryers and potable hot and cold water under adequate pressure to a mixing-type faucet shall be provided. Drainage in accordance with local plumbing codes shall be provided. Tuberculocidal, single-use hand wipes to augment the hand-washing requirements of this paragraph must be available in each booth.

b. A minimum of 80 square feet of floor space shall be provided for each booth.

c. There shall be at least 100 foot-candles of light at the level sufficient lighting where the tattoo procedure is being performed.

d. Facilities to properly sterilize instruments and evidence of a spore test performed on sterilization equipment 30 days or less prior to the date of the event must be provided; or only single-use, prepackaged, sterilized equipment obtained from reputable suppliers or manufacturers will be allowed. All tubes, tips and grips used for the tattoo procedure that are not single use must be properly sterilized and dated 30 days or less prior to the date of the event. Evidence of a spore test performed on the sterilization equipment must be dated 30 days or less prior to the date of the event. Single-use, prepackaged, sterilized equipment obtained from reputable suppliers or manufacturers will be allowed.

e. Tattoo artists must properly clean and sanitize the area used for tattoo procedures.

f. Floors of the facility the tattooing area(s) shall be smooth and impervious or be covered with an impermeable barrier.

~~22.10(4)~~ 22.11(4) The facility where the temporary establishment permit is needed event will be held must be inspected by the designated inspection agency and be issued a permit prior to the performance

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of any tattoo procedures. A \$50 inspection fee for each booth shall be made payable to the inspection agency.

~~22.10(5)~~ 22.11(5) No animals, except service animals of clients, shall be allowed in the temporary establishment at any time.

~~22.10(6)~~ 22.11(6) Temporary establishment permits issued under the provisions of these rules may be suspended by the department for failure of the holder to comply with the requirements of these rules.

~~22.10(7)~~ 22.11(7) Permits Temporary establishment permits and tattoo artist permits shall be posted in a conspicuous place in the temporary establishment.

~~641—22.11~~ 641—22.12(135) **Mobile tattoo unit permit requirements.** Effective September 7, 2016, no new mobile tattoo units will be permitted. (NOTE: Mobile tattoo units granted a permit prior to September 7, 2016, may continue to operate with a current permit provided they remain compliant with the rules of this chapter.)

~~22.11(1)~~ 22.12(1) Mobile tattoo unit permits shall be in compliance with all of the following requirements:

a. No mobile tattoo unit shall be operated in the state without having a permit to operate issued by the department.

b. ~~Each person acquiring or establishing a mobile unit shall apply for a permit prior to beginning operation.~~ All tattoo artists working in a mobile tattoo unit must have a permit and must comply with the permit requirements of these rules. Artist permits shall be posted in a conspicuous location in the mobile tattoo unit.

c. ~~A permit to operate shall be issued to a new mobile unit when the department or its representative has successfully completed an on-site inspection.~~ Permits Mobile tattoo unit permits shall be posted in a conspicuous place in the mobile tattoo unit.

d. ~~An annual, nonrefundable application fee of \$100, payable by check or money order to the Iowa Department of Public Health, shall be remitted with the initial or renewal mobile unit permit application.~~

e. d. ~~Tattoo mobile~~ Mobile tattoo unit permits are nontransferable.

f. ~~Change in ownership. Within 30 days of a change in ownership of a mobile unit, the new owner shall submit an application and fee for a new permit.~~

g. e. ~~Change in address location. Within 30 days of a change of location of a address of where the mobile tattoo unit is housed, the owner shall submit a new application and a nonrefundable fee of \$25 for a new permit.~~

f. Inspections will be conducted by the local jurisdiction in which the mobile tattoo unit is housed. Out-of-state mobile tattoo units must have a current Iowa mobile tattoo unit permit and will be required to have an annual inspection.

~~22.11(2)~~ 22.12(2) ~~Tattoo mobile~~ Mobile tattoo units and tattoo artists working from a mobile tattoo unit shall also comply with all of the following requirements.

a. Mobile tattoo units are permitted for use only at special temporary events lasting 14 calendar days or less. Permits must be obtained at least 14 days prior to the event, and no tattoo procedures shall be performed before a permit is issued. Promotional documentation of the event must be included with the application. Permit holders are responsible for compliance with all other local regulations including but not limited to zoning and business license requirements.

b. The mobile tattoo unit shall be maintained in a clean and sanitary condition at all times. Doors shall be tight-fitting. Openable windows shall have tight-fitting screens.

c. Mobile tattoo units must ~~have approved~~ meet the sterilization ~~equipment available,~~ requirements in accordance with all requirements of 641—22.5(135).

d. Mobile tattoo units shall be used only for the purpose of performing tattoo procedures. No habitation or food preparation is permitted inside the vehicle unless the tattoo work station is separated from culinary or domicile areas by walls, an impervious floor-to-ceiling, from culinary or domicile areas barrier.

e. Mobile tattoo units shall be equipped with a hand sink for use of the tattoo artist for hand washing and preparing the client for the tattoo procedures.

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(1) The hand sink shall be supplied with hot and cold running water under pressure to a mixing-type faucet, as well as liquid soap and single-use towels in dispensers or hand dryer.

(2) An adequate supply of potable water shall be maintained for the mobile tattoo unit at all times during operation.

(3) The source of the water and storage of the tank(s) shall also be identified.

~~(4) Tuberculocidal, single-use hand wipes to augment the hand-washing requirements of this subrule must be available.~~

f. All liquid wastes shall be stored in an adequate storage tank with a capacity at least 15 percent greater than the capacity of the on-board potable water supply. Liquid wastes shall be disposed of at a publicly owned treatment works site approved by the department of natural resources (IDNR).

g. Restroom facilities must be available at the special temporary event or within the mobile tattoo unit.

(1) A hand sink must be available ~~inside~~ within a reasonably acceptable distance from the restroom ~~cube~~.

(2) The hand sink shall be supplied with hot and cold running water under pressure to a mixing-type faucet, as well as liquid soap and single-use towels ~~in dispensers~~ or hand dryer.

(3) ~~Restroom doors~~ Restrooms must be self-closing, and adequate ventilation must be available adequately ventilated.

h. All tattoo artists working in a mobile tattoo unit must have a permit and must comply with the permit requirements of these rules. Permits shall be posted in a conspicuous location in the mobile tattoo unit.

i. No animals, except service animals ~~of clients~~, shall be allowed in the mobile tattoo unit at any time.

~~*j.* Permits shall be posted in a conspicuous place in the mobile unit.~~

~~641—22.12 641—22.13(135) Agreements.~~ The department may enter into agreements with the local boards of health to provide inspections and enforcement. An inspection agency shall:

1. Ensure that its inspectors will meet the educational requirements of ~~641—22.14(135) 641—22.15(135).~~

2. No change.

~~641—22.13 641—22.14(135) Inspection requirements.~~

~~22.13(1) 22.14(1)~~ The inspection agency shall bill the owner of a tattoo establishment \$250 upon completion of an inspection. Inspection fees are due upon receipt of a notice of payment due.

~~22.13(2) 22.14(2)~~ Tattoo establishments shall be inspected annually, and inspection reports shall be maintained for three years by the inspection agency.

~~22.13(3) 22.14(3)~~ When the tattoo establishment is located within the jurisdiction of a local inspection agency, the local inspection agency may establish fees needed to defray the costs of inspection and enforcement under this chapter. Inspection fees billed by a local inspection agency shall be paid to the local inspection agency or its designee.

~~22.13(4) 22.14(4)~~ When an inspection agency determines that a special inspection is required, such as a follow-up inspection or an inspection generated by complaints, the inspection agency may charge a special inspection fee, which shall be based on the actual cost of providing the inspection.

~~22.13(5) 22.14(5)~~ Unpaid inspection fees will be considered delinquent 30 days after the date of the bill. A late fee of \$30 per month will be assessed to the establishment owner after a 30-day notice. If inspection fees remain unpaid after 60 days, an order to cease and desist operations will be issued by the department.

~~22.13(6) 22.14(6)~~ Failure to ~~permit~~ allow an inspection is grounds for denial of an initial tattoo establishment permit or for issuance of an order requiring suspension of a tattoo establishment's existing operations.

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~~22.13(7)~~ **22.14(7)** If an imminent health ~~hazard~~ threat exists, the inspection agency or the department may, pursuant to Iowa Code section 17A.18A, order the establishment to cease operation immediately. Operation shall not be resumed until authorized by the inspection agency or the department.

~~22.13(8)~~ **22.14(8)** ~~Material safety~~ Safety data sheets (~~MSDS~~ SDS) for the chemicals used at the tattoo establishment shall be maintained at the establishment in a location known and readily accessible to the establishment staff and shall be made available upon request of the inspection agency.

~~22.13(9)~~ **22.14(9)** An establishment inspected under this chapter shall post the most recent routine inspection report, along with any ~~current complaint~~ or reinspection reports, in a location at the establishment that is readily visible to the public.

~~641—22.14~~ **641—22.15(135) Tattoo inspector qualifications.** Each person designated as a tattoo inspector shall have successfully completed a blood-borne pathogen certification course from the American Red Cross or an equivalent nationally recognized organization. A copy of current certification shall be maintained by the local inspection agency.

~~641—22.15(135) Client records.~~ A tattoo establishment shall keep a record of all persons who have had tattoo procedures performed.

~~22.15(1)~~ Records shall include the client name, date of birth, photocopy of identification, date of the procedure, name of the tattoo artist who performed the procedure(s), and signature of client.

~~22.15(2)~~ Records shall be retained in a confidential manner for a minimum of three years and shall be available to the department and the inspection agency upon request.

641—22.16(135) Enforcement.

22.16(1) No change.

22.16(2) The inspection agency ~~shall~~ may take the following steps when enforcement of these rules is necessary.

a. and *b.* No change.

c. *Failure to comply.* If the owner of a tattoo establishment, ~~or~~ mobile tattoo unit, or temporary establishment fails to comply with conditions of the written notice, the inspection agency may take enforcement action in accordance with Iowa Code chapter 135 or in accordance with local ordinances.

641—22.17(135) Adverse actions and the appeal process.

22.17(1) The department may deny an application for a permit, ~~may~~ revoke a permit, order that a tattoo establishment not be operated, ~~may~~ order a tattoo artist to cease engaging in the practice of tattooing, or ~~may~~ refer the case to the office of the county attorney or attorney general for possible criminal penalties when the department finds that an establishment is not operated in accordance with these rules or that a permitted person or a person who is not permitted has committed any of the following acts:

a. to *y.* No change.

22.17(2) Notice of issuance of a denial, revocation, or order to cease operations shall be served by certified mail, return receipt requested, or by personal service.

22.17(3) Upon receipt of the order, the aggrieved party may request an appeal. The appeal shall be made in writing to the department within 20 days from the date of the aggrieved party's receipt of the department's order. The appeal shall be addressed to Iowa Department of Public Health, Division of ~~Environmental Health~~ ADPER and EH, Tattoo Permit Program, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075. If such a request is made within the 20-day time period, the order shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the order upon satisfaction that the reason for the order has been or will be removed. After the hearing, or upon default of the aggrieved party, the administrative law judge shall affirm, modify or set aside the order. If no request for appeal is received within the 20-day time period, the department's order shall become the department's final agency action.

22.17(4) to 22.17(10) No change.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

22.17(11) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The copy shall be directed to Iowa Department of Public Health, Division of ~~Environmental Health~~ ADPER and EH, Tattoo Permit Program, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075.

22.17(12) No change.

These rules are intended to implement Iowa Code section 135.37.

[Filed 7/14/16, effective 9/7/16]

[Published 8/3/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/3/16.

ARC 2654C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of 1996 Iowa Acts, chapter 1212, section 5, the Department of Public Health hereby amends Chapter 177, "Health Data," Iowa Administrative Code.

The rules in Chapter 177 describe the Department's ability to collect and provide access to health information, including inpatient, outpatient and ambulatory data. These amendments allow patient names to be collected, which will enable Department programs to implement the Brain and Spinal Cord Injury Registry outlined in Chapter 21. These amendments will also greatly improve the epidemiological value of the data to more reliably link vital records, Medicaid and other databases with the inpatient and outpatient databases to assess patient care and outcomes. Personal identifiers and demographic information (e.g., patient ZIP code, age, sex) are already part of the inpatient and outpatient data sets of the Department. These amendments will allow unique identifiers to be created for patients. These unique identifiers will protect personal identity but still allow important research and surveillance to be completed across health care settings, including the study of readmission patterns, cost of care, emergency care, and patient transfers between health care settings. The Department ensures strict data confidentiality standards for all Department data. Confidentiality of patient identity will continue to be ensured through the use of secure computer software and hardware, the limiting of access to files with patient identifiers, staff training, and signed confidentiality agreements for those who wish to access data. In addition, these amendments update the implementation sentence of Chapter 177 and rescind the definitions of "contractor" and "payor."

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2458C** on March 16, 2016. A public hearing was held on April 5, 2016. No public comments were received. These amendments are identical to those published under Notice of Intended Action.

The Department adopted these amendments on July 13, 2016.

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

These amendments are intended to implement 1996 Iowa Acts, chapter 1212, section 5, and Iowa Code section 135.166.

These amendments will become effective September 7, 2016.

The following amendments are adopted.

ITEM 1. Rescind the definitions of "Contractor" and "Payor" in rule **641—177.2(76GA,ch1212)**.

ITEM 2. Adopt the following **new** subrule 177.3(3):

177.3(3) The Iowa Hospital Association shall collect, maintain, and disseminate hospital inpatient, outpatient, and ambulatory information pursuant to a memorandum of understanding with the department. The Iowa Hospital Association shall submit data to the department pursuant to the memorandum of understanding.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 3. Amend rule 641—177.4(76GA,ch1212) as follows:

641—177.4(76GA,ch1212) Department studies. The department shall may conduct special studies consistent with the intent of 1996 Iowa Acts, chapter 1212, using data collected in accordance with subrule 177.3(1). In conducting such studies, the department may utilize the services of a contractor.

ITEM 4. Amend rule 641—177.6(76GA,ch1212) as follows:

641—177.6(76GA,ch1212) Patient confidentiality. The department shall protect patient confidentiality. Confidential records or parts of such records collected as a part of this process shall be kept confidential. ~~Individual patient names shall not be collected to protect patient confidentiality.~~ All health data shall be collected, maintained, and disseminated only in accordance with Iowa and federal law.

ITEM 5. Rescind and reserve rule **641—177.7(76GA,ch1212)**.

ITEM 6. Amend rule 641—177.8(76GA,ch1212) as follows:

641—177.8(76GA,ch1212) Address and specification for data submissions. Data required to be submitted pursuant to this chapter shall be sent by agencies and health care providers, or their representatives, to the Iowa Department of Public Health, ~~Center for Health Statistics, Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa 50319~~ by the means and time frame specified by the department.

~~Data required to be submitted pursuant to this rule shall be sent in the form designated by the department within 30 days following the six-month calendar periods ending in June and December.~~

ITEM 7. Amend **641—Chapter 177**, implementation sentence, as follows:

These rules are intended to implement 1996 Iowa Acts, chapter 1212, section 5, and Iowa Code section 135.166.

[Filed 7/14/16, effective 9/7/16]

[Published 8/3/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/3/16.

ARC 2657C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue hereby rescinds Chapter 1, "State Board of Tax Review—Administration," and Chapter 2, "State Board of Tax Review—Conduct of Appeals and Rules of Practice and Procedure," and amends Chapter 6, "Organization, Public Inspection," Chapter 7, "Practice and Procedure Before the Department of Revenue," Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Chapter 11, "Administration," Chapter 67, "Administration," Chapter 71, "Assessment Practices and Equalization," Chapter 73, "Property Tax Credit and Rent Reimbursement," Chapter 76, "Determination of Value of Railroad Companies," Chapter 77, "Determination of Value of Utility Companies," Chapter 80, "Property Tax Credits and Exemptions," Chapter 81, "Administration," Chapter 85, "Tobacco Master Settlement Agreement," and Chapter 103, "State-Imposed and Locally Imposed Hotel and Motel Taxes—Administration," Iowa Administrative Code.

This rule making revises the Department of Revenue's rules to conform to 2015 Iowa Acts, chapter 109 ("the Act"). The Act caused the State Board of Tax Review to be dissolved upon the final disposition of all cases pending before the Board on the effective date of the Act, or July 1, 2016, whichever occurred earlier. The State Board of Tax Review has now been dissolved. The Act also provided that appeals previously brought before the State Board of Tax Review will now be heard by the Director of Revenue.

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In response to the Director's having an appellate role in certain tax areas, the Iowa Code was amended to provide that the Department of Revenue shall become the agency actor in place of the Director.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2519C** on April 27, 2016. No public comments were received. No changes have been made from the Notice of Intended Action for the adopted filing.

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

The Department of Revenue adopted these amendments on July 15, 2016.

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

These amendments are intended to implement Iowa Code sections 421.60, 425.7, 425.17, 425.18, 425.26, 425.27, 425.29, 425.31, 426A.6, 426C.7, 426C.8, 428.28, 428.29, 429.1, 429.2, 429.3, 433.1, 433.2, 433.3, 433.4, 433.5, 433.7, 433.8, 433.9, 434.2, 434.12, 434.14, 434.15, 434.16, 434.17, 434.22, 437.2, 437.4, 437.5, 437.6, 437.7, 437.8, 437.9, 437.10, 437.12, 438.4, 438.5, 438.6, 438.7, 438.8, 438.9, 438.11, 438.12, 438.13, 438.14, 438.15, 440.2, 440.5, 440.6, 440.7, 441.17, 441.21, 441.24, 441.26, 441.47, and 441.48 and 2015 Iowa Acts, chapter 109.

These amendments will become effective September 7, 2016.

The following amendments are adopted.

ITEM 1. Rescind and reserve **701—Chapter 1.**

ITEM 2. Rescind and reserve **701—Chapter 2.**

ITEM 3. Amend subrules 6.1(1) and 6.1(2) as follows:

6.1(1) *Establishment of the department.* ~~By an Act of the general assembly (chapter 1245, Acts of the 71st GA), a department of revenue and finance was created in lieu of three separate state agencies. The department is administered by the director with a three-member state board of tax review established within the department for administrative and budgetary purposes. As to the organization and functions of the state board of tax review, see rules contained in 701—Chapters 1 to 5. Iowa Code section 421.2 establishes a department of revenue to be administered by a director of revenue.~~

~~Effective July 1, 2003, the Iowa department of revenue and finance is titled the Iowa department of revenue.~~

The department of revenue in recognizing its responsibilities has adopted the following creed to guide and lend direction to its endeavors:

“The Department of Revenue is dedicated to serving the citizens of Iowa and other public officials, while performing the following mission:

~~“Collect all taxes due, which any person may be required by law to pay, but no more. “To serve Iowans and to support government services in Iowa by collecting all taxes required by law, but no more.~~

“In carrying out this mission the department resolves to provide the best service possible in a cordial and helpful manner and to provide maximum opportunity and incentive for the professional growth and development of all our employees.”

The office of the department is maintained at the seat of government in the Hoover State Office Building, 1305 East Walnut Street, P.O. Box 10460, Des Moines, Iowa ~~50306~~ 50319.

6.1(2) *Organization of the department.* The department consists of the office of the director; and the following divisions: property tax, tax policy and communications, internal services, tax management, and research and analysis, process improvement and innovation; and the state board of tax review. For ease of administration, the director has organized the department's divisions in some instances into bureaus, sections, subsections, and units.

~~a. The office of the director. The office of the director consists of the director and the following areas within this office: strategic planning and public/private partnership.~~ The essential functions of the director's office of the director include:

(1) Overall management of the agency ~~and review of protest and revocation cases on appeal.~~

(2) Review of protest and revocation cases on appeal.

~~(2)~~ (3) Strategic planning and coordination of the future operations and goals of the department.

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~~(3)~~ (4) ~~Providing~~ Provision of financial checks and balances within the department.

(4) ~~(5)~~ ~~Public/private partnership provides for~~ Facilitation of a working relationship between the public sector and the private sector.

b. Divisions.

(1) Property tax division. The property tax division provides technical assistance and training to local assessing jurisdictions, ensures equal assessment of property, and is responsible for determining valuation for ~~railroads, electric, water, and pipeline companies~~ centrally assessed property.

(2) Tax management division. The tax management division includes the processing services section, the compliance services section and the collection services section. The essential functions of the tax management division include:

1. Functions performed by the processing services section, ~~including~~ which is responsible for registration of taxpayers, deposit of tax revenue, processing of tax returns, ~~records~~ management of records, and provision of mail services;

2. Functions performed by the compliance services section, including office examination of returns, identification of nonfilers and underreporters of income, assessment, and review and approval of refund claims. The compliance services section also performs field audits and is responsible for audits for criminal prosecution; and

3. Functions performed by the collection services section, which is responsible for the timely collection of past-due tax liabilities, as well as collection activities for ~~the judicial branch of state government and for~~ other state agencies and local governments.

(3) Tax policy and communications division. The tax policy and communications division consists of audit services, taxpayer services, and policy. The essential functions of the tax policy and communications division include:

1. Functions performed by the audit services section, which ~~develops and reviews audit programs and completed audits, manuals, and guidelines for auditors, and which~~ provides support for the compliance services section, and coordinates the administrative process of protests and protest resolution and includes the clerk of the hearings section;

2. Functions performed by the taxpayer services section, which is responsible for responding to inquiries from the public, ~~practitioners~~ and other agencies, drafting brochures and graphics, ~~completing returns,~~ maintaining the department's online tax research library and Web page site, and coordinating public education by the department; and

3. Functions performed by the tax policy section, which is responsible for ~~the interpretation of legislation, statutes and cases~~ interpreting state and federal law, developing and maintaining rules for the department and monitoring tax-related issues considered by the general assembly and the United States Congress. This section also drafts declaratory orders, offers technical advice and completes studies and reports.

(4) Internal services division. The essential functions of the internal services division include:

1. Functions performed by the central accounting team, which include operating budget development, maintenance, and reporting; ~~and~~

2. Functions performed by the employee resource team, which governs personnel activities, payroll, benefits, quality of the environment and customer service; ~~;~~

3. Functions performed by the application development section, including system analysis, programming, database administration and support, in coordination with the information technology enterprise of the department of administrative services; and

4. Functions performed by the technical planning and support section, including providing technical support to the department on software and hardware issues, in coordination with the information technology enterprise of the department of administrative services.

(5) Research and analysis division. The essential functions of the research and analysis division include:

1. Functions performed by the research and program analysis section, which provides research on tax issues, compiles statistical tax data, undertakes tax credit tracking and analysis, projects state receipts and refunds, and evaluates the fiscal impact of tax legislation and policies on the state budget; and

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2. Functions performed by the performance analysis section, which develops and maintains performance measures for the department to align the department's resources, systems, and employees to meet strategic goals and priorities.

~~(6) Process improvement and innovation division. The essential functions of the process improvement and innovation division include:~~

~~1. Functions performed by the application development section, including system analysis, programming, database administration and support, in coordination with the information technology enterprise of the department of administrative services;~~

~~2. Functions performed by the technical planning and support section, including providing technical support to the department on software and hardware issues, in coordination with the information technology enterprise of the department of administrative services; and~~

~~3. Functions performed by the process improvement section, including identifying, analyzing, and improving existing processes within the department.~~

ITEM 4. Amend subrule 7.8(7) as follows:

7.8(7) The protest shall substantially state in separate numbered paragraphs the following:

a. Proper allegations showing:

(1) Date of assessment department action, such as the assessment notice, refund denial, etc.;

~~(2) Date of refund denial;~~

~~(3) (2) Whether the protester failed to timely appeal the assessment and, if so, the date of payment and the date of filing of the refund claim;~~

~~(4) (3) Whether the protest involves the appeal of a refund claim after six months from the date of filing the refund claim because the department failed to deny the claim;~~

~~(5) (4) The assessment, refund claim, and refund denial, copies Copies of which shall be attached the documented department action, such as the assessment notice, refund claim, and refund denial letter;~~

~~(6) (5) Other items that the protester wishes to bring to the attention of the department; and~~

~~(7) (6) A request for attorney fees, if applicable.~~

b. The type of tax, the taxable period or periods involved and the amount in controversy.

c. Each error alleged to have been committed, listed in a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.

d. Reference to any particular statute or statutes and any rule or rules involved, if known.

e. Description of records or documents ~~which that~~ were not available or were not presented to department personnel prior to the filing of the protest, if any. Copies of any records or documents that were not previously presented to the department shall be provided.

f. Any other matters deemed relevant and not covered in the above paragraphs.

g. The desire of the protester to waive informal or contested case proceedings if waiver is desired.

Unless the protester so indicates a waiver, informal procedures will be initiated.

h. A statement setting forth the relief sought by the protester.

i. The signature of the protester or that of the protester's representative, the addresses of the protester and of the protester's representative, and the telephone number of the protester or the protester's representative. A copy of the power of attorney for the protester's representative shall be attached.

ITEM 5. Amend paragraph **7.17(10)“b”** as follows:

b. *Finality of decision.* A decision entered in an expedited case proceeding shall not be reviewed by the director, ~~state board of tax review~~, or any other court; and shall not be treated as a precedent for any other case.

ITEM 6. Amend paragraph **10.8(1)“f”** as follows:

f. The taxpayer presents proof that the taxpayer at the due date of the return, deposit form, or payment relied upon applicable, documented, written advice made specifically to the taxpayer, the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal Internal Revenue Service. The advice should be relevant to the agency offering the advice and not beyond the scope of the agency's area of expertise and knowledge. The advice must be current and not superseded by a court decision, ruling of a

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quasi-judicial body such as an administrative law judge, ~~or the director, or the state board of tax review,~~ or by the adoption, amendment, or repeal of a rule or law.

ITEM 7. Amend subrule 11.4(5) as follows:

11.4(5) Preservation of records. The records required in this rule shall be preserved for a period of five years and open for examination by the department during this period of time. ~~*McCarville v. Ream*, 247 Iowa, 72 N.W.2d 476 (1956).~~

The department shall be able to examine the records of a taxpayer for a period of years as is necessary to adequately determine if tax is due in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

If a tax liability has been assessed and an appeal is pending to the department, ~~state board of tax review~~ or district court or ~~supreme~~ an appellate court, books, papers, records, memoranda or documents specified in this rule which relate to the period covered by the assessment shall be preserved until the final disposition of the appeal.

If the requirements of this rule are not met, the records will be considered inadequate and the department will compute the tax liability as authorized in Iowa Code section ~~422.54~~ 423.37.

ITEM 8. Amend rule ~~701—11.4(422,423)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~422.47, 422.50, 422.54, 423.16 and 423.21~~ 423.37, 423.41, and 423.45.

ITEM 9. Amend subrule 67.3(13) as follows:

67.3(13) General requirements. If a tax liability has been assessed and an appeal is pending to the department, ~~state board of tax review, or~~ district court or ~~supreme~~ an appellate court, books, papers, records, memoranda, or documents specified in this rule ~~which that~~ relate to the period covered by the assessment must be preserved until the final disposition of the appeal.

If the requirements of this rule are not met, the records will be considered inadequate and rule ~~701—67.5(452A)~~, estimate gallonage, applies.

ITEM 10. Amend rules ~~701—71.8(428,441) and 701—71.9(428,441)~~ as follows:

701—71.8(428,441) Abstract of assessment. Each city and county assessor shall submit annually to the ~~director~~ department of revenue at the times specified in Iowa Code section 441.45 an abstract of assessment for the current year. The assessor shall use the form of abstract prescribed and furnished by the department of ~~revenue~~, and shall enter on the abstract all information required by the department. However, the department may approve the use of a computer-prepared abstract if the data is in essentially the same format as on the form prescribed by the department. The information entered on the abstract of assessment shall be reviewed and considered by the ~~director of revenue~~ department in equalizing the valuations of classes of properties.

This rule is intended to implement Iowa Code sections 428.4 and 441.45.

701—71.9(428,441) Reconciliation report. The assessor's report of any revaluation required by Iowa Code section 428.4 shall be made on the reconciliation report prescribed and furnished by the department of revenue. The assessor shall enter on the report all information required by the department. The reconciliation report shall be a part of the abstract of assessment required by Iowa Code section 441.45 and shall be reviewed and considered by the ~~director~~ department in equalizing valuations of classes of property.

This rule is intended to implement Iowa Code sections 428.4 and 441.45.

ITEM 11. Amend rule ~~701—71.11(441)~~ as follows:

701—71.11(441) Equalization of assessments by class of property.

71.11(1) Commencing in 1977 and every two years thereafter, the ~~director~~ department of revenue shall order the equalization of the levels of assessment of each class of property as provided in rule ~~701—71.12(441)~~ by adding to or deducting from the valuation of each class of property, as reported to the department on the abstract of assessment and reconciliation report ~~which that~~ is a part of the abstract,

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the percentage in each case as may be necessary to bring the level of assessment to its actual value as defined in Iowa Code section 441.21. Valuation adjustments shall be ordered if the ~~director~~ department determines that the aggregate valuation of a class of property as reported on the abstract of assessment submitted by the assessor is at least 5 percent above or below the aggregate valuation for that class of property as determined by the ~~director~~ department pursuant to rule 701—71.12(441). Equalization orders of the ~~director~~ department shall be restricted to equalizing the aggregate valuations of entire classes of property among the several assessing jurisdictions. All classifications of real estate shall be applied uniformly throughout the state of Iowa.

71.11(2) Equalization percentage adjustments determined for residential realty located outside incorporated areas and not located on agricultural land shall apply to buildings located on agricultural land outside incorporated areas, which are primarily used or intended for human habitation, as defined in subrule 71.1(4).

Equalization percentage adjustments determined for residential realty located within incorporated cities and not located on agricultural land shall apply to buildings located on agricultural land within incorporated cities ~~which that~~ that are primarily used or intended for human habitation as defined in subrule 71.1(4).

This rule is intended to implement Iowa Code sections 441.21, 441.47, 441.48 and 441.49.

ITEM 12. Amend paragraph **71.12(1)“b”** as follows:

b. Use of other relevant data. The ~~director~~ department of revenue may also consider other relevant data, including field investigations conducted by representatives of the department ~~of revenue~~, to determine the level of assessment of agricultural real estate.

ITEM 13. Amend paragraphs **71.12(2)“a”** and **“b”** as follows:

a. Use of assessment/sales ratio study.

(1) Basic data shall be that set forth in rule 701—71.10(421) refined by eliminating any sales determined to be abnormal or by adjusting the sales to eliminate the effects of factors ~~which that~~ that resulted in the determination that the sales having been determined to be were abnormal. The basic data used shall be the assessment/sales ratio study conducted for sales taking place during the calendar year immediately preceding the year in which the equalization order is issued. The ~~director~~ department of revenue may also supplement the assessment/sales ratio study with appraisals made by department ~~of revenue~~ appraisal personnel for the year immediately preceding the year in which the equalization order is issued. The assessment/sales ratio study including relevant appraisals, if any, shall be used to determine the aggregate actual valuation of residential real estate in each assessing jurisdiction. The ~~director of revenue~~ department may consider sales and appraisal data for prior years if it is determined the use of the sales and appraisal data for the year immediately preceding the year in which the equalization order is issued is insufficient to determine market value. If such sales and appraisal data for prior years is used, consideration shall be given for any subsequent changes in either assessed value or market value.

(2) Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals ~~which that~~ that would indicate abnormal or unusual conditions or reporting discrepancies ~~which that~~ that would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.

b. Use of other relevant data. The ~~director~~ department of revenue may also consider other relevant data, including field investigations conducted by representatives of the department ~~of revenue~~, to determine the level of assessment of residential real estate.

ITEM 14. Amend paragraphs **71.12(3)“a”** and **“b”** as follows:

a. Use of assessment/sales ratio study.

(1) Basic data shall be that set forth in rule ~~701—71.11(421)~~ 701—71.10(421), refined by eliminating any sales determined to be abnormal or by adjusting same to eliminate the effects of factors ~~which that~~ that resulted in the determination that the sales having been determined to be were abnormal.

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The basic data used shall be the assessment/sales ratio study conducted for sales taking place during the calendar year immediately preceding the year in which the equalization order is issued. The ~~director~~ department of revenue may also supplement the assessment/sales ratio study with appraisals made by ~~department of revenue~~ appraisal personnel for the year immediately preceding the year in which the equalization order is issued. The assessment/sales ratio study including relevant appraisals, if any, shall be used to determine the aggregate actual valuation of multiresidential real estate in each assessing jurisdiction. The ~~director of revenue~~ department may consider sales and appraisal data for prior years if it is determined the use of sales and appraisal data for the year immediately preceding the year in which the equalization order is issued is insufficient to determine market value. If such sales and appraisal data for prior years is used, consideration shall be given for any subsequent changes in either assessed value or market value.

(2) Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals that would indicate abnormal or unusual conditions or reporting discrepancies that would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.

b. Use of other relevant data. The ~~director~~ department of revenue may also consider other relevant data, including field investigations conducted by representatives of the ~~department of revenue~~, to determine the level of assessment of multiresidential real estate.

~~Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals which would indicate abnormal or unusual conditions or reporting discrepancies which would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.~~

ITEM 15. Amend paragraphs **71.12(4)“a”** and **“b”** as follows:

a. Use of assessment/sales ratio study.

(1) Basic data shall be that set forth in rule 701—71.10(421), refined by eliminating any sales determined to be abnormal or by adjusting same to eliminate the effects of factors ~~which that~~ resulted in the determination that the sales ~~having been determined to be~~ were abnormal. The basic data used shall be the assessment/sales ratio study conducted for sales taking place during the calendar year immediately preceding the year in which the equalization order is issued. The ~~director~~ department of revenue may also supplement the assessment/sales ratio study with appraisals made by ~~department of revenue~~ appraisal personnel for the year immediately preceding the year in which the equalization order is issued. The assessment/sales ratio study including relevant appraisals, if any, shall be used to determine the aggregate actual valuation of commercial real estate in each assessing jurisdiction. The ~~director of revenue~~ department may consider sales and appraisal data for prior years if it is determined the use of sales and appraisal data for the year immediately preceding the year in which the equalization order is issued is insufficient to determine market value. If such sales and appraisal data for prior years is used, consideration shall be given for any subsequent changes in either assessed value or market value. Properties receiving a dual classification with the primary use being commercial shall be included.

(2) Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals that would indicate abnormal or unusual conditions or reporting discrepancies that would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.

b. Use of other relevant data. The ~~director~~ department of revenue may also consider other relevant data, including field investigations conducted by representatives of the ~~department of revenue~~,

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to determine the level of assessment of commercial real estate. The diverse nature of commercial real estate precludes the use of a countywide or citywide income capitalization study.

~~Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals which would indicate abnormal or unusual conditions or reporting discrepancies which would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.~~

ITEM 16. Amend subrules 71.12(5), 71.12(6) and 71.12(7) as follows:

71.12(5) *Industrial real estate.* It is not possible to determine the level of assessment of industrial real estate by using accepted equalization methods. The lack of sales data precludes the use of an assessment/sales ratio study, the diverse nature of industrial real estate precludes the use of a countywide or citywide income capitalization study, and the limited number of industrial properties precludes the use of sample appraisals. The level of assessment of industrial real estate can only be determined by the valuation of individual parcels of industrial real estate. Any attempt to equalize industrial valuations by using accepted equalization methods would create an arbitrary result. However, under the circumstances set forth in Iowa Code subsection 421.17(10), the ~~director~~ department may correct any errors in such assessments ~~which that~~ are brought to the ~~director's~~ attention of the department, including errors related to property with a dual classification if the primary use of the property is from the industrial portions.

71.12(6) *Centrally assessed property.* Property assessed by the ~~director~~ department of revenue pursuant to Iowa Code chapters 428 and 433 to 438, inclusive, is equalized internally by the ~~director~~ department in the making of the assessments. Further, the assessments are equalized with the aggregate valuations of other classes of property as a result of actions taken by the ~~director of revenue~~ department pursuant to rule 701—71.11(441).

71.12(7) *Miscellaneous real estate.* Since it is not possible to use accepted equalization methods to determine the level of assessment of mineral rights and interstate railroad and toll bridges, these classes of property shall not be subject to equalization by the ~~director~~ department of revenue. However, under the circumstances set forth in Iowa Code section 421.17(10), the ~~director~~ department may correct any errors in assessments which are brought to the ~~director's~~ attention of the department.

ITEM 17. Amend rules 701—71.14(441) to 701—71.17(441) as follows:

701—71.14(441) Hearings before the ~~director~~ department.

71.14(1) *Protests.* Written or oral protest against the proposed percentage adjustments as set forth in the tentative equalization notice issued by the ~~director~~ department of revenue shall be made only on behalf of the affected assessing jurisdiction. The protests shall be made only by officials of the assessing jurisdiction, including, but not limited to, an assessing jurisdiction's city council or board of supervisors, assessor, or city or county attorney. An assessing jurisdiction may submit a written protest in lieu of making an oral presentation before the ~~director~~ department, or may submit an oral protest supported by written documentation. Protests against the adjustments in valuation contained in the tentative equalization notices shall be limited to a statement of the error or errors complained of and shall include such facts as might lead to their correction. No other factors shall be considered by the ~~director~~ department in reviewing the protests. Protests and hearings on tentative equalization notices before the ~~director~~ department are excluded from the provisions of the Iowa Administrative Procedure Act governing contested case proceedings.

71.14(2) *Conduct of hearing.* The ~~director~~ department shall schedule each hearing so as to allow the same amount of time within which each assessing jurisdiction can make its presentation. During the hearing each assessing jurisdiction shall be afforded the opportunity to present evidence relevant to its protest. The ~~director or the director's designated~~ division administrator for the property tax division shall act as the department's representative. The department's representative shall preside at the hearing, which shall be held at the time and place designated by the ~~director~~ department or such other time

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and place as may be mutually agreed upon by the ~~director~~ department and the protesting assessing jurisdiction.

This rule is intended to implement Iowa Code section 441.48.

701—71.15(441) Final equalization order and appeals.

71.15(1) *Issuance of final equalization order.* After the tentative equalization notice has been issued and an opportunity for a hearing described in rule 701—71.14(441) has been afforded, the ~~director~~ department of revenue shall issue a final equalization order by mail to the county auditor. The order shall specify any percentage adjustments in the aggregate valuations of any class of property to be made effective for the county as of January 1 of the year in which the order is issued. The final equalization order shall be issued on or before October 1 unless for good cause it cannot be issued until after October 1. The final equalization order shall be implemented by the county auditor.

71.15(2) *Appeal of final equalization order.* ~~A~~ The city or county officials of the affected county or assessing jurisdiction may appeal a final equalization order to the ~~state board of tax review~~ director of revenue by filing a notice of appeal with the clerk of the hearings section of the department of revenue. The ~~protest~~ notice of appeal must be filed or postmarked not later than ten days after the date the final equalization order is issued.

a. *Form of appeal.* The notice of appeal shall be in writing and in the same format as provided in 701—subrule 7.8(6).

- (1) The notice of appeal shall substantially state in separate numbered paragraphs the following:
1. The county or assessing jurisdiction;
 2. The date on which the final equalization order was issued;
 3. The portion of the equalization order being appealed;
 4. A clear and concise assignment of each and every error;
 5. A clear and concise statement of the facts upon which the affected county or assessing jurisdiction relies as sustaining the assignment of error;
 6. The relief requested;
 7. The signature of the city or county officials bringing the appeal, or their representative, along with the address to which all subsequent correspondence, notice or papers shall be served or mailed.

(2) A county or assessing jurisdiction may amend its notice of appeal at any time prior to the commencement of the evidentiary hearing. The department may request that the county or assessing jurisdiction amend the notice of appeal for clarification.

b. *Filing of notice of appeal.* The notice of appeal must either be delivered to the department by electronic means or by United States Postal Service or a common carrier, by ordinary, certified, or registered mail, directed to the attention of the clerk of the hearings section at P.O. Box 14457, Des Moines, Iowa 50319, or be personally delivered to the clerk of the hearings section or served on the clerk of the hearings section by personal service during business hours. For the purpose of mailing, a notice of appeal is considered filed on the date of the postmark. If a postmark date is not present on the mailed article, then the date of receipt of protest will be considered the date of mailing. Any document, including a notice of appeal, is considered filed on the date personal service or personal delivery to the office of the clerk of the hearings section is made. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing.

c. *Answer.* The department of revenue shall file an answer with the clerk of the hearings section within 30 days after the filing of the pleading responded to, unless attacked by motion as provided in 701—subrule 7.17(5), and then the answer shall be filed within 30 days after the date on which the fact finder issues a ruling on the motion. The department may amend its answer at any time prior to the commencement of the evidentiary hearing.

d. *Docketing.* Appeals shall be assigned a docket number as provided in rule 701—7.10(17A). Records consisting of the case name and the corresponding docket number assigned to the case must be maintained by the clerk of the hearings section. The records of each case shall also include each action and each act done, with the proper dates as follows:

- (1) The title of the appeal;

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(2) Brief statement of the date of the final equalization order, the property tax classification affected, and the relief sought;

(3) The manner and time of service of notice of appeal;

(4) The appearance of all parties;

(5) Notice of hearing, together with manner and time of service; and

(6) The decision of the director or administrative law judge or other disposition of the case and the date.

e. Hearing. Rules 701—7.14(17A) through 701—7.22(17A) shall apply to any hearing or proceeding regarding the appeal of a final equalization order to the director of revenue.

This rule is intended to implement Iowa Code chapter 17A and sections 441.48 and 441.49.

701—71.16(441) Alternative method of implementing equalization orders.

71.16(1) *Application for permission to use an alternative method.*

a. A request by an assessing jurisdiction for permission to use an alternative method of applying the final equalization order must be made in writing to the ~~director~~ department of revenue within ten days from the date the county auditor receives the final equalization order. The written request shall include the following information:

~~a.~~ (1) Facts evidencing the need to use an alternative method of implementing the final equalization order. Such facts shall clearly show that the proposed method is essential to ensure compliance with the provisions of Iowa Code section 441.21.

~~b.~~ (2) The exact methods to be employed in implementing the requested alternative method for each class of property.

~~c.~~ (3) The specific method of notifying affected property owners of the valuation changes.

~~d.~~ (4) Evidence that the alternative method will result in an aggregate property class valuation adjustment equivalent to that prescribed in the ~~director's~~ department's final equalization order.

b. The ~~director~~ department of revenue shall review each written request for an alternative method and shall notify the assessing jurisdiction of acceptance or rejection of the proposed method by October 15. The assessing jurisdiction shall immediately inform the county auditor of the ~~director's~~ department's decision. The county auditor shall include a description of any approved alternative method in the required newspaper publication of the final equalization order. In those instances where the approved alternative method includes individual property owner notification, the publication shall not be considered proper notice to the affected property owners.

71.16(2) *Implementation of alternative method.* If an alternative method is approved by the ~~director~~ department of revenue, any individual notification of property owners shall be completed by the assessor by not later than October 25.

71.16(3) *Appeal by property owners.* If an alternative method is approved by the ~~director~~ department of revenue, the special session of the local board of review to hear equalization protests shall be extended to November 30. In such instances, protests may be filed up to and including November 4.

This rule is intended to implement Iowa Code section 441.49.

701—71.17(441) Special session of boards of review.

71.17(1) *Grounds for protest.* The only ground for protesting to the local board of review reconvened in special session pursuant to Iowa Code section 441.49 is that the application of the ~~director's~~ department's final equalization order results in a value greater than that permitted under Iowa Code section 441.21.

71.17(2) *Authority of board of review.* When in special session to hear protests resulting from equalization adjustments, the local board of review shall only act upon protests for those properties for which valuations have been increased as a result of the application of the ~~director~~ department of revenue's final equalization order.

The local board of review may adjust valuations of those properties it deems warranted, but under no circumstance shall the adjustment result in a value less than that which existed prior to the application of

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the ~~director's~~ department's equalization order. The local board of review shall not adjust the valuation of properties for which no protests have been filed.

71.17(3) Report of board of review. In the report to the ~~director~~ department of revenue of action taken by the local board of review in special session, the board of review shall report the aggregate valuation adjustments by class of property as well as all other information required by the ~~director~~ department of revenue to determine if such actions may have substantially altered the equalization order.

71.17(4) Meetings of board of review. If the final equalization order does not increase the valuation of any class of property, the board of review is not required to meet during the special session. If the final equalization order increases the valuation of one or more classes of property but no protests are filed by the times specified in Iowa Code section 441.49, the board of review is not required to meet during the special session.

This rule is intended to implement Iowa Code sections 421.17(10) and 441.49.

ITEM 18. Amend paragraph **71.25(2)“d”** as follows:

d. ~~Director~~ Department of revenue. The ~~director~~ department of revenue may make an omitted assessment of any property assessable by the ~~director~~ department at any time within two years from the date the assessment should have been made.

ITEM 19. Amend rule 701—71.26(441) as follows:

701—71.26(441) Assessor compliance.

71.26(1) The assessor shall determine the value of real property in accordance with rules adopted by the department of revenue and in accordance with forms and guidelines contained in the Iowa Real Property Appraisal Manual prepared by the department. The assessor may use an alternative manual to value property if it is a unique type of property not covered in the manual prepared by the department.

71.26(2) If the department finds that an assessor is not in compliance with the rules of the department relating to valuation of property or has disregarded the forms and guidelines contained in the real property appraisal manual, the department shall notify the assessor and each member of the conference board for that assessing jurisdiction. The notice shall be mailed by restricted certified mail and shall specify the areas of noncompliance and the steps necessary to achieve compliance. The notice shall also inform the assessor and conference board that if compliance is not achieved, a penalty may be imposed.

71.26(3) The conference board shall respond to the department within 30 days of receipt of the notice of noncompliance. The conference board may respond to the notice by asserting that the assessor is in compliance with the rules, guidelines, and forms of the department or by informing the department that the conference board intends to submit a plan of action to achieve compliance. If the conference board responds to the notification by asserting that the assessor is in compliance, a hearing before the director of revenue shall be held on the matter within 60 days of receipt of the notice of noncompliance. The director's decision is subject to judicial review in accordance with Iowa Code chapter 17A. If it is agreed that the assessor is not in compliance, the conference board shall submit a plan of action within 60 days of receipt of the notice of noncompliance.

71.26(4) The plan of action shall contain a time frame under which compliance shall be achieved, which shall be no later than January 1 of the following assessment year. The ~~plan of action~~ shall contain the signature of the assessor and of the chairperson of the conference board. The department shall review the plan to determine whether the plan is sufficient to achieve compliance. Within 30 days of receipt of the plan, the department shall notify the assessor and the chairperson of the conference board that it has accepted the plan or that it is necessary to submit an amended plan of action.

71.26(5) By January 1 of the assessment year following the calendar year in which the plan of action was submitted to the department, the conference board shall submit a report to the department verifying that the ~~plan of action~~ was followed and compliance has been achieved. The department may conduct a field inspection to ensure that the assessor is in compliance. By January 31, the department shall notify the assessor and the conference board, by restricted certified mail, either that compliance has been achieved or that the assessor remains in noncompliance. If the department determines that the assessor remains in noncompliance, the department shall take steps to withhold up to 5 percent of the

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reimbursement payment authorized in Iowa Code section 425.1 until the ~~director of revenue~~ director of revenue department determines that the assessor is in compliance.

71.26(6) If the conference board disputes the determination of the department, the chairperson of the conference board may appeal the determination to the ~~state board of tax review~~ director of revenue under 701—Chapter 7.

This rule is intended to implement Iowa Code Supplement section 441.21.

ITEM 20. Amend rule 701—73.30(425) as follows:

701—73.30(425) Audit of claim.

73.30(1) Authority. The ~~director~~ department of revenue may audit the records of the county treasurer to determine the accuracy of claims filed for property tax credits. The ~~director~~ department may also investigate the eligibility of a claimant for a property tax credit or rent reimbursement.

73.30(2) Recomputed rent reimbursement claim. If it is determined a computed rent reimbursement is in error, the ~~director~~ department shall collect any overpayment from the claimant or reimburse the claimant for any underpayment. If a claimant fails to reimburse the department for an overpayment, the amount of overpayment shall be deducted from any future rent reimbursement to which the claimant is entitled.

73.30(3) Recomputed property tax credit claim. If it is determined a computed property tax credit has been overpaid, the ~~director~~ department shall notify the claimant and county treasurer of the overpayment. The county treasurer shall collect the overpayment from the claimant as if it were an unpaid property tax and reimburse the ~~director~~ department for the amount of overpayment. However, if the property upon which the credit was allowed is no longer owned by the claimant, the ~~director~~ department shall collect the amount of overpayment directly from the claimant. If it is determined a computed property tax credit has been underpaid, the ~~director~~ department shall reimburse the claimant directly for the amount of underpayment.

This rule is intended to implement Iowa Code section 425.27.

ITEM 21. Amend subrule 76.2(3) as follows:

76.2(3) The ~~director~~ department of revenue may require the filing of additional information if deemed necessary. The request for additional information shall be answered completely and in accordance with instructions therein specified. Additional information required shall be considered part of the annual report.

ITEM 22. Amend subrule 76.5(1) as follows:

76.5(1) The income capitalization approach to unit value estimates the market value of the operating property by dividing the income stream generated by the operating assets by a market-derived capitalization rate based on the costs of the various sources of capital utilized or available for use to purchase the assets generating the income stream.

a. The net railway operating income to be capitalized shall be a weighted average net railway operating income. The weighted average net railway operating income shall consist of an average of the three 12-month periods immediately preceding the valuation date. Each of the three preceding 12-month periods shall be weighted by multiplying the first preceding period by 60 percent, the second preceding period by 30 percent, and the third preceding period by 10 percent. There shall be no adjustment for the company's current-year deferred income taxes to this income stream.

b. The ~~director~~ department may also utilize a "free cash flow model" in calculating the railway operating income to be capitalized. The "free cash flow model" shall consist of an average of the five 12-month periods immediately preceding the valuation date. Each of the five preceding 12-month periods shall be given equal weighting in the calculation of the five-year average railway operating income to be capitalized. Each year the net railway operating income shall be adjusted by adding the current-year deferred income taxes associated with maintenance expenditures, adding the current-year depreciation expense, and subtracting the current-year capital expenditures necessary to maintain the plant.

c. The ~~director~~ department may give consideration to both calculations of operating income as described in this subrule to determine the railway operating income to be capitalized. The ~~director~~

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department may also consider, in both calculations, adjustments for extraordinary, unusual, and infrequent items. These adjustments would not be expected to occur annually and are different from the typical railroad business operations. The purpose and intent of the income indicator of value is to match income with sources of capital and therefore every source of capital utilized or available to be utilized to purchase assets should be reflected in the capitalization rate determination as well as all operating income. The ~~director~~ department shall not include a separate adjustment to either income stream for noncapitalized operating leases. In the event the railroad company has no income or has a negative income, the indicator of value set forth in this subrule shall not be utilized.

ITEM 23. Amend rule 701—76.7(434) as follows:

701—76.7(434) Correlation. In making a final determination of value, the ~~director~~ department shall give consideration to each of the methodologies described in these rules, the use of which will result in the determination of the fair and reasonable market value of the railroad company's entire operating property. The stock and debt indicator of value and the income indicator of value shall each be weighted at 50 percent. In this particular circumstance, when the ~~director~~ department utilizes the stock and debt indicator and the income indicator in the correlation process, the cost indicator will be given no weighting. If circumstances dictate that a particular method is inappropriate for a specific company, that method shall be given little or no weight in the final correlation of value.

This rule is intended to implement Iowa Code section 434.15.

ITEM 24. Amend rule 701—76.8(434) as follows:

701—76.8(434) Allocation of unit value to state.

76.8(1) Allocation by ~~director~~ the department. The ~~director~~ department shall allocate that portion of the total unit value of the railroad company's operating property to the state of Iowa based on factors ~~which~~ that are representative of the ratio that the railroad company's property and activity in the state of Iowa bear to the railroad company's total property and activity. These factors are:

- a. Gross operating revenue weighted 40 percent.
- b. All track mileage weighted 35 percent.
- c. Revenue traffic units weighted 15 percent.
- d. Car and locomotive mileage weighted 10 percent.

76.8(2) Alternative methods. In the event that the allocation prescribed by subrule 76.8(1) does not fairly and reasonably allocate unit value of the railroad company's operating property to the state of Iowa, the ~~director~~ department shall consider such other factors as the ~~director~~ department deems appropriate by the exercise of sound appraisal judgment.

This rule is intended to implement Iowa Code section 434.15.

ITEM 25. Amend subrule 77.2(3) as follows:

77.2(3) The ~~director~~ department may require the filing of additional information if deemed necessary. The request for additional information shall be answered completely and in accordance with instructions therein specified. Additional information required shall be considered part of the annual report.

ITEM 26. Amend rule 701—77.6(428,433,437,438) as follows:

701—77.6(428,433,437,438) Cost approach to unit value. The cost approach to unit value shall be determined by combining the cost of the operating properties of the utility and deducting therefrom an allowance for depreciation calculated on a straight-line basis. Other forms of depreciation may be deducted if found to exist. The ~~director~~ department may use the replacement cost new less depreciation (RCNLD) valuation methodology for determining the assessed value of the Iowa operating property required under Iowa Code chapter 433.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, and 438.14.

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ITEM 27. Amend rule 701—77.7(428,433,437,438) as follows:

701—77.7(428,433,437,438) Correlation. In making a final determination of value, the ~~director~~ department may give consideration to each of the methodologies described in these rules, the use of which will result in the determination of the fair and reasonable market value of the utility company's entire operating property. Generally, for other than pipeline companies, the stock and debt indicator of value shall be considered to be the most useful, the income indicator the next most useful, and the cost indicator the least useful. If circumstances dictate that a particular indicator is inappropriate or less reliable for a particular company, the correlation of the indicators of value shall be adjusted accordingly. The correlation for pipeline companies will consider the cost indicator to be the most useful, the income indicator the next most useful, and the stock and debt indicator the least useful. In making the final determination of value, the ~~director~~ department will weigh the stock and debt indicator of value at 10 percent, the income indicator of value at 40 percent and the cost indicator of value at 50 percent.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, and 438.14.

ITEM 28. Amend rule 701—77.8(428,433,437,438) as follows:

701—77.8(428,433,437,438) Allocation of unit value to state.

77.8(1) Allocation by ~~director~~ the department. The ~~director~~ department shall allocate that portion of the total unit value of the utility company's operating property to the state of Iowa based on factors ~~which~~ that are representative of the ratio that the utility company's property and activity in the state of Iowa bear to the utility company's total property and activity. These factors are:

- a. Gross operating property weighted 75 percent, and
- b. Gross operating revenues, or MCF miles, or barrel miles weighted 25 percent. The selection of the property and use factor to be utilized shall depend on the type of utility being valued.

77.8(2) Alternative methods. In the event that the allocation prescribed by subrule 77.8(1) does not fairly and reasonably allocate unit value of the utility company's operating property to the state of Iowa, the ~~director~~ department shall consider such other factors as the ~~director~~ department deems appropriate by the exercise of sound appraisal judgment.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, and 438.14.

ITEM 29. Amend subrule 80.8(7) as follows:

80.8(7) Minimum assessment. The partial exemption shall apply only to the value added in excess of the actual value of the property as of the year immediately preceding the year in which value added was first assessed. If the actual value of the property is reduced for any year during the period in which the partial exemption applies, any reduction in value resulting from the partial exemption shall not reduce the assessment of the property below its actual value as of January 1 of the assessment year immediately preceding the year in which value added was first assessed. This subrule applies regardless of whether the reduction in actual value is made by the assessor, the board of review, a court order, or an equalization order of the ~~director~~ department of revenue.

ITEM 30. Amend subrule 81.4(13) as follows:

81.4(13) General requirements. If a tax liability has been assessed and an appeal is pending to the department, ~~state board of tax review or district court or supreme~~ an appellate court, books, papers, records, memoranda or documents specified in this rule ~~which~~ that relate to the period covered by the assessment shall be preserved until the final disposition of the appeal.

The records will be considered inadequate when the requirements of this rule are not met. The director may, by express order in certain cases, authorize permit holders to keep their records in a manner and upon forms other than those so prescribed (agreements must be in writing).

ITEM 31. Amend subrule 85.22(4) as follows:

85.22(4) Procedure for contesting notice of noninclusion or deletion.

a. A tobacco product manufacturer that disagrees with a decision made by the attorney general in relation to the directory may contest the validity of the decision within 60 days of the date of the decision by filing a written protest of that decision with the Iowa Department of Revenue, Clerk of

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the Hearings Section, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319, pursuant to rule 701—7.8(17A). The protest shall conform generally to the requirements of 701—subrules 7.8(1) through 7.8(10) to the extent applicable. The protest will, thereafter, be processed and a contested case hearing will be held in general conformity with ~~the rules set forth in 701—Chapter 7, rules 701—7.10(17A), 701—7.12(17A) and 701—7.14(17A) to 701—7.16(17A), 701—subrule 7.17(8), and rules 701—7.19(17A) to 701—7.22(17A)~~₂ to the extent applicable. The burden of proof shall be on the tobacco product manufacturer to establish that it or a particular brand family is entitled to be listed in the directory.

b. The form, status, finality and appealability of orders shall be controlled by the general provisions of 701—subrule 7.17(8), except that no appeal to or on motion of ~~the state board of tax review~~ or any other agency is authorized. All parties to the contested case may appeal any orders entered in relation to the contested case.

c. Stays of the decision of the attorney general during the pendency of the contested case proceedings and judicial review of the final contested case order of the department may be sought under 701—subrule 7.17(9). However, the addition or retention of a tobacco product manufacturer or brand family in the directory shall not be ordered during the pendency of the contested case proceedings and judicial review of the final contested case order unless a sufficient bond has been provided to the attorney general to ensure that all escrow amounts owed at the time of bonding and all escrow amounts reasonably expected to become due during the pendency of the contested case and all related appeals will be satisfied if the tobacco product manufacturer does not ultimately prevail in its challenge. Such bonds shall be subject to update on a quarterly basis on motion of the attorney general.

d. If a claim is made that a particular entity is the tobacco product manufacturer and the entity obtains an order allowing it and any of the brands it claims to be responsible for to be listed in the directory pending final resolution of its status and it is ultimately determined that the entity is not the tobacco product manufacturer, the required bond shall be forfeited to the state.

ITEM 32. Amend rule 701—103.4(423A) as follows:

701—103.4(423A) Retailers required to keep records.

103.4(1) Every retailer shall keep and preserve the following records:

1- *a.* A daily record of the amount of all cash and time payments and credit sales from the renting of rooms subject to tax under Iowa Code chapter 423A.

2- *b.* A record of all deductions and exemptions taken in filing a tax return.

103.4(2) The records required in this rule must be preserved for a period of three years and open for examination by the department during this period of time.

103.4(3) Retailers performing all or part of their record keeping and retention of books, records, and other sources of information under electronic data interchange process or technology, see 701—subrule 11.4(4).

103.4(4) If a tax liability has been assessed and an appeal is pending to the department, ~~state board of tax review~~, district court, or ~~supreme~~ an appellate court, books, papers, records, memoranda or documents specified in this rule ~~which~~ that relate to the period covered by the assessment shall be preserved until the final disposition of the appeal. This provision applies equally to parties to the appeal and other retailers who could claim a refund as a result of the resolution of the appeal.

103.4(5) Failure to keep and preserve adequate records shall be grounds for revocation of the state-imposed tax permit.

This rule is intended to implement Iowa Code section 423.41 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

[Filed 7/15/16, effective 9/7/16]

[Published 8/3/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/3/16.

ARC 2661C**REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of 2016 Iowa Code section 421.14, the Department of Revenue hereby amends Chapter 89, “Fiduciary Income Tax,” Iowa Administrative Code.

The subject matter of paragraph 89.8(8)“g” is the “no double deduction” rule as it applies to deductions from fiduciary income tax. Paragraph 89.8(8)“g” clarifies how the federal “no double deduction” rule applies to Iowa fiduciary income tax. The federal “no double deduction” rule under IRC Section 642(g) states that certain deductions for administration expenses and debts of the decedent taken on the federal estate tax return may not be deducted on the federal fiduciary income tax return. The basis for Iowa fiduciary taxable income is federal fiduciary taxable income with adjustments provided in the Iowa Code. Only deductions allowed on the federal fiduciary income tax return are allowed on the Iowa fiduciary income tax return unless there is a specific provision in the Iowa Code stating otherwise.

2015 Iowa Acts, chapter 125, section 1, (“the Act”) created a specific deduction from Iowa fiduciary income tax for administrative expenses not allowed on the federal fiduciary income tax return. The Act applies to all Iowa fiduciary income tax returns filed for tax years ending on or after July 1, 2015. This amendment updates the paragraph on the “no double deduction” rule to correspond with the change made by the Act.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2537C** on May 11, 2016. No public comments were received. The Department revised numbered paragraphs 89.8(8)“g”“1” and “2” from the amendment published under Notice in order to limit the expanded deduction to only administrative expenses, as the law requires.

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

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

This amendment is intended to implement Iowa Code subsection 422.7(58).

This amendment will become effective September 7, 2016.

The following amendment is adopted.

Amend paragraph **89.8(8)“g”** as follows:

g. The no double deduction rule. Expenses of administration, certain debts of the decedent like medical expenses incurred prior to death and losses during the period of administration are proper deductions in computing both the taxable income of an estate or trust (or on the decedent’s individual return in case of medical expenses) and the taxable estate for federal estate tax purposes under 26 U.S.C. Sections 2053 and 2054. The no double deduction rule only applies to trusts when the trust assets are included for federal estate tax purposes. 26 U.S.C. Section 642(g) prohibits the double deduction of those items which qualify as deductions for both taxes. To prevent the double deduction, it is a prerequisite for the allowance of the deduction for income tax purposes that a statement be filed with the fiduciary return of income waiving the right to claim the item or portion of the item as a deduction on the federal estate tax return. The waiver once filed with the fiduciary return of income is irrevocable. However, unless the waiver has been filed, the decision to claim the deduction or portion of the deduction on the federal estate tax return can be changed anytime prior to the time the item or portion of the item is finally allowed for federal estate tax purposes.

The waiver requirement has no application to estates and trusts not required to file a federal estate tax return.

The no double deduction rule has no application to deductions in respect of a decedent, such as deductions relating to trade or business expenses, interest, taxes, expenses for the production of income and the allowance for depletion, which are deductible both for income tax purposes and federal estate tax purposes. See 26 U.S.C. Section 691(b) and ~~federal regulations~~ 26 CFR Section 1.691(b)-1 for what constitutes deductions in respect of a decedent.

REVENUE DEPARTMENT[701](cont'd)

The no double deduction rule does not apply to the deduction of an item for Iowa inheritance tax purposes. Items are deductible or not in computing the taxable shares for Iowa inheritance tax purposes by reference alone to Iowa Code chapter 450.

Assuming an item is otherwise deductible for income and inheritance tax purposes, the no double deduction rule has the following applications for Iowa income and inheritance tax:

1. ~~For estates~~ Estates and trusts not required to file a federal estate tax return, ~~an item is deductible for~~ can claim the item as a deduction on both the Iowa inheritance tax return and the Iowa fiduciary income tax purposes return.

2. Estates and trusts required to file a federal estate tax return can ~~always~~ claim the item as a deduction on the Iowa inheritance tax return. In addition, the same item or portion of the item is a deduction ~~for on the Iowa fiduciary income tax purposes return~~ if the item or portion of the item is not claimed as a deduction on the federal estate tax return. If it is claimed as a deduction on the federal estate tax return, it is not deductible ~~for on the Iowa fiduciary income tax purposes return.~~

3. For tax years ending on or after July 1, 2015, estates or trusts required to file a federal estate tax return can claim administrative expenses as a deduction on the Iowa fiduciary income tax return, regardless of whether the item or a portion of the item was claimed on the federal estate tax return.

~~This rule~~ paragraph applies both to estates and trusts with a situs within and without Iowa.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/3/16.

ARC 2645C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Iowa Department of Transportation, on July 13, 2016, adopted amendments to Chapter 117, "Outdoor Advertising," and Chapter 118, "Logo Signing," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the May 25, 2016, Iowa Administrative Bulletin as **ARC 2543C**.

The amendments to Chapter 117 ease restrictions and clarify existing requirements for companies and individuals interested in outdoor advertising signs along primary highways in Iowa. The amendments correct the use of terms for the sake of meaning and consistency with Iowa Code chapter 306C; eliminate redundant, confusing or nongermane language; improve reader comprehension of original intent; eliminate overly restrictive regulations; clarify zoning requirements; provide for notice preceding permit revocation allowing opportunity to correct signs which are blank or in a state of disrepair; eliminate the permitting system for religious signs and service club signs; clarify that permit revocation may occur in conjunction with the issuance of removal notices; and include opportunities for contested case hearings within the rule rather than expecting the reader to search other Iowa Code chapters.

The amendments to Chapter 118 clarify that individual business signs are to be provided by the applicants; allow for the placement of signs in urban areas; limit the number of individual business signs to four on a trailblazer service sign; update the list of protected statuses to the antidiscrimination provision; prohibit entry restrictions based on age; set a minimum of eight hours of operation per day for food services; require a minimum seating for ten customers for food services; allow for breweries and distilleries to qualify for the attractions category of the program; clarify existing procedures regarding the attractions category to explain that the department reviews the sites first for technical compliance and then submits the applications to the tourist signing committee; clarify that the \$50 service fee for changing out logo signs is a per-trip fee; require signs to be retroreflective; and eliminate the separate RV symbol program.

TRANSPORTATION DEPARTMENT[761](cont'd)

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

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

These amendments are intended to implement Iowa Code chapters 306B and 306C.

These amendments will become effective September 7, 2016.

Rule-making actions:

ITEM 1. Amend rule **761—117.1(306B,306C)**, definitions of “Official sign or notice” and “On-premises sign,” as follows:

“*Official sign or notice*” means a sign or notice lawfully erected and maintained by a city, county or public agency within its territorial or zoning jurisdiction for the purpose of carrying out an official duty or responsibility. ~~The definition includes a historical marker lawfully erected by a state or local government agency or a nonprofit historical society.~~

“*On-premises sign*” or “*on-property sign*” means an advertising device advertising the sale or lease of, or activities being conducted upon, the property where the sign is located. The criteria to be used to determine if an advertising device qualifies as on-premises signing, excluding development directory signing, include but are not limited to the following:

1. No change.
2. An on-premises sign must be located on the same property as the advertised activity or the same property as that advertised for sale or lease. A subdivided property is may be considered to be one property if all lots remain under common ownership and all lots share a common, private access to public roads. However, if any lot in the subdivided property is sold or disposed of in any manner, that lot will be considered to be separate property.
3. ~~Contiguous lots or parcels of land combined for development purposes are~~ may be considered to be one property for outdoor advertising control purposes provided they are owned or leased by the same party or parties. ~~However, land held by lease or easement must be used for a purpose related to the advertised activity other than signing. To be considered one property, all contiguous lots or parcels of land must also be used for a purpose related to the advertised activity other than signing.~~
4. to 7. No change.

ITEM 2. Amend rule 761—117.2(306B,306C) as follows:

761—117.2(306B,306C) General provisions.

117.2(1) Scope. This chapter of rules pertains to all advertising devices which are visible from the main traveled way of any ~~interstate, freeway primary, or primary highway,~~ with the following exceptions:

a. and *b.* No change.

117.2(2) to 117.2(4) No change.

117.2(5) Advertising devices within the right of way. Any advertising device placed or erected within the right of way of any ~~interstate, freeway primary, or primary highway, except signs or devices authorized by law or approved by the department, is an obstruction in the highway right of way and violates Iowa Code section 318.3 and subsection 318.11(1) in violation of Iowa Code chapter 318 is subject to removal in the manner specified in Iowa Code chapter 318. In accordance with Iowa Code sections 318.4 and 318.5, the department shall remove the advertising device and assess the cost of removal against the owner of the device.~~

ITEM 3. Amend rule 761—117.3(306B,306C) as follows:

761—117.3(306B,306C) General criteria. The department shall control the erection and maintenance of advertising devices, subject to the provisions of these rules, in accord with the following criteria:

117.3(1) Prohibition. Advertising devices shall not be erected, maintained or illuminated unless they comply with the following:

- a.* No sign advertising device shall attempt or appear to attempt to direct the movement of traffic.

TRANSPORTATION DEPARTMENT[761](cont'd)

b. No ~~sign~~ advertising device shall interfere with, imitate or resemble any official sign, signal or device.

c. No ~~directional sign or sign~~ advertising device subject to the more restrictive controls of the bonus Act shall move or have any animated or moving parts.

d. No ~~sign~~ advertising device shall be erected or maintained upon trees, painted or drawn upon rocks or other natural features.

e. No off-premises ~~sign~~ advertising device shall include any flashing, intermittent or moving light or lights except those signs giving public service information such as time, date, temperature, weather and news. No on-premises sign located within the adjacent area of an interstate highway but outside an area zoned and used for commercial or industrial purposes, as defined in rule 761—117.1(306B,306C), shall include any flashing, intermittent or moving light or lights except those signs giving public service information such as time, date, temperature, weather and news. Any variation or addition to the stated service information is subject to department approval. This paragraph does not prohibit an LED display, provided:

(1) to (3) No change.

f. No lighting shall be used in any way in connection with any ~~sign~~ advertising device unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main traveled way of any highway, or is of such low intensity or brilliance as to not cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle. This paragraph does not prohibit an LED display provided the light intensity presented does not exceed that allowed for other illuminated displays.

g. No ~~directional sign or sign~~ advertising device subject to the more restrictive controls of the bonus Act shall be obsolete.

h. ~~Signs~~ No advertising device shall be maintained in good repair so as to be legible. Any advertising device that for a period of at least 90 days is in a state of disrepair or is illegible due to deferred maintenance is subject to removal in the manner specified in subrule 117.8(1), and any permit that has been issued for the advertising device is subject to revocation in a state of disrepair or illegible for a period of time exceeding 90 days.

i. ~~Signs~~ Advertising devices shall be securely affixed to a substantial structure.

j. No ~~directional sign or sign~~ advertising device subject to the more restrictive controls of the bonus Act shall advertise activities which are illegal under federal or state laws in effect at the location of those activities or at the location of the sign.

k. No change.

l. No off-premises advertising device may be erected within the adjacent area of any ~~interstate, freeway primary or primary~~ highway that has been designated a scenic highway or scenic byway if the advertising device will be visible from the highway.

m. An advertising device shall not be constructed or reconstructed beyond the adjacent area in unincorporated areas of the state if the advertising device is visible from the main traveled way of any ~~interstate, freeway primary, or primary~~ highway except for on-premises signs and official signs and notices.

117.3(2) and 117.3(3) No change.

117.3(4) Zoning exclusions.

a. A zone in which limited commercial or industrial activities are permitted incidental to other primary land uses is not a commercial or industrial zone for ~~outdoor~~ advertising control purposes.

b. Action which is not a part of comprehensive zoning ~~and is taken primarily to permit outdoor advertising devices in accordance with Iowa Code chapter 335 or Iowa Code chapter 414~~ is not ~~zoning~~ a commercial or industrial zone for advertising control purposes.

TRANSPORTATION DEPARTMENT[761](cont'd)

c. Action taken primarily to permit advertising devices is not a commercial or industrial zone for advertising control purposes.

ITEM 4. Amend rule 761—117.5(306B,306C) as follows:

761—117.5(306B,306C) Location, size and spacing requirements. This rule does not apply to on-premises signs.

117.5(1) Advertising devices lawfully in existence prior to July 1, 1972.

a. An advertising device that was lawfully in existence prior to July 1, 1972, and is visible from any ~~interstate, freeway-primary~~ or primary highway, including a device located beyond the adjacent area in unincorporated areas, may remain in existence without conforming to subrule 117.5(5) as long as the device otherwise conforms to all other applicable statutory and regulatory requirements. The permit provisions of rule 761—117.6(306C) apply.

b. No change.

117.5(2) to 117.5(4) No change.

117.5(5) Advertising devices erected after July 1, 1972. Except as otherwise provided in this chapter, an advertising device which is visible from the main traveled way of any ~~interstate, freeway-primary, or~~ primary highway shall not be erected after July 1, 1972, or subsequently maintained within the adjacent area unless the advertising device complies with the following:

a. No change.

b. *Commercial or industrial area.*

(1) No change.

(2) An advertising device visible from the main traveled way of a ~~freeway-primary or noninterstate~~ primary highway must be located within a commercial or industrial zone or an unzoned commercial or industrial area, as defined in Iowa Code section 306C.10.

c. *Spacing within city—interstate and freeway-primary highway.* Within the corporate limits of a municipality, the following provisions apply to an advertising device which is visible from an interstate or a freeway-primary highway:

(1) No change.

(2) The advertising device shall not be located within the adjacent area on either side of the highway in, or within 250 feet of an interchange or rest area. The 250 feet shall be measured along a line parallel to the centerline from a point opposite the end or beginning of whichever acceleration or deceleration ramp extends the farthest from the interchange or rest area to a point opposite the advertising device.

(3) No change.

d. *Spacing outside city—interstate and freeway-primary highway.* Outside the corporate limits of a municipality, the following provisions apply to an advertising device which is visible from an interstate or a freeway-primary highway:

(1) No change.

(2) The advertising device shall not be located within the adjacent area on either side of the highway in, or within 250 feet of an interchange or rest area. The 250 feet shall be measured along a line parallel to the centerline from a point opposite the end or beginning of whichever acceleration or deceleration ramp extends the farthest from the interchange or rest area to a point opposite the advertising device.

(3) No change.

e. to g. No change.

h. *Spacing—measurement of distance.* The minimum distance between two advertising devices visible to traffic proceeding in the same direction shall apply without regard to the side of the highway on which the advertising devices may be located and shall be measured along a line parallel to the centerline of the highway between points directly opposite the advertising devices. When a sign is visible and subject to control from more than one primary highway (~~interstate, freeway-primary or primary~~), it must meet spacing requirements along each route.

i. *Spacing—rural area next to incorporated area.*

(1) No change.

TRANSPORTATION DEPARTMENT[761](cont'd)

(2) In those areas where the adjacent area on one side of the highway is incorporated and on the opposite side of the highway all or part of the adjacent area is not, the spacing on both sides of the highway, except for daylight spacing, shall be regulated by the rural or unincorporated area spacing requirements.

j. to l. No change.

ITEM 5. Amend rule 761—117.6(306C), introductory paragraph, as follows:

761—117.6(306C) Outdoor advertising permits and fees required. The owner of an advertising device must apply to the department for an outdoor advertising permit if the device is visible from the main traveled way of any ~~interstate, freeway primary or~~ primary highway and the device is regulated by subrule 117.4(1) or rule 761—117.5(306B,306C).

ITEM 6. Amend paragraph **117.6(1)“a”** as follows:

a. A permit is required for each face of an advertising device; thus, a permit application must be submitted for each face. Three permits are required for a tri-face device if all three faces are visible from the main traveled way of an ~~interstate, freeway primary, or a~~ primary highway. However, only one application and permit are required for a back-to-back advertising device that identifies the same business or service on each face if each face is no larger than 8 feet in width or height and 32 square feet in area.

ITEM 7. Amend subrule 117.6(9) as follows:

117.6(9) Blank sign.

a. A blank sign is:

(1) An advertising device that has had a face physically removed.

~~(2) An advertising device that has been completely removed.~~

~~(3) (2)~~ (2) An advertising device that does not display copy. “This space for rent” or a similar message is not copy.

~~(4) (3)~~ (3) An advertising device that qualifies as an obsolete sign.

~~*b.* A sign that is a blank sign for at least six months shall result in revocation of any permit that has been issued for the advertising device and removal of the advertising device in the manner specified in subrule 117.8(1). A blank sign shall not remain in blank status for a period of time exceeding six months.~~

c. If the department determines that an advertising device has been blank for a period of time exceeding six months, the department shall issue a notice pursuant to rule 761—117.8(306B,306C) in which the owner has 30 days to either cause it to conform or to remove it.

ITEM 8. Amend rule 761—117.7(306C) as follows:

761—117.7(306C) Official signs and notices, public utility signs, and service club and religious notices. ~~This rule does not pertain to on-premises signs.~~

~~**117.7(1) Official signs and notices.** Official signs and notices regulated by the Manual on Uniform Traffic Control Devices, as adopted in 761—Chapter 130, shall comply with its provisions. All other official signs and notices shall comply with applicable state law, local ordinance or administrative authority. Historical markers are subject to the approval of the department if they are erected within the right of way of any interstate, freeway primary or primary highway.~~

~~**117.7(2) Public utility signs.** Public utility signs shall be erected no larger than required to adequately convey the necessary message; and only at such places as are required to adequately mark the location of the utility. Public utility signs are subject to the approval of the department if they are erected within the right of way of any interstate, freeway primary or primary highway.~~

~~**117.7(3) Service club and religious notices.** Service club and religious notices may be placed upon private property with the permission of the land owner provided the notice complies with the definition of “service club or religious notice” in rule 761—117.1(306B,306C), complies with the general criteria of rule 761—117.3(306B,306C), and does not exceed eight square feet in area.~~

~~*a.* Service club and religious notices shall not be placed within the right of way.~~

TRANSPORTATION DEPARTMENT[761](cont'd)

~~b. Service club and religious notices may be placed within the adjacent area of an interstate highway only if they are eligible for issuance of an outdoor advertising permit. All permit provisions apply, including but not limited to size and spacing requirements of subrule 117.5(5) and permit fees.~~

~~e. Service club and religious notices may be placed outside the right of way of a freeway primary or primary highway and outside the adjacent area of an interstate highway. Notices in these locations may be grouped upon a common panel and shall comply with the following:~~

~~(1) The message shall comply with the definition of "service club or religious notice" in rule 761—117.1(306B,306C).~~

~~(2) A notice shall not exceed eight square feet in area.~~

~~(3) A notice shall comply with rule 761—117.3(306B,306C).~~

~~(4) The department's approval shall be obtained prior to erection. A special application form shall be filed with the department, but no fees are required.~~

ITEM 9. Amend rule 761—117.8(306B,306C) as follows:

761—117.8(306B,306C) Removal procedures. The department shall cause to be removed every advertising device illegally erected or maintained and every abandoned sign.

117.8(1) Removal of illegal and abandoned advertising devices. In accordance with Iowa Code sections 306B.5 and 306C.19, an advertising device erected or maintained in violation of Iowa Code chapter 306B or 306C or these rules is a public nuisance and may be removed by the department upon 30 days' notice, by certified mail, to the owner of the advertising device and to the owner of the land on which the advertising device is located.

a. The notice shall require the owner of the advertising device to remove the advertising device if it is prohibited, or to cause it to conform to the provisions of these rules if it is not. The department may revoke a permit issued for the advertising device as part of the same notice, in which case, the notice shall be served by restricted certified mail or by personal service.

b. to e. No change.

117.8(2) Removal from right of way and other state-owned property. The department shall remove advertising devices erected upon the right of way of any ~~interstate, freeway primary or~~ primary highway; see subrule 117.2(5). Unauthorized advertising devices erected upon other property owned by the state of Iowa are subject to removal by the agency, board, commission or department having control or jurisdiction of the property.

ITEM 10. Adopt the following **new** rule 761—117.10(17A,306C):

761—117.10(17A,306C) Contested cases.

117.10(1) An applicant who has been denied an outdoor advertising permit by the department may contest the decision in accordance with 761—Chapter 13. The request for a contested case hearing shall be submitted in writing to the director of the office of traffic and safety at the address in subrule 117.2(2). The request shall be deemed timely submitted if it is delivered or postmarked within 30 days of the department's mailing of the letter denying the application.

117.10(2) The owner of an outdoor advertising permit which has been revoked or canceled by the department may contest the decision in accordance with 761—Chapter 13. The request for a contested case hearing shall be submitted in writing to the director of the office of traffic and safety at the address in subrule 117.2(2). The request shall be deemed timely submitted if it is delivered or postmarked within 30 days of the owner's receipt of the revocation notice issued by the department.

117.10(3) Failure to timely request a hearing on the denial, revocation, or cancellation of a permit is a waiver of the right to a hearing and a failure to exhaust administrative remedies.

ITEM 11. Amend rule 761—117.15(306C) as follows:

761—117.15(306C) Development directory signing.

117.15(1) No change.

TRANSPORTATION DEPARTMENT[761](cont'd)

117.15(2) Limitation. Each business within the development is limited to its name appearing on not more than two development directory signs visible to traffic proceeding in any one direction on any ~~interstate, freeway-primary or primary~~ highway.

117.15(3) Commercial or industrial development. A development directory sign must be located within a commercial or industrial development. For the purposes of this rule, a commercial or industrial development is a single premises that meets all of the following requirements:

- a. No change.
- b. No part of the development is separated from another part by ~~an interstate, freeway-primary, or a~~ primary highway.
- c. to g. No change.

ITEM 12. Amend rule 761—118.1(306C) as follows:

761—118.1(306C) Introduction. Logo signing consists of individual business signs attached to specific service signs erected by the department within the right-of-way of interstate and freeway-primary highways. The purpose of logo signing is to provide specific motorist service information of interest to the traveling public. Logo signing shall comply with this chapter and the “Manual on Uniform Traffic Control Devices,” as adopted in rule 761—130.1(321). The department shall perform all required installation, maintenance, removal and replacement of specific service signs and business signs within the right-of-way. The business signs are provided by the applicants.

ITEM 13. Amend rule **761—118.2(306C)**, definition of “Trailblazing sign,” as follows:

“*Trailblazing sign*” means a specific service sign erected on the road network accessed from an interchange that has logo signing; the sign directs motorists to a particular business signed on the mainline and has spaces for the attachment of business signs.

ITEM 14. Amend rule 761—118.3(306C) as follows:

761—118.3(306C) Erection and location of specific service signs and placement of business signs.

118.3(1) General.

a. The department shall erect specific service signs at rural interchanges if the requirements of this chapter are met and sufficient space is available. The department may also erect specific service signs at urban, or nonrural interchanges if the requirements of this chapter are met and sufficient space is available. If sufficient space is not available for more than one specific service sign, the department may install a general service sign in lieu of a specific service sign.

b. No change.

118.3(2) Mainline specific service signs and placement of business signs. Following are the requirements for mainline specific service signs erected in advance of an interchange, in a single direction of travel, and limitations regarding the number and types of business signs attached to these service signs.

a. to i. No change.

j. The department shall designate each mainline specific service sign for a particular type of motorist service, although the service sign may, in use, be displaying more than one service type, subject to paragraph “h” of this subrule. When a specific service sign designated for a particular service type exists and that sign is full, the department may grant an exception, in accordance with subrule 118.4(11), to allow the placement of a business sign for that service type on a specific service sign designated for another service type, provided that the department has displayed the legend for that service type on the service sign.

118.3(3) No change.

118.3(4) Trailblazing signs and placement of business signs.

a. to c. No change.

d. Trailblazing signs shall not display more than four business signs.

TRANSPORTATION DEPARTMENT[761](cont'd)

~~d. e.~~ The department may approve the use of an official traffic control device that is placed by the department or a local jurisdiction on the public right-of-way in compliance with the “Manual on Uniform Traffic Control Devices” as a substitute for a trailblazing sign.

~~e. f.~~ If site or other conditions do not permit the erection of a trailblazing sign, the department may approve the use of an off-premises advertising device as a substitute for a trailblazing sign if the advertising device complies, as applicable, with 761—Chapter 117 (including permit requirements) and any local regulations; the device is legible and understandable; and the device is placed along the route in advance of the intersection where the trailblazing sign would have been placed.

~~f. g.~~ No more than two trailblazing signs ~~or, including approved substitutes,~~ are allowed for a business. If the department determines that more than two trailblazing signs ~~or, including approved substitutes,~~ would be needed to guide motorists to the business, the business does not qualify for logo signing at the interchange. Also, if the department determines that one or two trailblazing signs or approved substitutes are required and conditions do not permit the erection of the required trailblazing signs or approved substitutes, the business does not qualify for logo signing at the interchange.

ITEM 15. Amend rule 761—118.4(306C) as follows:

761—118.4(306C) Eligibility for placement of business signs on mainline specific service signs. To qualify for placement of a business sign on a mainline specific service sign, the business ~~must~~ shall be open to the general public, shall not restrict entrance based on age, and shall meet the following requirements:

~~118.4(1) *Written assurance. Discrimination prohibited.* The business shall give the department written assurance of its conformity with all applicable laws concerning the provision of public accommodations without regard to race, religion, color, age, sex or national origin, and shall not be in continuing breach of that assurance. As a condition of approval as a participant in the logo signing program, the applicant shall give the department written assurance of the business’s conformity with all applicable laws prohibiting discrimination based on age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion or disability, and a participant shall not be in breach of that assurance.~~

118.4(2) and **118.4(3)** No change.

118.4(4) *Food.*

a. Qualifications. To qualify for placement of a business sign on a food specific service sign, the business must:

(1) No change.

(2) Operate a minimum of eight hours per day, six days per week, and serve three meals per day: breakfast, lunch, and dinner.

1. At a minimum, breakfast shall be served from 10 a.m. to 11 a.m. and shall consist of at least two of the following items: eggs, bacon, ham, sausage, pancakes, waffles, oatmeal, cereal, fruit, muffins, toast, croissants, doughnuts or rolls, or combinations thereof. Hamburgers, hot dogs, pizza, burritos, or other foods not commonly associated with breakfast menus do not meet the breakfast requirement and at least two of the following drinks: coffee, juice, tea or milk.

2. and 3. No change.

(3) and (4) No change.

(5) Have seating available for a minimum of ten customers.

b. and c. No change.

118.4(5) and **118.4(6)** No change.

118.4(7) *Attraction.*

a. and b. No change.

c. Types of qualifying sites or attractions. The site or attraction must be one of the following:

(1) to (7) No change.

(8) Winery, brewery or distillery with on-site production, tours, gift shop, and tasting room.

(9) to (17) No change.

118.4(8) to **118.4(11)** No change.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 16. Amend subrule 118.5(3) as follows:

118.5(3) Applications for attraction signing. The department shall perform an initial review of all applications for attraction signing to determine if the attraction signing meets the technical requirements, such as the maximum distance the site or attraction is allowed to be from the interchange. If the site or attraction meets the technical requirements, the department shall submit the applications for attraction signing to the tourist signing committee. The tourist signing committee will determine whether the applications meet the qualifications set forth in subrule 118.4(7) for an attraction under the logo signing program. The composition of the committee is set out in 761—subrule 119.5(3).

ITEM 17. Amend subrule 118.5(5) as follows:

118.5(5) Fees. A business is required to pay the following fees to the department for participation in the logo signing program.

a. and b. No change.

c. *Service fee.* The department may install replacement business signs at the request of the business and shall assess a \$50 service fee per business sign installed. The department shall also assess a \$50 service fee to install a renovated or new business sign that replaces a misleading, unsightly, badly faded or dilapidated sign, as specified in subrule 118.7(5). If removal of an existing business sign for the purpose of refurbishing is requested by the business, thereby requiring two service trips by the department, the service fee shall be applied per trip. The department shall invoice the business once installation is complete; the service fee is due within 30 days.

d. *RV symbol fee.* See rule 761—118.8(306C).

ITEM 18. Amend subrule 118.7(3) as follows:

118.7(3) Reflectorization. ~~Reflectorization of business signs is optional, at the discretion of the applicant~~ All business signs must be retroreflective.

ITEM 19. Amend subrule 118.7(4) as follows:

118.7(4) Supplemental messages.

a. With department approval, a supplemental messages message such as “OPEN 24 HRS,” “DIESEL,” “E-85,” “MECHANIC ON DUTY,” “24 HR TOWING,” “RV ACCESS,” or the dates of operation for seasonal operations may be displayed on a mainline business signs sign provided the letter height is at least 6 5 inches. Approval shall be limited to essential motorist information and does not extend to messages such as, but not limited to, “INDOOR POOL,” “CAR WASH” or “PLAY AREA.”

b. With departmental approval, a scaled-down version of the supplemental messages indicating the dates of operation for seasonal operations message used on the mainline business sign may be displayed on ramp business signs provided the letter height is at least 2 inches.

c. Business signs are limited to one supplemental message per business sign.

ITEM 20. Rescind and reserve rule **761—118.8(306C)**.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/3/16.

ARC 2644C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 321.180B, the Iowa Department of Transportation, on July 13, 2016, adopted amendments to Chapter 602, “Classes of Driver’s Licenses,” Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the May 25, 2016, Iowa Administrative Bulletin as **ARC 2544C**.

The amendments to this chapter:

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- Add the Department's Web site as a resource to obtain driver's license applications and forms.
- Add a new subrule to explain the passenger restriction for an intermediate license and the process required to waive the restriction. The passenger restriction is added to an intermediate driver's license, unless waived by the licensee's parent or guardian, and requires the licensee to limit the number of unrelated minor passengers in the motor vehicle when the intermediate licensee is operating the motor vehicle to one passenger for the first six months after the license is issued. This amendment conforms to existing practice.
- Add a new paragraph to comply with Iowa Code section 321.180B(2) concerning eligibility requirements for an intermediate license, to clarify that the 12-month period to possess an instruction permit is calculated cumulatively to include any period of time the applicant possessed a valid instruction permit but excludes any period of time the applicant did not have a valid driving privilege; and to clarify that the six-month period to remain accident and violation free is calculated continuously and must encompass without interruption the six-month period of time immediately preceding the application. This amendment conforms to existing practice.
- Add a new paragraph to comply with Iowa Code section 321.180B(4) concerning eligibility requirements for persons who are 17 years of age and relating to full driver's licenses to state that the applicant is required to possess an intermediate license for a 12-month period of time and must remain accident and violation free before applying for a full license. The applicant must hold an intermediate license issued under Iowa Code section 321.180B(2) or a comparable license issued by another state and maintain a valid driving privilege through the continuous 12-month period without interruption. This amendment conforms to existing practice.
- Amend rules concerning a minor's school license to align the hours that a minor school licensee may operate a motor vehicle unaccompanied during the hours provided for in Iowa Code section 321.194. Also, the amendments update the process by which an applicant who qualifies for a "hardship exemption" may demonstrate that completion of the driver's education course would impose a hardship. These amendments conform to existing practice.
- Add a new subrule to accommodate a student who holds a minor's school license and whose parents are divorced or legally separated and as a result of shared custody maintains more than one residence. These amendments conform to existing practice.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Iowa Code citations were corrected from the Notice of Intended Action within Item 4. Iowa Code section 321.194 was renumbered by 2016 Iowa Acts, House File 2437, section 33. As a result, citations to Iowa Code subsection 321.194(1)"a" were corrected to Iowa Code subsection 321.194(2), and the citation to Iowa Code subsection 321.194(1)"c" was corrected to Iowa Code subsection 321.194(3).

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

These amendments are intended to implement Iowa Code sections 321.180B and 321.194.

These amendments will become effective September 7, 2016.

Rule-making actions:

ITEM 1. Amend subrule 602.1(2) as follows:

602.1(2) *Special licenses and permits.* The department issues the following special licenses and permits. More than one type of special license or permit may be issued to an applicant. On the driver's license, a restriction number designates the type of special license or permit issued, as follows:

1—Motorcycle instruction permit—includes motorcycle instruction permits issued under Iowa Code subsections 321.180(1) and 321.180B(1)

2—Noncommercial instruction permit (vehicle less than 16,001 gross vehicle weight rating)—includes instruction permits, other than motorcycle instruction permits, issued under Iowa Code subsection 321.180(1), and section 321.180A and subsection 321.180B(1)

3—Commercial learner's permit

4—Chauffeur's instruction permit

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- 5—Motorized bicycle license
- 6—Minor's restricted license
- 7—Minor's school license

ITEM 2. Amend rule 761—602.2(321) as follows:

761—602.2(321) Information and forms. Applications, forms and information about driver's licensing are available at any driver's license examination station or on the department's Web site at www.iowadot.gov. Assistance is also available at the address in rule 761—600.2(17A).

602.2(1) to 602.2(3) No change.

602.2(4) Passenger restriction for intermediate licensee. The passenger restriction required by Iowa Code subsection 321.180B(2) will be added to an intermediate license unless waived by the licensee's parent or guardian at the time the license is issued. If the restriction is not waived at the time the license is issued, the intermediate license will be designated with a "9" restriction with the following notation: "Only 1 unrelated minor passenger allowed until [six months from the date the license is issued]." The licensee must obey the restriction for the first six months after the intermediate license is issued. If a parent or guardian wishes to waive the passenger restriction after the license has already been issued, the licensee and the parent or guardian must apply for a duplicate license and pay the replacement fee pursuant to 761—subrule 605.11(3).

This rule is intended to implement Iowa Code sections 321.8, 321.178, 321.180B, 321.184, 321.189, and 321.194.

ITEM 3. Amend subrule 602.11(2) as follows:

602.11(2) Requirements.

a. and *b.* No change.

c. For purposes of determining eligibility for an intermediate license issued to a person 16 or 17 years of age under Iowa Code subsection 321.180B(2):

(1) The 12-month period during which the applicant is required to possess an instruction permit before applying for an intermediate license shall be calculated cumulatively and shall include any period of time during which the applicant has held a valid instruction permit issued under Iowa Code subsection 321.180B(1), a minor's school license issued under Iowa Code section 321.194, or comparable instruction permit or license issued by another state, but shall exclude any period of time during which the permit or license is suspended, revoked, or canceled, or the applicant otherwise did not have a valid driving privilege.

(2) The six-month period during which the applicant is required to remain accident and violation free shall be calculated continuously and must encompass without interruption the six-month period of time immediately preceding the application. The applicant must hold a valid instruction permit issued under Iowa Code subsection 321.180B(1), a minor's school license issued under Iowa Code section 321.194, or a comparable instruction permit or license issued by another state and maintain a valid driving privilege without interruption throughout the continuous six-month period.

d. For purposes of determining eligibility for a full license issued to a person 17 years of age under Iowa Code subsection 321.180B(4), the 12-month period during which the applicant is required to possess an intermediate license and to remain accident and violation free before applying for a full license shall be calculated together and continuously and must encompass without interruption the 12-month period of time immediately preceding the application. The applicant must hold a valid intermediate license issued under Iowa Code subsection 321.180B(2) or a comparable license issued by another state and maintain a valid driving privilege without interruption throughout the continuous 12-month period.

ITEM 4. Amend rule 761—602.26(321) as follows:

761—602.26(321) Minor's school license.

602.26(1) Validity and issuance.

a. No change.

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~~b. The license is valid for driving unaccompanied from 6 a.m. to 10 p.m. on the most direct route between a licensee's residence and schools of enrollment or the closest school bus stop or public transportation service, and between schools of enrollment, to attend scheduled courses and extracurricular activities within the school district. during the times and for the purposes set forth in Iowa Code subsection 321.194(2) as amended by 2016 Iowa Acts, House File 2437, section 33, and at any time~~

~~e. The license is also valid for driving when the licensee is accompanied by a person specified in accordance with Iowa Code subsection 321.180B(1).~~

~~d. c. The type of motor vehicle that may be operated is controlled by the class of driver's license issued. A Class C minor's school license is valid for operating a motorcycle only if the license has a motorcycle endorsement. A minor's school license is valid for operating a motorized bicycle only for the purposes specified in paragraph "b" of this subrule.~~

~~e. d. The license is issued for two years.~~

602.26(2) No change.

602.26(3) *Exemption.*

a. No change.

b. "Demonstrates to the satisfaction of the department" means that the department has received an affidavit on Form 430021 attesting that completion of the course would impose a hardship upon the applicant. The affidavit shall be signed by the written proof that a hardship exists, signed by the applicant's parent, custodian or guardian and by the superintendent of the applicant's school, the chairperson of the school board, or the principal of the applicant's school if authorized by the superintendent.

602.26(4) *Multiple residences.*

a. An applicant whose parents are divorced or separated and who as a result of shared custody maintains more than one residence may be authorized to operate a motor vehicle from either residence during the times and for the purposes set forth in Iowa Code subsection 321.194(2) as amended by 2016 Iowa Acts, House File 2437, section 33, provided that the statement of necessity provided to the department certifies that a need exists to drive from each residence, that the school of enrollment identified in the statement of necessity meets the geographic requirements set forth in Iowa Code subsection 321.194(3) as amended by 2016 Iowa Acts, House File 2437, section 33, as determined by the primary residence identified in the statement of necessity, and that the secondary residence identified in the statement of necessity is either within the school district that includes the applicant's school of enrollment or is an Iowa school district contiguous to the applicant's school of enrollment. The fact that either residence is less than one mile from the applicant's school of enrollment shall not preclude travel to and from each residence at the times and for the purposes set forth in Iowa Code subsection 321.194(2) as amended by 2016 Iowa Acts, House File 2437, section 33, provided that need is otherwise demonstrated.

b. A minor's school license approved for travel to and from two residences for the purposes set forth in Iowa Code subsection 321.194(2) as amended by 2016 Iowa Acts, House File 2437, section 33, shall not be valid for travel directly between each residence unless the licensee is accompanied in accordance with Iowa Code subsection 321.180B(1).

c. The primary residential address listed in the statement of necessity shall appear on the face of the license. A minor's school license approved for travel to and from two residences shall include a "J" restriction on the face of the license, and the secondary address listed in the statement of necessity shall

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be listed on the reverse side of the license as part of the “J” restriction, with the following notation: “Also valid to drive to and from [secondary residential address] in compliance with 321.194.”

This rule is intended to implement Iowa Code sections 321.177, 321.180B, 321.189, 321.194 and 321.196.

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